



The Deal Room Podcast

Episode 246 – Insights on QLD Business Broking with REIQ's CEO Antonia Mercorella Part 2

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Transcript

Joanna:

Let's talk about some changes that we've seen recently in the REIQ contract. Now, I just want to preface this by saying, I'm a huge believer in state-based standard form contracts, I think they make the process of acting, you know, we act on hundreds and hundreds of business sales and acquisitions each year. So we deal with REIQ contracts and the other state-based contracts very, very regularly. And I love this concept, I think it's a really good thing for a deal and, you know, particularly deals under that \$2 million size to have something where we've got, you know, terms and conditions that have been set out. And all we're negotiating is the special conditions, which is a much shorter, you know, component. So, so I have to preface this by saying, I'm a huge believer in this process. And I, I believe good processes relate to good, you know, create good outcomes. So let's talk about where the REIQ contract is, and the reason for changes, and then you know, what's on the horizon?

Antonia:

Yeah, well, look, I would say it's, it's challenging to create a standard business sale contract, as you would appreciate, and many of your listeners would appreciate.

Antonia:

So not all of the eyes actually put out a standard business sale contract. And look, the first thing I'll say about this is, I don't even pretend it's a perfect contract, it's far from that none of our contracts is perfect. Our job is to try and create what I call a plain vanilla template, that is trying to cater for the vast majority of transactions as best as we can. But it's not going to be fit for purpose on its own every time if ever, in the case of a business sale, frankly. So I think that's really important, too. So so, you know, when people tell me, I will, it doesn't do all of these things, my response is, it can't do all of those things realistically, because, as we've talked about, many times during this interview, every business is quite different.

Antonia:

So look, we've tried to improve it, still plenty of room for improvement. So if anyone's listening, you know, always up for more feedback and insights as to how we can improve it. But we did we just recently released a new version of it and I think some of the highlights, it was really time to modernize it. So we've made some changes to allow for electronic communication. And, of course, electronic execution. We saw this as a result of COVID-19. There were some temporary legislative changes, which are now enduring, thankfully. So that argument around Can we do an electronic signing, in particular, where it's a corporate entity. I think that's been well-established now. So we've made some provisions and some changes to reflect that. We've also updated some of the employee-related provisions. We've made some changes to the verification of books and records, we had some feedback as well around our stocking trade, and, and whip work in progress. So again, not vastly different, but some clarification just to remove any room for error. And, as you can imagine, social media accounts are now part of a business sale. We hadn't contemplated those when we first developed that contract. So again, it's really important that we take those into account, they're part of that transfer process.

Antonia:

So now, the contract does contemplate that. We've also expanded our restraint of trade provision to protect goodwill. But again, I mean, when it comes to restraint of trade, again, what I'd say about that is our restraint of trade won't always be the right restraint of trade for every transaction, but it's in there and it might work. But we also know that in some instances, ours will be struck out and a new one will be inserted. And then what we've also tried to do is develop some new special condition and mixtures. This is something that we're frequently asked for special conditions. Again, they will change from transaction to transaction. But we do know that business brokers like having a special condition drafted because of course, what we know is that whilst a business broker in Queensland is permitted to facilitate the contract and use, you know, for example, a standard contract as we put out, we do know, though, that there's a limitation on that. That doesn't extend of course to the drafting of special conditions. As you know, the legal profession act is very clear about that.

Antonia:

So I'm always telling, well, both business brokers and real estate practitioners, practitioners more general, they are not to draft special conditions. So of course, what they can do is use a special condition that we've drafted and just complete the necessary fields. Or it doesn't have to be an REIQ special condition, you are, of course, permitted to use a special condition that a lawyer has drafted, provided that you don't start tinkering with it. So I think that's important to note as well.

Joanna:

The one thing that I read in the I worry sometimes about and I know, you know, the approach of business brokers in Queensland, for example, is completely different to those in New South Wales and Victoria, in relation to the interaction with the contract. So we have brokers in Queensland, who will create the contracts, draft them to create them, you know, and on the face of it, there's no issue with that, what I find is the practical issue and something that I think becomes an educational component. So, you know, I'm really glad that you raised it, the practical issue is that clients can see a contract, you know, this contract with all the words in it.

Joanna:

Maybe even some sort of templated special conditions that a broker's had created, or whatever they add into it. And then the client thinks that that equals someone having looked at their business sale, from a holistic perspective, and having considered and understood what the relevant legal risks are for them in that transaction, you know, particularly sell side, you know, and this is where I find that we have this risk, then that clients don't understand that there is so much more, you know when you look at a business sale transaction was we have these documents, like the standard form contracts here to enable us to more quickly and efficiently create the big the bones of the contract, it doesn't take away from the thinking that has to happen, which is sitting down and really understanding where are the risks? What, happens with the employees? Where are the entitlements, and what's going to happen with them? Where and how do we deal with personal leave and long service leave where they haven't hit the qualifying period? How do we deal with, you know, ensuring that we have this correct transfer of the value that sits in contracts, and you know, all of those sorts of things,

Antonia:

And what the business actually encompasses? So my view is, you're only as good as your client and the client's instructions, you don't know what you don't know. And, yes, they, they, you're right, the client sometimes assumes that the Business Brokers role, the scope of the role, is inclusive of everything. And it's not the business broker who is there to facilitate the sale of that business. But I'll and so, of course, a good business broker will ask a series of questions to make sure that they understand what this business includes, let me make sure that I am, when the time comes, I'm putting together a contract that encompasses all of the elements of this business, and that we haven't missed something. But at the end of the day, I mean, the client needs to take responsibility, and the vendor or the seller of the business needs to be responsible. And, you know, if you think about vendor warranties, for example, or if you think about all sorts of things that are included in that contract, it is the vendor's responsibility to make sure that they've understood that contract, the business broker is not able to give legal advice about that contract.

Antonia:

So what I always say and look, it's a best practice recommendation, from my perspective is, if you're going to be using the standard REO contract, or any contract for that matter, this isn't about me trying to, you know, plug our contract. I think it's a really good idea to give a copy of that document to the vendor and to recommend that they read it and that they get advice on it. Because I do think clients don't understand the scope of the engagement of the business broker. It does not extend to giving them legal advice. And the business broker can't be a mind reader. Yes, you can sit there and ask questions, and then provoke an answer. You know, if so, tell me about this. What's involved in the business? Do you have licenses for this? Do you have Tell me about your employees? Tell me about the assets that you know the list goes on and on. So of course, it's your job to ask the questions.

Antonia:

But at the end of the day, the vendor can't wash their hands and have all responsibility. The business broker can only do what they can do based on the instructions that they are given. So a good business broker will ask the right questions to get the right answer. Is but again, the vendor does need to go in understanding that there is a level of responsibility that rests with them notwithstanding that they have a business broker who's putting together the sale and, and affecting the sale for them. Yeah.

Joanna:

And I do think that can be one of the risks of Business Brokers, you know, filling in the form and providing it to their clients of the sale contract because the clients think this is the contract without realizing that there's so much more that needs to so much more thought that needs to go into ensuring that you know, the special conditions or whatever ever, everything has been included in some of these things, you know, Business Brokers just won't have that, that detailed understanding of things which are essential, you know, complex legal issues.

Joanna:

Because, you know, I mean, that's not their job, their job is to get you to know, the business out there and sold.

Antonia:

Well, if you're not, selling a property where you can go do a title search and find out what's registered on the title. And then alright, you still have to ask about unregistered encumbrances. But you know, you can work out most of it by looking at the title or going and researching certain things on different websites. A business isn't like that. Yeah, there's not a register of all businesses. And you can go there and go, Oh, well, this is great. This tells me exactly what I'm being engaged to sell. Right. Doesn't work doesn't mean that would be handy. If we would be it would be handy. It would be handy. All right, we'll put that on our to-do list.

Joanna:

Well, that leads me perfectly actually, Antonia to my next question, which is what's the future for? For these REIQ, business sale contracts? Are they future changes? What's, you know, things on the list that you want to tackle?

Antonia:

Yeah, look, here's what I'd say about that. I think it's really important that as an organization? Well, first of all, it's a contract that we put together, but it needs to serve the business broker community. So what I would say is, even if I think about the most recent amendments we've made, we've made those changes based on feedback that we've had from business brokers or legal practitioners. So I think in terms of what the future changes look like that needs to be dictated to a large extent by the business broking community and of course, then us as the peak body, it's our job to make sure that we're thinking about what are the legislative changes that are happening around Queensland or around Australia? Or even potentially, and how do they relate to business sales? And do we need to actually go in and update that contract?

Antonia:

So something we've been doing, I think, quite well, is working hand in hand with the AIBB. You know why I'm the first to admit we're the Real Estate Institute of Queensland. So we serve a variety of sectors. And look, I accept the criticism that we are focused mostly on property. If that's true, I won't say it's not true. We the business broking community are absolutely important. But as you can appreciate, it is a smaller community. And it's quite a niche area. And so and so look, we've been trying to do a better job of rolling out educational programs and events that are actually more relevant to business brokers. It's something that we're committed to doing.

Antonia:

We want to be delivering, I guess, events and educational programs that are bespoke, you know, a business broker doesn't want to be sitting in a classroom, learning about how to fill out a contract for the sale of residential property. You know, that's offensive, like they've got better things to do with their time. So I think we are doing a better job of working hand in hand with the AIB last year, we ran an event together, which was really great. And, they are an organization that is wholly and solely focused on the business broking community, which is outstanding. And so I think, you know, hopefully, we can complement their work, and they can definitely complement our work. I think there's room for both of us. So we've just recently rolled out best practice guidelines. And I'm, I feel really happy about this because we touched earlier on. Earlier on, I mentioned that the threshold educational qualification has very, very little content in there for business brokers. And similarly, there's not a lot out there for business brokers.

Antonia:

So what we've done is we've put together these best practice guidelines, again, working hand in hand with our business broking chapter to develop a series of guidelines for how to actually facilitate a business, a business sale transaction and how to act for a client adopting best practice principles and so We're not saying I mean, some of those things overlap with statutory requirements.

Antonia:

But in many instances, we're saying, Hey, this is what it looks like to deliver those services to this standard. And so what we want to do is ideally, and again, we worked with AIBB on the development of those guidelines. And that's not a process where we go tick, we can put that to bed now forever, that's a document that needs to be regularly reviewed, you know, once at least once a year, we need to be getting it out, dusting the cobwebs off and working out. Okay, times marched on, what do we need to do? What should we be recommending? So I'm really excited about that because that's got a lot of really great content. And again, I think it's a really good place for us to be trying to get some consistency and approach when it comes to business broken because even though business brokers do come under the Property Occupations Act, as we've already talked about, beyond the appointment process, there's not a heck of a lot in there.

Antonia:

That ultimately relates to business broking. And I'd like us to become better and better at delivering bespoke articles, materials, and training resources for Business Brokers, we've got a commitment from the Palisade government to introduce mandatory CPD. So I think there's an opportunity there for us to be hopefully, the leading provider of that CPD training, and really make sure that we're not asking business brokers to again, complete a course that has absolutely no relevance to what they do. You know, it'd be unfair. So I think those are the things that we're focused on at the moment.

Joanna:

Great. Okay. Wonderful. And I guess my last question is, what sort of feedback or what sort of commentary do you hear from business brokers? Like, what does that interaction look like? Do they contact ReIQ? When they've got problems, what are those problems? Or they, you know, how are Business Brokers engaging with you?

Antonia:

I guess? Yeah, look, definitely predominantly through that chapter process. We meet with our chapter once a quarter, having said that, the chair of that chapter will deal with our chapter chair, obviously, on a more regular basis, we worked with, with a select view on the amendments to the contract. And then obviously, that went back to the full chapter. So that would, I would say, would be the primary communication channel between the REI Q and the chapter. They give us guidance on articles we should be writing the content of events and training is interesting, actually, just recently, we held a career networking evening, and we had, we had the chair of our chapter there.

Antonia:

And it's really interesting, because again, to hear him talk about business broking, you'd see people in the room who had probably been thinking, well, I've got my, I've got my qualification, and I'll go off and do sales, or I might enter into commercial and industrial, you could see people in the room as he was talking about what it means to be a a business broker, you could really see people in the room responding to that and going, Oh, that sounds really interesting. I had no idea that, that this was an opportunity that this was a career pathway that I could be looking at. So I'd like us to do more to educate the community about what it is to be a business broker and how fascinating and interesting a career it can be. So I think that's something we need to be doing more and more of

Joanna:

exciting. Well, the future is indeed very, very exciting. I just want to say a huge thank you for coming on to the podcast, Antonia. And look, if some, if of our listeners who are business brokers want to engage with REIQ, how do they find out more?

Antonia:

Yeah, well, look, we'd love to hear from them. We've got a website, REIQ.com, which obviously tells you a bunch of information about us. But we've got a really friendly team here who if you wanted to give us a call, we could have a chat with you about how to become a member. What we've got coming up for Business Brokers, we've got a library if you like or a repository of material in our Member resources section that people can get access to. So either give us a call or jump online and check out some information. We'd love to hear from you. If people are interested in joining the Business Brokers chapter. We'd also love to hear from them. We've got a great group of people in that chapter. But it's a two-year term and there's always I think this is our second year actually. So the term ends at the end of this year and we'll be calling for nominations I think around September if I'm not mistaken. So if there is if there are any business brokers out there listening in Queensland, who would like an opportunity Ready to have a voice and a say, then, I would encourage them to reach out to us or to put their hand up when the time comes.

Joanna:

Fabulous will look like a huge thank you for coming on to the podcast will of course link straight through to you in our show notes. So if you are running along the beach at the moment all are driving to work. Please don't have an accident. Or you can go back and click on the show notes. to click through that you don't need to write it down. Antonia, can I just say a huge thank you for coming on to the podcast today?

Antonia:

Oh, that's a pleasure. Thanks so much for having me.

Joanna:

Well, that's it for this episode of The Deal Room Podcast. We hope you're now primed for your next deal with these pointers and have enjoyed these fascinating insights. Now if you'd like more information about this topic, then head over to our website at thedealroompodcast.com where you'll be able to download a transcript of this episode as well as access contact details and any other additional information we referred to today's podcast.

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