The World of Private Transactions: What, Why and How - Larry Pino: Ep #391 (Part 1)

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Dr. David Phelps

Dentist Freedom Blueprint with Dr. David Phelps

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Welcome to the Dentist Freedom Blueprint, a podcast about freedom—freedom from expectations of society and the traditional path to success that has been ingrained in us from our early years, I'm joined by mavericks, renegades, and non-conformers to discuss an anti-traditional path to financial freedom, freedom of time, relationships, health, and ultimately freedom of purpose. My name is Dr. David Phelps. Let's get started.

David Phelps: Hi David here. This next episode of the podcast is going to be a two-part, two weeks in a row. And it's on the subject of private transactions. That's private transactions primarily in the real estate arena. These can be done in other areas as well, but this is where we focus in real estate, alternative investments.

I'm doing this podcast with a good friend of mine, Dr. Larry Pino, you'll get his bio in just a minute. But this will be two sessions digging in the world of private transactions. It's something that I love and it's provided me a lot of opportunity and a lot of hedging against market volatility. Talk to you on the backside.

Good day, everyone. This is Dr. David Phelps of The Freedom Founders Mastermind community and The Dentist Freedom Blueprint Podcast.

Today, we're going to have a conversation with somebody who's become not only a good friend, but also, a mentor and a consultant to a lot of things that I do in my world today and alternative investments and in Freedom Founders community. And that is Dr. Larry Pino. Larry, how are you, sir?

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Larry Pino: I am absolutely wonderful Dr. David. Very well, thanks.

David Phelps: Well, Larry, you and I had the blessing, I guess, to really get to know each other. Gosh, it's been about little over five years ago through a mutual friend, which is sometimes the best way people come together, is through other people who think, "Hey, you guys need to connect." And so, we did that.

You've become really a right-hand counsel, if you will, for Freedom Founders. Just to let people know a little bit about Dr. Larry Pino. He graduated with a bachelor's degree from the University of Notre Dame. Has a Jurist Doctor degree from New York University School of Law, and a doctorate in Business Administration from the University of Florida.

Within just the last couple years, I saw you working hard on that many times. You really did put the time in.

He's also the Founder and CEO of Tuscan Gardens, which is a senior living company based in Florida.

And then prior to that, you've done many, many things. I was trying to find a way to synthesize your bio into about less than 20 minutes. So, this is my best job.

But going back to earlier years, you were the founder and CEO of a private equity development and management company, focused on developing and growing business enterprises.

And you've served as the chairman of the board for many commercial investments. All in all, what I know about Larry, I'll just give it in my lay terms, is certainly Larry is a very accomplished lawyer attorney.

But what I found with Larry, and I'm just speaking from my heart, he's an attorney that actually you can like. And what I mean by that, is we do need attorneys. We need professionals in our lives to help us wind our way through the intricacies of, in this case, law.

But so many attorneys I find are academically proficient in a certain area, but the real-life side of how do you actually implement the law in this case is where usually the mark is missing.

And what I love about Larry is that because of all of his experience in life, business, and law, real estate, certainly we'll talk about today is that Larry is very quick on the uptake.

When I have something I want to talk to Larry about or he's doing something for Freedom Founders in terms of reviewing syndications or funds, which he does on a regular basis, he's quick on the uptake.

He can get right to the heart of the matter and not spend unending amounts of time kind of spinning around and around, which I find a lot of people who don't have the experience to do that.

So, I had to say that because a lot of people think, “Well, gosh, another attorney, another attorney.” Nope, this is not another attorney. This is actually an attorney that helped not only me, but so many people I know personally that you've taken them through some different iterations of helping them with estate and asset planning, and entity structures and just a whole another topic that we could do on another day, that you've done for Freedom Founders.

But Larry, today, we want to talk specifically about the subject of private transactions. So, let's kind of get the scope of what this means. You want to jump in and kind of describe from your standpoint where we're going today?

Larry Pino: Yeah. So, and thanks for that, David. I appreciate the accolades and the bio and all that. But let's get started on it.

So, when you think about most investment activity, a lot of it comes out of sort of the institutional world. So, you've got people who invest in stocks and bonds, or you've got people invest in wreaths, if they like real estate. Or they get involved in private syndications, if they happen to have access to these private syndications for real estate and others.

And all of those, fundamentally, you get what's offered to you and you either say yes or no, but you can't alter it at all.

The thing about a private transaction is that it is a really creative opportunity for two people or institutions to be able; one, as an investor, has some capital to invest, and somebody on the other side, an opportunity that they have to deploy capital in.

And so, the opportunity for them to be able to come to terms and to create what I call a private transaction is really a very creative device. It's a very creative way to satisfy the needs.

You've got capital that you want to deploy because you've got money that you want to put to work for yourself for passive purposes. Well, okay, "Where do I put it?" Well, you can put it in the stock market and you kind of know what that looks like. Or you can put it into a syndication and somebody else is going to be driving the bus.

Or you can put it into a private transaction where you select the particular transaction, you refine and define what the terms are that are going to be acceptable to you. And you then have the opportunity to be able to mold the structure in a very positive way.

So, it's got lots of opportunities and I've done … oh gosh, I certainly don't have enough fingers and toes. But hundreds and hundreds of these private transactions for individuals that come from either the opportunity side or from the investment side, and if done properly, they are extremely satisfied.

And kind of brings what you know, just from our experience, it brings a smile to my face because one, it's a thing of beauty. It's privately executed, it has a good solid result, an outcome for all the parties. Everybody is happy and they're ready to do it again.

David Phelps: Exactly Larry. You mentioned access. And I think that's something that people that are listening right now or watching us on video are thinking, "Okay, you access, so where do you find these private transactions?" Are there some places or some brokerage for these, or really what's this look like in the real-world Larry?"

Larry Pino: Candidly, one of the things that you produce is you produced a wonderful community of individuals who are likeminded. And you have a mastermind community with Freedom Founders where literally the way that I've described it when I get introduced to one of your current members or new members that are coming in, is that you're like a kid in a candy shop.

I mean, because you've got all of these wonderful opportunities. You've got your structure and I'm sure many people who are listening to podcasts do. But for those who don't, you've got trusted advisors on the one side who have not only their own investment activities, but are constantly coming across opportunities that give the possibility of private transactions.

You have members and the members have capital to deploy. And many times, they come across transactions that they do with each other. And sometimes, they do a private transaction with one of the trusted advisors. And what it does is it just produces this cauldron of activity.

And I represent you, I represent Freedom Founders, I represent a number of these trusted advisors and members. So, I know sort of the amount of activity which is occurring.

And I'm sure that there are other types of organizations, I don't know to what extent they get that much involved in the investment side, because I'm not involved with them. But I do know that when you get that type of group that has a commonality of interest, private transactions inevitably are going to come out of it.

David Phelps: It really comes down to a network and you can create, build your own network, which is a great way to do things. You need to get out there in the world, in the space and find people that are like-minded and are in activities that you think you'd be interested in and work your way in and become educated. And that's a way to do it.

Or if you invest for founders, as you said organizations that seem to have that. That's what we love to do in Freedom Founders, as you said very much on the forefront of creating that environment where capital and investment opportunities can come together.

Larry Pino: Outside of that though, David, in my world, of course, as a practicing lawyer in the area of securities and investments, I do come across private transactions fairly regularly.

If I were not in this space and I were not involved with a network, I'm not really sure where I would go find them; not only because I'm not sure where I'd find the private transactions, but also there's an element of it, which I think we want to call a trust factor, that you want to be dealing with people that you have a high-level of confidence in.

And I'm not sure necessarily if you didn't have some network to be able to tap into, or you didn't do it professionally as part of what you do in your career — I'm not sure necessarily where you would come across them.

David Phelps: The other thing that you brought about, and I'm going to let you jump into the actual structure of the presentation, but you talked about the creativity available.

That part, I know that you love that. And I do too, is creatively how do you put together the capital to the actual investment platform or the proposal and blend it together to give both sides what they need.

The sponsor or the manager of the projected project, if you will, the investment has a certain goal in mind and we, meaning you and I and others, we look at that to see, does that meet the merits of what we're looking at?

Is that something that we understand, does it make sense in the economic environment with other capital structures in the capital stack, which I'm getting a little bit ahead of myself here, but just does it make sense? That's one of the things you just … does this just make sense?

And if it does, now how can we structure it to give each party, the sponsor and the investors, what we believe in. And again, it's a range, but what's a professional return look like based on the risk level and the projected time of how long the money's going to be out. When do we get returns of some kind, all these things come into play, lots of variables.

But that's the fun part. To me, it's like having a puzzle, but you get to reset the borders every time and reconstitute the new picture. And you're very artful in doing that. With your experience, you know how to move things around, to adjust for, well, “One party needs this, okay how can we counterbalance that over here?”

And that's the fun part, so that both parties really get the best of the best. So, I'll stop there. And when you're ready, you can dive into the fun stuff here.

Larry Pino: Alright. So, it sounds good. So, I know that when you had invited me on the podcast and you said, listen, you use both audio and video. And so, not everybody's going to be seeing the screen. So, I said “That's perfectly okay.”

So, what I did is I really just created a real small, short PowerPoint to give you sort of the sense of what this is. So, worry not by the way, if you're not seeing the screen and just listening, because I'll certainly walk it through.

When we talk about types of private transactions, for example (make sure that I got that) — the types of private transactions, we're looking for and many of them, the private transactions that I do, I assist investors in coming across private lending transactions where one party is going to be a lender and another party is going to be the borrower for that.

And in the private transactions, so what happens, you've got a private lender and a private borrower. Very often, there are privately held real estate notes that are out there, which make tremendously good investment transactions for individuals who want to park their cash. I'll give you a couple examples of this in a second and you'll see.

I also, in my day, as you know, David, I wrote the book on it. It was *Cash in on Cash Flow*, which was privately held real estate notes that I did through my National Mortgage Invest Institute for years, and ultimately, gravitated to the American Cash Flow Institute. I did an awful lot of partials. I'm going to give you an example of one of that.

1031 exchanges, we've done so many 1031 investments for individuals. The nice thing about it is with the 1031, what you can do is you can go in with a direct real estate ownership so that you're actually on the deed.

And what that does is it allows you to flip out of that particular real estate transaction and take your capital gains with you so that they continue to remain deferred after that. That's a private transaction between somebody who's got the real estate or the real estate opportunity, and you as an investor to actually go into that.

And then there are unique transactions and I'll give you an example of what I'm talking about, about a unique one, which I thought was kind of fun for a particular client, which I've got. The advantages of them, we talked about before as a prelude to this, which was that it gives the opportunity.

So, when I start off being involved in and being pulled in, either on the part of the opportunity or on the part of the investor, you're really just trying to understand, so what are your needs? And as an investor, what do you want to achieve?

Of course, what an investor wants to achieve is to maximize the protection for the capital. And not necessarily to maximize the return, but to get a decent, reasonable return on it, and to make sure that it's secure and that it's properly handled.

On the part of the opportunity that's come to the table, they've got the opportunity they want to take advantage of, but they need the capital to be able to do that. And very often, opportunities have constraints attached to them. Restraints or moderators attached to them, but you can't really resolve that until you sort of understand what those really look like.

And then you have all kinds of creativity. And again, I'll give you some examples of what I mean, all kinds of creativity and being able to see how you can match that up. And I'll go through some underwriting considerations in a second as to how to sort of give you a way to wrap your mind around sort of what that query looks like.

The additional advantage that you've got with private transactions, we call relationship capital. There's nothing better than a relationship. It's the same thing, David that you made reference to when you talked about referrals. My entire practice, my entire law practice is referrals. I don't advertise at all.

Somebody that knew me and knew me as a lawyer referred me to you. And within the context of the referrals that you've sent so many referrals to me as clients. And so, that's relationship capital, same exact thing with a good deal.

You have a good deal, you are satisfied as the investor. You've got the business person that says, “Hey, listen, he treated me fairly, and I want to take this opportunity back to him to do a number two and a number three, and a number four.” That's relationship capital. It gives you the opportunity to really leverage the relationship you've created.

As a matter of fact, one of the examples I'm going to give you is one that started off as just one. And we're now on number four, with the same two parties that are involved.

It allows you as a matter of fact right now, as we speak; I've been as you know, very involved as a stock and options investor for years, since certainly for the last 25 years, involved in that category. And I have very specific formulas for what I do in that particular space.

However, right now, it's crazy as can be. And so, as much as I've been an alternative investor also, I'm certainly hyping up. I'm not opening up any new positions in the market. And virtually, all of my capital is being deployed in alternative investments, which is another way of saying private transactions of this nature.

And I'll give you an example of one that I did not too long ago for exactly the reason that I just described, the volatility of the market basically said, “Hey, I got half a million dollars over here.” I just assumed put it into a sound investment and I'll show you what it looks like in a second.

The additional advantage of a private transaction is that you can get the documentation exactly the way you want it, because you're in control of the documentation.

There's a fundamental rule at law that basically says he or she who controls the documents, controls the deal. And it gives you the opportunity to get the documents the way you want them to be, and then you can go forward based on that.

For virtually every transaction, I always use overlapping security. So, there's a security that's redundant and you're going to see when you see some of these examples, what I mean by that.

And then in addition to that, you minimize your execution risks. When you're controlling the private transaction, what it does is it gives you the opportunity to make sure it gets done properly. The documents get executed properly. They get notarized properly, they get recorded properly, and they get completed.

You have a closing memorandum so that everybody knows. You make sure the wire transfers occur, but that this doesn't go until such time. The wire transfer doesn't go until such a time as the documents get recorded and so forth and so on. So, those are all just some advantages of the private transactions.

David Phelps: Larry, I was going to jump in.

Larry Pino: Yeah, by all means.

David Phelps: As you go forward, just to bring back up to the forefront, what you said about the documentation and the fact that most of the non-private transactions, as you said, funds, syndications, stocks, bonds, whatever you might invest in — well, that's already preset. It's already been prescribed. This is what you get. We're too small a fish to say, “Well, I don't really like that clause. No, that's not going to work.” You either take it or leave it.

In the private transaction, as you suggested, this is the opportunity to really have the documentation drafted very, very well. Not to take advantage of anybody, but to make sure that the protection that is available should be again, for both sides.

And what I've love about what you've done is even with those people who are bringing an already prescribed transaction opportunity, say a syndication or a fund of some kind, and they've had their attorneys draft it and nothing malicious was done at all.

But how many times are there ambivalent areas or areas not even discussed within the four corners of that documentation that you have brought to the forefront and gone back and had those inserted just for the protection.

Again, not that anybody's trying to pull anything over anybody, but it's just what's missing can come back and bite you. And I love that opportunity to make sure that documentation is done correctly.

Larry Pino: No, I totally agree. And there's some, by the way, with all the best of intentions. There was one transaction, as a matter of fact, one that I'll actually show you here in a second, where it came to me and it was drafted a hundred percent by the attorney on the other side. And with the best of intentions, they had a whole list of properties attached to this particular, what was effectively going to be a line of credit.

And the entire list of property was like a whole list of properties. And so, it was kind of like, okay, so, you're secured because you have all these properties. Well, no you're not secured. It was like a list of 20 properties. You're going to file a mortgage against these 20 properties? Of course, you're not.

So, what are we really trying to accomplish? So, the conversation started and it started to develop and it was finally one of those things where I said, "Well, who owns these properties?"

And so, it was the same owner for all the properties, the same LLC that owned all the properties. I said, “Okay, well we don't have to file a mortgage against all the properties. We just take collateral assignment of the membership interests of the owners. And then that now. automatically provides the real security and it's even easier than a foreclosure on a mortgage in the event that there's ever a default.”

So, doing nothing other, it just goes back to the creativity component. Doing nothing other than just trying to understand what they want to accomplish, they weren't unwilling to give the security. They just didn't realize that the method they were going to use for the security wasn't going to work in that context. So, we find something else that satisfies that and it was all just documentation.

Let me talk a little bit about the underwriting considerations because I do think it's really important. As a matter of fact, I just did for some individuals who I'm sure that you would know David, but I did an assessment of a particular deal that was a private transaction. It was on a 1031 basis of two individuals.

And you take a look at the investment. And so, what are you trying to accomplish in the underwriting? Well, notice how far down economics of the transaction happen to be; it's way down at the end, because unless you really are even satisfied with all these things, it's not even worthwhile talking about the economics of it. In this particular case, what are you really looking at? Well, let's look at the asset class.

So, in this particular case, it happened to be an apartment building, multi-unit apartment building and it was a value-add project. So, it was an 86-unit apartment building and they were going to add some additional value to it. And on the basis of that, the thesis is that you're going to have an increase in rent.

And that, of course, increases net operating income, which increases the value of the asset or some type of refinance or liquidity event.

So, that's the fundamental thesis. So, you look at that and you say, “Okay, so is there any problem with necessarily an apartment building?” The answer’s no. “Is there any problem with value-add?” No, because it's the value-add, which is what gives you the arbitrage between the going in value and the coming out value. So, perfectly okay on that.

What about the background of the operator? Does the operator know anything about rehabbing multi-unit? And in this particular case, they knew a lot about it. As a matter of fact, that's kind of what they've been doing in their entire professional career. So, background of operator was in good shape.

What about the geography? Was it in an area that people are moving from, or is it an area that people are moving to? And in this case, it was a good area and an area that has a substantial number of migration into the state of Florida.

And so, it was kind of like, okay, Florida, no problem with that. And this area in Florida, no problem with that. It wasn't rural Florida. It was a very populated area that is very popular.

What's the context of the opportunity? Well, here it is, it's located near shopping centers, near public grocery stores, it's already doing okay, it's doing fine, but nothing that a $750,000 budget can't rehab, can't make much better.

So, that's all they're really looking for, is the opportunity to bring in an equity partner for this particular rehab transaction and to be able to build value based on that. So, the context of the opportunity was in good shape.

What about the structure of the transaction? Well, you could do it a number of different ways, depending upon who the investor is and who the opportunity presenter is.

One way you can do it is just a straight loan. So, you could structure it as a loan. In this particular situation that I literally in real time, yesterday and today, it was really all about a 1031 exchange.

He wasn't really interested in putting his money in a form of loan. What he really wanted was to put the money in, to maximize the capital gains so that on an exit, he could just simply defer the capital gains into a new transaction.

So, we said, “Fine, if you're prepared to do that, and if an investment opportunity is prepared to do that, let's go ahead and do it.” As a, A what I call a joint participation agreement, some people call them tick agreements, but I tend to use joint participation, a JPA, and have them on title at the same time.

Well, why is that worthwhile? Well, number one, it's sort of a precondition of a 1031, but also, number two, it's even safer because mortgage, I got to do something about. There's a foreclosure, I have to do something about it. It's judicial in Florida, so forth and so on.

If I'm on title, I'm a title owner, this can't get sold out from under me. I have an opportunity to know for sure that I'm going to profit when there's an exit on this. Collateral and risk reduction is always going to be a consideration, it's collateral in some cases, but in other cases, it's also, “What else can we do to enhance it so that we get additional protection.”

So, for example, you'll see virtually everything has a personal guarantee attached to it. And I very often use cross collateralization, or I use some aspect of making sure that there's a collateral assignment of membership interest. Only after all of that, do I then get down to the economics of the transaction.

Because unless I know the structure, I don't even know what the economics are going to be. Because if I'm on title, that might be one thing. If I'm getting just a pref and a little bit of a waterfall, that makes a completely different situation.

So, the economics of the transaction come in and then of course, the very last thing is the documentation. And what documents am I going to need to effectuate this particular transaction?

And as you know, based on those transactions that you have referred in my way, where you're on the routing, I inevitably say, “Very good, thanks very much, David. Hello, so and so, looking forward to handling this transaction for everybody involved. It's my understanding that this is the general nature of the transaction.”

“In light of that, for me to be able to get a better understanding from a due diligence standpoint, here's what I would like you to send me. Number one, number two, number three, number four, number five, number six and very good.”

“And once we've gotten that, when I take a look at it, in order for us to be able to effectuate, I am thinking that in this transaction, here are the documents that we're going to be drafting for everybody to use.”

And that's kind of the flow of the underwriting considerations related to all of these private transactions that come across my desk.

David Phelps: David back again. So, this ends the first week or the first section of the episode with Dr. Larry Pino on private transactions. We've set the stage for what private transactions are, where the benefits are, some of the underwriting considerations.

Next week, we'll actually dig into some examples of some private transactions that we've put together very recently. And you can get an inside look as to the benefits and why I love these so much. I'll see you next week.

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