

views you can use

Commercial Real Estate – By Stephen A. Cross, CCIM



Selecting Your Team of Advisors

The modern real estate industry is founded on the concept of the “Arm’s Length Transaction” in which parties deal from equal bargaining positions. Parties are said to deal “at arm’s length” when each conducts business in a formal manner without trusting the other’s fairness or integrity and without being subject to the other’s control or dominant influence. It also assumes that each party is willing, but not compelled to lease, buy or sell.

The definition above comes from *The Language of Real Estate* by John Reilly, and demonstrates how real estate negotiations should be conducted in theory. In practice, it doesn’t come close. That’s because owners of commercial property surround themselves with experienced advisors that have specialized legal, financial and industry knowledge, while tenants and buyers typically do not. Arm’s length dealings are especially scarce in commercial leases, where comparative data about completed transactions is non-existent, and comprehensive information about available space is difficult to access.

This month’s column focuses on the professionals that anyone contemplating leasing or buying commercial real estate should seek out, and offers insights as to how they should be utilized.

THE REAL ESTATE ADVISOR

Because commercial real estate decisions are largely numbers-based, the most effective practitioners of this specialized discipline have backgrounds in commercial real estate and accounting. Your real estate advisor should act as the hub of the decision-making wheel and coordinate the entire lease/acquisition process, including: conducting the search for suitable space; negotiating economic terms, conditions, and incentives; and interfacing with your accountant and attorney. They can be paid hourly, by a flat fee, through commissions, or a combination of these.

A material difference exists between true *real estate advisors*, who do not accept property listings and, as a result, can render unbiased opinions; and *real estate agents*, who typically list properties and have a fiduciary duty to promote and protect the interests of property owners. This topic is addressed at length in my articles “The 7 Industry Terms You Need to Know” and “Factors That Affect the Price You’ll Pay,” available at www.crossrealty.com.

THE ATTORNEY

Once the parties reach a meeting of the minds, the property owner’s legal advisor prepares a lease or purchase agreement. As legal documents generally favor the party who drafted them, *always* have your own attorney review and comment on the agreement. Beware of seemingly innocuous documents that contain the word “Standard” in the title. This benign word

serves to lessen the nature of a legally binding contract.

Look for an attorney who specializes in real estate contracts and business law. Chances are that you will need assistance with the formation of a legal entity, preparation of employment agreements and other matters. Instruct your legal advisor not to attempt to renegotiate the economic terms or rewrite the contract. Their charter is to comment on the legal sufficiency of the document, taking special attention to bring balance and fairness to the agreement. Allow five to seven days for your attorney to review the document and prepare a memorandum containing comments. Under no circumstances should you solicit (or accept) legal advice from anyone other than *your* attorney.

Legal fees for the review of a typical contract should fall in the \$500 - \$1,000 range (I suggest negotiating a not-to-exceed number), including the negotiation of any comments with the property owner’s attorney.

THE ACCOUNTANT

CPAs tend to excel in tax preparation and the compilation of financial statements - documents most landlords and lenders require. However, only the most experienced accountants have a thorough understanding of the complexities, nuances and subtleties of commercial real estate, such as the viability of leasing versus buying commercial property, cost segregation analysis, 1031 exchanges and the like.

CAUTIONARY COMMENTS

► Remember that your advisors should be working *for you* ... so insist that they answer questions in a manner satisfactory *to you*. Be certain to inquire whether there are any questions you should have asked but did not.

► During your search for competent advisors, be wary of referrals to acquaintances in networking clubs, affinity groups, affiliated companies, or family members. To ensure objectivity and absolute accountability, your team should have no expectation of referral fees or kickbacks between each other.

► Professional designations do not assure you of independent or skilled representation in any field. When selecting the best people to represent 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 newly-minted practitioners, meaningless or unrelated credentials, and self-serving testimonials.

► Whether your business has three, 30, or 300 employees, I urge you to use the same care in selecting a team of advisors as you would when hiring senior-level executives. ■

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