

AGENCY AND PROFESSIONALISM



by
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Have the rumors about the demise of the industrial and office real estate broker, like the death of Mark Twain, been greatly exaggerated? In the heat of the dot.com era and the rise of the Internet and e-commerce, it was frequently predicted that our days were numbered. It’s now time to take another look.

There are those who predict the reduction in the numbers of commercial real estate practitioners over the near to medium term. If that reduction does occur, will it be due to:

- the loss of the commercial broker’s value to the principals he/she serves;
- the replacement of the broker by various information sources; or
- the progressive leveraging of the broker’s time and talent as productivity gains increase through new technologies?

Why Brokers Are Vulnerable

I speculate that all three of the above factors could play a part in the reduction in the numbers of those engaged in commercial real estate brokerage. In fact, the loss of value and the increase in the number and types of available information sources can be intertwined. To the extent that the broker has been merely a conduit of information, the brokerage role is vulnerable. Commercial databases of various kinds may offer more elegant solutions to the data requirements of clients than traditional brokers have been equipped or willing to provide.

Nonetheless, I believe that a deeper issue is involved: the failure by commercial real

estate professionals to understand, value, and exploit their unique role as....dare I say it?...*agents*. Pogo said it first: We have seen the enemy and we are it.

The Critical Agency Relationship

What is so special about agency? In recent years as state governments have imposed greater requirements on brokers to pay attention to agency issues, we have all taken the mandatory courses and added the mandatory provisions to contracts. But, have we used this opportunity to assimilate the unique nature and value of agency?

Again, why is agency so special? Think about it. The agent undertakes certain actions on behalf of another. Each agent must stand in the shoes of the person on whose behalf an action is being undertaken. Each must anticipate the client/customer’s needs and concerns, analyze and assess what he/she believes is in the principal’s best interest, and take authorized actions consistent with all of that, while not being the principal!

Intimacy with and fidelity to the principal’s interests and concerns coupled with being a separate and autonomous entity is what makes agency so special. This combination is also what gives rise to the many challenges of how to interpret and implement our duties as agents.

It is not my purpose here to delve into the law and customs of agency. That discussion belongs in a presentation of agency

theory and practice. I want to focus on a strategic analysis of what it means to be a commercial broker vis-à-vis the role of agency in determining where our value to our clients originates.

Let's take a look at the categories specified above:

- **Stand in the Shoes of the Principal.** This is not an action, but rather a state of mind. I don't believe that one can begin to function as an effective agent of another until he/she can imagine being in the position and role of the person or corporation on behalf of whom we are acting. On the one hand, a commercial real estate broker must be able to experience the general perspective of owning investment property as well as the particular goals, objectives, and fears of each specific investor client. On the other, one must also be able to switch perspectives to that of the lessee, for whom real estate is primarily a tool for the conduct of business. The needs of each of these are very different. The capacity to empathize with each and communicate the concerns of each to the other is at the heart of successful brokerage.
- **Anticipate the Principal's Needs and Concerns.** This is a skill set that involves both learned and instinctual behaviors. Being a good "people person" is an advantage in this regard. But there is more to this than just relating well to another person. In order to be effective in offering leadership to the client, you must have the capacity to think through each scenario to its consequences. One effectively anticipates future circumstances based on a well-grounded knowledge of the person or corporation being served, and a well-grounded understanding of the situation being addressed, followed by offering opportunities and/or solutions which can enhance the client's position or opportunities. In spite of my best efforts in this regard, clients sometimes surprise me by wanting something that I didn't anticipate.
- **Analyze and Assess What Is in the Principal's Best Interest.** This is the heart of the matter, the domain of marrying information to action through the exercise of sound judgment. The database function that has traditionally been such an important part of the practice of brokerage is a major element here. But beyond the data is the realm of interpretation. *Harvard Business Review* for May 2003 has an article entitled "The High Cost of Accurate Knowledge" by Kathleen M. Sutcliffe and Klaus Weber. Although written from the perspective of the corporate executive, one can just as well substitute "broker" for "executive." The following excerpt makes the key point:

"The truth is, in the complex world in which most business leaders operate, information about the environment, though abundant, is seldom obvious in its implications. Executives therefore have no choice but to interpret and intuit the data they receive. In light of that reality, another school of pundits contends that *it's not the accuracy and abundance of information that should matter most to top executives—rather, it's how that information is interpreted.*" (emphasis added)

Amen to that! Another way to say this is that informa-

tion, even at its best, is never perfect; and the value of information arises from how it is interpreted and applied. It could be said that the commercial broker's job description is "Interpreter-in-Chief." If a commercial broker is not the primary person the client looks to for definitive guidance in the relevant marketplace, the question must be "Why not?" The answer could point either to a deficiency in the broker or a problem in the relationship. I add to the sphere of interpretation an insight offered in the February 21, 2001 report for the Society of Industrial and Office REALTORS® Educational Foundation, "The Impact of New Information Technologies on the Commercial Brokerage Industry," by Joseph Gyourko and Asuka Nakahara (p. 20):

"...it is useful to note that brokers are compensated for a variety of activities, not just one. Among them is the ability to source new business, the ability to actually pitch and win new business, and the ability to execute and efficiently manage whatever plan was successfully 'pitched.'"

Clearly, the powers of sound interpretation underlie these activities.

- **Take Authorized Actions.** The scope of one's agency is defined in a mutual understanding between the agent and his/her principal. In brokerage, these understandings are typically in writing. The broker's agency agreement establishes the purpose of the agency and the specific duties of the one being engaged, as well as the limits on the agent's authority. This is the most straightforward of the four categories, as well as the one that makes most explicit the separateness of principal and agent.

From Context to Content

The discussion to this point is primarily about context. I characterize what I have said so far as the strategic context of how to engage in successful brokerage. A commercial brokerage practitioner can use this strategic template to identify strengths and weaknesses for the purpose of honing needed skills and assessing the relevance and relative value of the entire range of activities in which he/she engages.

To that end, some basic questions are:

- How well do I know my client? Do I understand the person or group who will make action decisions, both on the level of how to deal with them and on the level of their concerns, goals, and objectives?
- Do the services, knowledge base, and activities I typically offer fit this person/situation?
- Are there services, actions, additional knowledge or specialized expertise called for in this situation that require something different of me?
- Are my interpretive/assessment skills sufficient to the task to serve this client? Do I need to bring in outside help?
- Am I prepared to go out on a limb to convey my opinions, recommendations, or point of view, which may or may not be what I think the client wants to hear?

- Am I prepared to create value by being more than merely a processor of data or order taker?

Questions such as these move us from context to content. There is important content in the broker-client relationship, of which good and relevant information is basic. Process is also content. The management of information flow, the management of negotiations, all the forms of oversight and activity involved in property investigation (due diligence), transaction management, and consultation involve process management. Quoting again from “The Impact of New Information Technologies on the Commercial Brokerage Industry,” (p. 20) cited previously:

“The actual execution of a brokerage transaction at its core is a complex communication and project management function. The intersection of computing, wireless capabilities and the Internet could dramatically simplify the process.”

In the realm of content, there is ample opportunity for the commercial broker to seek new ways to add value to the client. The Internet is emerging as a source of many tools for managing process and expediting transaction flow. While broker productivity can increase exponentially as a result of the intelligent use of these tools, it is also true that a broker can offer new kinds of service to clients as a result of their availability.

The point is that it is the broker’s job to look to see if his/her scope of services is relevant, effective, and valued.

Blurred Lines in Representation

In his book *The Future of Freedom* (W. W. Norton & Company, 2003), *Newsweek* International Editor and political scientist Fareed Zakaria laments the decline of the traditional function of mediation in American society in recent years (“mediation” is used here in the sense of the actions of a trusted professional intermediary). He notes this trend in the legal, medical, accounting, and investment banking professions. What is involved in each case is what he calls the blurring of lines between parties—principal and professional (e.g., health service organizations replacing doctors in relation to the patient), professionals serving in multiple capacities giving rise to potential conflicts of interest (e.g., the multiple functions in Wall Street firms of stock brokerage, underwriting of public offerings, and research)—resulting both in abuses and loss of effectiveness. The name “Enron” evokes the entire matter in the case of accountancy.

What is the lesson with respect to commercial real estate brokerage? Zakaria’s conclusion, speaking about the professions of medicine, law, accounting, and investment banking, says that “A better, more flexible, and more intelligent solution (than formal governmental regulation) might have been to have these professions police themselves, restoring some of the restraints that were tossed aside in the past few decades.”

In the commercial real estate field “in-house broker” or “in-house leasing agent” might be considered by some as an example of blurring. These are individuals who are employees of a property owner and whose function it is to market the property solely for his/her employer. While the content of such a person’s work may mirror functions performed by a

broker, there is one essential difference: this person is not functioning in the uniquely separate role of agency.

I believe that we brokers have a unique opportunity to accomplish two goals simultaneously: by advancing our understanding of the characteristics and value of agency, we can enhance the economic foundations of the business of commercial brokerage, while re-emphasizing our professional role as intermediaries. What can be done to reclaim our proud heritage as agents? Understand it. It is obvious that one should make the basic effort to understand the legal and ethical nature of one’s professional identity. Relevant educational programs could be designed to deepen our collective understanding and appreciation of agency. Unfortunately, since the agency disclosure laws became effective in recent years, programs on agency have tended to be unimaginatively presented and one more layer of complexity required in the licensing process. Perhaps a program on agency that approaches the subject from a strategic perspective as a context for our professional advancement would be well received. What is called for now is the development of a sophisticated understanding of the difference between the business aspects from the professional aspects of agency.

Your Challenge

I challenge every member of SIOR to take seriously our claim to be “the best.” In order to be the best, we must be current with the best practices of the brokerage business, and simultaneously deliver our services within the professional framework of the agency relationships we enjoy. I trust competitive pressures to take care of the former. The latter is more ephemeral and the source of the greater opportunity. The question is, are we “professionals” prepared to accept the challenge offered by Zakaria and “...police (our)selves, restoring some of the restraints that were tossed aside in the past few decades?” SIOR could be the source of powerful leadership in this area by promoting the strategic understanding and appreciation of the agency role as defined by the Society’s *Code of Ethical Principles and Standards of Professional Practice*.

It is the very complexity of the commercial real estate transaction which gives rise to the need for our services. In writing on the core competencies of the industrial/office real estate broker (*Professional Report*, Summer 1997), I identified 11 areas of competency that are required in the conduct of our business. Those competencies exist in the realm of content. They are the stuff of our business.

Our *profession* consists of bringing those competencies to bear in the specialized context of agency. It is in crossing the professional threshold of agency that the issues arise:

- (1) fiduciary duty of utmost care, integrity, honesty, and loyalty;
- (2) diligent exercise of reasonable skill and care;
- (3) honest and fair dealing; and
- (4) full disclosure.

If we are fully living these commitments, there is no need to talk about them. However, to the degree that our clients don’t experience these things from us, we have failed. And I believe that we can do more to get the message out about the commitment that we make on a daily basis to conduct our business as professionals and within the framework of the

Society's *Code of Ethical Principles and Standards of Professional Practice*. To the degree that our clients experience that we are effectively acting "in their shoes" at all times, they will value us. It is a great pleasure to receive such service, and it is an honor to be given the trust to provide it.

The Value of a Broker as the "Middle Ground"

My conclusion is that a broker's value arises from the intersection of the exercise of the relevant competencies in a given broker-client situation and the artful functioning of that broker in the exercise of the agency role. I deliberately choose the word "artful," because functioning in the agency role is neither simple nor easy. The organized knowledge called the law of agency must be applied newly by each of us on a daily basis. The exercise of our interpretive powers in the service of our clients is key.

The "middle ground" is the space that we, as brokers, occupy between our principals. It is our rightful place. The

law of agency is the theoretical underpinning of this space. It is we who must claim the territory for ourselves. In so doing, when all the appropriate competencies are employed and actions taken as dictated by each specific situation, our value is manifest.

It is the fact of our agency that makes us unique and ultimately, not a commodity. In the rapid-fire economic reality of the 21st century, this ancient legal status is the basis for our right to earn and receive the trust of our clients. Mere information providers can't compete with this. Entities, whose primary business is banking, real estate development, real estate investment, or any other pursuit, are unlikely to have the clarity of vision of the unencumbered and independent third-party agency professional.

At the end of the day, the congruence of our business and professional commitments produces value. Perceived value results in compensation. The interests of both brokers and clients/customers are served. ❖