COMMERCIAL REAL ESTATE

The downside of an off-market deal is worth some serious consideration

Our commercial real estate market these days is heavily weighted toward sellers. Akin to a boxing mismatch, buyers are outclassed and must muscle up to counter the punches thrown by a market favoring a seller.

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Contributing columnist

If a seller lists his commercial real estate for sale, prices it fairly — or even unfairly in some cases — and assuming the building has good amenities, a ring full of buyers crowds his corner — with gloves full of cash — shortly after the first bell.

We as the trainers — aka the buyer's representatives — set out to find a fairer fight. We contact owners of commercial real estate and ask them if they would consider selling to our buyers. In rare instances, we find a willing seller, which creates an "off-market" deal. Great! But what are the problems with such a transaction? I propose we spend a moment and discuss the downside.

The seller has no advocate. Generally, a seller engages a broker to represent him. Incumbent upon a seller's rep is the duty to place a seller's interest above those of the broker.

Included in the representation is a presale conversation involving a review of current market conditions, an outline of a comprehensive marketing plan, candid discussions about the tax impact of selling, agreeing upon the touring protocol, and disclosing the selling plans to employees who occupy the building.

In an off-market transaction, none of these confabs occurs and the seller potentially enters the deal uneducated about the process. Without a seller advocate, the buyer enters the ring with an advantage. Good for the buyer. Bad for the seller.

Generally, the seller figures out he will not benefit from a lack of representation.

In this market, a seller's rep will counsel his client on the importance of running a process to find the best buyer — rarely the outcome of an off-market deal. I recently witnessed an off-market transaction that yielded a price for the seller 30 percent below the prevailing values. Ouch!

No vetting has occurred. Unresolved title issues such as tax liens, unrecorded easements, or loans against the property have not been investigated. Systems — the roof, fire suppression, and heating ventilating and air conditioning — have not been inspected. The tax impact of a sale has not been calculated. Are there any prepayment penalties that must be addressed before closing?

Any and all of these issues can cause a knockout, which means the bell rings on your commercial real estate deal and you are not the winner.

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