

**EPISODE 651**

[INTRODUCTION]

**[00:00:00] ANNOUNCER:** Welcome to The Real Estate Syndication Show. Whether you are a seasoned investor or building a new real estate business, this is the show for you. Whitney Sewell talks to top experts in the business. Our goal is to help you master real estate syndication.

And now your host, Whitney Sewell.

[INTERVIEW]

**[00:00:23] WS:** This is your daily Real Estate Syndication Show. I'm your host, Whitney Sewell. Today, our guest is Gene Trowbridge. Thanks for being on the show again, Gene.

**[00:00:33] GT:** You're welcome. Thanks for having me, Whitney.

**[00:00:35] WS:** Yes. I'm honored to have you back again. As the listeners know, if you've listened the last couple days, Gene has been gracious enough to walk us through these documents, whether you're on the in the business as an operator, or whether you're in the business as a limited partner, passive investor, you have to understand these documents. There's some specific things that are so important that you know. It can be very complicated and you need someone like Gene that's an expert that can help explain what some of this means, and so you know things you need to focus on, or maybe you need to ask the operator about, or different things.

Grateful for you as the listener, I'm just grateful that you're here with us again today. Today, we're going to talk about the subscription agreement and Gene's going to help us to go through that. That and the relationship between that and the other documents we've talked about and some other questions.

Gene, let me back up a little bit. A little about Gene, and you probably heard this yesterday, but I always like to highlight. He's the founding partner of Trowbridge Law Group LLP. He's representing over 400 clients. Also, I just like everybody to know that Gene was a former syndicator. He's been on this side of the business. He understands this business inside and out. He's a CCIM Senior Instructor and has a book that should be on everybody's shelf in this business, called *It's a Whole New Business!* You can also find that book on my website. If you go to our recommendations page, you can find Gene's book and a link to it right there.

Thanks again, Gene, for your time. Let's dive right in, Gene.

**[00:02:01] GT:** Okay. Well, that's great, Whitney. Let me go back to finding the book on your website, so it's there. Is there a link to the free PDF copy?

**[00:02:10] WS:** No. I should do that. I didn't know there was a free PDF copy.

**[00:02:14] GT:** Oh, never mind. I misspoke. I'll send you one.

**[00:02:18] WS:** Okay. Yeah.

**[00:02:19] GT:** I'll send you a link and then you can do that and I'd be happy to have everyone have one of those. That's just fine. Well, let's see. We started this journey – this is becoming a habit, Whitney, you and me. We started this journey talking about something that we call the PPM. The PPM is really a name, a acronym for the private placement memorandum. It really includes a number of documents. When we talked about the PPM, we were looking at something that's really the disclosure document, the story of the offering. We try to write it when we draft these for our clients. We try to write it in as much plain English as we can.

They read that. We hope that that's the first document that the client reads, and/or their investors. That's the disclosure document. Then that has some exhibits. There's an exhibit that shows, we always put the organizational document, showing that the company is actually formed in a particular state and give the investors that information.

Then exhibit two, which we talked about yesterday was the operating agreement. The operating agreement is the rules on how the company's going to run and how we're going to try to make the story come alive and happen.

Then there's exhibit three. Exhibit three is the subscription booklet, which we're going to talk about today. Basically, a contract, an offer and some background information from the investor to the sponsor to see if the investor can take part in the opportunity that the sponsor has put together.

Then in our documents, we have exhibit four, which is the business plan, the investment summary, the property package, whatever it is, it's all about the property. Some offerings, we have more. We have more exhibits. Some of the offerings we're doing today are tenant in common deals, so we also have the tenant in common agreements. Basically, it's the four.

Here's the subscription agreement. The subscription agreement is really the only document the investor signs now in the way that this is being done. We don't have the investor sign the operating agreement. We have the investor just sign the subscription booklet. It's relatively simple. You see the table of contents is relatively short. I've highlighted a lot of things, but it's not all that much. There's three parts; the instructions to someone who wants to subscribe and then number two, the subscription agreement itself. Number three, the offering questionnaire. There are reason for all those parts.

I guess, if an investor wants to invest, they're going to read all the documents, they're going to get this and then we tell them how to complete the book. You need to do the subscription agreement and then the offering questionnaire.

**[00:05:35] WS:** Gene, I was going to tell you too that we're not under a time crunch today, so I want you to have the time to explain this in the time that you need and then I wanted to remind the listeners as well that this would be on YouTube. Gene is sharing his screen and you can see the document as he's going through it. He's highlighted specific things that he's talking about. Just so you know, if there's something that you want to – if you're listening to it right now going down the road or wherever you may be and there's something you want to see, you can go back to that on YouTube and actually see exactly what he's talking about.

**[00:06:06] GT:** All right. We're talking about just instructions on how to do this and we're down to the subscription agreement. Now the subscription agreement says if you read right under Roman numeral II, "The undersigned hereby elects to purchase class A units." That's generally what the investors buy of the offering.

Here's the investor's offer, if you would, to me, if this were my offering, to invest. Then we talk about the purchase of units and we rehash. Now most of this information has already been covered, because it's in the PPM. It's in the operating agreement, but here it is again, because this is what we're going to sign. The person who's filling this out is going to tender a check in the amount of X, representing a total purchase of X number of units. In this offering, the units are \$10,000 per unit. This offering has a minimum investment of a \$150,000.

Now this says, a check. Not every subscription asks for a check. Some subscription agreements don't want any checks at all. They want you to wire the money, okay. You have to read this and see how do they actually want, how does a sponsor actually want your money. Sometimes the check is fine and then you'll find out later in the document that it says, if you want wiring instructions, we will give you wiring instructions.

Then it goes on to say that I understand my admission to the company is contingent what? Contingent upon the acceptance by the company. For those sponsors who are out there, you have the total right to say yes or no. You don't have to take an investor if you find from the offering questionnaire that you don't think the investor is suitable for this investment, you can turn them down. That's you're right. It's really your obligation to the other members and to this member if you don't think this is the right person.

Then it comes down. There's a term in here called breaking impounds. Remember, this offering had a 5 million minimum and a 15 million dollar maximum. Until the sponsor raises 5 million dollars, all of your money will be deposited in a bank account owned by the company, then it will be used for the purposes described, which will not occur until we break impound. The money is just going to be sitting in there in the account and there might be some interest earned, but today that interest is so insignificant that we don't deal with it.

When the 5 million comes, technically the term is that you break impounds and the manager sponsor can go out and use the money, it's generally used and stated to be used in the PPM and the operating agreement to buy the first property. Remember, this document we've talked about is a blind pool. If this were a specific offering, the amount needed to break impounds would be what you need to buy the property. Then probably, we continue to raise money to find money for the CapEx expenditures in the future, if you were going to fund those with cash, or fees, or anything we're going to do later. Usually there's a minimum and a maximum. The money just sits in there until you break impounds.

Sometimes, gosh, this is done so many different ways. Sometimes, the sponsors go into a bank, or someone who will do this for them and set up a checking account, which is fine, but set up a savings account and has given – it's not really an escrow account like you would think there'd be an escrow account at the escrow company to buy the property, but I'm going to call it an escrow account. All the money goes into the escrow account and stays there and the sponsor has a relationship, a contract with the bank that says, "We're depositing all this money. When it breaks impounds, you transfer the money to our checking account. If it doesn't break impounds, you send everyone the money back and any interest they might have earned on their deposit."

That's a little more complicated, but I've seen that on certain offerings. How would I know what's happening to my money? I can go read the darn document. Then when we accept the subscription agreement and the membership, we'll send you a receipt and I'll show you what that's going to look like in a minute.

One of the things you're doing here in the new way that documents are being drafted is this is what the investor is going to sign. The investor here agrees to accept the company agreement. You accept every provision of the company agreement, because we're not having the investors sign the company agreement. Representations and warranties and we go through stuff – some of the stuff we've already gone through, at least we've explained in both the PPM and the operating agreement who is suitable for this investment. Are we taking accredited investors?

We're asking the investor to say if they meet one of these suitability standards. We all pretty much know what those are, a million dollars of net worth, 200,000 of income, or 3 if you're married. Then there are a number of other definitions of accredited investor. Depending upon who

the sponsor is, we may or may not include in the subscription in the subscription agreement. This is a pretty thorough listing of if you are accredited.

Now, we're going to go into suitability. Just because you're accredited, doesn't mean you are suitable, but we're asking you after you've read everything, is your investment in other things that are not readily marketable not liquid. Is it disproportioned to your net worth? Well, I'm going to ask you another question about that, but this is one of the representations I want you to make. Then I want you to tell me that everything you do in the subscription agreement and all this information you give me is the truth. That's important.

Then we go through a section of risks. Now the section of risk is going to be quite a bit regurgitation of the risks that are already explained in the private placement memorandum. Risks really aren't in the operating agreement. They're in the disclosure document. It says, I have evaluated the risks of investing in the company and attest. That's like sitting on the witness stand and saying, "I attest to the truth. I testify that all the following statements are true. Hey, I understand that the private placement memorandum is important and oh, my God. I've actually read it. I've read the company agreement and I've read this document and I've read all other documents and everything I've said is true, but I've actually understood it. I understand that the investment involves substantial risks and I've taken full cognizance and understanding of all the risks and I've read the risk factor section in the offering materials."

Then we come down here. The next one is, darn it. The next one is about the offer to sell was directly communicated to me in a manner, such that I was able to ask questions and receive answers, okay. Now depending upon if it's a 506(b), or a 506(c), we have to have some a comment in there about solicitation. If it's a 506(c), we really don't care too much. Actually, this offering is a C and I left this in there. I just want them to say how they got introduced to the offering based on what I know the sponsor is going to do. The sponsor is not going to put ads in the newspapers, magazines, radio or television and I want the people to say, "Yes, I didn't get information from there."

If it's a 506(b) where there's no advertising at all, this paragraph's a little different. Hey, I was not solicited. I had the dreaded pre-existing, substantive relationship with the sponsor. It was directed – the offering was communicated directly to me, okay. These units are being acquired from

my own account. Okay. We have suitability standards. Whitney, we can't have you buying a 100 of these units and then selling it to your friends. In this particular offering, all of our investors have to be accredited, because it's a 506(c), so we have to be careful of that.

On top of it, regulation D has a rule that there cannot be a resale of units within the first 12 months of someone acquiring them. That rule is just to keep what I just said from happening from happening. We're not having someone buy some and resell. Now there are all sorts of things that could happen in the first year. Someone could die, they could get divorced and we can work through that. But a sale of the units is going to cause some trouble, because it could violate our exemption. The company wants to put a stop to that and that's what this disclaimer is.

Here it is and we even go farther the units will not be resold, unless the units are subsequently registered with the Securities Act, or the person who wants to sell the units gets an opinion letter from another attorney that this will not violate our exemption. Now all that's fine. Yesterday, we went through article 11 in the operating agreement, Whitney, and we talked about liquidity. Voluntary liquidity, liquidity through an active law and we talked about all the ways that units can be transferred. That's one of the four questions an investor should ask is is there liquidity in case I need to get my money out? A well-drafted document has liquidity provisions. As long as you follow the liquidity provisions in the operating agreement, this representation won't cause you any trouble.

Then the last one is I am able to bear the economic risk in case the documents, the investment comes completely worthless. Now why would anyone invest if they see that language? I don't know, but that's what we have to say. When I was doing storage units, one of the very first things in my risk section was is if all 800 tenants move out today, Whitney, we're not going to be able to make the mortgage payment and you're going to lose all your money. I always tell that story, because face-to-face with investors, I like to say that. Because if an investor laughs at that, meaning well, not all 800 people are going to move out, blah, blah, blah. I think I've got an investor who's got some experience.

If I say that to someone and their face tightens up and their body language goes like this, well, let's not take them as an investor. Let's not take them. They're not ready to do this.

Then we go into other considerations, which are still more like risk factors. Hey, this company has no operating history. The manager might, but this company doesn't. There's restrictions on liquidity, the financial projections are only estimates. We're not guaranteeing anything. Tax effects of distribution are up to the individual investor. No agency has made any determination on whether this is a good offering, or the books are written well. Conflicts of interest.

Hey, I'm Gene Trowbridge. I've got 16 storage facilities and I'm running right now. There's conflicts. I can only devote my time so much to any one unit. If there's a need for a member advance, or a member loan and if I have any money, I can give it to that unit, but not this unit. There's all sorts of conflicts. Then if you're a real estate broker, we have written conflicts in the PPM that says, as a broker, we're representing other clients and representing this property. I'm going to have conflicts. We need to explain all that. Then the manager has retained legal counsel. The legal counsel was just for the company. I do not represent an investor.

Generally, I won't talk to an investor, unless the sponsor is on the phone call with me. My fee agreement is with the sponsor, okay. I won't review other people's documents for investors. I think that's a conflict for me. We need to understand that. The manager may receive compensation. Okay, where's that? That's in both the operating agreement and the PPM. I love this one. I understand that the offering materials supersede any other facts, or assumptions.

Well, what's going to take? Three, four, five weeks to get this all ready to take to the market? You're doing your due diligence. You're working with the lender. All sorts of things are going and you're talking to potential investors. Who knows what happened that you represented in June that isn't the same that you're representing now on the 1<sup>st</sup> of September? Who knows what you said to who? This is the only document that counts for your protection and for the investor's protection. Everything that's in writing in the PPM is like the blocks of the 10 commandments, man. This is it.

Okay, don't bring any other information in. If it's not in the PPM, it never was said. For the sponsor, that's very, very important. I put it in writing. I said it. I never promised to send you any money. If you think I said I promised, let's look at the offering documents, which says we project, we may. Totally different words.



Then you say that you actually can sign this. That's important if we're investing for an entity. Let's say, an LLC wants to invest here, or family and office. How do you know that the person who's signing the document can actually do that? I understand that acceptance and execution constitute acceptance and execution of the company agreement. Remember, this is where we're signing, this is an exhibit. Instead of doing a company agreement, we're going to sign here.

Then we allow electronic signatures. This is a big change in the industry and I'm not going to go through this, but many times our sponsors are using a back-office company to help process the offering. We take this document and we give it to them and they electronically modify it. Then when people go to their website and sign, they don't do anything manually.

**[00:24:03] WS:** Just like using a portal, right? Or DocuSign or something like that.

**[00:24:05] GT:** It's like using a portal. A lot of people have portals. A lot of our companies – In fact, if we'd had portals – When I was making the decision to go to law school and stop syndicating, I probably would not have done this. One year, I sent out 1,676 K1s. I spent three months looking at envelopes and putting stamps on. There were no portables. There was no IMS, or Redwood, or whatever there are, but there are now, and so that makes a difference.

I think a portal is a little overkill on your first deal with 20 investors. Whitney, you do four or five deals, you've got 150 investors. Now we're talking about some mechanics. You can staff it yourself, which is what I did, or you can go outside and have someone else staff it. That's pretty prevalent today.

Then we have a question here. One of the definitions of an accredited investor is that you're smart. One of the ways you demonstrate the fact that you're smart is that you use a registered investment advisor to make your decisions for you. You might be the person who's typically, this is an older person who's subject to a trust and all their money comes out of the trust and the trust is being governed by the trustee and a professional advisor.

If you're going to use a professional advisor as an investor, we want to know who that is. We want to – and the sponsor is not a registered investment advisor. This is a career, this is a bonded, this is a licensed person. We want to know who that is, because they're the one who's making the decision for the investor and making the determination that this is suitable. We have that information.

Then it says, after you execute this subscription agreement and send us the money, the company will make a decision if they want to accept you. Now, we're gathering information. We need information on who wants to purchase. Pretty self-explanatory, but this is the one that causes everyone so much problem.

How are we going to hold title? I will tell you right now, Whitney, if you're the sponsor, this is not your responsibility. You can't know how the person should hold title. You know about them, but you don't know anything about what their estate planning is. You don't know anything like that. I get many, many, many calls. How should this client take title? My answer is, they should call their CPA, their attorney, or their trust attorney. Do not give them advice on how they should take title.

You need this, right? You need this correctly, so that the CPA can deal with the K-1s, the tax returns and the K-1s correctly. Now there are a million ways you can take title, okay. Here's here's a way that if you're doing this electronically, you can check a box and that helps. Then underneath this, it says that there are several states. I think there's seven states that have community property laws. I'm in one right now, California.

If I sit with you, Whitney, and I want to write a check, fill out a subscription agreement to buy units in this fund, you have to be alerted to the fact that when I write this check and I tell you I want to take title myself, you may have a problem with my wife down the line, because did she approve me going into the company checking account and writing a \$150,000 check out of savings or whatever and putting the title in my name?

When your investor is from one of these states and the choice is they want to take title individually, you need to ask them if they're married. Now, I could have been divorced in the past and I could have my own separate property from that other marriage. Now, I'm married, but I couldn't

take my money. That's mine. And take title as an individual as a sole and separate property. That's fine. You need to protect yourself.

This is what I say to everyone. If you're going to have an investor from one of these states that's going to take title individually, ask them if they're married. If they're married, provide them with a community property waiver. Basically, all it says is the spouse who's not signing and not wanting title in their name says, "I know what's happening here. I understand. I'm not making any claim." Then you sign it.

Now a year from later something goes wrong, the spouse speaks up and says, "Hey, I want my money back. This never should have happened." You're covered, because this is going to cost the company problems. I'm not worried about husband and wife arguing. I'm worried about some attorney calling us and saying, "We want a \$150,000 back from the bank account, because you never should have taken that investment."

It's a lot more complicated than that when you have unions out there that aren't actually married and who's investing whose money. It's something that you have to identify and ask questions. In fact, just as an aside, one of the things that they're thinking about in the accredited investor definition is expanding the definition of accredited investors to a household where otherwise, you would say these people are married, but maybe for some reason they aren't, but they're investing together.

If their net worth, or their income meets the definition, the 200 or 300, they can invest as accredited investors, even though they don't have the piece of paper that says they're married. I don't know if that's going to happen, but it makes some sense to me and it would clear up some problems that we have, that sponsors have.

**[00:31:13] WS:** It brings in that couple, or that person and they're not married, but they are in the household. It's going to bring them into the agreement, or at least the person that's signing is agreeing that they are part of the household.

**[00:31:25] GT:** That would be my recommendation. In fact, I have a couple sponsors who are married and same-sex marriages. We go through this. We go through this all the time. They

brought their own money to the relationship. Whose money is being invested? Is it money that was earned after the marriage, or before the marriage? The two groups I'm talking about are in Texas, which is community property state, so we've got that problem that we have to talk about.

Then if it's going to be an entity, I have this checklist of things. Hey, if you say you're going to invest in a partnership, a family partnership, well, I need to see the document that gives you the authority to sign and invest the money for the partnership, once again, to protect the company. I don't want someone coming six months later and say, "We didn't approve this investment."

I learned that a long time ago when I'm done in real estate. I sat down in an office with the person. He signed the listing agreement. I brought a full price offer in for this office building and we found out that he hadn't had the authority to sign the listing agreement and to agree to pay me a commission. Totally different if you're selling houses. You sit in the kitchen table, the husband and wife. Chances are they have the authority.

In the world of LLCs and corporations and everything, I would always advise someone to check, where's the authority coming from? Yes, you have to ask them. Okay, that shouldn't insult them. They've been asked before. Ask them. I go through a list of things that I'd like the investor to provide. Then we sign that. That's all the subscription.

Now we're in the offering questionnaire and I'm gathering information, okay. Where do you live? Well, that's important for their tax returns. That's important for the state notices that we send out. Do you have a house or an apartment in any other state? That's important, once again, for tax returns. Where do you pay your income taxes? Here, I'm trying to identify your residence. Because if you were doing an offering that's only approved in Texas, you'd want to make sure that the person is in Texas. We've got three questions for that. What's your age?

I can't tell you how many clients of mine don't want to ask their investor what their age is. I think that's extremely important, because if your holding period is six, seven, eight years and you're asking Gene Trowbridge to invest and Gene might invest with his IRA, don't you need to know if Gene is in a period where number one, seven or eight years is too long and number two, Gene, are you taking mandatory distributions? If all your money from your IRA is going into this fund,

where are you going to get your money for your mandatory distribution? Don't come to the company and ask for your money. We can't help you.

I think that's an important question. Then we go through once again, are you accredited? Here's the definition of accredited. Net worth income and if in fact you have another definition of accredited, which we listed earlier on, you can write that in there. What are the positions that you've held in the last 10 years? Now is this intrusive? Okay, so it's intrusive. Let's figure out if the person is suitable for your investment before it gets too late.

You have a lot of investors invest over and over and over, Whitney. This subscription agreement can be modified if you're dealing with nothing but past investors, because you know all this stuff, okay. Then how do you know? How do you know Trowbridge? How do you know Trowbridge apartment managers? How do you know all these people? Do you or don't you? I don't know. This offering is on CrowdStreet and I bought it from CrowdStreet. Okay, write that down. That's okay. It's a 506(c) offering. You can do that. If it's 506(b), I want to know.

Then we want to know if you're experienced in investing. Very important I think for the sponsor to know if this is the first time anyone's ever invested in an LLC that's not liquid. We need to talk about it. I might have mentioned this somewhere in some offerings if the minimum investment is large enough, I'll put in there a question that after you've done your minimum investment, I have some clients of the minimum investments, 500 000.

After you've invested your 500,000 how much money do you have? How much liquidity do you have? \$4. Okay. Don't take that person. Those are some other questions. This subscription agreement can be modified for the specific offering. Here's some more questions about where the state securities notice is? Where do you file your income tax, or your annual reports if you're an entity? Where was the entity formed? That's all important.

Then we sign it and then we go right back up to the beginning. It says, what do you do with this? Okay, complete the booklet, complete the offering questionnaire. Now do what you're supposed to do. Somewhere in here, it should tell you where to send it. You're supposed to send a check. You're supposed to do that, and/or there's a separate instruction letter that's a cover letter that

goes with it and that's what I have in this particular document. Where are you going to send it and where are you going to send the check?

That's the end of our march through the three documents. Just quickly, the PPM, the disclosure document told the story, the operating agreement gives you the rules and the subscription agreement basically says, "Hey, I've read all the stuff. I'm qualified. I'm suitable. I want to invest. Will you accept my offer?" In this case, it's a \$150,000 minimum and the sponsor can say yes or no.

It isn't on this document, because it's a standalone document that I have. There's a document that's the receipt. It's called acknowledgement and receipt. That's a standalone document that you would send to the investor when you accept them, you break impounds, everyone becomes a member, you send them this receipt that tells how many units they bought, how they're taking title and then you sign that. That's the receipt they get.

Sometimes, my clients like to send them a completed subscription book, but they've already received the subscription book. The clients have already seen all the documents. They're just executing this and making an offer, so you really don't need to send them that, but some people like to do a nice, fancy final set of documents. It's up to them.

**[00:39:08] WS:** Like in a booklet, in a fancy way. An operator would send them all the documents?

**[00:39:14] GT:** Mm-hmm. Or today, it's a link to a Dropbox, or a link to something where all their documents are. If you're using portal-to-portal, we'll upload the documents and tell the investor where they can find all the documents.

**[00:39:30] WS:** Right. I wanted to ask you about – I mean, and you talked about it right there, but that receipt page and anything else that say the investor signs and the operator has to sign. Is there any specific order that should take place, as far as who signs what, when and just getting that receipt back to the investor and their funds?

**[00:39:53] GT:** Yeah, there's only one signature. The signature on the subscription agreement accompanies the wiring of the cash, until let's say you're in a wire, you're going to require wiring. Until the money is wired into your account and until you receive the subscription agreement executed, you don't have anything. That would be the two things that should happen pretty much simultaneously. Sometimes, it takes a while for the money to get there as you know, because it comes out of an IRA account, or a 401(k).

Until everything, those two things are received, you really don't have the complete subscription. That time, I would think I would tell the people, "We're going to accept you. I've got your money." We explain where your money is going to sit until we break impounds. At that time, I'll send you a receipt memorializing your purchase. Because the syndicator has and we say it in the PPM upfront, the syndicator can cancel this offering at any time, send you your money back.

Prior to breaking impounds, just call the deal off. Then after you break impounds, it's a little harder. The syndicator has the right to say, "Well, we raised 5. We bought the first property, but because of this virus thing, I don't want to buy any more properties right now, so I'm going to send everyone a pro rata share of their money back and we'll just own one property. Fine." You can do that.

**[00:41:30] WS:** Any issues with an investor, say wiring their funds before they get the signed receipt, or signed documents from the operator?

**[00:41:39] GT:** I don't think that's a problem, because what is that, it's just a deposit. It's just a deposit and the deposit goes back. The securities laws deal with something called irrevocably committed. When the money is irrevocably committed to the offering, you're an investor. When is the money irrevocably committed when it's spent? We say, when you break impounds, it's irrevocably committed. In addition, when it's spent, it's spent.

Now, I have this issue in Hawaii, where we have to sign and I got to talk about that. City state notices it. Hawaii says, when the money goes in your bank account, we're going to start the 15-day clock. Well, and I argue with Hawaii I said, "No. The money could sit in there for 30 days before we break impounds. No, that's not acceptable to us. Our rules is that you have their money." We need to know what's all that about.

The minute I get a subscription from someone, well, backwards. The minute I have complete documents, Whitney, and I send it to you, here's your documents go forward. We're going to file the form D. The form D has to be filed within 15 days of the first money you accept that's irrevocably committed. We file it right away, so we don't have a problem with that.

Then as you get investors and you get their money that's irrevocably committed, you have 15 days to send your notice to the various states where the investor lives. We typically consider money irrevocably committed on a specific offering when you break impounds in your close. We order you, we have an Excel spreadsheet we give you, you fill it out. I want the name of the investor, the state and how much they've invested. Then we look at the list. If you've got investors in Nevada, we send a letter to Nevada. You've got investors in Oklahoma, we send a letter to Oklahoma. It's all filed online.

Our operation manager does all that. We send the letter, a copy of the form D and a deposit, because they always charge you for that. That has to be done 15 days after you take their money, so that if someone complains and they go to the state and they go to the secretary of state and say, "Hey, I'm in Texas and I invested in Whitney Sewell's deal, but Whitney's in Virginia. Texas needs to know how to get a hold of Whitney." The state notice alerts Texas to how they can get a hold of Whitney. That's the back-office stuff we do.

**[00:44:36] WS:** Okay. One other question I wanted to ask, is there any way to and maybe we talked about this briefly yesterday, but it's difficult because the documents are so property specific, deal specific. They're structured different ways, all these things that we have to take into account, even different states and things, but like using a portal. I know we've experienced issues, like you got to put the document in and there's lots of things to make that electronic stuff work correctly. It would be helpful if there was some standard portion of it. Then a portion that was – that we could alter per deal. Is something like that possible?

**[00:45:12] GT:** I suppose there is, but the question would be, would it be standard and would it already be in the portal and you just go in the portal and modify it? That answer, I don't think has happened yet. It's going to come from the attorney and go into the portal. Now, I have a couple clients whose staff work on the subscription agreement. Their subscription agreement, I mean,



use the term anal, okay. It's very anal about down to if you send us a check in an ACH way, that's where your distributions are going. The distribution have to go back to exactly where the money came from and we need to do all these and we're going to charge you \$50 if you do in an IRA account and all this.

That's pretty much pre-loaded. They use IMS. It's pretty much pre-loaded in the IMS world, but it changes all the time, so it doesn't help. We have to get it standard and then and they want the subscription agreement first. They're always on the subscription agreement. Let's get it uploaded and let's get it ready to go.

I will tell you that I think that there are some websites out there that say they will give you a PPM. Some websites say they'll give you a PPM and what it turns out to be, it turns out to be a slide deck. It's very, very standardized and it really doesn't tell you much about the deal.

**[00:46:52] WS:** Right. No, I would still want to create it by an attorney like yourself. There's no doubt about it.

**[00:46:57] GT:** A lot of those places still have you go to an attorney to get the operating agreement. I think the future is going to change. I think all these is going to change, I think mechanically. Example, I have a guy who a client who has done – I've done 119 offerings with him. You can't tell me some of those things aren't standardized. It's pretty easy. In fact, I helped him recruit an in-house attorney who does everything. All I have to do is review it for the broker-dealer community in the SEC and say, "Okay. This is fine." It's taken us about five years to get there. All right, Whitney.

**[00:47:41] WS:** All right, Gene. Well, I'm grateful for your time. I know as a listener, I appreciate you hanging in there. I know we went a lot longer today, but I think it's so worthwhile. I'm thankful that Gene could just take time and go through this document, because like I said, whether you're the operator, or whether you're the limited partner, you need to understand so much about this document.

Thanks again, Gene, for your time. Tell the listeners again how they can get in touch with you. I just want to say too, Gene is a very loyal a sponsor of the show and I'm just grateful for him

sponsoring the show as well. It's just a great fit, because he is such a name in this industry and has done such an amazing job. Gene, tell the listeners how they can get in touch with you.

**[00:48:21] GT:** Thanks for those kind words. The website is a [trowbridgelawgroup.com](http://trowbridgelawgroup.com). My e-mail address is [gene@trowbridgelawgroup.com](mailto:gene@trowbridgelawgroup.com). Just send me an e-mail. I use my e-mails, like I do with telephone. If it's something that I think deserves a call, I'll give you a call back.

[END OF INTERVIEW]

**[00:48:42] WS:** Don't go yet. Thank you for listening to today's episode. I would love it if you would go to iTunes right now and leave a rating and written review. I want to hear your feedback. It makes a big difference in getting the podcast out there. You can also go to the Real Estate Syndication Show on Facebook, so you can connect with me and we can also receive feedback and your questions there that you want me to answer on the show. Subscribe too, so you can get the latest episodes.

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[OUTRO]

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