

Commercial Real Estate

Real estate transactions that deal with office buildings. This will include leasing, subleasing (which occurs when a tenant in turn leases their premises to another tenant) selling or buying. This can include Condominiums, Fee Simple positions, net leases or leasehold interests, or exchanges.

Retail

Refers to leasing, subleasing, buying or selling of properties whose tenants deal with selling to the public or trade (stores). This will include Shopping Centers, Malls, Strip Centers, Power Centers, Freestanding Units, Pads and Urban stores. This can include retail Condominiums as well as Fee Simple positions, net leases or Leasehold interests. It will also include sales, purchases and exchanges or trades.

Residential

Refers to premises for single families (single homes) or multiple families (town houses, garden style apartments, or apartment buildings). This will include properties that are leased, owned in fee simple, condominium or cond-op or coop form. It will include sale, leaseback, purchase or trade.

Brokers and Salespeople

A middleperson or Broker or Salesman assists most activity within any of these categories. The difference between a broker and salesperson is that the broker license requires more education and experience to obtain. A salesperson cannot be in business unless under the auspices of a broker who holds the various sales peoples' licenses.

Brokers and salespeople earn a commission, which is usually paid by the seller. Counterintuitively, the broker/salesman advises the client. Thus a conflict of interest can be said to exist. Brokers fees are negotiable depending upon the size of the transaction and market conditions. This should be done up front before any offers or proposals are made.

Brokers usually specialize in one field. In addition, there is further specialization between sales and leasing brokers. In smaller markets, the broker will wear more hats.

Brokerage commissions can be substantial. This is due to the fact that unless a broker and client sign an exclusive agreement, there is no commitment by the client (customer) to use that broker. That said, in the event the broker shows the client a property, and then that person decides to negotiate either directly with the owner or through another broker, it is very likely that the first broker will sue the owner for a commission. To protect oneself, a seller will ask for an indemnification from a tenant or purchaser, that they have dealt with no one, or no broker other than the one that the owner is aware of.

Commissions are based on published schedules put out by the brokerage concern. In commercial transactions, they are on a sliding scale, usually 5% of the first year's rental, 4% of the second and third year and then 3 and 2 of the 4th and 5th years respectively. The rate is then 2% for the 6th –10th years of the lease. Thus over a 10 year period which is not unusually for a commercial lease, an owner must pay the broker 30% of a year's rent for

brokerage. This is usually paid in 2 or 3 installments over the first year of the lease. In the event of a sale, the commission can be 3-6% of the sales price usually on a sliding scale as the price escalates. Residential leases are usually 10% of the annual rent for furnished premises and 5-6% or higher for unfurnished leases. In large tight urban areas, they can run 1-2 month's rental. In residential real estate leases versus sales, the commission is paid by the lessee (person who is seeking the apartment). In residential sales, the commission which is 6-8% and less based on price, is paid by the seller at the time of closing.

Typically, notwithstanding an agreement to the contrary, a commission is earned when there is a meeting of the minds between buyer and seller. It is therefore prudent to advise the parties that any discussions are not to be considered binding unless in fact they are in writing.

Leasing or Renting

A leasing transaction, whether residential, retail or commercial is governed by a written agreement known as a lease. It is illegal in most states to make a contractual agreement for more than one year that is not in writing. Lease forms are usually available from Real estate boards or other printing companies, but in most cases they are favorable to the landlord. In cities such as New York there are Rent Guideline Boards that govern certain apartment leasing rates under Rent Stabilization Laws. Such laws were enacted during the 2nd world war but have remained in place. Other municipalities have laws that govern real estate activity but mostly in the residential sector. In Europe, there is much greater control exercised by the magistrates (courts) or governments.

A sublease usually refers to a lease offered by a tenant as distinct from a landlord. Technically speaking when an entity or individual net leases a property, all the tenants of that entity or person are subtenants. A net lease usually refers to a long-term lease agreement under which the owner receives an annual rental net of all expenses. Net leases longer than 49 years are considered sales in certain municipalities, such as New York.

Mortgages

A mortgage is an agreement between two parties, usually a bank or insurance company as lender (mortgagee) and a borrower (mortgagor) who can be an individual or entity under which the mortgagee agrees to lend the borrower a sum of money. The loan is in the form of a note, which is secured by collateral or the property. The mortgage document explains the transaction and the obligations of the parties one to the other. It usually includes an assignment (or transfer) of all the borrower's right, title and interest in the property as well as the leases, which secure the loan. The borrower usually pays interest and amortization on a monthly basis to the lender in arrears. The government will allow a borrower to deduct the interest charges on the mortgage from their income on the property. The amortization is an after tax event. A constant mortgage rate will start out where the interest is great and the amortization is low. Over time this reverses and so it is more advantageous for a person to refinance their mortgage than continue to pay higher principle payments for which there is no deduction.