

Case study: Collecting Commissions, “It’s Hard to Be a Saint in the City” Part 2



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In Part 1 of case study, **Collecting Your Commissions, “It’s Hard to Be a Saint in the City”** we discussed typical clauses pertaining to commission within the Letter Of Intent. The first was for a commission without a co-broker where you were either the tenant representative broker or the listing agent and the scenario was the same, with a commission line item within the LOI that the deal was based on. The second scenario was a co-broker or co-operating broker situation where you were the tenant representative and requested 3% of the

gross commission instead of splitting a 5% commission (2.5%/2.5%) as represented in the commission agreement or the Exclusive Listing Agreement, which is the case in Part 2.

Recently, I was the tenant representative for a deal completed in PA. I represented a regional/national restaurant operation and a well known competitor within the industry represented the Landlord. Within the very first conversation I asked about the commission and was told to include whatever I wanted in the Letter Of Intent. I explained I would like 5%, however I knew I would be willing to negotiate, as 3% for a co-brokered deal is certainly a good situation if the commission agreement total is 5%. Now in order to get paid per the agreement whichever way it pans out, you have to include an anticipated payment schedule. You submit a bill and you hear nothing for a week. You make a call and you are told that they are processing it, and then another week goes by. It’s week three and you see the landlord at a function, he promises payment and times goes by. You want to act like the gentleman you are and leave the line of communication open, so you dance between assertive collection of your money and keeping in mind the relationship your company wants to maintain. Hopefully you end up getting paid, however even with an Exclusive Listing Agreement where your compensation is specified and both Landlord and Broker have signed, sometimes there is a problem. The agent anticipates commissions as earned per the ELA, but many times its hope for the best, while engineers, attorneys and other professionals charge and are paid their fee, the Real Estate Broker is the last to get paid and often the commission is renegotiated or renewed upon.

Last year, at the ICSC show in Las Vegas, I was sitting at Binion’s Casino in the old part of Las Vegas when in walks a friend and his wife, the friend is a principal partner at a well known brokerage house in the greater Philadelphia area. We got to talking about several deals we worked on together through the years and the status with regard to non-payment. I asked why he and his company continue to take listings like this when they have gotten burned in the past.

He said “If we don’t take the listing someone else will” I replied so what, why deal with people who don’t pay you? He commented “it’s about signage and name recognition and market share”. To me it is real simple; if I represent a client I will show them every opportunity within the market place that fits their criteria. But, I will also make it a point to let my client know that I have been burned by a landlord and ask them to protect me throughout negotiations. With regard to taking a listing, I will never take a listing simply for market share; however there are others who always will.

The reason we are in this business is to earn commissions, and that means getting paid. If you want to be a Saint, join the Peace Corp. We are in this line of work because we believe we can control the art of the deal and make money. The art of the deal is the excitement that motivates guys like me. Bottom line, get your commission worked out right up front and don’t take anyone’s word for it. Still, there are some brokers who will agree to receive commissions as collected, which to me, is by far the very worst form of commission agreement. Under this scenario, you become the Landlord’s partner, sharing his down side but none of the upside, and leaving you totally unprotected. Brokers do their job when a deal is completed and

should be treated with the same courtesy as any other professional who gets paid at the conclusion of their performance. But as the story relates above, there will always be Brokers who will agree to anything in order to take a listing, they devalue themselves and they devalue their industry as well.

Second example: I am representing a national franchisee at another well known firm and referred the business to an associate from a national net-work, another broker in another state that had a personal relationship with my former company and all the Principals within

the company. A deal was completed and as usual we anticipated a 20% referral fee. I asked on several occasions during the course of 6 months for a commission schedule and was rebuffed. I did not pursue or push to bring it to a head; instead I acted like the saint and deliberately held back. When the day came to get paid, I was told they only did a 5 year deal instead of the usual 10 year term. And that due to a personal or long standing relationship with the company and the owner, they agreed to take a lesser commission. They were the sole Broker and accepted a 3% commission. So my 20% was based on a 3% commission not the anticipated 5%. But who was to blame? The Saint. I tried to take the high road, showing faith that it would all get worked out and did not want to come off the bad guy with the company principals, nor sour their relationship with the broker I had referred to them. What did I learn? Take nothing for granted. Don’t assume people will take the high road and make things right. At the end of the day, it comes down to self interest. Learn to ask for your commission right up front. Discuss the deal and all terms at the very beginning not at the end of the deal. Sometimes you win and other times you lose, but never be afraid to ask. The point: If Landlords could do a deal themselves, they would do it. If you are dealing with a co-broker you need to

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know what his agreement is from the very start, because he may be making deals that are not typical. Discuss all details upfront and come to a clear understanding. As a final comment, I later drove by the shopping center and noticed the broker that I did the deal with no longer had his signs on the property, but instead were replaced by another broker. I was told by the new broker that part of the pitch to gain this account was to take a discounted commission schedule and work with the bosses on their terms. Sound familiar?

“Those downtown bosses, all sure talk pretty. I felt just like a back street gambler, searching for a commission. It’s so hard to be a Saint in the City,” when you have money out on the street. Let someone else cry nickels for your pity, it’s your commission that’s due. The sages of the industry know it’s you who make them all look

pretty, you get their stores rented and you contribute to their bottom line. It’s such a fine line to dance that talk, should I be the Saint of the City?

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