The 6 Unspoken Rights of Commercial Tenants and Buyers

In the majority of commercial real estate transactions, well-meaning but under-informed tenants or buyers are pitted against well-informed property owners and their agents. Because the parties have opposing economic objectives, it is vital that each side: 1) understand their rights, and 2) take the necessary steps to protect these rights. The following is a discussion of the six *unspoken* rights to which tenants and buyers are entitled.

RIGHT #1: To know WHO protects your interests (and who does not). A material difference exists between real estate *agents*, who typically list properties and have a fiduciary duty to protect the interests of property owners, and real estate *advisors*, who do not accept listings and, as a result, can render unbiased opinions. **TIP:** Regardless of the size of the transaction, never deal directly with a listing agent, property owner, or asset/property manager. Instead, outsource the responsibilities of site selection and lease/purchase negotiations to a real estate advisor who has the legal duty to place your interests above all others.

RIGHT #2: To know WHAT concessions can be negotiated. A concession is any deviation from the property owner's advertised lease or purchase price. While there are only a few variables to consider when buying property, lease negotiations, when done correctly, are considerably more complex. Factors that can affect the overall cost of occupancy include (but are not limited to): lease term, free rent period, tenant improvement allowance, rental escalations, operating expenses, and leasable area. **TIP:** At lease renewal time I suggest shopping around, as the terms, conditions and concessions available at competing properties represent your strongest leverage when negotiating an extension (read: make your present landlord compete to retain your tenancy).

RIGHT #3: To know WHEN a proposal should be made, and in what form. As suitable spaces or properties are identified, I recommend submitting *non-binding* Letters of Intent as the initial leasing or purchasing proposal. These documents should contain those terms and conditions under which you are prepared (but not obligated) to proceed with a lease or purchase. **TIP:** Insist that all counter proposals be tendered to you in writing, and then take sufficient time to review the proposed terms and/or conditions before responding…*also in writing*.

RIGHT #4: To know WHERE the best deals are likely to be found and WHICH property owners have the most urgent needs. Details about sales prices are part of the public record. However, the particulars of commercial leases are proprietary and seldom made public by either tenants or property owners. As a result, there exists a scarcity of information about comparable transactions ("comps"), which works to the advantage of landlords and listing agent(s). **TIP:** As vacancies, pricing and incentives are continually changing, be certain your real estate advisor has first-hand knowledge about recently completed transactions; access to the *commercial* databases containing information about spaces or properties for lease and/or sale, without regard to the listing agent(s); and an insight as to which property owners are apt to have the most pressing needs to lease or sell.

RIGHT #5: To know WHY leasing or owning is best for your circumstances. Generally, if you can plan your space needs for the next five years, and the money required for a down payment is not needed to operate or grow your business, you should consider owning. Begin the process by talking with your CPA *and* an experienced, objective real estate advisor. Learn more about this subject in my article "Lease or Buy?," available at www.crossrealty.com. **TIP:** By paying as little as possible to lease space, and setting aside the savings towards a down payment, many tenants can become owners in just three to five years (a typical lease cycle). In the long run, commercial real estate should be viewed as a significant source of retirement revenue for your family or, if you lease space, for your landlord's family.

RIGHT #6: To know HOW to get value from the commission. Real estate leases and sales usually generate commissions (typically five to eight percent of the total transaction amount) that are shared between the agents or licensed advisors representing each party. Even though the property owner writes the commission check, it's the tenant or buyer that ultimately pays the tab. If you represent yourself you get no benefit from the commission, but the full amount is still paid to the listing agent(s). **TIP:** Make certain you receive value from your "side" of the commission by retaining an experienced, licensed representative - after all, you're paying for it.

CLOSING THOUGHTS: With rights, come duties and obligations. As most business owners and service providers must focus their full attention on running their business or practice, they don't have the time to become proficient at researching locations and negotiating the best possible terms and conditions. Nevertheless, consider it your *duty* to minimize your costs of occupancy, and your *obligation* to select an objective representative to manage the process. Remember: Property owners have advisors who protect their rights…so should *you*. ■

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