

Boilerplate Answers

By Chris Burand

When I was five, my dad taught me to ride a horse (or at least he tried). The first day he put me on a nice old nag. I learned that putting my heels to the horse's flanks, using the reins, and maybe adding a verbal command for good measure was required to get the horse to go. This worked well on the old nag. The next day, my dad put me on a thoroughbred race horse (still actively racing). Just like the cowboy on the old Marlboro TV commercials, I leaned forward in the saddle. The horse, Tez, made like a bullet for the mare about a mile down the road. The result? A broken leg, concussion, and facial stitches. What a way to learn that different horses had different "Go" commands!

Last summer in Colorado, black bears attacked several people. To defend against a black bear, a person should fight back. But when a brown (a.k.a grizzly) bear attacks, a person should play dead. Last fall, a person from Colorado, well-versed on black bears, was trekking in Alaska. He crossed paths with a grizzly amid a September feeding frenzy. The bear attacked. The hiker fought back rather than playing dead and nearly died as a result. Different bears require different survival strategies.

Two different horses require two different riding techniques. Two different bears require two different survival techniques. Different situations require different answers. Different agencies, though they might have the same problem, require different solutions. Simple, boilerplate answers rarely exist.

Demand though for simple solutions and boilerplate answers is great. Virtually every day I am asked to provide simple answers. The questioners honestly, and sometimes desperately, want a simple answer. Simple answers are easy and desirable. Unfortunately, they are most likely wrong. For example, I am regularly asked, "What is my agency worth?" The desired response is "X times commissions." To give such an answer however without a thorough analysis would be akin to lying because the answer would have no basis in fact. A joke illustrates the problem well: Three statisticians are hunting when they see a big buck at the end of a clearing. The first statistician fires and misses by ten feet to the left. The second statistician fires and misses by ten feet to the right. The third statistician yells, "Bulls eye! On average we got him!" Well, on average maybe all agencies are worth 1.3 times revenues but that does not mean any specific agency is worth 1.3 times. Agency values can range from -2.0 to maybe, in extremely good situations, 2.0 times commissions (and rare exceptions exist above and below this range).

Agencies face common issues to which agency owners often desire simple, boilerplate solutions. Several of these issues are listed below along with a few reasons why boilerplate answers will not work. If your agency is faced with one or more of these issues, consider your agency's unique needs as you evaluate your options.

Producer compensation

Producer compensation depends on producer responsibilities, the local market price, the type of business being written, the extent to which owners are willing to subsidize producers, the

agency's competitive advantages, and many other factors.

Trade Secret/Non-piracy/Trade Secret Agreements

While these agreements are fairly standardized, every agency has different requirements, each state has slightly different regulations, and having an attorney review the agreement is an absolute must.

Agency valuations

Agency valuations absolutely cannot be "boilerplated," averaged, or in any way simplified to a one-sentence statement. Agency valuations are inherently complex and must consider volume, business mix, growth, companies, personnel, producer competency/compensation, the quality of employment contracts, E&O exposure, the balance sheet, and several dozen more factors.

Buy/Sell Agreements

Buy/sell agreements must consider valuation issues, the parties involved (shareholders/non-shareholders), the buy/sell triggers, and many other factors.

Acquisition/Merger Agreements

Acquisition/merger agreements must consider the type of merger/acquisition, state regulations, the unique terms of the merger/acquisition, tax issues, liability issues, employment issues, conditions to be upheld, and dozens of other very serious considerations.

Cluster Agreements

Most cluster agreements I have read have significant flaws, so to copy one to use as a boilerplate is like building a foundation of cardboard. The structure will surely crumble in a matter of time. Additionally, clusters are as unique as the agencies themselves, so each agreement must address the special needs of the cluster's members.

Agency owners and managers often face seemingly simple question (for example, "How much should I pay my producers?"). Identifying the solution though is complex and unique. Simple, boilerplate solutions do not exist. Successful agencies will invest the money, time, and effort to find the solution for their agency, not some other agency's solution.

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NOTE: None of the materials in this article should be construed as offering legal advice, and the specific advice of legal counsel is recommended before acting on any matter discussed in this article. Regulated individuals/entities should also ensure that they comply with all applicable laws, rules, and regulations.

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