

SECURITY LINE

A PUBLICATION OF THE METROPOLITAN BURGLAR & FIRE ALARM ASSOCIATION OF NEW YORK

MAY - JUNE 2018



Secrets of the Alarm Industry see page 4

BUYING AND SELLING *see page 6*

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In This Issue of Security Line

-
- 4 **The Rest of the Article**
By Alan Glasser
Executive Director, MBFAA
- 6 **Legal Side**
Selling and Buying: How much can you expect to get for your Alarm Contracts and how much you can expect to pay for Alarm Contracts
By Kenneth Kirschenbaum, Esq.
- 10 **Out of Nowhere: Protecting Job Sites From the Source**

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Executive Director's Message...



Alan Glasser

*“Give a man a fish and you feed him for a day.
Teach a man to fish and you feed him for a lifetime.”
— Chinese Proverb*

The Rest Of The Article

by Alan Glasser, Executive Director of MBFAA

I am going to give away one of the best secrets in the alarm industry. A secret I have known for a few years and I have only released to a few very close business associates and members of MBFAA.

The secret is the answer to any of the following questions:

- “Where do I get the training needed to get into the alarm industry?”
- “How do I train my technicians?”
- “How do I technically train my sales people?”
- “How do I train myself for education and advancement?”

The **National Center for Construction Education and Research (NCCER)** and Prentice Hall provide a unique development process created by industry-based subject matter experts to provide training materials for specific jobs. (<http://nccer.pearsonconstructionbooks.com/store>)

Continued on page 12



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Legal Side

By Kenneth Kirschenbaum, Esq.

Kenneth Kirschenbaum, managing partner of the legal firm of Kirschenbaum & Kirschenbaum, P.C., is legal counsel to the Metropolitan Burglar and Fire Alarm Association of New York. Mr. Kirschenbaum's offices are in Garden City, NY. He can be reached at 516-747-6700, ext. 301. Email to: Ken@KirschenbaumEsq.com.



Careful Who You Sell Your Business To...

Selling your business [in this industry that typically means selling your subscriber contracts with RMR] is often a once in a lifetime opportunity, and except for the sale of your home, the largest financial transaction many of you are likely to engage in. If you have built a small or large business your only choices are transitioning the business to family or friend, or selling it. Of course you need a lawyer in either case. You want the process to be clean, friendly and as simple as possible. You also want to minimize your legal and other expenses so your net proceeds is as much as it can be. But selling your business is not always the experience you are hoping for. And, that's the topic of today's article.

If you are lucky enough to get a 100% cash on closing deal then your risk is reduced. But that kind of deal is unlikely. More likely you are either going to self-finance the purchase by allowing a payoff over a number of years, or you're going to

have a cash at closing with a percentage of "hold-back" which is typically payable after a year. That percentage can range from 10% to 20% or more of the gross purchase price before common adjustments. Whatever that hold-back number is, you should feel that it's substantial, and should be hopeful that you're going to get it or most of it after your guarantee period expires.

There are two important factors that influence your chances of getting the hold-back, your contract with the buyer, and your buyer's character and penchant for litigation

Your lawyer is responsible for the first issue; you are responsible for the second issue. In a sense you are responsible for both issues, because you are responsible for engaging the right lawyer to represent you on the transaction.

What difference does the lawyer make? All the difference. There is nothing routine about selling your alarm business. How could it be routine? The number of people in the alarm industry who have sold more than one, more than five, alarm businesses in their career can be counted on one hand. Now, routine for the buyer is another matter. Some buyers have engaged in many acquisitions and many are very set in their way how they purchase the accounts. Some use a lawyer who uses the identical form over and over with minor modification for each deal, and others don't bother using a lawyer because they have the "lawyer's form" and they think they can do the deal themselves. And you know what, some can, because they won't make any changes to their form.

Continued on page 8

Together we reach your business goals



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Careful Who You Sell Your Business To... from page 6

It's their deal and that's it. Some minor concessions to you and you may think they were flexible, but they are making the deal they want, for the most part. That doesn't mean you won't get a good deal, by the way, because you might get lucky and deal with a reputable industry buyer. Your lawyer will make a big difference in how smooth the transaction goes and how comfortable you will be with the transaction. Not being sure that you or your lawyer know all you need to know about the transaction could be unsettling. Whether you plan on a small or large transaction you can count on the Merger and Acquisition attorneys at K&K to protect you. We've done a few of these deals; a few hundred in fact. Small, medium and large. For our regular clients and those that engage us just for the transaction. **For information, call me [you should have my number on speed dial by now] or Jennifer Kirschenbaum, Esq. at 516 747 6700 x 302.**

Even your lawyer may not be able to help you the way you can help yourself when it comes to determining the character of your buyer. By character I mean integrity, honesty and someone who believes in treating people - particularly you - fairly. It's important because you are going to be "loaning money" to this buyer and the buyer is going to be able to reduce that indebtedness during your guarantee period. A less credible buyer may use that time to shake out your customer base. Worse, some buyers may have no intention of paying you the hold-back. They may come up with reasons why they don't have to pay you, or they may just

not pay you, leaving you to whatever remedy your contract calls for. If your lawyer doesn't have litigation experience then he or she may not really understand what can go wrong and what may be involved in enforcing the contract. When the dispute arises, usually a year after the deal closed, the "transactional" lawyer is long gone. I've had to step in and clean up the mess. A contract that takes these risks and remedies seriously can often avoid a problem later. Another reason to call K&K for your transaction. Sure, I'll help you when you have a problem with your deal, but cleaning up someone else's mess is almost always more costly.

Fortunately you do have some influence over the two factors discussed. You can choose your lawyer carefully. Be leery of a broker recommendation unless you know the attorney's reputation. Peer recommendations is another option. [of course best option is calling me]. As for your buyer, that's your job. You can start by asking [even getting representations in the contract] whether your buyer has had any disputes regarding the hold-back or any other disputes with prior sellers. Any litigation with prior sellers? Ask for list of prior sellers and call them for their experience with this buyer. You don't want to deal with a buyer who is going to look for trouble when the hold-back is due. Keep in mind that most of you will be out of the business once you sell, hardly in a position to take back accounts or happy about litigating over the hold-back [and if you are not careful being exposed beyond the hold-back]. Better to deal with a buyer who has had no adverse issues, someone you would be comfortable making a loan to, because that's what you're doing. •



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One of MBFAA's members has come up with a unique solution to a common problem in the security industry. Read their story below...

Out of Nowhere: Protecting Job Sites From The Source

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A growing demand.

It's a changing world out there. In the North American region alone, construction mega zones are cropping up faster than the season's harvest. These are the days of progress and the structures that are being built require lots of energy on a daily basis.

As a security integrator, *Power Tech Business Solutions* assists with the security camera and alarm systems installation at many construction sites and properties.

Determined to combat the concern.

We speak to GCs and property developers on a daily basis, meeting their security demands with state of the art camera and alarm systems that provide detection and alert systems for maximum security at 24 hour intervals. Our leading engineer boasts over 40 years of industry experience, focusing on driving his expertise toward the future of power in the construction industry and beyond. With direct emphasis on updating security systems at just about any location, the educative resources we've engineered will continue to shape the progress of harnessing power for maximum security protocols.

During the last 12 months, our agents have noticed a common question among our clients and their growing portfolios: "Is there an available solution for power on remote construction sites?" They commonly referred to high impact zones in Upstate NY, but the demands quickly escalated to the far West and way down South, where it seems remote construction sites are also struggling to create a compatible and reliable source of power.



We firmly believe that construction site surveillance is key to a productive work area and noticed just how much these sites relied on the influx of appropriate power gauges. What started

as a research stint has to date expanded into a world of solar powered security systems that are customized to operate on remote locations with no available AC power. Solar is available, accessible and safe. Maintaining a safe work zone is a high priority for developers and owners, as is keeping close tabs on intruders or hazards.

From within the job site.

We've spoken to Moses L., a Power Tech client who is currently using our solar powered security system on site.



Here's what he had to say: "I had virtually no power supply on my site and zero connection for miles. Since Power Tech installed the solar security unit, I have direct access to live footage of all equipment and vehicles. With equipment worth over \$15MM, security measures are important to me. The real time footage allows me to conduct a thorough and quick clipping of each

truck that enters the site area, giving me a precise count of all assets, incoming traffic and contractor dues. Power Tech has saved me millions of dollars to date and the solar innovations have helped me manage a more secure job site."

Combining tech, power and intellect.

Harnessing the power of the sun is the first step toward direct power when there is none. The Power Tech advantage is a combination of scientific mediums, solar equipment and point to point connection, in conjunction with the right PTZ camera system. The work of our leading engineers have made power available for maximum security of remote job sites and our solar compatible poles are the structures that promote progress, power and protection where they're least expected.

We include:

- Solar Panels
- Power backup
- Batteries
- Point to point wireless antenna
- PTZ camera

When cost comes to shove:

Depending on demographic on the map and other variables, solar power availability may vary. It's important to get a professional opinion before selecting a camera or alarm system plan for your next project.

Our engineer utilizes expertly configured ratios of required solar and available sunshine to create a custom plan for every job site. Based on the amount of equipment needed, an advisable solution is created.

— Perry Ferencz
Power Tech Business Solutions

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The Rest of the Story

From page 4

One subject matter is “Electronic Systems Technician.”

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The four book pictures below are hot links to the actual ordering page.



I have been using these books (and others) for years. First I'll give you an overview and then I'll tell you how to get them.

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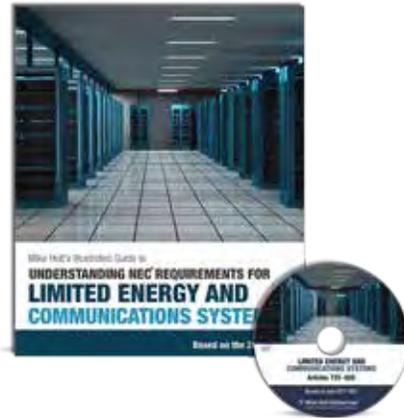
You could call the Order Department Prentice Hall, 200 Old Tappan Road, Old Tappan, NJ 07675. Call: 1-800-922-

0579 and ask about “Electronic Systems Technician,” and order them by phone. It is best to look at the catalog first to see exactly what you need in books, supplies, and testing material.

The next **ESSENTIAL** book is: “2017 Understanding NEC Requirements for Limited Energy and Communications Systems DVD”

<https://www.mikeholt.com/productitem.php?id=1498>

The book picture below is a hot link to the actual ordering page.



This full-color, illustrated textbook with corresponding DVD provides insight into many of the technical rules of the 2017 NEC that apply to these systems. Subjects include the NEC rules that apply to low-voltage and limited-energy systems that most people are not aware of, definitions, the general NEC installation requirements, and specific NEC requirements for control, sound, video, CATV, CCTV, antennas, telephone, fiber optics, etc. Topics include grounding, cable installation, spacing, support, etc. This program is suitable for Low Voltage exam preparation and the textbook includes practice questions, quizzes, and a final exam.

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Is It Time To Change The Exculpatory Clause To Cover Even Fraud

By *Kenneth Kirschenbaum Esq*

The Exculpatory Clause holds that the alarm company will not be liable for any breach of contract or negligence in the performance or non-performance of the contract. Alarm companies need this provision and it is certainly one of the most important and prominent “protective” provisions. The provision is consistently enforced throughout the country with few exceptions.

One of the more commonly accepted exceptions to the enforcement of the Exculpatory Clause is fraud. We see “fraud in the inducement” claims in many alarm defense cases because claimants’ counsel understands that the fraud claim may defeat the consequences of the Exculpatory Clause. Fortunately, claiming fraud and proving it are too very

different matters, and the fraud in the inducement claim rarely gets traction. A case I just read peaked my interest to see if a change in the terminology of the Exculpatory Clause might help defeat the fraud claim. This is the excerpt from the case that caught my interest: [the case is not an alarm case]

“... the district court overlooked the fact that both Florida and Nevada prohibit a contractual waiver that exculpates a contracting party’s fraudulent misconduct. See *Oceanic Villas, Inc. v. Godson*, 4 So. 2d 689, 690-91 (Fla. 1941) (holding that a contract provision cannot preclude a fraud claim unless the contract expressly states that it is incontestable on the ground of fraud); *Burton v. Linotype Co.*, 556 So. 2d 1126, 1127 (Fla. Dist. Ct. App. 1989) (“Fraud is an intentional tort and thus not subject to the cathartic effect of the exculpatory clauses found in contracts.” (quoting *L. Luria & Son, Inc. v. Honeywell, Inc.*, 460 So. 2d 521, 523 (Fla. Dist. Ct. App. 1984))); *Lawyers Title of Nev., Inc. v. Bonar*, 381 P.3d 633 (table), 2012 WL 1923697, at *2 (Nev. May 23, 2012) (holding that an exculpatory clause was ineffective to immunize liability for a knowing misrepresentation) (citing Restatement (Second) of Contracts § 195(1) (1981) (“A term exempting a party from tort liability for harm caused intentionally or recklessly is unenforceable on grounds of public policy.”)).”

Did you notice this in the quoted language:



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“See Oceanic Villas, Inc. v. Godson, 4 So. 2d 689, 690-91 (Fla. 1941) (holding that a contract provision cannot preclude a fraud claim unless the contract expressly states that it is incontestable on the ground of fraud)”“Unless the contract expressly states that it is incontestable on the ground of fraud”. So I looked up the case. It’s a Florida case, circa 1941. OCEANIC VILLAS, Inc., v. GODSON 148 Fla. 454. That case holds that:

“That false and fraudulent misrepresentations as to past income, gross receipts or profits may constitute fraud on which rescission should be awarded is too well settled to be seriously questioned.To hold that by the terms of the contract which is alleged to have been procured by fraud, the lessor could bind the lessee in such manner that lessee would be bound by the fraud of the lessor would be against the fundamental principles of law, equity, good morals, public policy and fair dealing. It is well settled that a party can not contract against liability for his own fraud.We do not mean by this, however, to hold that a contract may not be made incontestable by the terms thereof on the ground of fraud. We recognize the rule to be that fraud in the procurement of a contract is ground for rescission and cancellation of any contract unless for consideration or expediency the parties agree that the contract may not be cancelled or rescinded for such cause, and that by such special provisions of a contract it may be made incontestable on

account of fraud, or for any other reason.” citations omitted

So how far do we try and go with the Exculpatory Clause? Do we push it over the edge? What do you think? And, what you think is important because you’re the one who has to get the contract signed and you’re the one who has to avoid doing anything that could be construed as fraudulent.

Any thoughts? •



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StarLink connect

Cell/IP Communications | Universal Virtual Keypad | Notifications | Connected Home

Randy Zornberg
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NAPCO

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counterforce

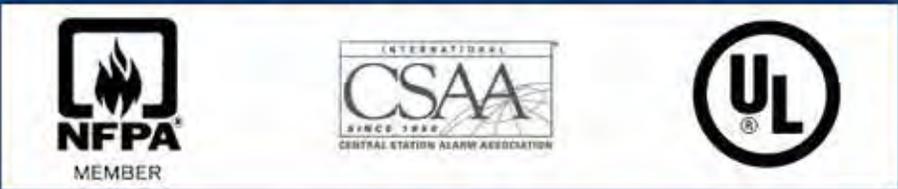
Central Alarm Services Corp.



**NYC FIRE
MONITORING**

- **NYC Fire Approved Monitoring**
- **No Renewal Fees**
- **No Registration Fees**
- **Dealer Support**
- **No Annual Call Limits**
- **Telephone Voice Recording**

\$20⁹⁵
per month includes
all points



- Burglar • Fire/Sprinkler Monitoring
- UL Central Alarm Station Burglar Alarm Systems
- UL Approved Fire Alarm Monitoring
- "800" Monitoring Lines
- Open/Close with Reports
- GSM Radio Monitoring
- Total Connect
- Connect 24 Radio
- DMP Monitoring
- Alarmnet
- Dealer Access
- Nearnnet Radio
- All Major Digital Formats
- Guard Response Available
- Alarm Path Radio

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