



RED FLAGS FOR DC TAKEOVER PLANS



ILENE H. FERENCZY, ESQ.,
Ferenczy Benefits Law Center LLP



KEN MARBLESTONE, ESQ.
The MandMarblestone Group LLC



Takeover Red Flags

- The *real* takeover red flags are not characteristics of your client
- They are things *you* do during the takeover process and afterwards



Three Takeover Goals

- How to do the job *effectively*
- How to do the job *profitably*
- How to limit risk of *liability*
and/or litigation





Part I

EFFECTIVE TAKEOVERS



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Goals

For the Plan

- Get the plan running smoothly.
- Make sure it is compliant with the law.

For You

- Get the info you need.
- Don't repeat mistakes made by predecessor.
- Don't disrupt plan, client, or your business.



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Steps

- *Pre-Assess* the Client
- Prepare for a Transitional Year
- Make the Client Yours



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Assessment

- What you want to find out:
 - Do we want to work with this client?
 - Can we and do we want to do this work?
 - Can we meet the client's expectations?
 - Can we do all this without:
 - Disrupting our business?
 - Losing money?
 - Creating unacceptable liability?



* Photo

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Planning

- Goal: by end of transitional year:
 - Case looks like all your other cases
 - Plan is running smoothly
 - Client's expectations met
 - Case is profitable
 - Acceptable risk level



Planning

- You and your client should both be prepared for that first year to be:
 - More difficult
 - More expensive
 - More thorough



Making the Client Yours

- Build the relationship ...
- Be a *leader* in the relationship
- Long-term planning
- Who should be involved in the process?



Group Discussion #1 Effectiveness



Effectiveness Red Flags

- ❏ Not evaluating client thoroughly before you take on the case
- ❏ Not questioning what went wrong before so you know what not to repeat
- ❏ Not planning and communicating the steps you will take
- ❏ Not being the leader



Part II

PROFITABLE TAKEOVERS



Formula for Profitable Takeovers

- Prediction of fees/costs
- Communication to the client
- Agreement
- Modification as necessary



Do You **Know**
When a Takeover
is Profitable?



Does a Takeover Have to Be Profitable?

NO

.... As long as you intended
for it to be a loss leader!



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Communication

- Services agreement and §408(b)(2) disclosure
- Keeping track of what you do
- Clear and prompt reporting of services and fees
- Advance advice/approval of fees when possible



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Group Discussion #2 Profitability



Profitability Red Flags

- ❏ Not figuring out whether you want to be profitable and how much you have to charge to be profitable
- ❏ Not communicating the expected fees or changed circumstances to your client
- ❏ Not taking credit for free stuff





Part III

LIMIT LIABILITY



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In a takeover situation, your Client thinks **You** will be responsible for everything from now on ...



... Even if it happened before you came!



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#1 Liability Protector: Your Services Contract



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In Your Contract, You Can ...

- Limit responsibility to review/warrant past work
- Outline conditions for representation
- Discuss charges for takeover processes
- Provide for indemnification



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#2 Liability Protector:

Your Letters and Records



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#3 Liability Protector:

Your E&O Insurance



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#4 Liability Protector:

Your Ethics



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Group Discussion #3 Liability Limitation



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Liability Limitation Red Flags

- ❑ No service agreement (or client won't sign)
- ❑ No limitation on liability for work done by other providers
- ❑ Poor recordkeeping
- ❑ Voiding your E&O policy because you don't know what it says you need to do



FINAL THOUGHTS ...





<p>Ken Marblestone, Esq. The MandMarblestone Group LLC</p> <p>The Cira Centre 2929 Arch St #600 Philadelphia, PA 19104 (215) 222-5000 X111 marblestone@mand.com</p>	<p>Ilene H. Ferenczy, Esq. Ferenczy Benefits Law Center LLP</p> <p>2200 Century Parkway, Suite 560 Atlanta, GA 30345 (678) 399-6602 (V) (866) 515-5140 (toll free) ilene@ferenczylaw.com</p>
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