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WHERE METROPLEX BUSINESS COMES FIRST

What to look for when bringing a broker into a deal

Savvy brokers can help tenants make the right moves when assessing buildings and leases

By **BARBARA KEVLES**
Correspondent

NORTH DALLAS — For five years, accounting firm Brooks, Glover & Associates L.L.P. officed in a Class A building at Mockingbird and Central Expressway replete with marble foyer, exterior fountains and an athletic club atop a parking garage.

But when the landlord wanted a 70% per square foot rate increase, the firm decided to relocate to a Class B building a little further north on Central Expressway at a savings of \$5 per square foot over the next five years.

"There is a difference between Class A and B buildings. You give up things," says Rita Brooks, principal. She misses amenities such as 24-hour security and a convenient deli for the long hours during tax time.

But Brooks' move paid off in cost-savings. According to M/PF Research, Inc., rents in Dallas-Fort Worth Class A multitenant office buildings have increased almost \$8 a square foot, which is about 50%, in just three years. And many small- to medium-sized businesses are downgrading for the same reason Brooks did.

"The higher rent would have made a tremendous impact on the firm's profitability," Brooks says.

Pamela Kelley Pizel, owner of Pizel & Associates Commercial Real Estate, acted as the broker for Brooks and many others in similar situations last year. During 1998, 50% of Pizel's business came from tenants moving to less expensive properties.

The estimated 3,000 commercial real estate brokers in D-FW have been bustling from the business of relocations, expansions and out-of-state move-ins due to the economy and Dallas job growth, which ranked fourth in the nation.

An estimated 85% of D-FW tenants leasing over 5,000-square-foot offices, stores or warehouses engaged brokers to research their next location. "A knowledgeable broker can forewarn tenants about buildings with congested parking, poor maintenance, overcharges on common area expenses or landlords who lease to other tenants

even after signing letters of intent," said Pizel.

Brokers can also make tenants aware of lease pitfalls to discuss with their attorneys. For example, the operating expense clause (which details who is responsible and how building operation costs will be paid) can have a tremendous effect on the lease rate.

Typically, tenants may be asked to pay a share of the building's taxes, insurance, common area maintenance, janitorial or management fees and other operational costs with escalations. "Depending on how the clause is structured and the type of lease, this clause can mean a \$7 difference per square foot per year," Pizel says.

The same is also true of tenant improvement dollars.

"Tenants may not realize the tax consequences of their contribution to space improvements," Pizel says. "If tenants pay the finish out as an increased lease rate over the term of the lease rather than all at once, they may have a chance to deduct the entire annualized payment as rent rather than only a limited portion as depreciation."

The sublease clause is another hidden fish hook. "What type of tenant activity can occur in a space depends on the writing of the lease's sublease and use clauses," says Pizel. "A good broker will advise broadening these clauses, so that they are favorable to the tenant."

In choosing a licensed real estate professional, tenants need a broker who possesses in-depth familiarity with their favored submarket, type project and references to confirm those qualifications.

Janice Peters, senior vice president at Henry S. Miller Commercial, underscores another key criteria: trustworthiness.

"In this market, a broker's honesty is most important. It's not the best market for tenants right now, and they have to know that. If a broker promises drastically lower rents than the market supports, beware. They will disappoint you at a severe cost to your budget and standing within your company."

Peters cautions tenants to "be wary of agents who tell half-truths to get your business." For example, an agent might promise to get a tenant out of a lease without mentioning the possible brokerage, construction or buy out fees



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involved. "You need the full picture to assess if it's worth it to leave a lease early," Peters says.

Tenants, in return, "need to be extremely honest about their requirements," says Nora Hogan, first vice president of CB Richard Ellis Inc.

A new landlord of a building housing a medical school Hogan represents wanted to relocate the school to a another location. The landlord and the new school director thought the property offered sufficient parking for the school's student population. That proved not to be the case. As a result, the tenant was put in default, and the broker, who was then called in, had 30 days to find new quarters.

Some brokers will find the space, tour with the tenant, arrange for the landlord and tenant to meet and disappear with the commission — which, in almost all cases, is paid by the landlord.

"The 5% who are just interested in the commission won't work the transaction as thoroughly as others," says Jean Farris, vice president and director of leasing at LaSalle Partners Inc.

However, tenants should realize that the commission is built into the transaction as a marketing cost. If a tenant decides to negotiate without a broker, that independence simply allows the landlord's representative to receive a higher commission.

Consequently, CB's Hogan recommends that it's in the tenant's interest to have a broker because "a brokered deal will probably conclude in lower, not higher, costs for the tenant."

By contrast, full-service brokers usually offer financial analysis of all lease proposals, get involved with negotiations, space planning and construction management of the finish out, move-in coordination and even furniture purchase.

One example of full-service support is a recent deal where Peters of Henry S. Miller coached a tenant and his architect on how to convince a landlord who performed a poor quality finish out to redo the job.

It's ill-advised to have several brokers. "If several brokers researching the same space contact the same landlord, that volume of interest may make the landlord a tougher negotiator, if not on price, then on other deal terms — to your disadvantage," says Pizel.

When should a tenant call it quits with a broker? Says Pizel: "If a broker doesn't return your calls by the end of the next business day or shows an unusually limited number of properties for your area and criteria, then it's time to reconsider your agreement."

Kevles is a free-lance writer living in Las Colinas.



Texas law requires all real estate licensees to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

Information About Brokerage Services

Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

IF THE BROKER REPRESENTS THE OWNER:

The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

IF THE BROKER REPRESENTS THE BUYER:

The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

IF THE BROKER ACTS AS AN INTERMEDIARY:

A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act.

The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction:

- (1) shall treat all parties honestly;
- (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner;
- (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and
- (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property.

With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding.

This is not a contract.

The real estate licensees asks that you acknowledge receipt of this information about brokerage services for the licensee's records.

Pizel & Associates Commercial Real Estate

Real Estate Broker Company

Buyer, Seller, Tenant or Landlord

Date

Real Estate Licensee **M. W. (Hugh) Resnick**

Date

Buyer, Seller, Tenant or Landlord

Date

Texas Real Estate Brokers and Salesman are licensed and regulated by the Texas Real Estate Commission (TREC). If you have a question or a complaint regarding a real estate licensee, you should contact the TREC at P.O. Box 12188, Austin, Texas 78711-2188 or call 512 465 3960.