



## What 2 out of 3 People Don't Know About Commercial Real Estate

### And How It Can Cost You 6-Figures On Your Next Lease or Purchase Negotiation

**T**here's a staggering statistic with regards to real estate transactions that was published by the Consumer Federation of America. This statistic reveals a misconception that can lead to a number of pitfalls in any real estate transaction, most importantly, a potential loss in tens to hundreds of thousands of dollars in a single transaction.

Given that 65% of the market has this misconception, it is important that you understand this article as if it were a check made out to you with several figures before the decimal point.

What's the statistic?

“65% of consumers believe the agent on the other side of the deal is always or almost always required to represent their best interests, simply because they are working on the transaction.”



## What Role Does The Listing Agent Really Play?

Here's the plain and simple truth: A listing agent does not (and cannot) represent your best interests as a tenant or buyer. In fact, they are required to do the opposite and represent the party with opposing desires in the transaction.

This is an important distinction, because in any negotiation, all parties want to get a good deal. And a great listing agent can make a tenant/buyer feel like they're being represented and receiving a great deal from the property owner, when in fact, they may not be. To the contrary, they may be leaving hundreds of thousands of dollars on the table.

- ▶ Real estate agents are regulated and licensed by their state and have fiduciary responsibility to their clients, equal to that of a what an attorney has with their client.
- ▶ Unless explicitly communicated, a tenant or buyer is a 'customer' of a listing agent, not a client, and the listing agent does not have loyalty to the customer.
- ▶ A listing agent's client on the other hand is the property owner, and they must make every effort to achieve their client's agenda and maximize their returns as directed by them, in spite of what it may cost the tenant/buyer (the customer).

- ▶ The only exception to this rule is if the listing agent discloses their fiduciary responsibility to you as the tenant, and you then ask for them to represent both you and the landlord within the transaction. This would be akin to being the defense in a court of law, and asking for the prosecuting attorney to represent you (which does not happen). Not only would this be a terrible approach, but it is also illegal in the vast majority of states.
- ▶ Many states require disclosure of agency on every transaction because many cases brought in front of real estate commissions across the country are a matter of uneducated buyers or tenants not understanding the listing agent had a fiduciary requirement with the opposing party until it was too late. Despite this requirement, this disclosure does not happen in many transactions.

Understanding fiduciary roles and the distinction between a customer and a client in a real estate transaction is paramount. Even though a listing agent might make you "feel" like a client, it is a violation of real estate law for them to put your interests as a tenant/buyer on par with or above their client's interests (when those interests are in opposition). It's a violation of their fiduciary duties that could result in penalties, disciplinary action, or even a loss of their real estate license.





## What Obligations Does A Buyer's or Tenant's Agent Have?

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When you hire an agent as a tenant or buyer, that agent is obligated by the same laws that a listing agent is obligated to when representing the landlord or seller, which includes a full range of real estate services (i.e. fiduciary duties). As a client, not a customer, they must provide you with a high level of service and care in helping to achieve the best possible outcome. The role of an agent is a weighty endeavor.

In most states, any agent that represents you as a client in the transaction must:

- ▶ Treat you honestly and fairly
- ▶ Obey you and following instructions, as long as it is lawful, during the transaction
- ▶ Remain loyal to your interests above the property owner's, and even their own interests
- ▶ Disclose known material defects relevant to the property
- ▶ Disclose any other information that would further your interests
- ▶ Diligently and competently handle all research, communication, documents, funds, etc.
- ▶ Keep sensitive information confidential, both during and after the sale or lease
- ▶ Account for all funds received and disbursed
- ▶ Comply with all state and federal laws

A good and reputable buyer's agent takes these roles very seriously. Not doing so could otherwise lead to harm for their client and substantial penalties for the agent or brokerage.

## What Benefits Are There To Hiring A Buyer's or Tenant's Agent?

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There are many benefits to hiring an agent to represent you in a purchase, a new lease, and even a lease renewal. Below are just a few.

**It Saves (And Doesn't Cost) The Buyer or Tenant Money:** In residential and commercial real estate alike, sellers and landlords have agreements with listing agents to pay commissions for both parties in the transaction. The property owner has already factored this into the deal. Not having an agent represent you doesn't mean you'll somehow save money equal to those commissions either. In fact, in the vast majority of transactions, the unrepresented tenant or buyer ends up costing themselves more in the deal due to a lack of market knowledge, strategy, and experience.

**It Ensures You Have A Solid Game Plan:** If you have a property you are looking to lease or sell, you want someone who has finalized dozens or even hundreds of listing contracts. This ensures you have someone you trust who has seen as many



hurdles as possible, and can help you effectively navigate this type of transaction. Conversely, if you are seeking to lease or purchase a space as a tenant or buyer, you want someone who has a game plan specific to your transaction and can deliver you the highest amount of concessions at the lowest possible rate.

**It Unlocks Lease Concessions Otherwise Unknown:** Without fail, when given the chance to review a lease that was negotiated without the assistance of an agent, you will find there was significant room for improvement in the business and economic points of the lease. With effective strategies, posture, and thousands of hours of experience negotiating commercial deals, a tenant's agent can help you realize significant monetary concessions that wouldn't be offered otherwise.

**It Saves Valuable Time & Resources:** Dozens of hours are spent on a typical transaction, hours that would otherwise cost the business owner and their staff. What takes an expert agent a few hours might take a person representing himself or her-

self 3-4 times as long. Process flow, technology, and industry tools and resources provide a service that allows clients to avoid wasting non-billable hours on work that's a distraction to them and their staff's daily routine.

In summary, the most successful approach to achieving the best possible terms in any commercial real estate transaction is to hire a tenant/buyer's agent that's an expert in the market and can competitively advise you while procuring terms from multiple properties, giving you the client several options to choose from and make an informed decision on.

It is costly to believe that the agent on the other side of the deal is "always" or "almost always" required to represent your best interests, or equally to take a do-it-yourself approach in a specialized industry like healthcare real estate. Whether you're renewing a lease, buying a property, or leasing a new office, make sure your practice's next real estate transaction is handled at the highest level.

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