Avoiding conflicts of interest and other pitfalls

Novelist F. Scott Fitzgerald wrote that "the test of a first-rate intelligence is the ability to hold two opposing ideas in mind at the same time and still retain the ability to function."

The reality is that everyday life is riddled with both opposing ideas and conflicting interests. Most of us function perfectly well without paying much attention to such scenarios as:

— A doctor prescribing an MRI at an imaging center in which her practice has a financial interest.

— An attorney working on an hourly basis (what is the incentive to be efficient with time?).

— An investment banker suggesting that his client increase the size of a mezzanine round (he makes more money the larger the sum raised).

Each of these situations is a potential conflict of interest, or could lead to one.

But in order to judge, we need to understand the context and background of each situation and the circumstances and logic leading up to each transaction.

Commercial real estate provides wonderfully fertile ground for potential conflicts. The larger the lease or purchase transaction, the more money the broker makes. So what is it that regulates that very human wish — to maximize one's personal return for effort expended?

There is, of course, Washington state's real estate law. But if one reads it, one realizes that it was written for the lowest common denominator, i.e., to govern the behavior of people who, as my grandmother would put it bluntly, are not very well brought up.

And it really only regulates some of the most egregious and obvious situations. The law states that leases, as well as purchase-and-sale agreements, have to be signed by both parties in order to be enforceable.

But what about the letter of intent? The penultimate paragraph of most LOIs is a disclaimer that points out that "this letter is not a binding contract."

Fair enough. But think about the term "intent." It's a statement of what you (or your company) intends to do should someone else agree to certain terms. Certainly it's contingent on getting through the minutiae of the legal document.

But it's your word ... and that should not be taken lightly. Sign a letter of intent only if you intend to make a good faith effort to honor it.

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EFFECTIVE TRANSACTIONS

Paul Suzman

We all have a thirst for fairness. And most of us instinctively sense when we are taking advantage of a situation or someone is taking advantage of us.

There is a classic economic/psychological experiment known as the "ultimatum game" in which two players decide how to share a given sum of money. If the second player rejects the split initially proposed by the first, neither player gets anything. The bottom line is that if the split offered is generally less than 20 percent, the second player usually chooses to reject the offer and everybody goes home hungry.

This is an analogy for the give and take of real world real estate negotiations. In the real estate business, we see variations of this play out time and time again. The lesson is one that Gordon Gekko in the film "Wall Street" never learned. There is a point at which a reasonable ROI (return on investment) becomes greed.

Whether one is a real estate professional, a retailer or oncologist, one has but one asset. Reputation. And there are few better vaccines against its tarnish than transparency.

In the commercial real estate world, this means ensuring that clients understand how we are compensated. And by whom. And if there are obvious discrepancies in compensation between competing properties, consider removing the differential by capping the fee. Our clients rely on us for unbiased counsel, and deserve no less.

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