

Commercial Real Estate

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The 10 Myths and Misconceptions of Commercial Real Estate

FOR DECADES, THE REAL ESTATE industry has been heavily influenced by “insiders” – real estate agents, brokers, owners, property managers and, to a lesser degree, appraisers, economists, academicians and the related trade associations whose mission is to promote the interests of their members. These groups have access to information that “outsiders” – anyone wishing to lease or buy commercial real estate – generally do not; as well as the largely unfettered ability to interpret, manipulate, and disseminate information to suit their purposes.

The insights that follow are intended to draw attention to the rarely discussed myths and misconceptions propagated by commercial real estate insiders, and offer strategies that will enable outsiders to level the playing field when leasing space or buying property.

MYTH 1: The majority of commercial vacancies are advertised.

FACTS: Only a fraction of the thousands of spaces available for lease or sublease are advertised to the public, and of those, few mention price.

STRATEGY: In order to make fully-informed decisions, tenants and buyers need to know as much as possible about: the number and sizes of available spaces (vacancies), recently-completed transactions (“comps” or comparables), their configuration (condition), and the asking prices.

MYTH 2: Comparables (what others have paid) are readily available.

FACTS: While sale prices are part of the public domain and can be accessed by logging on to the website of the County Recorder, *information about leases is proprietary*, meaning only the property owners, tenants and the agents involved in the transactions are privy to the terms.

STRATEGIES: Tenants and buyers would be well-served to retain the services of an experienced real estate advisor who has first-hand knowledge about the specifics of recently completed leases, access to commercial databases, and insight into which property owners are likely to have the most urgent needs.

MYTH 3: The “market rate” is the price tenants and buyers should pay.

FACTS: The term “market rate” has devolved to mean little more than the property owner’s asking rate, not their getting rate. If the terms for every lease were known, we would see that each transaction is unique, with different rates, terms, and concessions (any incentive or reduction from the original asking price and/or terms).

STRATEGY: Think of the “market rate” as what it is: merely the property owner’s opinion of value...and the negotiation’s starting point.

MYTH 4: One agent can fairly represent both parties in the same transaction.

FACTS: The operative word here is “fairly.” In a true arm’s-length transaction, the parties deal from equal bargaining positions. In addition, neither party is under the other’s control or dominant influence, nor do they rely on the other’s fairness or integrity. At least that’s how the legal profession views it, and why it is unethical for both parties to have the same representative in any legal matter. The real estate industry sees it differently (to the detriment of millions of tenants and buyers), and permits a single agent, or multiple agents from the same firm, to represent both parties in the same transaction. This is called a “dual agency” (think “double agent” for the true meaning). Such an arrangement favors the property owner, who receives the highest amount possible, and the real estate agent, who retains the entire commission.

STRATEGIES: Dual agency is the real estate industry’s dirty little secret and should never be tolerated. In practice, many tenants and buyers divulge confidential information to an agent they are led to believe is representing their interests, only to discover the agent has an undisclosed conflict of interest when a lease or purchase contract is presented for them to sign. At that point it is generally too late to renegotiate the terms of the transaction. If you suspect that you may have been the victim of an undisclosed or improper dual agency, I suggest contacting the Department of Real Estate to report this potentially unethical behavior. You

may also wish to discuss the matter with a seasoned real estate attorney.

MYTH 5: Being treated as a “customer” is a good thing.

FACTS: The real estate industry has adopted the seemingly innocuous yet misleading label of “customer” to denote a party who is due the *lowest* standard of care, accountability and confidentiality in a transaction. In reality, the party due the highest standard of care is known as the “client.”

STRATEGIES: Be aware of the distinction between “customer service” and “client service,” and insist on establishing a client relationship with your real estate advisor from the onset.

MYTH 6: Friendly agents and property managers are acting in your best interests.

FACTS: Agents and property managers are the eyes and ears of the property owners – their clients. While their stock-in-trade is a friendly manner, their fiduciary duty is to lease or sell the property for the highest amount possible, and with the fewest concessions.

STRATEGY: Because anything you tell a listing agent or property manager is likely to be shared with the landlord, and could dilute your negotiating leverage, refrain from discussing your businesses’ circumstances – including your budget, timing and other buildings under consideration – with anyone not on your decision-making team.

MYTH 7: Real estate services are free.

FACTS: Real estate transactions typically include commissions that are shared by the agents or advisors representing each party. Even though the property owner writes the commission check, it’s the tenant or buyer that ultimately funds the commission – in the form of rent payments (for leases) or purchase proceeds (for sales).

STRATEGY: Make certain that you are receiving full value from your “side” of the commission by having an unbiased, experienced, licensed real estate advisor assist you with the research for suitable spaces and in the negotiation of acceptable terms and conditions.

MYTH 8: Large real estate companies, and/or those with many listings, are the best sources of information for tenants or buyers.

FACTS: Full service real estate companies employ dozens (even hundreds) of agents, brokers, property managers and support personnel, and are best suited for property owners who require property management and brokerage services. Regardless of

their size, companies that list properties have inherent and unavoidable conflicts of interest when representing tenants and buyers, and tend to suppress competitive negotiations by steering them to the properties they control.

STRATEGIES: Because tenants and buyers seek objective and rigorous representation, they should avoid agents and brokers from companies that list properties. When selecting an advisor, obtain confirmation that you will be exposed to all suitable spaces, including those being offered for sublease.

MYTH 9: Leases are less complex than purchases.

FACTS: Even the most basic commercial leases contain several dozen interrelated variables that are open to negotiation, and that affect the overall cost of occupancy. As a result, leases are generally *more* complex transactions than purchases.

STRATEGY: Recognize that, in order to make a fully-informed leasing decision, many terms and conditions need to be identified, addressed, and negotiated. Once the economic terms have been negotiated to your satisfaction, retain a competent real estate attorney to review and comment on the legal sufficiency of the lease agreement.

MYTH 10: Real estate agents are experts in real estate.

FACTS: Expertise in any field is the result of much training and accumulated knowledge. Yet it takes the equivalent of attending just two weeks of classroom instruction, and then passing a very basic examination, to obtain a real estate license. This limited education is hardly sufficient to qualify anyone to help business people make some of life’s most significant financial decisions.

STRATEGIES: Tenants and buyers have a legal right to hold real estate agents and advisors who imply or claim to have expertise in an area of specialization accountable for their actions and recommendations. Select your advisor with the same care as you would an attorney, accountant, or a senior member of your decision-making team, and make certain they have significant and verifiable experience in solving your specific problems.

Closing comments.

Be aware that commercial real estate is a highly-competitive and adversarial business. While negotiations need not be combative or confrontational, the process nevertheless pits parties with opposing interests against each other. In the final analysis, a real estate transaction is only as good as the thoroughness of the research, the quality of the information, and the experience of the negotiator...*and that’s a fact.* ■

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