

COMMERCIAL REAL ESTATE DEALS

Why there often are three sets of negotiations

As if one negotiation is not enough, we in the commercial real estate profession insist on three separate negotiations for every deal. Why, may you ask? Let me spend a moment and give you my take.

Negotiation one: the proposal

Once upon a time and not very long ago, a buyer's expression of interest to buy a property took the form of a binding offer: the deposit receipt and escrow instructions.

Outlined in the offer were the price, escrow period, loan amounts, representations and warranties requested of the seller and a period for due dili-



Allen C. Buchanan
Contributing
columnist

the seller to make a deal under acceptable terms and conditions.

All sorts of problems were created within this deal structure. Few buyers took the time to review the documents they were signing. Misunderstandings occurred. Buyers changed their minds. Sell-

gers and closing. The buyer signed the offer, deposited a good faith deposit with the broker and hoped his representative could convince

ers decided not to sell. The impact of the sale wasn't properly vetted. Buyers made commitments to move, which backfired when the deals were not closed. Litigation ensued. Quite a mess. What evolved was the non-binding letter of intent. Most negotiations now originate with such a letter.

Negotiation Two: The purchase and sale agreement

Because the first negotiation is via a nonbinding letter, the agreed upon terms and conditions — such as the price — must be placed in a document that will commit the parties to accomplish certain

things, such as opening an escrow, notarizing grant deeds, delivering clear title to the property, representing the seller is authorized to sell, etc.

Ample time is given to the buyer and seller to comment on the specific language of the agreement and request changes, or another negotiation. Once the binding purchase and sale agreement is signed by the buyer and seller, a period of buyer due diligence commences.

During this period of time, the buyer arranges financing, checks out the physical aspects of the building — roof, fire suppression system, plumbing, electrical, heating and air conditioning — re-

views the title to make sure no matters are looming, checks the condition of the soil for potential environmental contamination, and visits with the city to insure the buyer's proposed use for the building is allowed. That's quite a bit to accomplish in a 30- to 45-day period.

Negotiation three: The end of due diligence

Presumably, the buyer has completed all inspections, the lender has approved the loan, the title is clean and ready to be transferred, and the deal can safely move toward closing.

Oops, not so fast.

Invariably, something is

uncovered in the due diligence period that surprises the buyer and causes another round of negotiations. These surprises can be as simple as a roof repair and as complex as an environmental cleanup. Sometimes, the issues can be fixed with a dollar credit from the seller to the buyer. However, sometimes the problems are more systemic and can result in a canceled transaction.

Allen C. Buchanan is a principal and commercial real estate broker with Lee & Associates, Orange. He can be reached at 714-564-7104 or abuchanan@lee-associates.com.