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Commercial Real Estate

The Realities of Commercial Real Estate

Commercial real estate is an extremely competitive and complex business, with hundreds of thousands of dollars at risk in even the most basic transactions. Property owners understand this reality and surround themselves with real estate agents, property managers, appraisers, accountants and attorneys who

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protect their interests. Tenants and buyers, on the other hand, all too often rely on anecdotal information when making decisions. As a result, their interests are largely *underrepresented* in most transactions. The purpose of this article is to bring attention to some of the most onerous practices and misconceptions within the commercial real estate industry, and to suggest ways to make the process of leasing and purchasing property more equitable to tenants and buyers (users and investors).

Commercial real estate is an adversarial process. While nego-

tiations need not be combative, or confrontational, the process nevertheless pits parties with opposing interests against each other. Recognize that agents who either list properties or work for a company that lists properties are *de facto* employees of property owners, and have a fiduciary duty to protect their interests, not yours...not ever. Be especially wary of the motivations of friendly agents and property managers (the eyes and ears of property owners); and refrain from discussing your businesses' circumstances with anyone not involved in your decision-making process.

Clients are served, customers are sold.

Because most of us have been conditioned to believe that “the customer is always right,” we infer that being treated as a customer is a good thing. The real estate industry capitalizes on this perception and has adopted the seemingly innocuous (and misleading) label of “customer” to denote a party who is due the *lowest* standard of care, accountability and confidentiality in any transaction. In reality, the party due the highest standard of care is known as the “client.” For example, the client of any listing agent is the property owner, the tenant or buyer is the customer, or prospect. *Strategies:* 1. Be aware

of the distinction between a “customer” and “client,” and insist on establishing a client relationship with your advisors from the onset. 2. Select advisors who have no apparent or undisclosed conflicts of interest. Hint: if the agent or their company has listings of any description, an unavoidable and insurmountable conflict of interest exists.

Commercial real estate is a business based more on *who you know* than *what you know*. While it is tempting to trust golfing buddies, acquaintances from networking clubs, affinity groups or family members when leasing or purchasing commercial real estate, mixing friendship with business is generally bad for both relationships. I suggest using the same criteria in selecting a real estate advisor as you would when hiring an executive for your company, or your accountant or attorney. Also, think twice before making decisions based on unsolicited information provided by agents that just happened to catch you in while they were cold-calling – these are generally entry-level agents using your business for on-the-job training.

90 hours to riches. Real estate agents hold themselves out as being qualified to help people make some of most significant financial decisions of their lives; yet it takes just 90 hours of classroom instruction, and then passing a very basic examination to obtain

a real estate salesperson's license. The coursework focuses on the Department of Real Estate Rules and Regulations, and, in reality, the license merely entitles one to receive commissions (which can be substantial). With a limited skill set, the newly-minted agent is capable of little more than cold-calling and acting as the property owner's messenger. Unfortunately, many licensees never continue their professional development, other than taking the required 24 hours of continuing education classes every two years to keep their licenses active.

Any person holding themselves out to be a competent real estate advisor should have, in addition to a real estate broker's license, an understanding of contract law, accounting, economics, zoning, finance, appraising, space planning, construction and negotiating – skills and competencies that can only be obtained through experience and advanced education.

Credentials do not ensure credibility. Professional designations or titles do not necessarily assure you of receiving independent or skilled representation. When selecting the best people to protect your interests, I suggest evaluating their body of work in your area of need. As you want the benefits that experience, logic and objectivity bring to the table, be wary of meaningless or unrelated credentials and unverifiable testimonials. Ask for references and check them out.

Dual Agency: The industry's dirty little secret. Law and real estate share many common characteristics; one is the utilization of contracts to document the understandings between parties. However, unlike the legal profession, where each party is assured of having independent and rigorous

representation, in the practice of real estate it is legal for one agent, or multiple agents within the same company, to represent both parties in the same transaction. This obvious loophole defeats the principles of the "Arm's Length Transaction," where the parties deal from equal bargaining positions, without trusting the other's fairness or integrity and without being subject to the other's control or dominant influence.

The real estate industry calls this practice a "dual agency." Substitute the word "double" for "dual" and the true meaning of the concept emerges. Dual agents, like double agents, place their own self-interests – in receiving a double commission – above the interests of all others, even though they have a fiduciary duty to represent a stakeholder in the transaction. In my opinion, the widespread practice of dual agency representation should be exposed for the self-dealing practice it is. While currently legal, it is inherently unethical, and steps should be taken to make it illegal – just as the legal profession has done.

Control is crucial. Real estate agents are taught early on to control as many aspects of the process as possible. These include: steering tenants and buyers to their listings; dispensing information that is favorable to their clients (remember, the property owner is the client, the tenant/buyer is merely the customer, or prospect); answering only the questions that are asked; and making every effort to retain all commissions that result from the transaction. Savvy tenants and

buyers understand that, in order to make fully-informed decisions, they need to: discover all available properties that may be suitable for their needs – regardless of which company controls them; learn as much as possible about recently completed transactions and market conditions; identify which property owners have the greatest needs and/or urgency; obtain answers to questions they may not have asked; and get value from their "side" of the commission.

Reality check. There are three realities in commercial real estate: the property owner's, the tenant's or buyer's, and the agent/broker's.

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The biggest reality of all is simply that there are no do-overs – when the contract is signed and money changes hands, all parties must live with the terms and conditions that have been reduced to writing. It doesn't get any more real than that. ■

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