

Why pay a broker if you can get free help?

As commercial real estate agents, our assignments are memorialized through agreements — either agency or representation.

In the former, an owner engages us to procure a buyer or tenant for her vacant building or sell an occupied one. This is referred to as a leased investment sale. The latter tasks us with finding a location for an occupant to rent or purchase.

Owner representations are also known as listings. This contract underlies virtually all of the signs you see advertising a property and certainly any in the commercial multiple listing services such as AIR or CoStar.

If a broker is involved, it's imperative that such an understanding exists and outlines the duties and responsibilities of each party (broker and owner).

In real estate transactions, a listing agreement is a contract between a real estate broker and a property owner. This agreement gives the broker the authority to act as the owner's agent in the sale or lease of the property. The term "exclusive" means the owner agrees to work solely with the broker for a specified period of time to try to sell or lease the property.

There are typically three types of exclusive agreements: the exclusive right to sell or lease, exclusive agency and open listing.

Exclusive right to sell or lease: In this agreement, the listing broker is given the exclusive right to earn a commission by representing the owners and bringing a buyer or tenant, either through another brokerage or directly. The property owner pays both the listing and selling broker's fees.

Exclusive agency: In an exclusive agency agreement, the listing broker has the exclusive right to represent the property owner. However, the owner retains the right to sell or lease the property themselves without obligation to pay a commission, unless the broker brings a buyer or tenant.

Open listing: An open listing agreement is a non-exclusive contract, meaning the owner can hire as many brokers as they like. The commission is earned only by the broker who brings a buyer or tenant.

An agreement called a tenant or buyer representation authorizes the broker to represent the tenant or buyer in their search for a new space, negotiate lease or purchase terms on their behalf, and often also may include handling other aspects of the transition such as planning and managing the move.

Much like listing agreements, tenant or buyer representation agreements typically specify the broker's responsibilities, the duration of the agreement, the geographic area covered by the agreement, compensation for the broker and other terms and conditions of the relationship.

In these types of arrangements, it's especially important for the broker to fully understand the needs of the client. For instance, a manufacturing company may have very specific power requirements, zoning regulations and more.

Preceding a tenant or buyer representations could be anything from a company growing and needing larger facilities, to a business downsizing or restructuring its operations, to an operation relocating to a different area. These transitions often can require expert help to manage, particularly when it comes to finding suitable new locations, negotiating leases or sales, and managing the move itself.

Among the two understandings — an agency obligates the owner to pay a fee if certain conditions are met — price, time frame, terms, etc. — whereas the rep agreement asks the agent to seek compensation from the owner as well, in some instances by cooperating through an agency.

Yes, that's correct. By engaging a practitioner to source an address, no resulting fee is promised. In effect, the occupant gets professional representation for no charge to the occupant. What if an owner refuses to pay an occupant's rep, you may be wondering? The short answer is he's out, scout.

You may be curious why all occupants wouldn't proceed in this manner. After all, they get the expertise of a commercial real estate professional for free. I'd offer these reasons as possibilities:

Control: Some businesses may prefer to handle the process internally to maintain control over every aspect of their move.

Costs: Even though the broker's fee is usually paid by the owner or landlord, the cost still may be reflected indirectly in the lease or purchase price.

Confidentiality: Some companies might prefer to keep their property searches and moves confidential until they are final, which can be easier to manage without involving external parties.

Complexity: Some businesses may have very specific or complex needs that they believe they can manage better internally.

Past experiences: A company may have had a negative past experience with a broker and may choose to handle the process internally as a result.

In conclusion, though there are many benefits to using a commercial real estate broker, the decision ultimately depends on the specific needs, preferences and experiences of the individual owner or occupant.

Allen C. Buchanan is a principal with Lee & Associates Commercial Real Estate Services in Orange. He can be reached at abuchanan@lee-associates.com or 714-564-7104.