

Broker Tradecraft and Etiquette

A commercial real estate broker has a lot of things to keep in mind to be successful. Here are a few of them:

BY RAY HANKAMER

Clients

Follow your instinct in accepting a client. Check clients out in advance before going to work for them. Make sure your client wants you to “win” if through your professional expertise you enable him to “win” in a business dealing. Researching prospective clients is relatively easy and private and is worth the time you spend to do it.

Listing

Get the listing. If you control it, you control the pace of the deal and many other aspects. Once you have gotten the listing and have through your marketing developed a stream of inquiries—and hopefully offers—screen the prospective buyers carefully. This is a duty to your seller but also smart business for you. You do not want to find out a buyer is unqualified after he has tied up your seller’s property for weeks or months. This breaks your marketing momentum and can give your seller the idea that another broker may be better.

Procedure/Letters of Intent

Steer away from any semblance of “practicing law”, as it is forbidden to begin with by the Texas Real Estate Commission. Especially avoid the temptation of filling in the blanks in a promulgated form or adapting a lawyer-prepared letter of intent from a previous transaction. By doing so some small honest mistake—especially when it comes to the wording in

the “Special Provisions” box—can get you innocently embroiled in costly legal proceedings if the deal goes bad.

Advise both your client and the other side to employ a lawyer for all legal documents. Just putting in the phrase “not legally binding & for discussion purposes only” does not necessarily remove the possibility that an LOI could be deemed binding. Insist on lawyers.

When there is “hard” earnest money in a contract, I always recommend that my client require that it be distributed to him at the time it goes hard, and not wait to see if the deal closes. If the contract fails to close, the chances are good your client may not be able to receive the “hard” money if the other side resists approving its release by the escrow agent.

Broker Cooperation

Real estate brokerage is most often a collegial and cooperative endeavor. One broker has the seller, and another broker has a buyer. By working together, the brokers can serve their clients and each other. The seller’s broker usually is paid a commission which he usually shares with the buyer’s broker, and traditionally on a 50-50 basis.

Exceptions to this rule may come when one broker “does more of the work” and in this case the brokers may agree to a disproportionate split. Since the listing broker controls the sharing of the commission, it is

advantageous to be the listing broker.

Some brokerage houses take the position that when they get the listing they are the designated recipient of the commission and that the buyer’s broker needs to get paid by his client. Because of precedent, the buyer’s broker and the buyer normally expect the commission to be shared by the seller’s broker, and therefore buyers are sometimes hesitant to pay any commission, leaving the buyer’s broker “hanging out” unpaid for his professional contribution to the transaction.

There are some who believe by refusing to share with the buyer’s broker that the listing broker is breaching his fiduciary duty to his client, the seller, to represent him to his best ability to get the property sold.

A good question to ask a seller’s broker who is refusing to share his commission is whether his client knows he is not sharing with the buyer’s broker. Often the seller/client does not know this and will require his broker to share after all. All sellers should have an understanding with their broker upon signing the listing as to his intent to share with a buyer’s broker.

Negotiation

It is often best to let the other side make the first proposal. This can be accomplished by not quoting an asking price in the marketing material, and when a prospect calls to inquire, initiate a discussion about the buyer’s overall needs and ability.

Often there are aspects of a deal which are equally or more important to a buyer than price, and sometimes the seller can add value by providing information, extended closing, financing, etc. that causes a buyer to pay a higher price than he originally intended to pay.

By discovering the various needs of a buyer, the seller and his broker can formulate a proposal more nearly able to

match all the needs of both sides, thus achieving a “win-win” transaction.

Be fair but firm with both sides during the negotiations. The listing broker can set the pace of the negotiation. A too eager broker telegraphs that your seller is eager and he may not be. Too laid back can be taken as rudeness or incompetence by the other side.

Closing

Contrary to the past, today brokers almost never attend closings. Most closings are done now by fax or email or messenger, and by not attending, the broker avoids being pressured by one or both principals to absorb unexpected closing costs. A senior closer for a title company once told me that virtually every commercial closing she had worked involved pressure on the broker to contribute, that inevitably the broker pitched in to “save the deal”, but that in her estimation not one single deal would have failed to close had the broker just remained firm or had not been present in the first place.

Deals That Don’t Make Sense

I have heard it said and I believe that “Hard work never goes unrewarded”. Even though the deal you have worked so hard on fails to close, you have nonetheless had the chance to make a favorable impression on all the parties to the failed deal: attorneys on both sides, title company personnel, surveyors, insurance agents, lenders and mortgage brokers, and the other side’s broker and principal. They may well remember you and recommend you for future deals.

If a deal breaks down from your side in mid-negotiation, have the courtesy to call the other broker and tell him, and to thank him for his/her hard work. Don’t just go “radio-silent” and expect that to suffice as notice to the other side. Your personal rudeness could unfairly affect the other people in your firm and block them from getting business from parties you have offended. ●