

What Every (Potential) Business Buyer Needs to Know About Business Brokers

A few months from now, you might find yourself sitting across the table from a friendly stranger in a strip-mall office. The stranger will hand you a glossy “Confidential Information Memorandum” describing a small manufacturing business. They will tell you things like “the seller is motivated,” “the numbers are great,” etc. They will also hint (or outright say) that there are other buyers interested.

And, somewhere in that conversation, they might tell you something like this: “Don’t waste your money hiring a lawyer. We have a standard form for this kind of deal. It’s fair to both sides.” **If you take only one thing from this article, take this: when you hear that sentence, get up and leave.**

The stranger is a business broker and the “standard form” is anything but. The deal is not fair to both sides because – first, outside of the context of a *particular* deal, “fair to both sides” is somewhat of a *non sequitur*... a document that’s fair under one set of facts could very easily be unfair under another set of facts; and second, the broker has not been working for both sides. The warning signs that something is wrong with what you are about to buy may not surface for years, by which point your options will be – if not nonexistent – drastically narrower than they would have been before you signed.

A solid half of what I do for a living is deal work. M&A, asset purchases, stock purchases, restructurings, private equity, the whole catalog of how one business swallows another. I have sat across the table from many business brokers, and I have seen the patterns. And my one takeaway is APPROACH WITH CAUTION.

I don’t want you to hear me say that all business brokers are bad. That’s not the case. Some brokers are diligent, ethical, and end up really and truly helping their clients – and, from my side of the table, they’re a genuine pleasure to work with. But on the other hand, a significant share of them take shortcuts and cut corners that have real consequences, and they do it in ways that neither party (but especially the buyer) will see until well after closing.

This is the first of TWO longer-form articles I am writing on business brokers that will be posted on my blog. This one is mainly for **BUYERS**. The next one is for sellers, and the verdict there is not much kinder. But for now, let’s talk about what you, as a buyer, are actually walking into when you hire one of these “business brokers.”

What Is a Business Broker?

A business broker is a person who facilitates the purchase and sale of small to mid-sized businesses. In practice, that means someone who lists businesses for sale, markets them to potential buyers, fields offers, helps the parties negotiate, and shepherds the transaction to closing.

At the larger end of the deal spectrum, you find people who rightly call themselves investment bankers. These are usually firms with FINRA-registered broker-dealers, securities licenses, and well-developed institutional practices. They typically work on transactions starting around \$10 million or \$20 million in enterprise value and going up from there. The work is more sophisticated, the documentation is more sophisticated, and the regulatory backdrop is more sophisticated.

Usually, these (FINRA-regulated, larger deal-value) brokers are less likely to leave you high and dry.

And then, under the \$6 million(ish) mark, you have... the “danger zone.” At the smaller end of the spectrum, in what the industry calls “Main Street” deals, you find business brokers who are basically unlicensed and unregulated – no institutional practice, not FINRA-registered, no securities licenses, no name you’ve ever heard of, happy to represent both sides, just overall a lot more “wild west”. In fact, the model is borrowed almost wholesale from residential real estate – which is the first part of the problem. A few (and I do mean FEW) are excellent. Many are not. There is no shortage of these people who use the terms “M&A advisor” and “business broker” interchangeably, including some who do not have the experience or the licensing to back up either label.

Story time: I was talking to one of these self-described “M&A advisors” at an event a few years ago (I won’t name names, but I’m sure others have similar stories), and I mentioned that I had a merger going on at the moment where the reps and warranties were being negotiated quite heavily between the buyer and seller. Common situation. But he looked at me like I had grown a third arm out of my forehead or something – and after an awkward silence said “but you aren’t allowed to change the reps and warranties.” Cue full deer-in-headlights.

At first, I thought he was just making a bad joke about demanding clients or something, so I kind of politely chuckled. But he continued... “it says so on the forms.” This person truly believed that there was only one form you could use to close a purchase or sale of a business. I told him as nicely as I could that he might really, really want to talk with his lawyer.

Obviously mistaken. Dangerously mistaken. So many ways and so many levels. But still! His business card said “M&A Advisor” and if you didn’t know any better... THAT is the person you might’ve picked to be running your deal.

Needless to say... don’t hire that person, folks.

But, to return to the point: for purposes of this article, I am going to use “business broker” to cover the full range of intermediaries you might encounter on a deal valued from a few hundred thousand to a few million dollars. That’s the zone where the issues are most acute, and where the average buyer has (or rather THINKS they have) the least leverage to push back. Some of them are not as bad as “that guy” from my story. Others... maybe worse.

Who Hires the Broker & Who Pays the Broker?

Here is the single most important fact about business brokers, and the one most buyers fail to internalize: **the broker works for the seller.**

The broker is hired by the seller – they are not a neutral third party intermediary and they certainly don’t work for the buyer. The broker signs a listing agreement with the selling business owner. The broker is paid by the seller, almost always on a contingency-fee basis (often around 6% to 12% for smaller deals, with lower percentages for larger deal values). If the deal closes, the broker collects a commission. If the deal does not close, the broker gets nothing (or sometimes a small upfront or hourly fee).

The broker has a financial interest in *closing the deal*, not in *protecting the buyer* (or, for that matter, protecting the seller – but that’s a topic for another day). They make money when the seller’s business gets sold. They do not make money when you walk away. They do not make money when you renegotiate the price downward based on diligence findings. They do not make money when you ask for additional protections in the purchase agreement, conduct additional diligence, demand proper reps & warranties, negotiate indemnification, or anything else. They do not make more money when you make a good deal vs. a bad deal. And if you negotiate certain buyer-favorable payout structures like earnouts or clawbacks, they might have their payday delayed, or even actually lose money.

Bottom line: they do not make money based on the (good or bad) terms you negotiate in the agreements.

Everything in the broker’s compensation structure is pointed at one single outcome: get the deal to closing. Get you the buyer to write a check to the seller. Period.

And, by the way, the more you pay, the more they make! My verdict on that: shortsighted and incomplete, at best. This is an industry where the contingency fee model is very ill-suited to a neutral (or purportedly neutral) advisor because sometimes a non-close is the right outcome.

The contingency fee structure is not, by itself, a moral failing. Real estate agents have the same structure, plaintiffs’ lawyers have the same structure, and many perfectly ethical professions work on contingency.

The problem is that buyers consistently misunderstand the dynamic (and their misunderstanding is sometimes... let's say "encouraged" by the broker) and, as any economist or psychologist will tell you, it is a bedrock truth of human behavior that **"people respond to incentives"**¹. So, the scene you have may be: someone walks into the office, the broker is friendly and helpful, the broker answers their questions, the broker explains the documents, and the buyer concludes (reasonably enough, given the social cues) that the broker is "on their team."

Not so. The broker is not on your team. The broker is (if anything) on the seller's team, and even that may be overly generous, because the broker's incentives are not fully aligned with the seller's, either. **The broker is on the broker's team. The broker wants one thing above all else: for the deal to close.** And sometimes, that interest lines up perfectly with the interests of everyone else on the deal team. Other times, the "right answer" is **the deal shouldn't close**. Or that it shouldn't close without a drastically lower price. Or that it shouldn't close without significant reps, covenants, and indemnities. Or whatever else. It's a fundamental truth in deal practice that sometimes the right closing is NO closing, whether the broker is pushing for it or not.

In a healthy transaction with multiple advisors on the deal team, this sort of commission-compensation isn't especially problematic, because everybody understands the alignment and brings their own representation. The seller has the broker. The buyer has a lawyer and an accountant (and maybe the seller has a lawyer and accountant too). The seller's lawyer reviews documents from the buyer's side. The accountants dig into the business's financials and make projections and valuations. Everyone knows whose interests are whose, and the deal moves forward in a structured, adversarial-but-civil way. Most importantly, the buyer has at least one advisor (possibly more than one) whose compensation is not tied to closing, and who therefore is properly incentivized to tell the buyer "Don't Close!" or "Walk Away!" if the circumstances warrant (and sometimes they do). That is how M&A is supposed to work.

In an unhealthy transaction, the broker subtly persuades the buyer that the broker is the "neutral party" and the buyer therefore does not need to retain anyone of their own. The buyer signs documents without independent review. The buyer accepts diligence materials without independent scrutiny. The buyer ends up with a deal that was structured, drafted, and presented by someone whose compensation depends on getting the buyer to sign. Then, eighteen months later, the buyer finds out the customer concentration was different than represented, or the inventory was overstated, or the equipment is not actually owned, or the lease cannot be assigned. And the buyer's options to do anything about it are far worse than they would have been if they had brought a lawyer in on day one. The money is gone, the contract provides no remedies, and the buyer is left with a very, very expensive lesson.

1. Or, in Charlie Munger's more colorful formulation: "Show me the incentive and I will show you the outcome."

If you understand the overwhelming incentive coloring a business broker's process from the beginning, and proceed accordingly, you will be in a much better position to get a positive outcome from the deal process.

“You Don’t Need a Lawyer”: Run

The single most common piece of malpractice-flavored² advice I hear from business brokers, and I have heard it many, many times, is some version of: “you don’t need to hire a lawyer for this.” It comes in a few flavors:

- “We have a standard form that’s fair to both sides.”
- “Lawyers just slow these deals down and run up costs.”
- “If you bring a lawyer in, the seller will walk.”
- “We can handle the paperwork in-house, and our forms have been used hundreds of times.”
- “An attorney will cost you more than the deal is worth.”

Each one of these statements is, in my experience as deal counsel, somewhere between a red flag and a REALLY red flag – depending on how forcefully it is being made.

“We have a standard form.”³ There is no such thing as a standard purchase agreement for a business acquisition.

This is one of the most common BS lines I hear. THERE IS NO SUCH THING AS A “STANDARD FORM” FOR AN M&A DEAL.

Every business is different. Every set of buyer and seller circumstances is different. Every industry has its own representations and warranties that matter. A business with \$4 million of customer-concentration risk in one account needs different reps than a business with a thousand customers. A business with deferred revenue needs different working-capital provisions than a service business with no inventory. A business with key employees who must remain after closing needs different transition provisions than one being acquired for its assets and brand. The broker’s “standard form” is, almost by definition, a one-size-fits-many template designed to get the deal across the finish line with the minimum amount of friction. That is the opposite of what a careful buyer needs.

2. It WOULD be malpractice if they had a license. But if you don’t have a license, can anything technically be malpractice?

3. Residential real estate agents in Texas can fill in the blanks on a contract because the Texas Real Estate Commission promulgates the forms and the Occupations Code expressly contemplates license holders using them (see Tex. Occ. Code § 1101.155). There is no TREC-promulgated form for the sale of a business, and no agency vouching for whatever the broker hands you. The “standard form” is standard only in the sense that the broker keeps using it.

“Fair to both sides.” This phrase is the legal-document equivalent of “trust me.” Putting to one side the strangeness of someone with no legal training claiming to have any idea what is “fair” or “market”, what makes a document fair is both sides having had the opportunity to review it with their own advisors (including legal counsel), negotiate the points that mattered to them, and reach an arms-length agreement on the result. What is fair for one industry or in one context might be grossly unfair in a different industry or a different context. If someone tells you their non-negotiated, boilerplate form is “fair to both sides”, what that person is really telling you is “I am utterly clueless about deal practice and M&A; someone else told me to use this form and in fact, I may not even understand what it says. But I will act like I do!”

Said another way: if a document is handed to you by someone who is paid only if you sign it... do you think that document would be fair to your interests?

“Lawyers slow deals down.” Sometimes they do. That is often a feature, not a bug. The reason a careful deal lawyer slows things down is that they are reading the document, asking the questions the broker did not ask, identifying the issues the broker did not identify, and getting the protections the broker did not put in. The cost of slowing down a deal by two weeks to get the documents right is FAR less than the cost of cleaning up a botched deal a year later.

“If you bring a lawyer in, the seller will walk.” No legitimate seller walks away from a serious buyer because the buyer brought a lawyer. Sophisticated buyers have lawyers. Sellers who are uncomfortable with their counterpart having a lawyer are almost always trying to hide something. In those situations, the only solution is WALK AWAY.

Dual Agency and the Both-Sides Problem

This brings us to one of the practices that most distinguishes the business brokerage world from the legal world: **dual representation**.

In law, a single lawyer cannot ethically represent both the buyer and the seller in a transaction. The reason is straightforward: the buyer's interests and the seller's interests are by definition adverse to one another. The seller wants the highest price, the strongest representations from the buyer, the cleanest indemnification carve-outs, the shortest survival periods on the seller's reps, and so forth. The buyer wants the lowest price, the strongest representations from the seller, the broadest indemnification rights, the longest survival periods, et cetera. These positions are fundamentally and incurably incompatible. A lawyer (or anyone else) trying to advance both interests at once is, by definition, failing one or the other.

State bar associations and ethics regulators across the country have weighed in on this for decades. The Illinois State Bar Association put it very well, in Ethics Opinion 89-01, stating that “it is professionally improper for an attorney hired by a ‘business broker’ to draft any closing documents on behalf of the seller *and* buyer,” noting that “it is difficult at best for the

Committee to perceive how, in an arm's-length transaction, both parties to the transaction can be adequately represented by a single party particularly when that attorney was initially hired by a third party, the "business broker."

Business brokers, by contrast, frequently represent both sides. In some states they call it "dual agency" or "transaction brokerage" and require written consent. In others, they simply do it. In either case, the result is the same: a single intermediary, whose compensation depends on the deal closing, implicitly or explicitly holding themselves out as a neutral facilitator for two parties whose interests are fundamentally adverse.

SO fundamentally adverse, that Illinois and every other state bar association who has addressed the matter has found that a lawyer *cannot ethically represent both sides*. Yet a broker will do it without blinking.

The calculus here is not subtle. When a single broker is representing both sides, the broker's loyalty cannot be undivided to either party. Fully advocating for the buyer on price would harm the seller, who is their client. Fully advocating for the seller on price would harm the buyer, who is also their client. So who do they advocate for? Easy - they advocate for the *deal to close*! Which is to say, for themselves.

Additionally, the broker's information flow is necessarily filtered. They may know things about the seller's situation that the buyer needs to know but that the seller would prefer be kept quiet. They may know things about the buyer's situation that the seller would benefit from.

In these cases, it's fair to ask: Which side does the broker choose? Do they share the information with the buyer or the seller? Neither? Does it depend on who they like better? Or who has paid them a higher commission?

Bigger question - who regulates brokers with regard to the ethics of this situation? (hint: no one!)

The broker's documents ultimately reflect the lowest-friction compromise, not the optimal terms for either side. And I don't mean "this could be better" not-optimal. I mean like "this would be a malpractice case if a lawyer ever let a client sign it" not-optimal.

I have seen buyers who walked out of dual-representation single-broker deals genuinely believing they were well-represented, eighteen or twenty-four months post-close, dealing with claims they cannot bring because the indemnification expired too early. Ditto for holding losses they can't recover because the seller's reps were poorly drafted, vague, and sloppy.

Are Business Brokers Even Regulated?

The honest answer is: not really, and certainly not in any way that will meaningfully protect you.⁴ We're going to spend a few paragraphs on it and really dig in. So, buckle up.

At the federal level, you are operating in a regulatory vacuum. The closest analog to federal regulation of business brokers is the SEC's broker-dealer registration regime. SEC broker-dealer registration is the principal federal scheme designed to police people who effect securities transactions for others. It is a serious regulatory framework. Registered broker-dealers have to comply with hundreds of pages of rules, undergo regular examinations, maintain detailed books and records, file disclosures, and participate in mandatory dispute-resolution forums like FINRA arbitration. Their salespeople have to pass licensing examinations (the Series 7, the Series 63, the Series 79 for M&A work, and so on). If something goes wrong, an aggrieved investor has numerous remedies involving a neutral, reputable third party regulator, including a formal complaint mechanism, an arbitration forum, a regulator with subpoena power, and (assuming that their complaint has merit) a meaningful chance of getting their money back without years of litigation.

If you're purchasing securities from a SEC/FINRA broker-dealer, the good news is that you have a very robust regulatory apparatus standing behind you, with decades of history.

Now the bad news. That entire apparatus, in 2023, was effectively declared to be too important to bother with for small business sales. In Section 15(b)(13) of the Securities Exchange Act of 1934, Congress exempted "M&A brokers" from federal broker-dealer registration in connection with the sale of "eligible privately held companies."⁵ An eligible privately held company is one with less than \$25 million in EBITDA or less than \$250 million in gross revenues in the prior fiscal year.⁶ The message is straightforward. The federal regulatory regime that exists to protect investors in real (i.e. LARGE) securities markets, where deals are measured in nine (plus) figures and the principals are presumed to be sophisticated, is not interested in policing the sale of small businesses. It has decided, formally and as a matter of policy, that those transactions are too small for its regulatory apparatus to spend resources on. If something goes wrong, the parties get to sort it out in state court as a fraud claim, a breach of contract claim, a state consumer protection claim, whatever the local commercial laws allow.⁷

4. This is the part of the article my "test readers" found most counterintuitive, so I have expanded it since the first draft.

5. The exemption is not unconditional. Among other things, the M&A broker cannot take custody of funds or securities, cannot help form a shell company for the acquisition, cannot be involved in a public offering, and the buyer (or buyer group) must end up controlling and actively operating the business. And, relevant to the dual-agency discussion above, the broker may represent both sides only with clear written disclosure to, and written consent from, both parties. The exemption also does not displace state law; state securities regulators have their own dealer-registration regimes and exemptions, which do not always line up with the federal one.

6. Needless to say, that's still quite large. But it's not SEC-large.

7. To be fair, this makes a certain amount of sense. The SEC regulatory apparatus is expensive. I know a number of lawyers who work there – they're very, very sharp – and spending their time on The Case Of The Main Street Cupcake Shop's Missing \$100,000 Revenue is not a wise allocation of federal taxpayer dollars.

The realm you, as a small business buyer, are operating in – when the business broker with the glossy memorandum sits down at the table – is the land of the exemption. There is no SEC standing behind you; there is no FINRA arbitration system available to you! The mandatory federal disclosure rules that protect investors in registered securities offerings quite simply do not apply to your transaction. The dispute resolution forums that exist for stockbroker malpractice flat out do not exist for business broker malpractice. You are exempt, and you must look out for yourself.

Your remedies, if something goes wrong, are whatever your state's commercial laws say they are,⁸ enforced through whatever litigation your wallet can sustain, and funded (if you win) by whatever remains in the business broker's and/or seller's pocket (if anything!) after accounting for your state's judgment-debtor protection laws. That is a meaningful (dare I say gigantic) gap. Most buyers have no idea that a gap is even there until they need to find a remedy and discover that the protections they assumed were in place the whole time... aren't. And in fact never were.

At the state level, the picture varies. Some states require a real estate license if the business sale involves any transfer of real property. Some states have specific business brokerage statutes; most do not. Texas, where I practice, is on the “lighter-touch” end of this spectrum. Texas requires a real estate license if real property is being transferred in connection with the sale, but for asset sales that don't involve real property (and even for many that do, through workarounds), brokers operate without any state license.⁹

The certifications brokers tout are voluntary and inconsistent. Things like the “Certified Business Intermediary” designation from the International Business Brokers Association, the “Merger and Acquisition Master Intermediary” from the M&A Source, or the “Board Certified Broker” from the Texas Association of Business Brokers are not regulatory licenses. They reflect that the broker has taken some coursework and passed an industry-administered examination. They do not reflect government oversight, carry malpractice insurance requirements, subject the broker to a disciplinary board with subpoena power, or give the buyer much (if anything) in the way of formal remedies if things go wrong. They are marketing credentials with some tangential educational substance.

8. In Texas, don't count on the Deceptive Trade Practices Act, either. Among other exclusions, the DTPA does not apply to a transaction (or set of related transactions) involving total consideration of more than \$500,000, unless it involves the consumer's residence (Tex. Bus. & Com. Code § 17.49(g)), and it excludes most written contracts over \$100,000 where the consumer was represented by counsel (§ 17.49(f)). For most business acquisitions, that leaves common-law fraud, negligent misrepresentation, and breach of contract.

9. And even then, the Texas real estate license is not exactly a high barrier to entry: 180 hours of qualifying education and a passing score on a state exam with a reputation for being quite easy. A motivated person can earn one in a few months.

When a broker tells you that you can trust them because they are a CBI, what they are telling you, accurately, is that they have invested some money and time into industry training. That is genuinely better than a broker who has not done that – but it is not remotely the same as a licensed, regulated professional.

So let's take inventory. The intermediary on the other side of that transaction is, in most cases, operating outside the protective regulatory framework that governs broker-dealers; outside any formal state licensing regime in many states; and inside, at most, a voluntary industry credential and a general state real estate license that takes a few months to earn (and offers no real recourse against a bad broker). The structural protections that exist in adjacent regulated markets simply do not exist. The protections you do have are whatever your purchase agreement says, plus whatever common-law and state-statutory fraud remedies your jurisdiction provides, enforced at your expense, and in the event of victory recovered only to the extent your broker's wallet will support.

This might seem like an argument for not buying a business. It's not. People successfully buy businesses every day. It is, however, an argument for understanding the regulatory gap, and for filling that gap yourself with competent legal counsel and a competent accountant, from day one. The federal regulatory apparatus is not coming to save you. The state licensing regime, where one exists, is very, very thin – and 999 times out of 1,000 is also not coming to save you. Your protection is what your lawyer puts in the documents, what the structure of the transaction provides for, and what you verify in legal and financial diligence. That's it.

Broker Tactics to Watch For

Before we get to the published horror stories, a few words about the recurring patterns I have seen in broker behavior on deals where things went badly. These are not legal failings, necessarily, but they are tactical patterns that a careful buyer should learn to recognize.

The artificial bidding war. “We have two other buyers interested, and one of them is about to sign an LOI, so if you're serious you need to move fast.” Sometimes this is true. Often it is not. A 2025 DueDilio.com article titled “Dealing with Dishonest Business Brokers” describes this pattern explicitly, citing complaints from “popular M&A forums” of brokers who repeatedly claimed sellers had accepted a buyer's LOI terms and were ready to sign, only to later retract and say the LOI was signed with another buyer. The pattern is structurally designed to compress the buyer's deliberation window, push the buyer past necessary diligence, and lock in terms that would not survive careful examination.

All in service of (recall our discussion above) getting the deal to closing, by hook or by crook.

The compressed diligence timeline. Tied to the artificial bidding war. “The seller wants to close in 30 days.” Almost no real business acquisition (apart from very simple deals, and deals with a pre-existing close relationship) closes responsibly in 30 days. Quality-of-earnings work alone takes longer than that. Title verification on real estate, lien searches on assets, customer interviews, employment-law diligence on key employees, environmental review on any real property with industrial use... none of this fits into a 30-day window unless you skip it entirely. A broker pushing a 30-day timeline is asking you to skip diligence. Sometimes the seller *really* is in a hurry. Even when they are, the appropriate response is one of two things: (1) “I understand, but I am not going to commit to a closing timeline that does not allow me to do the work that protects me” or (2) “So you’re asking me to gamble. Alright. I can be a gambler. But you understand that because we’re being asked to skip diligence and in effect take a gamble, the starting price just moved down by half, right?”

In no realistic world (again, the value of having a lawyer) does a business sell on a 30-day timeline for full price. 30 days from contact to close is the “going out of business next month, everything 75% off, including our shelves and furniture” sale of the M&A world.

The pre-filled LOI. “Here is the LOI we use for these deals. Just sign it and we can move forward.” The LOI is presented to you on broker letterhead, with the price already filled in, with an exclusivity period already specified, with a broker fee already allocated. It looks like a form. It is not.

If you sign it, you may have signed a binding (in some respects) commercial document drafted by someone whose compensation depends on you signing it, and on making it very difficult to get out of or change later.

The “we’ll figure that out later” deflection.

Buyer asks: how does the working capital adjustment work? Broker: we’ll work that out closer to closing.

Buyer asks: what are the seller’s representations and warranties? Post-closing covenants? Broker: it’s all in the standard form.

Buyer asks: who pays for the audit? Broker: don’t worry about that, we’ll figure it out.

Every one of those questions is a multi-thousand-dollar question, and every one of them needs an answer in the LOI or the early documents, not on the eve of closing when the buyer has no leverage left.

The cherry-picked financials. The CIM contains a beautiful set of three-year trailing financials, adjusted for owner compensation, adjusted for non-recurring expenses, adjusted for whatever the seller wants to add back. What the CIM often does not show is what the financials look like *without* the add-backs, what the customer concentration looks like, what the receivables aging looks like, what the inventory turnover looks like, what the cash

conversion cycle looks like. You need all of that. The broker often makes the buyer ask for each piece individually, in a way that subtly conveys disapproval at the asking. Ask anyway. If the broker is hesitant or reluctant to share a given piece of information, implies that the seller will be annoyed at having to provide that information, or in any other way pushes back, there's a reason for their behavior and you should want to see that piece of information EVEN MORE than you did when you asked for it the first time.

The pressure on the customer call. Real business diligence eventually requires the buyer to talk to the seller's major customers. The broker usually pushes back on this, citing confidentiality concerns and the risk of disrupting the seller's relationships. To be clear, some of that concern is legitimate. Many other times, however, the broker is worried that the customer will tell the buyer something the seller does not want the buyer to know. A reasonable middle ground is: customer calls happen after a binding LOI and before closing, under NDA, with the seller (or their CFO) on the call. Or, in the alternative, during a purchase-agreement executory period with various outs related to those customer calls and a break fee.

A broker who refuses to permit any direct buyer contact with customers at all, at any stage, with any protection, is signaling something.

The financing nudge. "We have a preferred SBA lending partner who really understands our deals." Maybe. Or maybe the broker has a referral relationship with the lender that pays the broker a kickback (or its functional equivalent) for steering loan business their way. A 2023 LinkedIn essay by self-described SBA acquisition consultant Deb Curtis titled "Outsmarting the Scammers" describes this pattern directly, alleging that "business brokers often request recent copies of bank statements from potential business buyers" with their "in-house SBA lending partner(s)," and that those partners offer the broker a significant additional incentive based on the SBA-funded loan amount for steering the business. The post characterizes this arrangement as a "total conflict of interest" leaving buyers "vulnerable to exploitation."¹⁰ If the broker is pushing a specific lender, ask whether the broker is receiving any compensation from the lender for the referral, and ask in writing.

The "earnest money" pressure. Some brokers will push a buyer to put a meaningful earnest money deposit into escrow before the buyer has done substantive diligence, on the theory that the deposit shows seriousness. Sometimes that is fine – if and only if there are legitimate, genuine reasons for it and legitimate, genuine clawback mechanisms in place. Often, however, it is a way to lock the buyer into the deal psychologically and financially before the buyer knows what they are buying. If you are putting earnest money up, make sure the terms under which it is refundable are clear, in writing.

10. I have not independently verified Ms. Curtis's specific allegations, but the broker-lender referral structure she describes is consistent with what I have seen in my own deal practice.

Published Horror Stories

The patterns above are abstract. What follows is the documented version. I have organized this research into three categories: published court decisions, allegations from established consumer-complaint forums, and patterns documented by industry observers. For each, I have tried to be precise about the source, the level of verification, and the appropriate framing.

Where the underlying claims are unproven, I have flagged them (I believe prominently) as such. You should treat the unverified allegations as what they are: public, but unverified, complaints made by aggrieved parties, to which the named brokerages have not necessarily had the opportunity to respond.

Beachway Restaurants 2, LLC v. Transworld Business Brokers (Fla. 4th DCA, May 2024). This is the case I would most encourage a curious buyer to look up. The buyers of a business sued the brokers, among others, alleging that the brokers, “in preparing a financial analysis of the business and discussing their findings with the Buyers, failed to disclose information relevant to the business’s financial health.” The Buyers brought claims against the Brokers¹¹ for negligence and “negligent information supplied.” The procedural posture of the case involved a fight over whether the two-year professional malpractice statute of limitations applied, which in turn depended on whether the Buyers and the Brokers were in privity of contract. The trial court initially dismissed the claims against the Brokers as time-barred. The appellate court reversed and remanded, finding that the trial court had not adequately addressed the privity issue. This case stands for at least the following propositions:

- buyers do, in fact, sue brokers for failing to disclose information about a business’s financial health,
- those cases are procedurally complicated because they raise privity and statute-of-limitations issues that vary by jurisdiction, and
- buyers’ remedies against brokers are uncertain even where the broker arguably did something wrong.

Bray v. Brooks, 41 S.W.3d 7 (Mo. Ct. App. 2001). The Missouri Court of Appeals (Western District) considered a case in which David Bray, a licensed real estate broker in Missouri and Kansas, was retained by David and Mary Ann Brooks to sell the business assets of their company, KCI Rent-All, Inc. Bray located buyers, the business was sold, and Bray drafted multiple legal documents in connection with the transaction, including the offer, counteroffer, a promissory note, a corporate resolution, and a covenant not to compete. When the parties

11. The broker defendants were named as “Transworld Business Brokers, LLC d/b/a Transworld Business Advisors, another d/b/a Transworld Business Advisors PSL, an unregistered fictitious entity, and John DeVries.” The limitations fight arose because Florida’s two-year professional-malpractice statute (Fla. Stat. § 95.11(4)(a)) by its terms applies only to plaintiffs in privity with the professional; otherwise the longer general negligence period governs. Whether a buyer is in privity with the seller’s broker is exactly the kind of threshold question that makes these cases expensive before anyone gets to the merits.

later disputed the commission, the sellers counterclaimed that Bray had engaged in the unauthorized practice of law and had negligently prepared the documents. The trial court agreed, and the Court of Appeals affirmed the finding that Bray had engaged in the unauthorized practice of law (while sending the parties back down on the damages questions). The case is a useful reminder that the broker who hands you a “standard” form may be doing something that, in the view of at least some courts, requires a lawyer.

The Chicago “fake numbers” case. In November 2025, the Chicago Business Litigation Lawyer Blog published a description of an ongoing case the firm is handling. According to the firm’s account, their client, “a small investor,” purchased a business after reviewing “glossy marketing materials, tax returns, and financial statements provided by the seller and a business broker.” The buyer paid a substantial price based on those numbers and on the seller’s written warranties that the financials were “accurate” when provided and at closing. The buyer began comparing the business’s point-of-sale (POS) data to the historic financials post-closing and “the numbers did not come close to matching. The prior owner had used numerous no-tax transactions or other sleights of hand to inflate apparent sales.” The firm alleges common-law fraud, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, and breach of contract. The firm describes the broker as one of the parties responsible for the deceptive financial presentation. (Note: this is an ongoing case as of the firm’s blog post date, and I have not independently verified the underlying claims or seen the defendants’ answer.) Whatever the eventual outcome of the case, the structure of the alleged fraud (inflated revenues, broker-vouched financials, buyer relying on representations) is a repeating theme in the industry.

Atallah LLC v. Transworld Business Brokers of Florida LLC (Fla. 4th DCA, 2020). This was a dispute between Transworld and a Florida business owner (Bam Bam Entertainment LLC d/b/ a Cyn Nightclub) over a commission Transworld claimed it was owed after the business was sold to a buyer it had introduced. The Florida appellate court reversed a summary judgment in favor of Transworld and remanded the case for further proceedings, finding material issues of fact about whether the owner had actually signed the marketing agreement Transworld was suing to enforce. The case is interesting both for the underlying commission dispute and for the procedural reminder that even routine broker-commission cases can produce contested factual records.

In re Transworld Business Advisors of North Dallas (U.S. Bankruptcy Court for the Northern District of Texas, Case No. 21-03013, decision Nov. 16, 2021). What makes this case worth a brief mention is who was suing whom. According to the publicly available decision on the Northern District of Texas bankruptcy court’s website, Transworld Business Advisors of North Dallas was the *plaintiff* in this adversary proceeding, pursuing a former employee/salesperson in connection with a non-compete and an alleged scheme. The court ultimately denied the plaintiff’s claim for non-dischargeability. The fact that Transworld lost is not particularly interesting. What is interesting is the questions the case raises that the public record does not

answer: was Transworld pursuing this suit because the brokerage is generally litigious? Did the former employee actually do something genuinely wrong, even if the bankruptcy court did not find the conduct nondischargeable? Did Transworld hire someone they knew or should have known was a litigation risk? What does the internal HR or vetting process look like at a brokerage operation that produces this kind of adversary proceeding? We do not know the answers. The case is mentioned not as evidence of buyer-side malpractice (it is not), but as a reminder that the kind of internal commercial litigation that surrounds business brokerage franchises is itself a signal worth noticing.

Allegations from Consumer-Complaint Forums

The following are allegations posted publicly by self-identified complainants on consumer-complaint platforms. None of them has been independently verified by me. I am reporting them here because they are public, because they reflect a pattern of accusations that has been a recurring theme in the small-business M&A community for years, and because anyone considering working with a particular brokerage can find them themselves with a few minutes of searching. The named brokerages have not been adjudicated to have committed the conduct alleged, and many of the complaints are from former employees or unsuccessful counterparties whose perspective may not reflect the full picture. I am presenting these with attribution and as alleged conduct, not as established fact.

Allegations against Sunbelt Business Brokers, generally and across multiple offices. Sunbelt is one of the largest business brokerage franchise networks in the United States. A search of ripoffreport.com under “Sunbelt Business Brokers” returned multiple complaints across different offices and jurisdictions. (Note: I have not independently verified any of these allegations. They were posted publicly by the named complainants and are presented here for the purpose of illustrating the kinds of public claims that have been made.)

- *Highland Village, Texas (Ripoff Report, 2011).* A complainant identified only as “Andrew” from New Orleans, in a report originally posted to Ripoff Report, alleged that “most of the listings that Sunbelt has listed in the Metroplex are such fraudulent junk, that they won’t even take a CA by fax, and fax any information back to a buyer in return. They force you to take off from work and come see them in their office.” The complainant further alleged that Sunbelt “is the undisputed national ‘King of the Junk Listings’” and described a pattern of brokers faxing buyers “a one page typed P&L that usually causes more questions than it answers, and if you ask any questions about it, they’ll say ‘Make an offer, put ten percent in escrow, and then you’ll have seven days to do due diligence¹².’” The complainant alleged this practice was an attempt to extract earnest money commitments before buyers had meaningful information. (Again: unverified allegation)

12. Side Note: I don’t doubt that there are as many unserious junk buyers as there are junk listings and so can partially appreciate a “put up or shut up” attitude by a broker.... but... SEVEN DAYS for due diligence? Who on earth is closing on seven days of diligence???

- *Minneapolis (Ripoff Report)*. A complainant alleged that Sunbelt broker Richard Jahnke had signed a purchase agreement with the complainant on a particular business and that Jahnke nonetheless “still sold to another guy w/o asking if we’d match.” (Again: unverified allegation)
- *Atlanta (Ripoff Report)*. A complainant alleged that a broker named “Ray Boreham” associated with the “Sunbelt Business Brokers (Atlanta Office)” engaged in “unethical, corrupt and unscrupulous business practices.” (Again: unverified allegation)
- *Las Vegas (Ripoff Report, July 2022)*. A complainant who identified themselves as a former Sunbelt salesperson alleged that “the previous owner of Sunbelt Business Brokers Las Vegas (Lyn Krick) was under investigation for accepting a commission for a \$500,000 [dollar] deal without a Series 79 by Finre¹³,” and that the complainant had been fired in connection with a \$15 million deal the complainant had generated. The complaint further alleges other intra-firm conduct that I will not republish here. (Again: unverified allegation)
- *Sunbelt seller-side complaint on ComplaintsBoard.com*. A separate seller-side complainant, on complaintsboard.com, headlined a Sunbelt complaint “Liars & Thieves” and alleged that “Sunbelt not only did not know the true value of my business they do the least amount of research to find out. They do NOT pre-screen buyers like they claim. The gal they introduced me to HAD NO MONEY to buy my business so instead she tried to steal it.” The complainant further alleged that Sunbelt’s listing contract contained terms under which “no matter who is to blame if the transaction needs a lawyer the individual selling their business will have to incur the costs.” (Again: unverified allegation)¹⁴
- *Sunbelt broker “Bob Hawkins” allegation, PissedConsumer.com*. A complainant identifying themselves as British, on pissedconsumer.com, alleged that “we gave Robert ‘Bob’ Hawkins \$5,000.00 as brokers fee and to date nothing has been done and he even threatened us because we are foreigners (British) but we are here legally.” (Again: unverified allegation)

Allegations against Transworld Business Advisors, generally and across multiple offices.

Transworld is another large brokerage franchise network, and, as with Sunbelt, the public complaints span multiple offices.

- *Houston (Ripoff Report, February 2015)*. A complaint posted to ripoffreport.com named a specific Transworld of Houston broker (Gerald G. Brisson) and characterized the brokerage as a “fraud company.” The complainant’s specific factual allegations are set out in the public posting. (Again: unverified allegation)
- *BBB profiles (Trumbull, Connecticut and West Palm Beach, Florida)*. Both offices’ Better Business Bureau profiles carry a “failure to respond” notation on at least one filed

13. Sic. Presumably the complainant meant FINRA. The Series 79 is FINRA’s investment-banking representative exam, and it comes into play where the broker is selling securities – a stock or LLC-membership-interest sale, for example – rather than a pure asset sale.

complaint. Thin evidence on its own, but a broker who won't answer the BBB probably won't answer you, either.

The DueDilio pattern. The 2025 DueDilio.com article I mentioned earlier (“Dealing with Dishonest Business Brokers”) aggregates buyer-side complaints from M&A forums into a familiar list: brokers claiming the seller had accepted a buyer's LOI and then “discovering” it was signed with someone else; pressure to sign before diligence is done; evasiveness about critical details; and “overly positive projections” with nothing behind them.¹⁵

The UK pattern. This is a U.S. article, but the pattern is not confined to the United States. The site ukbusinessbrokers.com maintains a lengthy page of broker complaints – gross overvaluation, “waiting clients” who never materialize, promises of a sale within weeks, non-refundable deposits – and notes that *The Mirror* has run multiple investigations into UK brokerage practices over the years. The same page makes a point worth remembering: search results can be scrubbed by “reputation management” companies, so a clean first page of Google is not a clean record.

What These Stories Have in Common

I list these examples not to condemn any particular brokerage, and certainly not to suggest that every Sunbelt or Transworld office, or every CBI-credentialed broker, behaves this way. Both franchises have many offices and many brokers, and plenty of them are competent and ethical. The point is that the patterns recur. Across different states, franchises, deal sizes, and decades, the complaints are remarkably similar: inflated valuations, pressure to skip diligence, “standard” forms that aren't, dual-side representation, steering to preferred lenders, information withheld until the buyer has committed, phantom competing buyers, and financials that turn out after closing not to have been accurate.

The published cases are also a small minority of the cases where things go wrong. Most disputes settle. Many are abandoned because the damages don't justify the litigation. Some die because the indemnification period expired or the buyer signed a non-reliance disclaimer that killed the fraud claim. Some are never filed because the buyer cannot find or serve the broker. The pattern in the published cases is the same pattern in the disputes that never become public – and in the ones that simply, quietly bankrupt the new owner.

14. The fee-shifting clause described, if accurate, would be unusual in most commercial settings – and it is exactly the kind of listing-agreement term the seller-side article will spend some time on.

15. Full disclosure: I have not verified these accounts, and DueDilio is an M&A marketplace with its own commercial interests. On the other hand, they would be exposed to a defamation claim if they were publishing knowingly false allegations, and the patterns match what I hear from clients and other lawyers again and again. Draw your own conclusions.

Why Deal Problems Take Years to Surface

This is the part I most want you to internalize, because it is the reason buyer-side disputes with brokers are systematically underreported and undercompensated.

When you buy a business, you are paying for the assets, the contracts, the customer relationships, the employees, the goodwill, and the cash flows. The price reflects your expectations about all of them, and the transaction documents are supposed to give you recourse if those expectations turn out to be materially wrong.

But most of those expectations do not get tested until you have been running the business for a while.

The customer concentration you were not told about reveals itself when the major customer fails to renew, maybe six months after closing, maybe eighteen.

The “recurring” revenue that is actually project-based reveals itself in the first quarter where the projects do not repeat.

The key employees who were “totally committed to staying” reveal their actual intentions when they leave six months after closing.

The customer relationships that were “with the company, not the seller” reveal themselves when the customers follow the seller to whatever the seller does next.

The inventory that was valued at cost reveals itself when you try to sell it and discover it is unsellable.

The undisclosed lawsuit reveals itself when the complaint arrives.

The bad lease provision reveals itself when you try to assign or extend.

The tax exposure reveals itself when the IRS audits.

The “all material contracts disclosed” representation reveals itself when the change-of-control consent is not received from a vendor on whose service the business depends.

These problems take time to surface – often a year, sometimes much longer. Indemnification provisions carry *survival periods* that limit how long after closing the buyer can bring a claim for breach of the seller’s reps. Twelve to eighteen months is typical for general reps, sometimes shorter, and brokers who want clean closings and minimal post-closing friction push for shorter still. By the time the buyer realizes there is a problem, the survival period has often expired, and the claim is dead.

That is the structural reason most of these disputes never reach a court. The legal claims die before the buyer knows they had them.

Add to this the difficulty of suing a broker directly. The Florida court in *Beachway Restaurants* spent the entire opinion wrestling with privity and statute-of-limitations issues. The broker's contract is with the seller, not you, which makes contract claims hard. Tort claims (negligence, negligent misrepresentation, fraud) are available in some jurisdictions but come with their own technical hurdles, and brokers' insurance, where it exists, is often thin. And buyers who *did not* have lawyers tend to have signed agreements disclaiming reliance on anything outside the four corners, which kills the fraud claim from the other direction.

Add to this the practical economics. To recover \$200,000 you may have to spend \$150,000 in legal fees. Suing a broker for a six-figure recovery is usually unattractive; for a five-figure recovery, almost always. So the buyer absorbs the loss, learns the lesson, and moves on. The broker stays in business and finds the next buyer. The pattern persists because the friction of seeking accountability is, by design and by accident, just high enough to discourage most people.

The bottom line: the time to protect yourself is *before* you close, not after. The leverage is on the front end. After closing, the contracts you signed define the universe of your remedies, and most of those remedies expire on a clock you may not be watching.

How to Protect Yourself

If you have read this far, you understand the problem. Here is the practical answer.

Hire your own lawyer before you sign anything. Not after the LOI. *Before*. Your lawyer should review the NDA, the LOI, and the CIM for issues that get more expensive to fix later. The cost of having deal counsel review and negotiate an LOI is modest, and the LOI is where many of the most consequential decisions get locked in. Once you have signed an exclusivity provision, your leverage to renegotiate drops dramatically. And read every word of every document – or have your counsel do it. Every paragraph in a purchase agreement allocates risk between you and the seller. Every paragraph matters.

Do not use the broker's lawyer. Even if the broker offers one “to handle the paperwork,” even if that lawyer is “free.” A lawyer paid by the deal is loyal to the deal closing. There is no scenario in which this serves you.

Do real diligence. Get the underlying financials (not just the CIM), the tax returns, and the bank statements. Talk to the major customers (usually after LOI, with the seller's participation). Inspect the physical assets. Run a background check on the seller, search court records for litigation, and search UCC filings for liens. And insist on getting this information *before* you sign anything binding: a broker who withholds diligence documents until you have signed an exclusive LOI is asking you to commit your time, money, and leverage before you can verify whether you want to. If the broker resists, ask why. If the answer is unsatisfying, walk.

Get a quality of earnings analysis for any deal of meaningful size (I generally suggest north of about \$500K to \$1M in price, but the threshold scales with complexity, not just price). A QoE is an independent accountant's report on the company's normalized earnings, and it will tell you whether the financials the broker handed you reflect economic reality. The cost is modest relative to the protection.

Do not rely on the broker's representations. If the broker tells you something material – the gross margin, the customer count, the employee tenure – verify it independently. The broker is not under oath, the broker's statements will not appear in the purchase agreement, and the broker will not be writing you a check if they turn out to be wrong.

Push for strong representations and warranties. This is your single most important protection. The reps are the seller's statements of fact about the business, made as of closing, with legal consequences if they are wrong. A good buyer-side lawyer will negotiate reps covering the things you care about: financials, customers, contracts, employees, IP, litigation, compliance, taxes, environmental, and real property. A broker-drafted set of reps will cover much less.

Negotiate the indemnification and survival provisions. Survival should be at least 18 to 24 months for general reps in most deals, longer for fundamental reps (title, capitalization), and much longer or indefinite for tax and environmental.¹⁶ The cap, the basket, and the deductible¹⁷ should be negotiated based on the size of the deal and the risk profile of the business. The broker's "standard" provisions here are almost universally seller-favorable.

Hold back some of the purchase price. An escrow, a holdback, or a seller note gives you post-closing leverage. If the seller has skin in the game for a year or two after closing, your indemnification rights have teeth. If the seller has taken all the money and disappeared, they are theoretical.

Negotiate against any "non-reliance" disclaimer. Seller-side templates often say the buyer is not relying on any representation other than those expressly set out in the purchase agreement. In some jurisdictions that language defeats a fraud claim based on what the broker or seller told you verbally but never put in the contract. Your lawyer should be alert to it.¹⁸

16. Texas buyers have a small statutory assist here. Tex. Civ. Prac. & Rem. Code § 16.070 voids a contract provision that purports to shorten the time to sue on the contract to less than two years. Whether a twelve-month survival clause is a "limitations period" caught by § 16.070, or merely a substantive condition on the seller's indemnity obligation, is the kind of question that gets briefed – but it is a point a buyer's lawyer should know to raise. Don't count on it. Negotiate the longer period instead.

17. Quick glossary. The cap is the most the seller can be made to pay on indemnification claims (fundamental reps and fraud are usually carved out of it). The basket is the threshold of aggregate losses the buyer must reach before recovering anything: a "tipping" basket pays from the first dollar once crossed, while a "true deductible" pays only the excess. In larger private deals, the published deal-points studies put the median cap in the neighborhood of 10% of purchase price and baskets well under 1%. Main Street deals are all over the map, which is precisely why you negotiate rather than accept the form.

Take your time. The broker will push you to close quickly. So will the seller. Some of the urgency may even be real. But almost every bad deal I have seen had a moment where someone said “we have to close by [date]” or “the seller is getting antsy.” Push back. The right deal will wait. The wrong deal usually will not.

Search the broker's name before you commit. It takes ten minutes: Google the broker and the brokerage with “complaint,” “lawsuit,” “fraud,” and “review”; check the BBB; check Ripoff Report, ComplaintsBoard, and PissedConsumer; and search court records (PACER for federal, the state court systems for state). The absence of complaints doesn't mean the broker is clean (see the note about reputation management above), but a pattern of specific, consistent complaints against the office you are dealing with is meaningful.

Frequently Asked Questions

This section is for people who arrived here searching for a specific question rather than reading start to finish. Short answers below; the longer explanations are above.

What is a business broker?

A business broker is an intermediary who facilitates the purchase and sale of small to mid-sized businesses, typically by listing businesses for sale, marketing them to potential buyers, helping negotiate the deal, and shepherding the transaction to closing. Business brokers are usually retained by sellers and paid a contingent commission on closing.

Are business brokers worth it?

For sellers, sometimes (the next article gets into when and why). For buyers, the question is mostly moot, because *the broker is not your broker*. The seller hires the broker. Your job as a buyer is to deal carefully with the broker on the other side of the table, not to decide whether to “use” one.

Do I need a lawyer to buy a business?

Yes. Without exception, in my view. The cost of competent deal counsel is small compared to the cost of a deal that goes wrong because the documents were not properly negotiated. If a broker tells you that you do not need a lawyer, treat that as a serious warning sign about the broker.

18. Texas law on this point is well developed. A garden-variety merger clause will not bar a fraudulent-inducement claim (*Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of America*, 341 S.W.3d 323 (Tex. 2011)), but a clear and unequivocal disclaimer of reliance, negotiated at arm's length between represented parties, generally will (*Schlumberger Technology Corp. v. Swanson*, 959 S.W.2d 171 (Tex. 1997); *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51 (Tex. 2008)). The irony is that the disclaimer is more likely to be enforced against a sophisticated buyer who had counsel – which is one more reason to have counsel strike or narrow it in the first place.

Who pays the business broker?

The seller, almost always, and almost always on a contingent basis. Commissions on small-business sales commonly run around 6% to 12% of the purchase price, with the percentage decreasing as deal size increases. Some brokers also charge upfront fees for “valuation” or “marketing packages,” which is often a red flag.

What is a Certified Business Intermediary?

A voluntary designation issued by the International Business Brokers Association (IBBA) to brokers who complete certain coursework and pass an exam. It is an industry credential, not a government license: it does not give the buyer legal remedies, does not require malpractice insurance, and does not subject the broker to a regulatory disciplinary process.

Can a business broker draft contracts?

It depends on the jurisdiction and the document. Brokers can generally prepare non-binding LOIs and ministerial documents. Drafting a binding purchase agreement is another matter, and in some states has been held to be the unauthorized practice of law (see *Bray v. Brooks*, discussed above). The safer course, for everyone involved, is for the transaction documents to be drafted by lawyers.

Should I trust the business broker?

I would not phrase it that way. The broker is doing a job, and the job is selling the seller's business to you. Treat the broker professionally and courteously, with realistic expectations about whose interests they are advancing. Do not rely on the broker for objective information about the business or for legal advice, and do not let the broker talk you out of getting your own counsel.

Are business brokers licensed?

In most states, no – not as business brokers specifically. Some states require a real estate license if the sale involves a transfer of real property; Texas, where I practice, has no business brokerage license at all. At the federal level, the SEC's “M&A broker” exemption (Section 15(b)(13) of the Securities Exchange Act) exempts most business brokers from broker-dealer registration on private-company deals under \$25 million in EBITDA or \$250 million in revenue. Net effect: the regulatory framework that protects investors in the securities markets does not protect you.

What is the difference between a business broker and an M&A advisor?

In practice, the line is blurry. “Business broker” usually means someone working smaller, Main Street deals (a few hundred thousand to a few million dollars) on a real-estate-style listing model. “M&A advisor” or “investment banker” usually means larger deals (roughly \$10 million

and up), often with a FINRA-registered broker-dealer, institutional documentation, and a more sophisticated process. There is real overlap in the middle, and plenty of people calling themselves “M&A advisors” who are doing business broker work. Look at what they actually do, not what they call themselves.

How do business brokers find buyers?

A mix of online listings (BizBuySell, BizQuest, LoopNet, and similar marketplaces), targeted email and phone outreach to lists of likely buyers, networks of professional contacts, and inbound interest from buyers who find the listing. Some brokers run quite professional buyer-development operations. Others, frankly, post the listing and wait. The quality of buyer pool a broker can produce is one of the few things that distinguishes excellent brokers from indifferent ones.

Can a business broker represent both the buyer and the seller?

In most states, yes, with disclosure. Lawyers cannot ethically do this, and the fact that brokers *can* does not make it a good idea for either party. A single intermediary whose compensation depends on closing, holding itself out as a neutral facilitator between two parties with adverse interests, is a conflict by construction. Avoid these arrangements where you can, and review every document independently when you can't.

What questions should I ask a business broker before working with them?

If you are a buyer dealing with the seller's broker, I would ask: (1) How long have you represented this seller? (2) Have you handled deals in this industry before? (3) Who drafted these documents, and was it a lawyer? (4) Is your commission contingent on closing? (5) Are you representing the seller exclusively, or do you also represent buyers in this transaction? (6) Have you been the subject of any complaints, regulatory actions, or lawsuits in the past five years? (7) Do you have a referral relationship with any lender you have suggested I use? The answers will tell you most of what you need to know about how this is likely to go.

How can I check a business broker's reputation?

Search the broker's and the brokerage's names with “complaint,” “lawsuit,” “review,” and “fraud”; check bbb.org, the state real estate licensing board (if applicable), and the IBBA member directory; and check court records (PACER and the state court systems), which are often more revealing than Google. Ripoff Report, ComplaintsBoard, and PissedConsumer host public complaints that, while unadjudicated, can show patterns. And remember that search results can be scrubbed by reputation-management firms – a clean first page is not a clean record.

What are the most common business broker complaints?

Across the forums and cases I reviewed for this article, the recurring themes are: (1) inflated valuations and rosy projections the financials don't support; (2) failure to disclose material information about the business's financial health; (3) pressure to put up earnest money or sign exclusivity before adequate diligence; (4) phantom competing buyers; (5) seller-friendly "standard" forms; (6) failure to pre-screen buyers; (7) referral conflicts with preferred lenders; (8) refusal to respond to complaints after the fact; and (9) commission claims on deals the broker had little to do with closing. None of these are universal. All of them are common enough to show up again and again.

What should I do if I think a business broker misled me?

Act quickly. Limitations periods for fraud and misrepresentation vary by state and are often shorter than people expect.¹⁹ Gather everything you have – emails, texts, the CIM and other materials the broker provided, and any contemporaneous notes – and preserve the originals. Then talk to a litigator with M&A and business-tort experience about your potential claims and whether your indemnification rights under the purchase agreement are still alive.

Can I sue a business broker for misrepresentation?

In principle, yes, though as *Beachway Restaurants* illustrates, these cases are procedurally complicated. Viability depends on the governing state law, whether you can establish privity (or fit an exception), what your purchase agreement says about reliance on extra-contractual statements, what the broker knew, whether you did reasonable diligence, and whether the survival periods in your purchase agreement still permit a claim. None of those is a yes-or-no question. A good litigator can give you a realistic read on strength and likely recovery against the cost of pursuing it.

Are business brokers a scam?

No, in general. There are competent, ethical business brokers who provide real value. But the absence of meaningful regulation, the contingent-commission structure, and the lack of formal training requirements mean the *floor* of broker quality is much lower than in most professional services. The mistake buyers make is assuming the floor is higher than it is. Approach the broker as you would any unregulated commercial counterparty: politely, professionally, and with healthy skepticism about anything you cannot independently verify.

¹⁹ In Texas, fraud carries a four-year limitations period (Tex. Civ. Prac. & Rem. Code § 16.004(a)(4)); negligent misrepresentation gets only two (§ 16.003). The discovery rule and fraudulent concealment can extend those in the right case, but you do not want to be litigating about whether they apply.

What is a letter of intent (LOI) in business purchases?

An LOI (or “term sheet”) summarizes the basic terms of a deal before the parties commit to a full purchase agreement: price, structure (asset vs. stock), exclusivity period, closing timeline, key conditions, broker commission, and any earnest money or escrow. Most LOIs are mostly *non-binding*, with certain provisions (exclusivity, confidentiality, governing law, sometimes a break-up fee) expressly binding – a distinction broker-drafted LOIs are frequently sloppy about. The LOI is also where most of your real leverage gets committed: once you sign exclusivity, you have given up your alternatives for the length of that period. Have a lawyer review any LOI before you sign it.

What's the difference between an asset purchase and a stock purchase?

In an asset purchase, you buy specific assets (and assume only specific liabilities) of the target business. In a stock purchase, you buy the entity itself, and inherit everything it owns *and* everything it owes, including liabilities nobody disclosed. Buyers generally prefer asset deals for liability and tax (stepped-up basis) reasons; sellers generally prefer stock deals. The choice has major tax, legal, and operational consequences and is often locked in at the LOI stage, so have your lawyer walk you through it first. I cover this in depth in a separate article: [\[LINK TO ASSET SALE VS. STOCK SALE ARTICLE\]](#).

What is an earnout?

An earnout makes part of the purchase price *contingent* on the business's post-closing performance: the seller gets a base amount at closing and more later if the business hits agreed targets (revenue, EBITDA, customer retention) over a defined period, typically one to three years. Earnouts bridge valuation gaps, but they are among the most litigated provisions in M&A, because post-closing performance depends on decisions the buyer now controls, and the final calculation is almost always contested. If you are contemplating one, use counsel who has seen earnout disputes. A well-drafted earnout protects both sides; a poorly drafted one creates years of fighting.

What questions should I ask when buying a business?

Beyond the questions for the broker (above), the questions about the business itself fall into a few buckets. Financials: do the tax returns and internal statements reconcile, what add-backs is the seller claiming, what is the customer concentration, and what do the receivables and inventory really look like? Customers: are the relationships with the company or with the seller personally, and what are the contract lengths and renewal rates? Employees: who is key, will they stay, and are there written agreements, non-competes, or pending claims? Operations: are the key vendor contracts and the lease assignable, and are any licenses or permits hard to

transfer? Legal exposure: any pending or threatened litigation, regulatory inquiries, tax audits, or environmental concerns? A competent diligence list runs to several dozen items beyond these. Ask all of them before you sign a binding LOI, not after.

What is quality of earnings (QofE)?

A quality of earnings report is an independent accountant's analysis of the target's normalized earnings, prepared specifically for M&A diligence. It reconciles reported earnings to "normalized" earnings (testing the seller's add-backs), reviews revenue recognition, analyzes customer concentration and working capital, and assesses the receivables and inventory.

At the price points I mentioned above (north of roughly \$500K to \$1M), a QofE is almost always worth the cost (typically \$10,000 to \$40,000). It is the single most useful piece of independent diligence a buyer can commission, and it routinely surfaces issues – aggressive revenue recognition, downplayed customer concentration, working capital that needs a real adjustment – that become negotiation points in the purchase agreement.

If the seller resists a QofE, ask why. The honest answer is usually "I don't want you to find something." Walk, or reprice for what the QofE would have shown.

What are red flags when buying a small business?

The recurring red flags in deals that go badly include the following.

The seller is unusually motivated. Some urgency is normal. A seller who is *desperate* (health, financial distress, a partner dispute) may be willing to obscure material information to get the deal done. Investigate the motivation.

The financials and the tax returns do not reconcile. They should track each other with minor adjustments. Large unreconciled differences suggest aggressive bookkeeping at best and fraud at worst.

The customer concentration is extreme but was not disclosed up front. If you learn from a customer call that one customer is 60% of revenue and that was not in the CIM, the seller is either incompetent or hiding something.

The seller will not provide bank statements. The CIM and the internal financials are seller-prepared. The bank statements are bank-prepared, and they tell you what actually flowed in and out. A seller who will not provide them is hiding something.

The CIM and the seller's verbal representations diverge. If the broker says one thing and the seller says another, find out which is true before you proceed.

The broker is unusually aggressive on timeline. A broker pushing a 30-day close is a broker trying to skip diligence. Push back.

The broker discourages your lawyer's involvement. Discussed at length above. The single biggest red flag of all.

The seller's reps and warranties in the proposed purchase agreement are unusually narrow. A seller (or seller's lawyer or broker) who refuses to make broad representations about the business believes there are issues that broad representations would expose.

Any one of these does not automatically mean the deal is bad. It does mean the deal needs more diligence and a more conservative structure. If you see several, walk.

Coming Up: The Other Side of the Story

Everything above is from the perspective of a buyer dealing with a broker the seller hired. The next article flips the table and looks at brokers from the *seller's* side: whether to hire one at all, what to look for if you do, and the listing-agreement terms that should give you pause. (Preview: if the broker you are interviewing tells you not to hire a lawyer, the interview is over.) The fact patterns are different, but the lesson is the same: the broker's incentives are not your incentives, and your only real protection is competent counsel of your own.

Bottom Line

Most of the disasters I see in small-business M&A are not the result of buyers being foolish or sellers being dishonest. They are the result of buyers and sellers trusting the broker to look out for them, in a transaction structure where the broker cannot and does not look out for either of them.

If you are about to buy a business, treat the broker as what they are: a professional doing a job for somebody else. Be courteous, be cooperative, don't waste anyone's time – but bring your own lawyer, do your own diligence, verify everything that matters, and remember that the problems you will eventually care about won't surface until a year or two after closing, when the time to protect yourself has long passed.

No federal regulator is policing this transaction for you. The state regulatory floor, where it exists, is thin. The credentials are marketing, and the "standard" documents are not standard. Everyone on the seller's side, including the broker, makes money only if you sign. The published cases tell you what happens when people skip the lawyer; the complaints scattered across the consumer forums tell you the published cases are the tip of the iceberg.

I have spent a substantial portion of my career on M&A and transaction work, and the single highest-leverage decision a buyer makes in a business acquisition is the decision, on day one, to retain independent counsel. Everything else flows from that. If you would like to discuss your specific situation, [give us a call](#). The conversation costs you nothing. The decision not to have it can cost you a great deal.