



One Flip Module #6

How to Use the Securities Laws to Your Advantage and
Owner Financing

Hosted By:

Kyle Garfo, SREC Head Coach
Joseph D. Carney, Esq.
David Streeter Jr., Esq.

YOU'RE JUST ONE FLIP AWAY...



What You Get...

- 4 Live Quick Start Class
- 3 Live Q&A Classes
- 10 Live Core Coaching Classes
- Unlimited Verifiable Pre-Approval Letters (up to \$500,000)
- Lifetime access to members site & Deal Genie
- Unlimited coaching via the One Flip Facebook Forum
- Unlimited phone coaching via webinars
- Retake classes as often as we offer them

YOU'RE JUST ONE FLIP AWAY...



Let's Review...

- **One Flip Goals:**
 - Find 1 Great Deal
 - Freeland will fund that 1 Great Deal
 - Find 1 Reliable Contractor + 1 Reliable Realtor
 - Have 1 Successful Flip
 - **Close with \$30-50k Profit (or more!)**

YOU'RE JUST ONE FLIP AWAY...



Members Site

- <https://oneflipaway.com/members/>
 - You should have received your username & password in a welcome e-mail (if not, check your Spam folder)
- To Do:
 - Register for all classes
 - Join the One Flip Facebook group & write a post introducing yourself and your goals
 - Review all resources on members site

YOU'RE JUST ONE FLIP AWAY...




Need Help?

- General Support Questions
 - Click the "Support" tab on the member's site to visit our Customer Support Portal
 - Call us at 877-811-3011
 - E-mail us at support@srecnow.com




YOU'RE JUST ONE FLIP AWAY...



What is a Security?

- In the rehab business, people like to borrow money and issue notes
 - Private Notes Are Most the Popular way to borrow capital
- **Some people believe Notes are not Securities. This is not correct. Notes, as well as other types of indebtedness, are Securities.**
- **The only classes of Notes which are not Securities are those that are purely commercial in nature, such as those issued by borrowers to a bank.**
- That commercial interpretation for a note is a very narrow and limited interpretation which is a matter of case law, its not statutory. It will not apply to any private company small investor situations.


YOU'RE JUST ONE FLIP AWAY...



Scope of Reg D Offerings

- BY FAR, THE MOST POPULAR EXEMPTION USED BY PRIVATE COMPANIES AND PUBLIC COMPANIES IS THIS PRIVATE PLACEMENT EXEMPTION
- The private placement exemption exists under SECTION 4(a)(2) OF THE SECURITIES ACT and also exists as a safe harbor in rule 506(b). The statute is very general and the rule is very specific, therefore it is easier to comply with the rule with certainty
- thus, most people want to comply with the safe harbor in Rule 506(b) which is viewed as narrower than the statute. If YOU FAIL TO COMPLY WITH Rule 506(b) you might still be within the broader statute but its less certain.


YOU'RE JUST ONE FLIP AWAY...



Types

- 504(\$1 million—no state law BLUE SKY LAW exemption- YOU MUST FILE IN THE STATES- \$-Time) NOTE: Online "SCOR" offerings popular in the 1990s WERE shut down because of rampant fraud (old Rule 504) --Shut down was accomplished by just withdrawing the preemption of state law so that all online RULE 504 offerings had to fully register WITH THE STATE BLUE SKY AUTHORITIES. AVOID RULE 504.
- 505 (up to \$5 million NOT OFTEN USED AS 506(b) is more flexible. Avoid Rule 505
- 506 (b) (Classic Private Placement – IF YOU USE FORM D, BLUE SKY EXEMPTION Can be obtained). Up to 35 Non accredited Investors and unlimited number of accredited Investors; Replaced Rule 146
- 506 (c) (accredited investor crowdfunding (Can USE GENERAL SOLICITATION), if YOU USE FORM D, BLUE SKY EXEMPTION Can Be obtained.)
- Use of all Exemptions is unavailable to offerings involving "Bad Actors" See Slides on Bad Actors

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- REG D 506 (b) FEDERAL FILING = SAFE HARBOR TO SECTION 4 (a)(2), WHICH IS ALSO A SELF EFFECTUATING FEDERAL EXEMPTION FROM REGISTRATION AND IS BROADER THAN RULE 506(b).
- This is the main and the best known and developed Private Placement Exemption.
- Allows You To Get Money From Accredited (Unlimited) And Non Accredited (Max 35) (Unaccredited MUST BE Sophisticated).
- NO LIMIT TO AMOUNT YOU CAN RAISE


YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- As for Rule 506(b) and all EXEMPTIONS IF YOU ARE CHALLENGED YOU MUST PROVE YOU COMPLIED As FAILURE TO PROVE YOU MET THE EXEMPTION MEANS YOU NEEDED TO REGISTER.
- FAILURE TO REGISTER UNDER 506(b) = INVESTORS ENTITLED TO GET their money back with interest and if Issuer has failed, PROMOTERS AT RISK OF LIABILITY. THIS IS ONE REASON This is So IMPORTANT.


YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- Well developed and well known exemption used by public and private companies
- Unlimited raise (may be pragmatically limited by number of investors)
- FORM D – Very few questions; federally no fee (states have fees)
- FORM D IS A FAIRLY STRAIGHT FORWARD. Questionnaire to fill out
- Update with amendment but most of the time does not need updated or amended - Can cover up to 12 months


YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- No Waiting Period
 - Within hours / minutes you get confirmation That THE FORM D IS "ACCEPTED"
 - YOU Can never say "Approved"
 - FILING CAN BE DONE after SALES AND MUST BE DONE WITHIN 15 Days of sale But FILE EARLY WITH SEC and states you KNOW YOU will have sales
- Venture Funds; Hedge Funds; PRIVATE EQUITY FUNDS; etc. use Rule 506(b) to form VERY LARGE pools of money (other laws apply to funds depending)


YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- Form D... when filed with a state... causes the preemption of its state Blue Sky laws registration provisions, but not the State's Anti-Fraud Laws; with only the short Q & A Notice filing; its easy to enter and RAISE CAPITAL in various states

YOU'RE JUST ONE FLIP AWAY...




Federal Level: 506(b)

Your Business May Crisscross State Lines

- NO 80/20 Rule (Intrastate offerings RULE 147 discussed below), raise CAPITAL in any state and crisscross as often as you like; Apply the money in a different state; File Form D in each state where a sale is made within 15 days (BETTER PRACTICE IS SOONER -- AS FILING PAYMENT PENALTIES EXIST FOR LATE FILINGS - \$\$)
- Alternatives to exemptions are FILINGS, SEC FILINGS, Filing fees; EXPENSIVE, LONG WAIT TIMES for comments and responses; may continue for months, COMPLEX and detailed financial statement requirements; NEED SEC ACTION TO SELL (Registration or Qualification); Often filings during offering period or after
- State Registration BLUE SKY requirement have MULTIPLE different sets of approaches IN NEARLY ALL OF THE 50 states; each state may be different; timing and state requirements can be different and at times, can be conflicting. Blue sky compliance very complex. LONG WAIT TIMES FOR COMMENTS; need Clearance to sell; Often filings during offering period or after

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- Investor Questionnaire to fill out (Investor must be sophisticated or have help SUFFICIENT TO render the investor sophisticated) as part of the Subscription Process
- **No general solicitation allowed; this means no soliciting strangers; no internet; no country club OR SIMILAR membership lists. You must have a prior substantive existing relationship to offer them an INVESTMENT. A NOTE OR A DEAL**


YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(b)

- It's perfect if you know a lot of people or you can network well AND HAVE THE TIME TO CONVERT NETWORK TO PRE-EXISTING RELATIONSHIPS
- CANNOT take out a CRAIGSLIST AD saying "Get 12%"
 - Cannot Say "10% Guaranteed"
 - These BORDER on INTRINSICALLY MISREPRESENTATIONS AS RETURNS ARE ALWAYS UNCERTAIN
 - ALWAYS. ALWAYS --FULL FAIR AND ADEQUATE DISCLOSURE OF ALL MATERIAL FACTS; YOUR REGISTRATION EXEMPTIONS DO NOT AFFECT YOUR DUTY TO DISCLOSE


YOU'RE JUST ONE FLIP AWAY...



FINDING INVESTORS: PRIOR EXISTING RELATIONSHIP VS. GENERAL SOLICITATION

- Under Rule 506(b), Private Placements **may not use any form of general solicitation**
- SOLICITATION OF PERSONS OR ENTITIES WITH WHOM YOU HAVE PRIOR EXISTING RELATIONSHIPS IS NOT GENERAL SOLICITATION (CDI 256.26)
 - Prior Existing Relationship = Defined At Federal Level
 - It is a substantive, pre-existing relationship between the PROSPECTIVE investors and the company OR ITS SENIOR PERSONNEL.
 - It is a matter of substance and does not relate to the time of a relationship or the context. SEC says this is a fact specific determination.
 - Impersonal, non-selective means of communications indicate General Solicitation, such as using a list of members of a club, even an exclusive club.
 - Online offerings are PUBLIC OFFERINGS/general solicitations inconsistent with 506(b).
 - Craigslist and Facebook posts are impersonal


YOU'RE JUST ONE FLIP AWAY...



FINDING INVESTORS: PRIOR EXISTING RELATIONSHIP VS. GENERAL SOLICITATION

- There is no minimum waiting period for an issuer (or person) to establish a pre-existing substantive relationship (cDI 256.30):
 - THIS MEANS DO NOT OFFER YOUR NOTES, investment or deal prior to your getting the pre existing relationship formed.
 - This is historically part of the normal process of getting prospective investors comfortable with you as part of an issuer.
 - Do not offer your deal until you achieve the preexisting relationship.
 - Don't be tempted to do so.


YOU'RE JUST ONE FLIP AWAY...



FINDING INVESTORS: PRIOR EXISTING RELATIONSHIP VS. GENERAL SOLICITATION

- Issuers cannot form substantive pre-existing relationship merely by a few SIMPLE phone calls OVER A PERIOD OF TIME
 - Substantive relationships are based on:
 - **Quality of interaction**
 - **Meaningful exchanges of information** (not just on the number of communications)
 - Multiple communications are often used, but can be accomplished if done properly in a single session


YOU'RE JUST ONE FLIP AWAY...



FINDING INVESTORS: PRIOR EXISTING RELATIONSHIP VS. GENERAL SOLICITATION

- Consider use of prior closed offerings can facilitate creating prior PRE-existing relationship, use for investor to teach issuer about his sophistication and via this and learning investors other investments
 - **Can't put offer on website** (visible to the world) (some exceptions if you have highly qualified technology; but not worth it.)
 - **Keep it password protected** (still a significant risk)
 - **Or take off web all together**

YOU'RE JUST ONE FLIP AWAY...



Disclosure Obligations

- Regulation D has specific Instructions for an OFFERING.
- If you have Unaccredited Investors, a Disclosure Document is required.
- If you have Accredited Investors, you do not need a disclosure document but how do you prove you disclosed all material facts.
- If you DISCLOSE FACTS TO ACCREDITED INVESTORS you must Disclose the Same FACTS to Unaccredited INVESTORS. Therefore the Best way to accomplish this is with a DISCLOSURE DOCUMENT.
- The Government does not tell you the terms of the offering (BLUE SKY LAWS IF APPLICABLE CAN require specific terms but the plan is to be exempt from them)
- Thus for your Specific Offering – you design the terms; You Design the SECURITY; ITS YOUR OFFER; ITS YOUR OFFERING: use Form 1-A, Model B as disclosure guideline * Google it*


YOU'RE JUST ONE FLIP AWAY...



Disclosure Obligations

- Full, Fair and ADEQUATE DISCLOSURE OF ALL MATERIAL FACTS.
- MATERIAL FACT = ANYTHING THAT WOULD BE IMPORTANT TO A REASONABLE INVESTOR. IF IN DOUBT Of its non materiality, Disclose it.
- GENERALLY: DISCLOSE YOUR PAST ISSUES and PROBLEMS IF YOU HAVE HAD THEM.
- CONSULT A SECURITIES LAWYER for HELP WITH DISCLOSURE ISSUES. AS you are in the business disclosure becomes more complex.
- For example, disclosure of your bio is important but what do you include; what do you omit? What about that bankruptcy? That lawsuit? Those other businesses?
- Note -Interest rate -Minimum or max amount if variable; other terms- Investing in particular property or properties; all other material facts


YOU'RE JUST ONE FLIP AWAY...



Disclosure Obligations

- You can't say I will give you (X); Can't make a promise that depends on future events without adequate qualification. A note paying 12% does not mean your investors will get 12% -- **WHAT IF YOU FAIL???** All you can say is that you are obligated to pay 12% and that your success is UNCERTAIN, BUT THAT YOU have a Business Plan that should yield success because of x, y, z but you can't promise success. You can never promise to go public, that is one of the few examples the SEC gives of what is a fraudulent statement

YOU'RE JUST ONE FLIP AWAY...



Disclosure Obligations

- YOU TECHNICALLY DON'T NEED A DISCLOSURE DOCUMENT WITH ONLY ACCREDITED INVESTORS BUT HOW DO YOU PROVE WHAT YOU DISCLOSED? **YOU NEED A DISCLOSURE DOCUMENT.**
- You can say "This is what others have done"
- Tell the lender about the SEC and YOUR REQUIREMENTS
- You SHOULD have a prior substantive existing relationship with your PRIOR lenders
- Your lenders MUST NOT BE located with general solicitation of any type

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- FEDERAL CLAIM OF EXEMPTION FROM REGISTRATION FOR OFFERINGS *THAT INCLUDE GENERAL SOLICITATION*; Includes RIGHT TO FILE FORM D WITH THE STATES AND Preempt State Blue Sky FILINGS
- Mandated by the "J.O.B.S." Act
- There is no Statute bigger than the rule (as with Rule 506(b) and Section 4(a)(2)) ; mess up and you have violated the law = Potential rescission offers; or rights of investors to rescission

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- FEDERAL CLAIM OF EXEMPTION FROM REGISTRATION FOR OFFERINGS *THAT INCLUDE GENERAL SOLICITATION*; Includes RIGHT TO FILE FORM D WITH THE STATES AND Preempt State Blue Sky FILINGS
 - Similarities to 506(b)
 - Still Unlimited Money
 - Unlimited **Accredited** Investors
 - Obligation to file Form D with SEC and Right to file it with the States


YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- **General Solicitation IS NOW ALLOWED for private placements**
 - The BAD NEWS: DISCLAIMER & "THE RUB"
 - You Can Only Accept Money From **Accredited Investors** (estimated as **maximum of 10% of all investors**- estimates over 20,000,000 people)
 - The GOOD NEWS
 - You Can Make A Specific Offering On DAY 1
 - Take Money On DAY 1
 - No Preexisting Relationship Required if Investors are Accredited and you have taken reasonable steps to verify that they are accredited

YOU'RE JUST ONE FLIP AWAY...




Federal Level: 506(c) Crowdfunding

SEC Requires offerors take reasonable steps to ensure investors are Accredited

- SEC's Questions and Discussion Information (CDI) 260.06:
 - An ISSUER who has (1) taken reasonable steps to verify the accredited investor status of a purchaser prior to the sale of the securities, and (2) reasonably believes (based on these steps) that at the time of the securities sale the purchaser was an accredited purchaser, will still be protected under the 506(c) exemption IF THEY LATER LEARN THE INVESTOR WAS NOT ACCREDITED.

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

SEC Requires offerors take reasonable steps to ensure investors are Accredited

- §230.506(c)(2)(ii) lists several Safe Harbor METHODS issuers can take to verify the status of accredited investors but states that these methods are only "examples of the types of non-exclusive and non-mandatory methods that satisfy the verification requirement"

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- **Income Based Purchasers:** 17 CFR §230.506(c)(2)(ii)(a)
 - Can show accreditation through any Internal Revenue Service form that reports the purchaser's income for the two most recent years where forms include but are not limited to:
 - Form W-2
 - Form 1099
 - Schedule K-1
 - Form 1065
 - Form 1040
 - Written representation from the purchaser that he has a reasonable expectation of reaching the income level necessary to qualify as an accredited investor during the current year
 - Married couples relying on joint income accreditation each submit written representations

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- **Asset Based Purchasers:** 17 CFR §230.506(c)(2)(ii)(b)
 - Can use documentation dated within the prior three months and obtain a written representation from the purchaser that all liabilities necessary to make a determination of net worth have been disclosed
 - Documentation include:
 - bank statements
 - brokerage statements
 - securities holdings statements
 - certificates of deposit
 - tax assessments
 - and independent third party appraisal reports

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- **Written Confirmation:** 17 CFR §230.506(c)(2)(ii)(C)
 - Consumer report from at least one of the nationwide consumer reporting agencies; or
 - Obtaining a written confirmation that person has taken reasonable steps to verify investor accreditation within past 3 months from:
 - A registered broker-dealer
 - An investment adviser registered with SEC
 - A licensed attorney who in good standing
 - A certified public accountant in good standing

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

If You Want To Take Money From ACCREDITED INVESTORS YOU CAN ADVERTISE

- **And you don't have to register advertisements with SEC**
- Billboards, Flyers, Websites, Commercials
- FREELAND IS CONSIDERING Be Focused On Experiential (Golf Outings & Steak Dinners) and Digital/Online Marketing
- CAUTIONS FOR ALL SITUATIONS
 - Have you met full fair and adequate disclosure, or have you omitted material information (negligent misrepresentation or fraud risks)
 - **NO Commissions; NO Finders Fees;**(ANY Compensation THAT IS TRANSACTION RELATED) either can only be paid to fully registered broker dealers; all other situations create substantial risks. IGNORE WHAT OTHERS SAY IF THEY ARE NOT EXPERIENCED COMPETENT SECURITIES LAWYERS.

YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- When You File Form D Federally Its A Free Open Database
 - Its A Form Of Public Communication and Dissemination
 - Completely Legal, In Fact Required (as is filing with each state where there are purchasers)
 - States JUST DEVELOPING A Open, Digital Database for FORMs D but not for Blue Sky filings, or if they do its not easily accessible
 - Is (XYZ) company listed with you??

YOU'RE JUST ONE FLIP AWAY...




Federal Level: 506(c) Crowdfunding

The Companies who file their Form D with the SEC and all required states have brought themselves to the attention of the SEC and the states and that's good


- Its The Many Thousands Of Others Who Don't File Form D, who don't claim another state or federal exemption or who don't register or should and don't that SEC and the STATES are more likely to pursue.
 - Secret Shoppers.
 - **There is no room for error in Rule 506(c)**
 - RULE 506(c) limitations:
 - ONLY ACCREDITED INVESTORS
 - ONE NON ACCREDITED INVESTOR OR INSUFFICIENT Reasonable Steps to Verify CAN CREATE RECISSION RIGHTS TO ALL INVESTORS
 - YES RISK OF HAVING TO GIVE BACK ALL THE MONEY WITH INTEREST; NO PROBLEM FOR SUCCESSFUL DEALS
 - HUGE PROBLEM FOR UNSUCCESSFUL ONES: REAL RISK TO INDIVIDUALS WHO RUN OR CONTROL

YOU'RE JUST ONE FLIP AWAY...




Federal Level: 506(c) Crowdfunding

- RULE 506(c) IS NOT A SAFE HARBOR. IT'S A CLIFF. Go beyond it and you have fallen off. There is no statute which is broader than the Rule.
- In 506(b), section 4(a)(2) is broader than the rule; if you go outside rule 506(b) you can try to rely on the statute; no possibility of this in Rule 506(c) offerings.
- If you go beyond the rule, you are in violation of the law.




YOU'RE JUST ONE FLIP AWAY...



Federal Level: 506(c) Crowdfunding

- 506(c) Limitations
 - The onus is on the ISSUER to make reasonable STEPS TO Verify that the Prospective investors are accredited PRIOR TO ACCEPTING THEM AS INVESTORS. If they turn out to be accredited but you failed to take the reasonable steps to verify you have violated Rule 506(c).

YOU'RE JUST ONE FLIP AWAY...



Types of Business Entities

- Sole Proprietor (Not Really an Entity)
- Partnership (General vs. Limited)
- Corporations (C or S)
 - "S" Corporations not a Legal Entity, but an IRS election related to manner in which it is taxed
- Limited Liability Company (LLC)

YOU'RE JUST ONE FLIP AWAY...



Why Choose a Business Entity?

- Tax Considerations (Get a Tax Professional)
 - Pass Through Entity vs. Double Taxation
 - Expenses
 - W2 Employees or 1099 Contractors (members of your Team)
- Non-Tax Considerations
 - Liability Protection
 - Management Structure (Chain of Command)
 - Percentage Ownership
 - Diversification

YOU'RE JUST ONE FLIP AWAY...

 **ONEFLIP**

What Entity to Choose?

- Varies on specific circumstances
- My Preference → LLC

YOU'RE JUST ONE FLIP AWAY...


 **ONEFLIP**

Basics of LLC's

- Single-Member LLC
 - Taxed as a Sole-Proprietor
- Multi-Member LLC
 - Taxed as a Partnership

YOU GET TO CHOOSE HOW YOU ARE TAXED

YOU'RE JUST ONE FLIP AWAY...

 **ONEFLIP**

Basics of a LLC's (cont.)

- What do you need to establish a LLC?
 - Articles of Organization
 - "Corporate Record Book"
 - Operating Agreement
 - Member Declarations (Flexible)
 - Member Certificates
 - Statutory Agent
 - Employer Identification Number (EIN)

YOU'RE JUST ONE FLIP AWAY...



Special Considerations for the Real Estate Investor

- Titling Real Estate Acquisitions
 - Depends on Type of Financing
 - Cash
 - Traditional Bank Financing
 - Hard Money Lending
 - Preferred: Freelend Lending
- Sale of Units (ownership interest)
 - Remember Securities Laws
- Sell LLC holding the real estate

YOU'RE JUST ONE FLIP AWAY...



Special Considerations for the Real Estate Investor (cont.)

- How Many LLCs should you own?
 - Risk Tolerance
 - Type of Investment (Single Family vs. Apartment)
 - Administrative "Hassle"


YOU'RE JUST ONE FLIP AWAY...



Important Real Estate Forms

- Purchase Contracts (Do you Wholesale?)
- Assignments
- Leases
- Lease with Option to Purchase
- Land Contract

YOU'RE JUST ONE FLIP AWAY...

 ONEFLIP

Real Estate Forms (cont.)

- Deeds
- Mortgages Notes (So many kinds)
 - Simple Interest
 - Deferred Interest
 - Fully Amortized
 - Balloon
 - Equity Participation
 - Term
 - Cognovit
 - Recourse vs. Non-Recourse

YOU'RE JUST ONE FLIP AWAY...

 ONEFLIP

Q&A

YOU'RE JUST ONE FLIP AWAY...
