

Warren Kirshenbaum

Brecht Palombo: Back to the distressed pro professional podcast series. Today I'm really happy to have Warren Kirshenbaum on the line who I've spoken with in the past. I've known Warren now for a couple of years and he has some interesting specialties in the field of law.

I've asked him today to come talk to us about assembling a fund. I've asked specifically to talk about how to assemble a private equity fund for the purpose of buying notes. However what we are going to talk about today would apply to buying any kind of asset.

Just a quick bio on Warren, Warren Kirshenbaum is President of a Cherrytree Group LLC. He is an experienced Transactional Real Estate and Business Attorney. Specializes in tax credit syndication, arbitrage and private equity as well as creating distressed asset investing platforms, structuring private equity funds, loan workouts, short sale and foreclosure purchase, brown fields and renewable energy tax credit transactions.

He was educated at the University of the – Warren how I'm I going to say that? What is – is it Witwatersant?

Warren Kirshenbaum: Close. Yeah, it is Witwatersrand.

Brecht Palombo: New England School of Law, New York University School of Law. He's got numerous professional affiliations you can find at his Web site, cherrytree-group.com. Before I butcher anything on your page Warren, thanks very much for being on the call and welcome.

Warren Kirshenbaum: Thank you, thanks for inviting me Brecht. It's always a pleasure to talk with you.

Brecht Palombo: Well it's great to have you back. I think you were one of my first guests quite a while ago and, I think, to have you back for this is timely. There is just such a surge in interest in notes and in distressed assets generally and with the data that I'm looking at we are really expecting to see more stuff get released over the next 12, 24, you know maybe even 36 months or so.

Folks are getting positioned for that and so this is a very timely, I think it's a very important call. For me personally I've become more interested in this as you know I've been very transactional and worked for banks so I do a lot of disposition work but I've had a lot of folks with money talking to me about wanting me to help them get connected.

I've a personal interest here too just in how I would, how I would do this. We've got a great outline I will look to working through with you and I'll ask you some questions along the way. You want to just dive right to it or is there anything you want to say before we get to the meat of it?

Warren Kirshenbaum: Oh no, we can dive right into it.

Brecht Palombo: Okay. Help us understand what type of a legal structure do we have to have in order to have investors – what do I have to have to have investors give me money that I'm then going to invest on their behalf?

Warren Kirshenbaum: Okay, basically what you are looking to do in this type of situation is to raise a pool of money whereby you are going to invest in a number of assets that are either identified or to be identified. The investors are going to invest in one or more persons who have the pedigree or track record that they are hoping to see.

What tends to happen is that an entity will be set up and usually it's a Limited Partnership or it's a Limited Liability Company. What happens on the Limited Partnership side is that you are treated as a corporate entity but for tax purposes you are looked at as a partnership by the IRS but you need to have an entity involved that runs the daily operation of the fund which becomes the corporate general partner.

And so you have a corporate general partner owning a very small equity interest and the majority if not all of the interest is owned by the limited partners who tend to be the investors.

Brecht Palombo: Okay.

Warren Kirshenbaum: On the other side there is a Limited Liability Company which gives you the same flow through tax advantages but the investors would just be members of the Limited Liability Company. It is a little simpler structure and there are advantages and disadvantages of each and it just depends on the deals and preferences of the principles and the investors.

Brecht Palombo: Is this applicable – is this a State by State sort of a thing or is it something that applies generally no matter where anybody is? We have listeners across the country.

Warren Kirshenbaum: It applies generally it is the same structure.

Brecht Palombo: Okay.

Warren Kirshenbaum: Wherever in whichever State you are but the funds principals will tend to for the entity in either the State in which they are based or doing business or acquiring the assets. If that for instance is New York or California, it might be a California entity.

It is possible that it might to be that they chose a neutral entity or one that has advantages that they believe are there for either from a litigation standpoint that the corporate law is more advanced like a Delaware or Nevada. It can be structured anywhere and it's traditionally the same structure.

Brecht Palombo: Okay. At what point would you recommend or at what point do people usually establish an entity? Would you do it before you – I mean do you need, I guess what I'm getting to is, do you need to have this in place before you start looking for money?

Warren Kirshenbaum: I would advise it, yes.

Brecht Palombo: Okay.

Warren Kirshenbaum: Technically what could happen is that the investors could invest and it could go into an Escrow account held by a professional whether that's a third party or an attorney in the deal. Then it would be released at some point to the fund itself based on how the deal is structured and what the rules and requirements are in the offering documents for the release of that money.

I have also seen that the money would go directly into the fund itself and in that case you would have to have the entity set up but I would always recommend (CSC) 07:40 kit set up prior to looking for the funding.

Brecht Palombo: Okay. Can I catch you off when I just start interjecting and running over you with my own questions? Were you on a track there or you want me to keep going?

Warren Kirshenbaum: I think its fine because it sounds...

Brecht Palombo: Yeah, yeah. It's fine.

Warren Kirshenbaum: Okay or we continue?

Brecht Palombo: Yep. Yeah. Totally.

Warren Kirshenbaum: That's all I need to know.

Brecht Palombo: Okay. So whether I'm investing in one asset or multiple assets doesn't matter, correct?

Warren Kirshenbaum: That's correct.

Brecht Palombo: Okay.

Warren Kirshenbaum: Because the fund concepts originated out of people, developers or purchasers of assets that has traditionally always been a market with somebody with a particular asset would potentially go out and find an equity partner to come in and provide an initial funding for that and the remainder of it would be debt funding.

That's different because there is a particular asset that has been identified and the investor could do due diligence on that asset so they know what they are getting.

The fund concept is different because essentially, you are being asked if you are an investor to invest your money in a pool of funds together with other investors whereby the funds principals or the management of the fund is going to then go out and purchase what is then undisclosed assets, you know, what type of class they are.

In this case we are talking about notes or financial instruments but you don't have a specific portfolio, specific identification.

Brecht Palombo: Correct.

Warren Kirshenbaum: That's where the risk factors need to be flashed out and that's where investors need most of the information or the trust factor comes into play.

Brecht Palombo: If I'm putting together the fund, if I'm assembling the money and sourcing the notes or whatever other assets they are, what options would I have in terms of how I set up my own compensation. Are fees, equity or you know, what does that look like and what are my parameters to consider?

Warren Kirshenbaum: Okay. A lot of times the principal in the fund will retain some equity in the fund. If for instance if it's a limited liability company the principal sets it up and at that point is the sole shareholder and when the investors invest in they will be taking upwards of 80 % maybe even 90% or more of the equity.

I think if a principal retains some equity it is usually in the range of the range of the 5% to 10% amount. 20% seems on the high end. The other ways that they get compensated is the management agreement. The principals and in a deal such as this, where you are acquiring notes, you would assume you are dealing with a principal who has a relationship with one or many financial institutions and so maybe they have done business with them before, they have a track record, the financial institution knows that they can come up with the funding and close the deal.

What they are saying now is we just need a larger funding base. They will be running their deal in the sense that they are sourcing the asset negotiating, closing on them. They are managing the funds that come in and out and running the day to day activity.

They may have a management agreement that pays them a certain guaranteed amount or an annual percentage fee or things like that.

Where there is work that needs to be done, if the asset needs to be rehabilitated or repositioned to be placed back on the market for resale or rent. If it's one of those deals, you might need an entity that is going to be doing that work.

That entity sometimes is affiliated with the principals and there are fees that get charged to the fund in that way. The principals will either take some equity, get a management fee or have affiliated corporations that they own or run extracting fees from the fund. I think the way that the structure will work for each particular fund depends on how the pro-forma numbers come out.

Brecht Palombo: Okay.

Warren Kirshenbaum: And so investors in a particular fund may either be promised or looking for a return in the 12% range or the 16% range and if that is the case, then how this compensation work will have to be scaled up or down to meet those objectives.

Brecht Palombo: Typically when a fund – after you have started to, well maybe this is not after. How should I ask this question? What level of involvement do you typically see that the sort of silent partners have if any in the actual decision making process after you have been funded?

I guess what I'm asking is, okay so, I've laid out the criteria for what I'm looking for assets. What kind of a return I think I'm going to be able to provide you. You've now given me your money and I'm

working with it. What other involvement or input – what control does the silent partner or the limited partner have at that point?

Warren Kirshenbaum: Usually not a lot Brecht.

Brecht Palombo: Okay.

Warren Kirshenbaum: Usually it's a pact that's raw...

Brecht Palombo: Yeah.

Warren Kirshenbaum: That you can't see in a situation where an investor is either capitalizing the fund to a large extent making a big capital contribution that they may negotiate up front that they get some kind of board seat or advisory board seat or something like that.

For the most part it's a passive investment where you are seeding control over to the front principal. They are going to run with it and report to you as an investor either quarterly or annually. It's not much involvement on the part of the investor.

Brecht Palombo: Okay, all right. Let's get on to sort of the second section that we had looked at for this which is, what rules or regulations do I need to be aware of when I'm marketing my fund or soliciting for investors for it?

Warren Kirshenbaum: Okay that's a great question. Essentially, if it is a private offering and so you fall under the securities laws and they are State securities laws known as the Blue Sky's Laws and the Federal Securities Laws which of course have garnered more attention and that is the SEC, the Securities Exchange Commission.

When you are doing a private offering you are exempt from registration with the Federal and the State Securities regulators so long as you follow the rules of that exception.

It's a Section 4-2 Private Offering Exemption and there's specific rules within the 1933 Securities Act which deal with the requirements such as the size of the offering you can have, whether it is going to be an offering within a particular period of time like a 12 month period, whether the financial statements need to be certified or audited and things of that nature.

The offering documents will be drafted in order to meet and comply with these rules. Basically it's a disclosure type document where you are number one, disclosing to the investors the particulars of the deal, the risks of the deal which is very important and that kind of touches what we had talked about before.

If you are dealing in notes, there might be several risks and these will differ from deal to deal based on the structure, the size of the deal. It also depends on how much money is being raised and whether the funds can be begun. If not all that money is raised because it's financial projections are being made based on a certain amount of dollars coming in and then the fund can begin operations on less than that amount then each investors risk is increased.

The documents need to make these financial projections, tell the investors how this deal is going to be structured and like I mentioned before, if there are affiliated entities that are going to be earning

money from the fund and they are owned by the principals that is something that should be disclosed, the management agreement and things of that nature.

Then on the other side the investors themselves need to be a particular type of investor. They have a designation in the statute either as accredited or non accredited...

Brecht Palombo: Sure.

Warren Kirshenbaum: For accredited investors there is a particular set of parameters based on your qualifications may be your knowledge and expertise. The amount of income you earn per year, the net worth, whether you are an individual or a corporation and things of that nature. The disclosure requirements are heightened if there is a non-accredited investor versus if there is an accredited investor.

There is also a limit base of which rules that you follow and how many non-accredited investors you can have in an offering. There is a number of rules that you have to follow both in the drafting and in soliciting the investors and in bringing in the funds. There is general solicitation rules because the offering needs to be made only to specific types of people. We could discuss this for a long time you'll just have to stop me.

Brecht Palombo: Well let me ask a few. Let me ask a few pointed questions. I'm reasonably familiar with the term accredited investor. I think the last time I heard anything about it was something like you had to have a minimum net worth of, I forget what it was, like a million or

something. Or you had to have had net income of like \$500,000 a year for three years or something. I'm I in the ball park with that in terms of who that is?

Warren Kirshenbaum: Yes. It's at Section 501 of SEC's Regulation D.

Brecht Palombo: Okay.

Warren Kirshenbaum: The way that we tend to deal with it is to create an investor questionnaire which goes out to the investors which mimics the requirements of the Statute and we are asking people to certify it so whether or not they fall within certain within certain categories then its right.

If you are an individual, is your net worth more than \$1 million? Was your income for the past two years at least \$200,000 as an individual or if you are married \$300,000?

Brecht Palombo: Okay.

Warren Kirshenbaum: But then also, do you expect it will be at that level for the next two years? If you are a Corporation, do you have assets in excess of \$5 million? And so on and so forth. It's assumed that if you meet these requirements you have the financial stability to invest in these types of deals.

Brecht Palombo: Okay.

Warren Kirshenbaum: Basically what it is is, it's illiquid. I think that that is something that should be stressed and the risk factors in several places in these deals because traditionally for the fund to work, the money is coming in but it is only going to be distributed or returned to investors at the end of a term.

Brecht Palombo: Okay.

Warren Kirshenbaum: And that term there will be a holding period or three years or five years or seven years or whatever the business plan shows that a full cycle is needed in order to make this business work.

So, as an investor you'd have to, one, be able to invest this money and have it not affect your life or your business operations and, two, I think you'd have to be able to be in the position that if the investment was lost completely it also wouldn't affect you.

Brecht Palombo: Okay.

Warren Kirshenbaum: So, and I think this is an important consideration because I think this is where the lawyers come in because you draft the documents but then you need to make sure that you're client's are soliciting the right type of people because you can't have people out there with assets who are not sophisticated.

If it's an inheritance or something like that...

Brecht Palombo: Sure.

Warren Kirshenbaum: ...you might have a situation where there's assets but investing in an illiquid private equity deal would be completely inappropriate.

Brecht Palombo: Right. So if I'm out there looking for real money and putting some of that together and then my Cousin Larry wants to get in with \$10,000 bucks or something not only is it obviously dangerous for him but accepting his money would even sort of restrict or dictate some more complications in assembling the other money, is that a fair statement?

Warren Kirshenbaum: Yes and no.

Brecht Palombo: Okay.

Warren Kirshenbaum: Because clearly we're talking about a fund that may have accredited investors but for the most part at the level that I deal with we're not dealing with sophisticated financial institutions who are investing in hundreds of millions of dollars or half a billion dollar fund.

Brecht Palombo: Right.

Warren Kirshenbaum: So, at this level, yes, I think you have to be concerned and some of these concerns are risk-based, legal-based and business-based.

So, from a business perspective if you're going to raise a three or a five million dollar fund...

Brecht Palombo: Yeah, that's just exactly what I was going to ask, that range. Yep.

Warren Kirshenbaum: So – and you take your \$10,000 from Cousin Larry you may end up having hundreds of investors and like we talked about earlier, they are passive but they want to know what's going on and get quarterly's and so this is going to be a major undertaking for the fund to be able to satisfy, communicate properly with its investors.

The other consideration is if you're setting those limits too low at let's say the \$10,000 then you get a different type of investor versus if you're saying for your fund it's a minimum investment of \$50,000 or \$100,000.

So the higher you set it the different – there will be a difference in the audience that you're speaking to or attracting.

Brecht Palombo: Okay.

Warren Kirshenbaum: So, it certainly is – it's possible and why I said yes and no is because the Cousin Larry is, however, important to us because if you were the fund principle and I'm an investor the thing is you're coming to me and saying invest in this pool and I'm going to have discretion over it, you don't know what investments I'm going to make, you have to kind of trust me.

And one of the thoughts going through an investors mind is, well, tell me you've got some of your own money in there or at least if you haven't you've got some family or friends who think you're smart enough that they'll put their money in.

Brecht Palombo: I see.

Warren Kirshenbaum: And I'm not the first person you're coming to.

Brecht Palombo: Right.

Warren Kirshenbaum: So you kind of want Cousin Larry's money in there and you don't.

Brecht Palombo: Okay. All right, and so talk a little bit about who can investment or what that means and how that works? I want to talk a little bit about finding people. I mean, I have obviously been in the business for a little while so I know a lot of people and can pick up the phone and that kind of thing but if I'm not maybe as well connected and I'm – but I've got a good plan or maybe I know some bankers, I have good sources that I've set up, I know I can get product that would be attractive and I want to go out and start marketing myself to – or marketing my fund or to solicit then, you know, what are my restrictions? Can I have a – can I send a mailing to all of the dentists in a 50 mile area and have them – and go do a town hall type of meeting? Can I run an ad on the Internet and have people visit a sales page where they complete a form to find out more information?

What are the mechanics of how all of that would work and what would - I know I just asked you probably two big questions in one breath that are not the same but if you could just sort of lay that out a little bit, how that would work if you're working with people that aren't sort of they aren't today the kind of people where you would pick up the phone and just tell them that you're raising capital.

Warren Kirshenbaum: That's another great question. I think that a lot of fund principals have this idea. They speak informally with people who say it sounds like a good idea. I might be an investor in that but that and actually being an investor and putting up the capital is two very different conversations.

So, I think a lot of people approach this with the idea not much – not that they haven't thought it through but they just don't realize how difficult it is to raise money. It's extremely difficult and so I couldn't say to you that people don't do those general solicitation methods because if you went on the Internet you'll see that there's funds that have just simply created a Web site and anybody can go and they do do these mass mailings.

I don't advise that and I don't think that that is either successful or that it meets the requirements of this private offering exemption. I prefer to have a closed list of investors that are targeted based on the principals knowledge of them or prior experience in them and what we would do is assist the funds with sending out with non-disclosure type documents these offering documents to the particular investors and we have a list of who are the potential investors and we also track the documents that go out with codes and numbers and so we know how many went out and who got which document.

And so we could answer the questions if ever raised by the securities authorities as to whether this was a general solicitation. I think once you start getting into a general solicitation you're acting more like a

broker underwriter versus doing the private offering and so you could blow the exemptions.

So, I don't recommend, advise or like getting into that at all.

Brecht Palombo: Okay.

Warren Kirshenbaum: There are people that do it.

Brecht Palombo: So, yeah – and what that would mean if you're – if it's a...

Warren Kirshenbaum: Just to get back to that...

Brecht Palombo: Sure.

Warren Kirshenbaum: ...you can have evenings where you invite people but the way I've done this with the clients is we're inviting targeted list of people and we know who's – it's not a general solicitation of like, you suggested, all dentists in the area.

Brecht Palombo: Right, right. So, I'm just kind of going over some notes as we've been talking. So, the difference between a private solicitation and a general solicitation involves additional or some licensing is that what we're – the big difference between the two?

Warren Kirshenbaum: I didn't – it does. It involves licensing and it does – yes it can involve licensing but also the private offering exemption says that you are making an investment to a certain number of accredited investors and you're certifying that whatever you disclose to the

accredited investors you're going to disclose to the non-accredited investors.

And the securities authorities do not have to approve your document but you do file with them to the fact that you're making this private offering.

Brecht Palombo: Okay.

Warren Kirshenbaum: They don't have to approve it, they don't get to change the language or put restrictions on it and all of the things that they do when it's becoming a public offering and it's a perspective.

So, if you do blow that exemption and they consider it to be a public offering then you've got a whole other animal on your hands.

Brecht Palombo: Okay.

Warren Kirshenbaum: And – so...

Brecht Palombo: Is this like the Dewey or – what is... I forget the name of the law but it's when an investment turns into a security and then you've got – this is when you cross the line.

Warren Kirshenbaum: Right.

Brecht Palombo: Yeah, okay.

Warren Kirshenbaum: But I don't know – backing up, if you look at these sites and people that do these general solicitations.

Brecht Palombo: Sure, yep.

Warren Kirshenbaum: They will put out a basic Web site which tells you things and then asks you to click another button or give them your information and then they'll send you out offering documents.

Brecht Palombo: Right.

Warren Kirshenbaum: It's not as if there's a Web site with these offering documents just being displayed over the Internet. They're going to be trying to say they've got control over who they're sending these documents out to because they requested them and they did it based on the Web site.

But it's hard enough to raise money and the way that I see it is that the investors are investing in the principles of the fund.

Brecht Palombo: Right.

Warren Kirshenbaum: They're basically backing those people based on some kind of knowledge of their track record or trust factor.

So, I just believe that the success rate and just generally soliciting out is not going to be high and those investors that you get in that have no real relationship or knowledge, why be burdened?

Brecht Palombo: Right.

Warren Kirshenbaum: In terms of management and information communication and things like that. So I would really recommend not doing that.

Brecht Palombo: And what about compensating people for bringing capital to the table? Like, for example, for whatever reason I happen to know a number of wealth managers, people who deal with wealthy individuals and their estates, planning their estates and managing their money and that sort of a thing.

Can you reach out to those people and they can reach out to their people and, if so, can they be compensated for being in the middle, how does that work?

Warren Kirshenbaum: Yeah, they can. You can reach out to them, they then do reach out to their people. They can be compensated. Once again, it's a disclosure issue.

Brecht Palombo: Yep. Okay.

Warren Kirshenbaum: So in your offering documents you need to be telling investors specifically the source and uses of funds and this is where potential fund principals kind of lose it because they just disclose the business idea that they have. In other words, I went out and bought ten foreclosed homes and I made X dollars off of them.

So this is my financial projection. I buy a home for X, I rehab it for Y and then I sell it for this and I'm making 20%. But under the law you

have to disclose how all of these funds are being used. So if you are going to be compensating people to bring investors in you need to disclose that in the documents so the investors know.

And the form that you file with the SEC is called a Form-D. This Regulation D is the statute so it's a Form-D which matches that and on that you're saying whether or not you're going to be employing people or giving them a commission to raise the funds.

Brecht Palombo: Okay.

Warren Kirshenbaum: But once again, you can't do it but everybody has to know about it.

Brecht Palombo: Okay, so if I'm the principle in the fund really, ideally, the way this goes is I make sure that I have a solid plan or process or a source of desirable product that I am confident that I can get some returns on. I reach out to – first off, I put my own money in and then I reach out to friends and family and business associates who I think might be interested in and capable of investing and then as a third round I could look to work with other professionals, it sounds like probably licensed professionals, who would also have those connections who could invest but I really wouldn't want to run an ad in the Boston Globe on Sundays that says like, now forming, does a fund go to buynotescheap.com to download a package, right?

Warren Kirshenbaum: Exactly, exactly. And that's how our clients do it. It's kind of a stacking procedure. You've got, first of all, your own skin in the game and then friends and family and then colleagues and so on.

Brecht Palombo: Okay.

Warren Kirshenbaum: And you build it up like that.

Brecht Palombo: Cool. So, I think we've talked about – I've got a few points here. How do the different legal structures or other structures impact who can invest with you and how you can market and solicit.

I think we covered that pretty thoroughly. Is there anything that you want to add to that piece?

Warren Kirshenbaum: Well, you had asked me a question before we started this. What happens when an investor wants out?

Brecht Palombo: Oh, yes.

Warren Kirshenbaum: And I think that's important because this goes to the accredited investor or the sophistication of the appropriateness of the investment.

I think that in these funds – these are illiquid investments and if it's a note purchase there's going to be a period of time where you're negotiating with the banks and based on the way that I see it a lot of times it's some kind of a portfolio of notes that they're going to want to sell. Sometimes they want to stick you with some of the notes that are less well performing and they'll give you the deal in that way. So you're going to have a certain inventory that you need to then market, reposition, get out in the market, sell, recoup the funding. You're

going to have to invest in facilities or software or personnel and so all of this takes time.

So, I think that the disclosure, the offering documents need to disclose that there's a certain time cycle and it may be five years and during those five years you're not going to get any money back. You will get your reports and you'll be fully informed of your investment but the investment won't be able to perform if there's distributions to invest in.

And I think that should really clearly be brought out in the documents.

Brecht Palombo: So, in that case, one of the other things that I'm seeing out there and so I just want to make sure that we clarify this because some of the people that I know who are buying notes are really doing it – sometimes they're buying performing and sometimes they are buying non-performing but they're renegotiating or doing workouts and so there's a matter of – there's still cash flow and amortization of the assets that they buy and so then in that case would you – are you paying dividends back to your investors?

Warren Kirshenbaum: Yeah.

Brecht Palombo: Okay and how would you recommend doing that? Are you doing that on a monthly or a quarterly – what would you recommend for how that would work?

Warren Kirshenbaum: I would think quarterly. I think monthly might be too much.

Brecht Palombo: Yeah.

Warren Kirshenbaum: Too much administration. But what I said before as to the investor's principle, I think it should be stated that investor principle is going to be illiquid...

Brecht Palombo: Oh, okay.

Warren Kirshenbaum: ...term of the fund.

Brecht Palombo: Right.

Warren Kirshenbaum: And distribution, yes. And I would recommend that the fund does that either on a quarterly, twice a year or annual basis. So that should be done.

Brecht Palombo: Okay. Okay, what else do I have here on my list. Let's see. I have a couple of things. I'm going to save number five for last I think. Let me ask you one more thing about sourcing funds. I know some folks here up at PENSICO Trust that are – have you ever heard of them?

Warren Kirshenbaum: No.

Brecht Palombo: Well, they're a local – I want to say local, I guess they're regional. They're out in New Hampshire or something but they do alternative IRA's where you're not putting them in stocks and that kind of a thing. It's self-directed IRA's, that's what I'm looking for.

Warren Kirshenbaum: Yeah.

Brecht Palombo: And so what I wanted to ask you about is in terms of finding people with funds could people use IRA funds or something, some other funds, other than just cash that they have in the bank?

Warren Kirshenbaum: Yes, they can use those. I think from what I've seen the IRA, which is the pretax fund, can be used but the Roth type IRA funds cannot be used.

Brecht Palombo: Okay.

Warren Kirshenbaum: As far as I know. And then we try to deal with a situation where an investor has 1031 funds and that's very, very difficult and it's rare because of the timeline. But it is possible but I guess the answer to your question is, yes, IRA money could be used. I've seen it done.

Brecht Palombo: Okay. So I have been involved in a number of exchanges in my career but it was always real estate for real estate, straight up I'm selling this, I've owned it for 25 years and I'm not paying taxes, damn it, and I'm going to exchange it. So you're saying that it is possible but difficult to get that into a fund and that would still qualify or would it – because I know, I'm sort of rambling on a little bit here, there was the ticks for a while which are not unlike what we're talking about and that totally imploded but is this – so is it a similar sort of... Tell me about that?

Warren Kirshenbaum: It is it's just that the structure would have to be around the 1031 funds and all other money would have to fit into that because of the fact that certain – because the limitation on the assets that you can

invest in but there is an IRA section and I may get it wrong I think it's 761 but if you're following...

Brecht Palombo: I'm not going to check Warren.

Warren Kirshenbaum: Okay. It's very detailed, the disclosures, and how it gets split up so the whole fund would have to be structured around this 1031 money and I don't think that's going to happen not unless you're making up a (unintelligible) 45:21.

Brecht Palombo: Okay and so I know, this is kind of wondering off into some other territory so maybe we don't even want to talk about this, but I know the 1031 obviously there's the (like) kind assets, right?

So, in this case and I don't mean to be putting your 1031 knowledge to the test, I know you're not, well I don't know but I didn't think that was sort of your main thing, but is it a debt instrument? Is a loan or a note, that's not equivalent to a property is it in an exchange?

Because you're not really buying property, you're buying the debt on a property is that what you'd say – is that accurate or do you think it could be argued that if I sell an actual piece of real estate I could buy a real estate note with that money?

Warren Kirshenbaum: I don't know.

Brecht Palombo: No.

Warren Kirshenbaum: I wouldn't be comfortable answering that definitively

Brecht Palombo: Yep. All right, we'll dodge that one, we'll silo that one. We'll come back to it in a future call.

All right, okay. So I know that you've...

Sorry, go ahead.

Warren Kirshenbaum: No, I think that there's certain things that are specifically excluded and limited partnership interest may be one of them because I did have a potential, a client, who had done a 1031 and actually wanted to go into a tax credit investment which wasn't possible and I remember from that research that I think that limited partnership or interest in corporations weren't (high) but does that mean an interest in a note falls into that – I wouldn't know without looking into it in detail.

Brecht Palombo: Okay. Right, because I guess you're not actually investing the notes you're investing in shares in the partnership that's investing in the notes.

Warren Kirshenbaum: Yes, and that's where that 761 comes in but it's – I don't know. I wouldn't want to talk about this one.

Brecht Palombo: Okay.

Warren Kirshenbaum: Yeah.

Brecht Palombo: Okay, that's a good response to a question like that I think.

Are there any actual like client issues or questions that you've seen in the past that you've dealt with or things that I might not have brought up that you want to touch on or talk about?

Warren Kirshenbaum: Well, I think just specifically I'm – not specifically, on a more general level the issues that I see are that I tend to work on a lot more documents than deals that actually get closed and funded.

So I'm not saying that these deals never get closed and funded but we do work with clients where we are drafting up the offering documents and they don't seem to have realized how difficult it is to raise the money and they go about it in a way that (dooms) the project.

Sometimes I've worked for a client who spent so much time on the documents and getting them absolutely perfect that the window with the potential investors closed.

So, there's an argument here that you need to strike the right balance. You need to make sure that you're complying and putting out a good document but honestly there's a window of opportunity with these things and you have to strike during that period of time.

I think that maybe it's a sophistication level. I've had to work with clients that had a very good idea but the fund idea was not what their background had been and so as much as we tried to structure the documents and in those types of situations I would put in a board of advisors of more professional people within the asset class of what the funds trying to do but that's a very tough sell.

So, specifically or generally those are kind of the issues that I see.

Brecht Palombo: Okay. That does help. And so sort of – I guess to tie this off we talked a lot about the structure and sort of how a lot of the workings of it. So, I think we've talked about where to set it up and so finally these are legal documents. I know you prepare them. What should somebody expect to be investing in just getting set up to be able to do all of the stuff that we've talked about.

Warren Kirshenbaum: Okay. I would call this the documents or the documentation phase of the fund. So the creation of the documents themselves it depends not really on the size of the deal but on the structure and the complexity and the level of detail and work that needs to go into fleshing out the financial projections and things like that.

If you have a client that is hiring accounting professionals it will make it easier. If you have a client that is trying to do it themselves or trying to have some of that work be done by the lawyers it's going to make it more costly and probably slow the process down.

But as a ballpark I would think that the documentation would cost somewhere around \$10,000 and it could be as much as \$25 maybe even \$30 or \$35,000 on a much larger deal.

Brecht Palombo: Okay.

Warren Kirshenbaum: I think that would probably be the range.

Brecht Palombo: Cool. So, I mean this has been really helpful for me. I've had a number of these questions that I've been walking around thinking about and so I really appreciate you coming on and giving me an opportunity to ask them and is there anything that you want to leave folks with or can I tell them how to find you?

Warren Kirshenbaum: Yes please, please tell them.

Brecht Palombo: Where would you like them to go?

Warren Kirshenbaum: The Web site is Cherrytree-group.com.

Brecht Palombo: And Cherrytree is one word?

Warren Kirshenbaum: Cherrytree is one word, yeah. Our phone number is 617-431-2266 and we're in Newton, MA. That's 233 Needham Street, Newton, MA. My email is warren@cherrytree-group.com.

Brecht Palombo: Okay. Well that's great Warren.

Warren Kirshenbaum: Thank you!

Brecht Palombo: I really, really appreciate you coming on and this will be an excellent addition. It's just so timely and it really answers a lot. This is – it's like a little mini course right here all wrapped up into an hour of chatting. So thanks a lot for coming on and I really hope to talk to you again soon.

Warren Kirshenbaum: Thank you Brecht. I appreciate it very much.

Brecht Palombo: My pleasure!

END