

M&A Nuggets: How to Avoid Hairline Fractures in M&A Deals

February 4, 2026

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In medical parlance, a hairline fracture of the bone is caused by stress that can result from trauma, is painful, and curtails activity. Hairline fractures can also arise during an M&A transaction and are important to avoid. Hairline fractures can be caused by 1) lack of communication between the purchaser and the seller, 2) a delay in contacting third parties whose consent is required, and 3) professional advisors who put their desire to win at any cost above their client's interests.

How can hairline fractures be avoided? First, it is crucial for the purchaser and seller to fully understand each other's objectives and to then memorialize all major business terms in a letter of intent. Too often, letters of intent are devoid of key business terms on the theory of "let's just get the letter of intent signed and move on." This often results in surprises, misunderstandings, and disappointment, all of which delay or doom a deal. Second, third parties whose consent is required, such as landlords and lenders, must be contacted well before the planned closing date. These third parties, who have their own processes and procedures when faced with a client sale, often take an extended time to react. Last, a seller should clearly explain its objectives, time frame, and expectations to its counsel and other advisors. A seller must work with advisors who will prioritize making the deal happen over winning every point in the negotiation. The lesson here is that, with proper communication and planning, hairline fractures in an M&A transaction can be avoided.