

Collecting Commissions—“It’s Hard to Be a Saint in the City”



Jack Intrator
CPM, RAM, ARM

You have just completed a retail/restaurant lease and you have earned your fee, now it’s time to collect your commission. Sound easy? Not always. Unless you have taken all the necessary precautions, inserted the proper language into your agreement you may be left with “zip” for all of your efforts.

In leasing there are many varied commission schedules and language that can be written into a commission agreement and a Letter of Intent. My personal preference is to structure a deal with a straight commission, asking right up front for 5% of the base aggregate rent which is calculated by adding up the total base rent for the full term of the lease. For instance, if you are doing a ten year deal on 3,000 sq. ft. with a base rental rate of \$23.00 PSF, the total base rent in year one would be \$69,000.00. For the remainder of the lease, you would add in the “bumps” or the percent of increases for the term and then add each year in the 10 year base term. Let’s assume the total rent for the full 10 year term is \$731,400.00. 5% of that amount would produce a \$36,570.00 Gross Commission. Your next consideration should be how and when your commission is paid - this becomes an important factor in the deal, actually in some cases it becomes even more important than the actual commission dollars themselves. How is this possible? It really comes down to two central elements - Time Value of Money and Risk vs. Reward.

It’s customary to ask for ½ of the agreed upon commission at lease signing and ½ at store opening. When you have a Landlord who readily agrees to do this then great, a perfect situation. However, more times than not, these commissions become hybrids. Let’s look at a couple of examples: already built into my Letter of Intent is a line item under commission:

Commission: Per separate agreement - 5% of the total aggregate rent. To be paid ½ at time of lease signing and ½ at tenant possession of space.

More times than not, I negotiate the lease and the more my client wants the location the less leverage I have. It’s almost a catch 22. I end up negotiating from a weakened position and the Landlord knows it. After all how many times can I discuss a commission with a Landlord at first phone call? How many times in our experience

does a Landlord become upset that I am discussing the commission before my client has even seen the location? So although the above Commission language has been inserted into the LOI form, I submit a separate Commission agreement and after making some compromises still manage to negotiate a fair deal. For instance:

Based on five (5%) of total aggregate base rent of years 1 through year 5, and four (4%) of total aggregate base rent of years 6 through year 10 of base term of the lease, and four (4%) of the base term renewals - payments shall be as follows: One Half (1/2) at lease execution, One Half (1/2) at tenant possession of the space. Renewal option will be paid if and when tenant proceeds with renewal option of lease. Payable in full based on total aggregate rent and calculated years 11 to year 15 of the term of the lease. Still a fair deal, but let’s look at one more example of a deals progression as it relates to Commission.

I received a call directly from a Landlord, he asked me to find and secure a tenant for his restaurant location that other brokers were not able to attain. I called my client, the Independent Restaurant Operator and asked if he would consider the opportunity at the site - the answer was “yes.” I immediately called the VP of Real Estate and asked the following question, was there another broker that had the listing - the answer was “No.”

I then stated that I would be registering my client and his name was “X”. I set the meeting for the next morning and immediately sent my typical LOI which included the 5% paid ½ at lease signing and ½ at tenant opening for business. The deal progressed with several offers, counter offers and more negotiations. There were approximately 5 drafts of the LOI and even the final signed LOI had the commission as anticipated but the Landlord avoided signing the commission agreement. Finally after all the negotiations were completed the Landlord approached me and stated he does not pay a commission the way I asked to be paid. It did not matter to him the month of negotiations and all the correspondence that it referenced. Instead I had to accept ½ at tenant opening for business. You are probably saying “no big deal” if you’re not familiar with how restaurant deals work. We negotiated 6 months of free rent and the tenant took an extra two months longer to open than originally planned. The worst part was the second half of my commission was paid at the 5th year anniversary of the base term. What could I do, at that point I had to take it.

But for lessons learned:

More times than not I negotiate so aggressively for my clients that I get them a whole host of concessions and if I do not get the commission worked out at the beginning of a deal, I get burned. Once you have your client committed to the deal you can’t pull back, you are there to represent your client’s interests, your interests take a back seat. So the point is.... the only time you can openly and assertively negotiate your commission is at the very beginning, at the inception of the deal. So from lessons well learned I now incorporate the following clause in all my agreement and especially in a co-broker situation, where I am representing the tenant and another broker is representing the Landlord. See below:

Commission: Per separate agreement - 3% of the total aggregate rent. To be paid to (Insert Agent name) ½ at lease signing and ½ at store opening for business (1st ring of the register) or first receipt of rental payment whichever is the earlier to occur. (Insert name of other Agent for LL) or any broker agrees to accept separate amount that shall not be reflected in the 3% commission.

This language ties the commission to the tenant opening and also to first receipt of rental payment, whichever is the first to occur. The language protects your commission even if the tenant has free rent, when they open for business you are assured payment. If on the other hand there are delays with regard to receiving financing, permits and approvals but the tenant begins to pay rent before opening, you still receive your whole commission. All participants in the lease process understand the risk vs. reward right up front at the signing of the Letter of Intent and there are no surprises at the end of the process.

“Another deal is done, another battle won, we feel like Brando when he walks into the sun. We have danced this deal just like a Casanova, we earned our commission and we don’t cry nickels for your pity.....It’s hard to be a Saint in the City” - Shades of Springsteen.

Jack Intrator is a CPM, RAM, ARM and Restaurant Leasing Specialist, Zommick McMahon Commercial Real Estate Inc, a Commercial real estate firm located in Pennsylvania. He is a board member of the Pennsylvania Restaurant Association, Delaware Valley and a member of Brandywine Chapters, which is an affiliate of the National Restaurant Association. Jack is also a member of International Council of Shopping Centers, the Institute of Real Estate Management, Tri-State Association of Realtors and National Association of Home Builders. For more information please contact Jack at 610-359-1100 or visit online at jintrator@zmcre.com.