EPISODE 823

[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]

[0:00:23.8] WS: This is your daily Real Estate Syndication Show. I'm your host Whitney Sewell. Today, our guest is Mauricio Rauld. Thanks for being on the show again, Mauricio.

[0:00:32.3] MR: Thanks, Whitney. Great to be on man. I think it is number four, isn't it?

[0:00:35.6] WS: I think so. At least that many. Mauricio has been very gracious with his time and we've done numerous shows together. Obviously, he has a skill set that every syndicator needs to be aware of or have somebody like him on your team. So important. I mean, we've talked about a beginner's guide to avoiding common mistakes and syndication, that was show 194. Show 262 was how to be a legitimate co-sponsor — so important. And we're going to touch on a little bit of that today and even some changes that you need to know about if you're in whether you're an operator or a co-syndicator or passive investor, you should understand some of this. But even though we did show 317 on considerations for dealing with international investors as well.

So, Mauricio, again, welcome to the show and a little bio, in case you listened or you haven't heard of Mauricio before. He's the founder and CEO of Premier Law Group, one of the premier syndication attorneys in the country that spends 100% of his practice on syndications for real estate investors. He regularly travels around the country speaking to real estate investors and entrepreneurs, educating them about syndication, the legal basis how it fits into the overall syndication puzzle. He shared the stage with the likes of Robert Kiyosaki, Ken McElroy, Rod Khleif, Brad Sumrok and of course, the Real Estate Guys. Mauricio is known for taking complex matters and making them easy to understand and is jokingly referred to as one of the few lawyers who actually speaks English. As every CEO, welcome back to the show. It's always a pleasure to have you on.

I know, we're going to discuss numerous things today that anyone in this business, like I mentioned, needs to know about, at least they didn't know enough that they need to contact somebody like yourself, right? It's so important. There are too many complexities, too many moving parts to think that okay, me as the operator, I can figure out all these things, or even think that I can find some document online that's going to help me to do this correctly and protect myself or our investors. But again, welcome to the show. Let's dive in Mauricio.

[0:02:30.8] MR: Thanks, Whitney. And yeah, let's touch on that for two seconds. I mean, as a syndicator, well, you said like travel around the country, I used to travel around the country. I haven't left the house in six months. But when I did travel around the country, that's one of the things I always stress that your job as a syndicator isn't to know, it's not to be the technician, it's not to know every little nook and cranny and every statute and every law, you just have to have a kind of a contextual understanding so you can have intelligent conversations with your experts. You're the quarterback of the team. You're putting this jigsaw puzzle together, just know enough about in this case, the syndication rules, that you can have intelligent conversations with your securities attorney, you can ask the proper questions and get through. You don't need to know everything.

[0:03:11.7] WS: It's who, not how.

[0:03:12.6] MR: Yes, exactly right.

[0:03:15.5] WS: Who, not how, and you better have somebody like Mauricio on your team. So, let's jump in a little bit to some of these changes and things that have happened recently, and things that these guys that are listening gals to that are getting into this business and operating and what's happened that they need to know about some changes. Let's dive in.

[0:03:36.5] MR: Whitney, I don’t know what's going on, but there's been a flurry of updates and new rules and proposed rules literally in the last two months, I would say. And I don't have an answer as to why. I don't know if it's because the administration was changing, and they wanted to get everything done. But just out of nowhere, there's been all these great updates to the point, I think I have – finally, after all this time, got together and got my book done, *5 Things Every Syndicator Must Know to Stay Out of Jail*. And now I feel like I got to go back in and rewrite some of those chapters, because — one of them, which you mentioned, I talk a lot, and we've talked about on the show as well, is this idea of paying people to raise money for you, right, the money raiser issue, which has become a huge hot button lately.

The SEC is really cracking down on this. As you know, there's a ton and I think the last time we spoke, I knew of one or two. Now, I know, five or six investigations that the SEC is conducting on this issue of paying money raises, because as a syndicator, obviously, probably one of the hardest things for most, especially if you're starting out is actually raising the money. So, it's very tempting that when somebody comes along and says, “Hey, Whitney, I've got a bunch of investors over here and we can probably bring in a million bucks or 700 grand to your deal. But hey, I want to I want to get a piece of the pie or I want to cut the deal. I want to be a GP and all that stuff.” It's very tempting.

And so, what's been happening as you know, and that's why we did the show on the co-sponsors is the way people were kind of trying to get around the rule is to become a co-sponsor, right? And just say, “Hey, I'm part of the GP and therefore I'm good.” And the problem is you're not good by merely being a member of the GP. The analysis, just like the securities analysis is the same. It's not whether you're technically a GP, or you're officially on the books, you're not technically on the books, it all has to do about, are you getting compensated — what we call transaction-based compensation. Anytime you're getting paid, only when somebody invests in your deal, either a percentage of the deal or just it doesn't happen until you get paid. That's transaction-based compensation. And the only people up until now that can get paid for transaction-based compensation are broker dealers, right? But nobody's a broker dealer ever, but everybody's out there acting like broker dealers. And that's the problem.

There's a new literally, I don't even want to call it a proposed rule, so here's what happened. Literally, I don't remember the exact – I want to say was early, no to date this too much, but about three weeks ago, there was literally a press release. That's the state of where we are on this proposed rule. But there's basically a move by the SEC to expand that and actually allow people to start getting compensated for making referrals to people or raising capital legally, because I think they've recognized that most of us, even if you're doing really well, in our business, Whitney, as you know, we're not raising $100, $200 million. We're not we're not JP Morgan. We're not Blackstone. We're not raising billions, or hundreds of millions, we're raising a million, 2 million, 5 million, 10 million. And it's not realistic for us to use broker dealers. Broker dealers usually don't like to get out of bed unless they're bringing 25 to 50 million bucks.

So, there's a gap because if you have to use a broker dealer to help other people raise money for you, but you're only raising a million, 2 million, 3 million, there's a gap there. And that's where I think the SEC came in and said, “Hey!” Recognizing that that's an issue there, a hole or whatever you want to call it in the system. And so, what they did was they literally came out with a press release. So, just just so everybody knows how early we are in this process, and this is what they're kind of, I don't want to say they're proposing — Yeah, they are proposing but it's more like, here are some ideas we have, that's where we're at. So, they've requested some comments from the public to kind of say, “Hey, are we crazy with this? Give us some feedback.” And that will then lead to a proposed rule probably next month, or next quarter.

But essentially, what they want to do is like, look, they're going to allow you as an individual or a company to refer investors to a syndicator and get compensated transaction-based compensation, meaning we're going to be able to do exactly what we're talking about now that we can’t do, they're going to allow us to do. So, I could have a couple of investors and I could call Whitney up, say, “Whitney, I've got three investors here and they've got 500 grand to put in. I'd love to refer them to you and if they invest in a deal, I want you to pay me a certain amount of money, or I want you to give me 5% of the deal or 10% of the deal.” That's transaction-based compensation. That's going to be allowed under this proposed rule.

Now, it still has to be disclosed, obviously, to the investors coming in, because obviously, that does affect their analysis of the investment, whether you're getting compensated for making that referral. But unlike finders, where you're not really allowed to participate at all, in that whole transaction, this proposal will actually allow you to, first of all prequalify the people that you know. You can actually talk to them, you can vet them, you can find out what they're looking for, what their profile is, what the risk factors. You'll be able to go through the syndication documents with them. You can literally sit down next to them, open up the PPM and walk through the PPM and explain the investment to them. You can't make any recommendations because that would be definitely broker deal activity. But you're going to be able to do that. You're going to be able to actually sit in and participate once you make the introduction.

Right now, there's some finder rules where you can make an introduction, but you can't — That's it. That's all you can do. Here you're going to be able to be part of the meeting, be part of the phone call. Again, you can't make any recommendations.

[0:08:49.9] WS: And we can only pay for -- I mean, we had to pay for a referral, whether they invested or not before.

[0:08:55.9] MR: If you went through finders, which is a really – it's a really fine line, it's a tightrope you've got to walk in and only some states have it. It doesn't exist at the federal level. But at the state level, like Texas, which is a good one, they have a finder rule. And yes, you're getting compensated for making the introduction. So, it doesn't matter whether that person invest in your deal or doesn't invest your deal. It's just a phone call. It doesn't matter, because that's not what you're getting paid for. That's not transaction. But you're simply referring them and say, "Hey, Whitney, I understand John's looking for an investment. Whitney, I know you've got one. Let me connect the two of you, and then I'm out."

And then if you're going to pay me $100 every time I make an investment or $5,000 to send an email out or whatever, that compensation, as long as it's not contingent on the person investing, there are ways to do it. But it's impossible because again, most people can't stay within the lines. And most people want to be involved somehow in that transaction. They're either participating in the phone call with the investors or they're giving recommendations. "Hey, Whitney is a really great sponsor, and this is a great investment. I highly recommend you invest in this deal." Like that kind of stuff.

So, it's really tricky, but with this one, it's much more than the finder and even though they're calling it finders to be clear, the SEC is referring to these people as finders, but they really are a lot more involved. Now, there are some limitations, it's not just all gravy — at least as it stands right now. And that is they're going to limit those referrals to accredited investors only. So, that's one limitation. And you're not going to be able to go out and find new people to then refer to the sponsors. You have to have some kind of a – well, you're not going to be able to go advertise.

Again, I don't know, but I'm guessing it's going to be something similar that you have to have a preexisting relationship, what level of relationship we don't know, but we'll be able to go on Facebook and just market and get a thousand investors in the door, then turn around and refer those people to a sponsor and get compensated, you got to know them already. It's got to be in writing, obviously, few of those things make sense. But it's just going to be super exciting to see where it goes.

Now again, just to caution everyone, because I get excited. A lot of people get excited about it. And by far of all of these updates is the most relevant and most fascinating, but it's just literally a press release. Okay, so what's going to happen is, we're coming up at the end of the 30-day comment period where people like me, like you, anybody that has a stake in syndications will write letters to the SEC and say, "Yeah, this is a great idea." Other people say, "It doesn't go far enough, we've got extended it to non-accredited." Some people are going to say, "This is a terrible idea." Like, there's just going to be all these comments and that's going to lead to what they call a proposed rule, which probably will happen first quarter of next year is my absolute guess, based on what I've seen before. Then there's another comment period section and then, I think on average, I've seen these probably at the end of the year, fourth quarter of next year, is when I would expect it to happen. But then some of these regs, I mean, when 506(c) came out, or actually the crowdfunding, the regulated crowdfunding came out, it took forever to come up with a proposal.

But anyway, that to me is the most exciting one. I hate to belate it. But of all of the updates, that to me is the one, and I know a lot of my clients are excited. They're asking me about it already. And I keep reminding people, it's just a press release at this point, it's not the rule. And so just just keep an eye on it. And maybe as this legislation or not legislation, as this rule progresses, maybe we can come up and keep updating you guys.

[0:12:04.1] WS: Yeah, so as far as compensation-based pay, or referrals, or co-sponsoring, things like that, I mean, right now, you're going to stick to the same rules we've always had, because is it only a press release. I just want to make that very clear. And then, hopefully, within a year's time or less, we'll know exactly what that role is and what that means for us.

[0:12:26.9] MR: That's right, and one other thing which is relevant. And again, it's just vague, whether you will be able to be a co-sponsor in a deal, kind of like what people are doing now. One of the prohibitions right now is you're not going to be able to be involved in the structuring and the preparation of the documents. So, that tells me that maybe you won't be able to be an actual co-sponsor. You literally have to be a third party that literally will refer people to the syndicator and the syndicator will then pay him a percentage or a flat fee or whatever, based on that on that transaction.

[0:12:55.0] WS: Nice. So, quickly hit on there then, what's the difference in that person, being a co-sponsor or in being part of the GP, versus being part of the GP?

[0:13:04.1] MR: Being a co-sponsor and being part of the GP are the same thing. They're just different vernaculars in my world. But just real quick, the difference is, in order to be considered what I would consider a legitimate co-sponsor, that gets you around the requirement of having to be a broker dealer, because as a co-sponsor, you're not the issuer, or as a sponsor, like when you put a deal together, you are not the issuer, you are the general partner, you're the sponsor, but you're not the actual issuer. So, you have to figure out, “Well, why am I not registering as a broker dealer?” And it's because there's an exemption, there's some rules. And the 15-second version of that is that the sponsor has to be number one, performing substantial duties, real stuff and their primary role needs to be working on those substantial duties. It can't be primarily raising the money.

So, all these people will just go raise the money. And then once the money is in, and the deal closes, they have no more duties. Those are the issues that have come out and definitely cannot get paid transaction-based compensation. So, this, “Hey, if I raise a million bucks, you give me 10%. If I raise 2 million you give me 20%.” That's definitely off the table as it stands right now.

[0:14:03.0] WS: So, I also wanted us to touch on, just like the credited investor definitions and how they have changed a little bit. I know that's some new stuff and we haven't really talked about that on the show yet. So, I'm thankful to have you on. Let's let's talk about that.

[0:14:16.7] MR: How have you not talked about it on the show yet?

[0:14:18.2] WS: I know.

[0:14:20.9] MR: Look, I'll give you my editorial version first. As it stands right now, it's not super groundbreaking, but it lays the foundation for us to get some really interesting changes in the accredited investor rule literally could be next week, next month. we don't know. But anyway, here's the deal. An accredited investor up until now, as of this final rule was always based on income or net worth for individuals. And just as a reminder, a million dollars in net worth excluding your primary residence, or you have earned $200,000 the last couple of years, last two years with a reasonable expectation of earning that much this year. That was your typical definition and the issue has always been, well, is that really a great metric, right? Just because you have a lot of money, does that really mean that you're qualified to invest or that means you're really sophisticated? Because as we all know, there's plenty of people who have a ton of money and are the biggest morons in the room. And there's plenty of people who don't have their very modest monies, but they're the smartest guys in the room.

So, that's been the debate. And they finally came out with a proposal back in December of last year, and now it passed just a couple of months ago, but it doesn't become effective until – by the time this gets released, it will be effective. But essentially, it now allows people to become accredited via a certification process, meaning I can go to a certified institution, which we don't know what that looks like — But the SEC is going to designate certain institutions or companies that have the authority to to provide these courses, you're going to be able to go take a course, presumably pass an exam, and then you will be certified as an accredited investor and now be able to invest as an accredited investor.

Now, the issue is, right now, is that we don't know anybody — nobody's been certified at least that I've checked them last week yet. So, right now, there's no institution that you can go run out to and go take this course and get certified. I have no idea what the length of the course is. I don’t know if it's a weekend getaway, if it's a semester, if it's a yearlong program, if it's an online course for two hours. I have no idea on that. But there's going to be some kind of a course some kind of an exam, some kind of a passing where you get your diploma that now says, “Hey, I'm an accredited investor. I'm now going to be eligible to to invest in your deals.”

Now, I shouldn't say that nothing's changed. As it stands right now, there is a few people that now qualify as an accredited – actually, as of December 8, as an accredited investor that before wasn't, and those are people who are registered investment advisors, because they've got that certification already. So, people have a series 7, a series 65, or series 82, because they’ve taken a course, passed an exam and received a license — that those people are now going to be considered accredited, and there's going to be something similar, that's going to be coming out, as I said, with SEC designated some institutions, some people, some groups with the authority to give these exams and certify it.

So, that's exciting. That is going to expand the pool of accredited investors. And again, not to leave anybody behind, there's a lot of exemptions that we rely on, so that we don't have to – we don't want to be registering our securities with the SEC. A lot of our exemptions will be dictated whether you can accept or not accept accredited investors. So, this issue is an important one for us because if you're only able to take accredited investors, like some of the exemptions are, having obviously a larger pool of prospects helps a lot.

[0:17:36.2] WS: I can see it, we've stuck with 506(b)’s because we have so many non-accredited that have been so faithful to invest in every deal. I would imagine they could be certified. They invested in that many deals. So, it's going to be interesting to see how they can do that and maybe we help them, somehow, to accomplish that. And then we can even do 506(c) if we wanted, but at the moment, we haven't needed to.

[0:17:58.9] MR: Well, yeah, absolutely. The other question I have is how many people are going – if you’re an investor who wants to – you’re a passive investor, and you want to have access to all these deals, and yes, and it may make sense for me to go take an exam and become accredited. But if you're approaching someone, and they're not accredited, they're certainly not going to be like, “Oh, well, if you can go get a certification, go run down the street, pass a test, and then come back to me in three weeks.” I doubt that's going to happen. But if you're an investor, if you're a passive investor out there, and you just are frustrated, because you don't have access to some of these deals that are only available to accredited investors, then it's something to look into them to become an accredited investor. How long that takes, I have no idea.

[0:18:36.4] WS: Maybe you'll be able to go down to the DMV and do something — have it on your license.

[0:18:40.2] MR: I know we're running out of time, Whitney, but there's another set of rules literally became final a few weeks ago, they are not officially on the books yet. And again, there's always like a 60-day delay on these things. But you mentioned 506(b) because there's some new – I don't want to get into details there, but there's some new integration rules that have shorten the timeframe between having two offerings combined into one which is not something we want to have. You're now actually able, you talked about 506(b), you're going to be able now, which you can't right now, but you can now start a 506(b) and then in midstream, change your mind or just be like, "Hey, I've run out. I need to raise so much money that I've run out of my non-accredited people that I know friends and family" —

You can then switch midstream into a 506(c), start complying with 506(c), start advertising your stuff, take accredited investors only, take reasonable steps to verify and those two will not be integrated, which I think is of all of the integration examples and rules, that's going to be the most practical for somebody. Because there's a lot of people that I know and you know too, probably it's happened to you too, it's like you don't really want to go 506(c) because you have all these non-accreditives. Well, you could start with a non-accredited, raise a million bucks or whatever and then in midstream switch it, advertise, just take accredited app and then you got to take the reasonable test to verify the new people.

But that little pivot thing, I think is going to be also interesting and something to look for and see if people take advantage of that.

[0:20:03.7] WS: And when will that take effect?

[0:20:06.3] MR: That's actually taken effect. That's a final rule. But it's 60 days from the time. I think that passed early November. Maybe by the time this podcast comes out, it may be not, but it's going to be right around January and February.

[0:20:19.3] WS: Wow. It's going to be interesting to see how different operators use that. Okay. I appreciate you bringing that up. You want to give us one or two things that just highlights out of your book, the five things every syndicator must know to stay out of jail. Maybe it's six or seven things now, I'm not sure.

[0:20:34.9] MR: I'm going to have to go back and rewrite. So, one of them was you can't pay money raises. But now maybe I'm going to change that say, "Well, maybe you can in certain circumstances." The second one I do talk about is that the things that people should know is the advertising rules, like people on social media advertising left and right, and improperly doing that. But there are some integration rules, I think will allow you to do some stuff that previously was a little bit on the gray area, like these famous post-closing posts, people celebrating that they closed on a deal. That might actually, in my opinion now, may have changed to be okay, based on these new rules that have come out.

But I have a chapter on how to use social media basically, when you're doing a 506(b). I talk a lot about not even realizing that you're dealing with a security. That's a big one, people calling things, joint ventures, people doing a promise or people trying to get around the securities law. That's actually my first chapter because that's the biggest mistake that most syndicators make. So, that was number one.

And then we talk about establishing, having to establish preexisting substance relationships. So, there's five of them, and I'm happy to share the the e-book for free to your listeners whenever they want.

[0:21:43.0] WS: Nice. That's awesome. That's awesome. Well, Mauricio, do you have a couple of daily habits that you are disciplined about that have helped you achieve success?

[0:21:52.2] MR: I get up early, we've talked about this I think on the air and also, off the air when we've been hanging out, but I needed to – you get get up early, I get up super early. And I mean, like, sometimes with three handle, 3:00, 3:30 in the morning, not all the time, but on average, 4:30 I'm up. I get such a great jump in the morning, we're just joking, “Oh, by 730 in the morning, I feel like I've gotten a whole half days’ worth and I think it's lunchtime. And it's like 7:30. So, it's just great. That’s been a huge change that I implemented when my kids were born, actually.

[0:22:24.5] WS: Nice. It’s at least the time for your third cup of coffee at 7:30, right?

[0:22:28.8] MR: Absolutely. That's the one thing I got to stop, really. I've been drinking a lot of coffee lately, I got to stop doing that. I went from drinking one cup of coffee to like five or something a day, which has got to stop.

[0:22:39.2] WS: What's the number one thing that's contributed to your success?

[0:22:43.5] MR: On a professional level, it’s just adding value. I come from that school of just the more value you can add, I've just been blessed with people responding to that. And that's one of my little superpowers that we talked about before. I take these complex securities matters, and they are complex, which is one of the reasons I titled that book, that way, to stay out of jail, even though you're probably not going to jail. People take these rules really lightly. They're super complicated, but I just have this knack of making them easy to understand and I put a lot of content out there and that has just exploded our business on the professional side.

[0:23:13.2] WS: How do you like to give back other than what you just talked about?

[0:23:16.5] MR: I like to give back by just just doing this. I do a ton of free phone calls. I do a lot of videos. I do a lot of content. Sometimes, it seems like it doesn't make sense from an economic standpoint. But I just find out that's how I like to give back is just help people, especially if they're just starting. They're not going to be able to afford and spend 15 or 20 grand on a securities lawyer because they're raising 50 grand, but I'm always happy to help.

[0:23:39.8] WS: Awesome. Well, Mauricio, it's always a pleasure to have you on the show. It's been great to get to know you better over the last few years. I know we've been in different masterminds a little bit and in different places and conferences. And so, always a pleasure to catch up. Grateful for your time and just sharing your expertise with listeners and myself.

Tell them how they can get in touch with you learn more about you and Premier Law Group.

[0:24:00.5] MR: Yeah, so I'm just launching my website, tostayoutofjail.com, which is where you can get a copy of the e-book. So, that's one good way to get ahold of me. My YouTube channel is where really, I spend most of my time on adding value. So, there's a ton of videos. Just search my name on YouTube and you'll find some videos and hopefully you can get some value out of them.

[0:24:17.1] WS: Awesome. That's a wrap, Mauricio. Thank you so much.

[0:24:20.1] MR: Thanks, Whitney.

[END OF INTERVIEW]

[0:24:21.8] 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.

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[OUTRO]

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