

THE ROLE OF A REAL ESTATE BROKERS IN YOUR TRANSACTION

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1. Before looking for a property, first determine your objectives. Then select the appropriate broker that specializes in the geographic area, property type, size, etc. you are seeking. You want a broker whose goals and experience correspond with your objectives.
2. There are buyer's brokers and seller's brokers. Buyer's brokers represent the buyer and focus on a broad range of properties. Seller's brokers represent the seller and usually have influence on who the seller picks from the many that maybe interested in buying the property.
3. If you are using a buyer's broker and there is a lot of competition for the property, it is typical for the seller to pick someone who is not represented. In a highly competitive situation, you may want to arrange to pay the commission and ask your broker to make an offer where the seller's broker will keep the entire commission. In other cases, there may be little competition for the property and seller's broker will be more than anxious to complete the transaction and share the commission with the buyer's broker.
4. In some cases, the buyer's broker may be the sole broker in the transaction. In other cases, you may be dealing directly with the seller's broker listing and there is no buyer's broker involved.
5. There is a saying in the industry that, "Buyers and sellers are always just a commission apart." Usually they will be percentage of the purchase price. The higher the price, the lower the percentage. For example: for transactions over \$50 million, the commission may be 1% or even less. For transactions \$250,000 to \$500,000, the commission could be 5% or 6 %. If you find a property that is properly priced including the commission, it is risky to negotiate the commission because another buyer could come in and offer to allow the brokers to keep the full commission.
6. Determine your policy on NDAs (non-disclosure agreements). When presenting an off- market property, the broker may ask you to sign a non-disclosure agreement, agreeing that you will keep all information confidential. Ask an attorney to review any contract before you sign it. It is better for you if the presenting broker has a confidentiality agreement with the seller rather than with you. Ask for a provision that you are no longer obligated if this information is "commonly known in public." There should also be a provision that, if the broker is not able to conclude a sale to you within a certain period of time, you are free to work with another broker. It should cancel automatically if the seller lists the property with another broker.
7. This is a competitive market and good projects are difficult to find in most areas. Try to keep the broker happy.
8. Most brokers prefer to keep the buyer and seller apart and to control all of the negotiation. You may, however, reach an impasse and have to insist that you have access to the seller. We have often found that we can resolve issues if we can have a meeting directly with the seller to discuss issues and come up with possible alternatives.
9. Always keep in mind that any representation or promise relating to real estate must, under most state laws, be in writing. Basically, if it is not in writing it does not exist. The broker's authority, commission structure, and the circumstances under which he or she is entitled to receive it, should be carefully stated in writing.

10. Watch out for what we call “Xerox brokers.” These are brokers who take a listing from other brokers, transfer it onto their own forms, and send it out to prospects--thus appearing to own the listing. Make sure that the broker you are dealing with as a seller’s broker has a written agreement with the seller. Ask to see the actual agreement. Some brokers, in an attempt to create a transaction, will tell a potential buyer that they know someone who is interested in selling their property and gets authorization to represent the prospective buyer. Then the brokers tell the owner of the property that they know someone who is interested in buying the property. A transaction in which one or the other party is not motivated is a waste of time. Focus on people who really want to sell and really want to buy.
11. We quite often are presented with properties where brokers represent themselves as having a special relationship with the seller although he may not have a listing. He plays golf with the seller, went to school with the seller, or is related to the seller and has an inside track on getting the property for you. When I own the property I can reply, “That’s very interesting, since you are presenting a property to me that I already own. Yet I do not recall ever having ever met you, gone to school with you, or being related to you.”
12. When a broker presents a property to you and it does not meet your objectives, be sure to ask what other properties he or she may have. Often we don’t end up doing the original transaction, but the broker has something else that we buy.
13. When using a buyer’s broker, determine whether you want to offer to pay the broker’s commission. Many listing brokers (seller’s brokers) endeavor to find a buyer who is either not represented or who will pay the buyer’s broker. That way, the seller’s broker can receive the full commission. This places you ahead of the competition and gives the selling broker an incentive to convince the Seller to select you as the buyer.
14. When properties are listed, it is generally understood that the commission will be divided equally between the buyer’s broker and the seller’s broker. Sometimes the listing might indicate that there will be no commission split and the buyer must pay the commission to his or her broker.
15. In off-market deals, it should be clarified from the beginning whether the seller will pay a commission. It is common in off-market transactions for the buyer to offer to pay the commission, to encourage the seller to sell. The seller pays more attention when the broker says the commission will be paid by the buyer.
16. The Letter of Intent (the document that usually initiates the transaction) should indicate who is paying the commission. If one party is paying and does not want the other party to know the amount of commission, include a clause stating that “X” is paying a commission on the transaction. Include a clause that states the commission is subject to a successful close and pursuant to a separate agreement between the party paying the commission and the broker involved.