Commercial Real Estate

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How to Hire, and When to Fire, Listing Agents

COMMERCIAL REAL ESTATE IS A high-stakes business, and no one understands this better than investors in income-producing properties, whose fortunes rise and fall based largely on the occupancy levels of their buildings. Many of these owners (especially those living in distant cities) have found that delegating the marketing and leasing functions to real estate agents can be an effective and efficient solution to these time-consuming tasks. This article will focus on the challenges faced by owners of single and multi-tenant commercial buildings in the selection, supervision and termination of listing agents.

Legal Relationships. The Designated Broker is the person within every firm who is responsible to the Department of Real Estate for the actions of all licensed agents and associate brokers under their employ. It is the Designated Broker who enters into a contract (listing agreement) on behalf of his firm with the property owner for brokerage services. Among other things, the listing agreement spells out the duties of the brokerage firm and its (subcontractor) agent(s), the terms of compensation, and the length of the legal relationship. *Strategy:* Most listing agreements are drafted by the brokerage firm, and contain terms and conditions favorable to them. The property owner should have the agreement reviewed by his/her own legal advisor, as well as an independent real estate advisor; the former for legal sufficiency and specifically to ensure that a reasonable early termination clause is included, and the later to make certain that the economic terms are equitable and the agent's duties are comprehensive and clearly articulated.

Transaction Costs. Real estate agents who list properties are usually compensated on a contingency (commission) basis, with commission schedules almost universally based on a percentage of the gross value of the transaction. They are considered earned when the lease agreement is mutually signed and money changes hands. Note that commission amounts are always negotiable and tend to vary with the state of the economy. In times when the demand for space exceeds the supply, commissions typically run between 5 and 6%, increasing to 7.5 to 10% (or more) when demand is low. It is common for 2/3 of the commission amount to go to the procuring cause (the agent representing the tenant or buyer) with 1/3 retained by the listing agent(s).

What to Look For. Commercial real estate is an industry based as much on *whom* you know as *what* you know. That's why agents with very little technical knowledge or experience, but who are unafraid to knock on doors, can make significant incomes. Therefore, novice agents who are willing to cold call until their knuckles bleed are as valuable to a property owner as veteran agents who can provide accurate insights about the marketplace and competing properties – including the perceived urgency other property owners have to complete deals. Such insider knowledge is vital in establishing or adjusting the lease rate, terms, and incentives, and in crafting meaningful counter proposals.

The 50% Reality. The most important part of a listing agent's job is to identify *qualified* prospective tenants (for all of their listings); this multi-faceted task should consume at least 50% of his/her available time and resources. Make certain that whomever you hire commits *in writing* to a systematic schedule of canvassing (cold calling)…and require regular reports identifying those companies that may have interest in your building, and the agent's follow-up action plan. The other 50% of their time will probably be devoted to locating suitable space for prospects that were generated as a result of their cold-calling efforts, but who are not a good fit for your property. *Insight:* For most agents, negotiating is more enjoyable than canvassing. Consequently, they tend to become complacent about maintaining listings once they have established relationships with tenants needing space.

Teams. A recent trend within the industry is the team, or group, concept – where two or more agents from the same company form a mini-agency within the firm. Teams commonly consist of a senior member and one or more supporting, but much less experienced, agents. Note however, that when all of the team members are industry veterans (rainmakers), who spend a large portion of their time networking (read: schmoozing) with property owners and obtaining listings, no one is likely to be charged with the responsibility of doing the essential field work (cold calling). *Insight:* Waiting for the telephone to ring is not a desirable leasing strategy.

Trust, but Verify. It is common for agents to 'puff' (exaggerate) their abilities, as well as offer inflated estimates of the value of space or property in order to obtain listings. Before awarding the listing contract, it is reasonable to request for review summaries of some of the agent's recently completed transactions, similar in size and scope to the availabilities in your property. For each transaction, confirm the agents role, the address and size of the transaction, the time period the space or property was on the market, the asking rate, the contract (getting) rate, as well as details about all concessions and incentives that were granted. *Insight:* Ask for, and verify, references from property owners who have, or have had, listings with the agent(s) you are considering.

Size Seldom Matters. Real estate decisions should be made on a local level, and every market is different. As a result, national companies are seldom better suited to list and market a property than are small, local companies. When selecting a listing agent, or team of agents, hire the agent(s) that you feel will give *you* the best service. *Strategy:* Require a clause in the listing agreement allowing you to terminate the contract in the event your agent(s) should be severed from their Designated Broker. Otherwise, your listing could be assigned to agents that you do not care to work with.

Your Building: Source or Destination? Companies and agent(s) with numerous or similar listings within a relatively small geographic area have inherent conflicts of interest, which needs to be disclosed and discussed. This is especially true when the listing company and/or its agents are also (competing) owners, who may consider newly acquired listings to be sources of tenants *for other buildings*, including their own. Once they know the expiration dates of your tenants, they may be tempted to move them to another of their listings in order to generate activity and commissions. *Caution:* Ask prospective agents about their other listings and/or ownership status. And obtain a written agreement that under no circumstances will anyone from the listing agent's firm be a party to the 'poaching' or 'churning' of your tenants. When a tenant vacates, require the listing agent to confirm where they moved, who represented them, and why they relocated. Understanding why tenants chose to relocate (rather than renew) can also help you manage leases that are approaching their expiration date. *Extreme Caution:* Be especially aware of agents who, through inattention, negligence, or design, allow vacancies to rise and then offer to purchase the property at a significant discount. Such events could be a form of an undisclosed dual agency, and may be legally actionable (including breach of contract, breach of fiduciary duty and intentional interference with business relations – consult with a qualified real estate attorney for clarification of your rights and the remedies available to you.)

Marketing the Property. The marketing process begins with the preparation of a brochure that includes photographs of the property, current floor plans, a location map, and details about each vacancy. Advertising available space includes, but is not limited to: property signs (see Mini-billboards below), cold calling, direct mail to prospective tenants, agent/broker mailings and e-mails, open houses, advertising in newspapers and magazines, and posting vacancies on websites and widely used commercial databases, such as CoStar and LoopNet. *Note:* If staffing an unoccupied office within your building is included in the listing contract, require a schedule of office hours and make it known that you will follow up on this from time to time.

Mini-billboards: Property signs should contain the size(s) of the available space(s) on individual riders – and the riders should be removed promptly when the spaces are leased. When there are no vacancies, require the removal of the property sign in a timely manner. *Insight:* Signs that remain on buildings with no vacancies convey a negative impression about the property, and serve as mini-billboards for the agents to attract tenants to their other listings.

'Pocketing' Listings. Since the majority of transactions are 'co-brokered'; that is to say, each party is represented by their own agent, cooperation among agents is essential. If you find that you are losing tenants, or that outside agents (those that represent potential tenants) are not showing your property, your agent(s) may be 'pocketing' the listing. This means doing little or no advertising, creating an unfriendly environment, and/or handling inquiries from the brokerage community in an untimely or unresponsive manner. While infrequent, it does happen. In order to prevent this unscrupulous behavior, *and the negative effects it will inevitably have on the property*, owners should require written weekly reports summarizing the source of all inquiries and how they were handled.

It's Your Baby! At the end of the day, your property is just that: *your property*. And regardless of how conscientious listing agents are, they may not provide the level of service and accountability you believe you are paying for and reasonably deserve. Therefore, if controlling your own destiny is important to you, and depending on the number of properties you own, you may be best served to bring the marketing and leasing responsibilities in-house. While you should still plan on paying commissions to outside agents, you can allocate the commissions otherwise payable to a listing company to the salary of a staff member...you may even be able to hire one of the aspiring agents you have interviewed, eliminating the normal learning curve. Such an arrangement will provide the agent an opportunity to strengthen their professional résumé and allow you to oversee every phase of the marketing process. After all, in the final analysis, no one will treat your baby the way you will.

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