



professional services

Tenant representation: protecting the tenant's best interests with an exclusive tenant representative

ms Tenant Rep.



Windsor
Commercial
Real Estate

One of the least understood dichotomy's in real estate is tenant representation vs. landlord representation. In the world of real estate brokerage, many tenants believe that when a broker takes them out to look at properties, make offers or negotiate lease terms, that they are working with a professional that is looking after their best interests. In fact, in the eyes of the law and the landlords, the

landlord's fiduciary duty is to the landlord. This means that all the conversations you have with your broker, traditionally are used to help the landlord secure the best deal possible, not you, the tenant. The crux of this whole dilemma is in the document. In order to ensure that your broker is looking out for you, it is in your best interest to appoint one broker as your exclusive tenant representative. This requires a legal document with some form of language stating that you grant "exclusive right" to the broker to represent you and negotiate on your behalf, and is not to be confused with a power of attorney. Most "exclusive right" agreements still state that all negotiations and agreements are subject to your consent, so you cannot be bound to any

lease, letter of intent, or other commitment without your approval. Of equal importance, the landlord still typically pays the transaction fee.

If making sure your broker's responsibility is to you, is not compelling enough by itself, let me expound on some of the details of how this arrangement works, and what you can expect from your agent.

One of the best analogies to use here is your accountant. Once a year you file taxes, and if you are like 95% of the population you use a CPA or tax preparer because they are professionals and handle tax returns dozens or even hundreds of times each year. Let's face it, preparing our return is time consuming and even dangerous if we don't know all the laws and loopholes,

and who wants to deal with the IRS when they come calling to ask about your creative accounting practices? Similarly, the job of landlord, like the IRS is not a hobby or side job. In most cases, being a landlord is a full time profession. Landlords run their business like everyone else, by reducing expenses and increasing revenues. They are reviewing leases and negotiating with tenants and brokers on a daily basis while most tenants only deal with their leases once every five to ten years.

As full time brokers, we know a dozen strategies landlords will use to take money from tenants, and a good tenant rep will know another dozen ways to penetrate those practices in order to mitigate exposure to undefined charges, escalations and fees within the lease docu-

ment. While a tenant may believe working with multiple brokers will give them better exposure to the market, what ends up happening is the brokers become intent on looking out for their own best interest, and not the tenants. Consider that broker A understands your requirement, and knows you are working with other brokers. He will be motivated to show you as many properties as possible to ensure another broker does not show it first, frequently filling your day with inspections for no other purpose than to attempt to get "protection" on sites that may not even fit your current criteria. Then he will extol all the virtues of the properties he has shown you while denouncing the properties another broker has brought to you. Why? Because even if the other broker's property is better for you the tenant, broker A will not receive a commission unless you lease one of the properties broker A offered you. Working with an exclusive tenant rep will not preclude other brokers from offering a property. Brokers share commissions all the time. Hiring an exclusive agent gives them the freedom to compare all of the properties side by side, regardless of who offered them, and provide an unbiased analysis of all of the properties because they know at the end of the process they will earn a fee regardless of who originally presented the property. Also consider that when you work with multiple brokers you run a high risk that more than one broker will try and show you the same properties that you have already seen. When this happens, it becomes less clear which broker is entitled to a fee when you do finally lease that property. This opens both you and the landlord to potential litigation which can be costly to defend and costly from a business standpoint when the lease, tenant construction process or occupancy become delayed.

Both national and corporate clients have grown accustomed to having a real estate department or at least having a qualified advisor help manage the process. While qualifying a broker is outside the scope of this article, we recommend interviewing two or three full-time commercial brokers, and giving that broker the tools they need to operate on your behalf by executing the "exclusive right" document and maintaining loyalty to that broker throughout the transaction process so that the broker can focus on fulfilling your requirement and not protecting their commission.

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