

Wearing One Hat: Avoiding the Real Estate Trap on a Nonprofit Board

Real estate transactions involve some of the most significant business decisions made by a nonprofit organization. Yet, when it comes to real estate, most nonprofits expect their executive director to handle the matter alone or turn to the real estate professional on their board of directors. It is important to retain the services of an outside professional.

Executive directors are rarely hired because of their expertise in real estate transactions. Asking the executive director to locate, evaluate and negotiate without professional guidance is a penny wise and dollar foolish decision. A professional real estate broker will know the current market rates and available inducements better than the inexperienced executive director, and real estate commissions are typically paid by the landlord or seller, not the tenant or purchaser.

The role of the real estate professional board member should be to help facilitate the board's understanding of the real estate transaction and to assist the executive director in supervising the outside professional. Acting in this manner, the board member is able to provide valuable technical expertise to the board, offer objective evaluations of proposed transactions and provide guidance and counseling to the executive director. However, the real estate professional board member cannot effectively act in a dual capacity of board member and service provider.

AVOID CONFLICT OF INTEREST

While everyone sees the obvious conflict in retaining a relative or business associate of a board member to provide services to the organization, many boards do not hesitate to ask a

board member to provide those same services in real estate. Even when the services are performed at a reduced rate or on a pro bono basis, the board member is being asked to wear two hats. In this position, the board member's ability to act as an objective resource for the organization is compromised.

REAL ESTATE ISN'T SIMPLE

Real estate transactions are seldom simple. An organization can reasonably expect several proposed leases or purchases to fall apart after the expenditure of substantial time and effort on the part of the real estate professional, the executive director and the board of directors. Here's a scenario: A board member who is providing real estate services at a reduced rate or at no charge will ultimately begin to lose patience and feel abused as the process drags on. Obviously, this person is not able to make an objective decision in regard to a proposed real estate transaction as a member of the board. What is in the best interest of the organization may no longer be in the best interest of the unhappy board member. And there is no easy way out of this situation when it arises.

The executive director and the board of directors can take prompt action if they feel an outside, paid professional is not performing adequately, and the outside, paid professional can withdraw if he or she feels the executive director or board is being unreasonable. But it is not so easy if the professional who is not performing adequately or who feels the board is not being reasonable is also a dedicated volunteer and board member. If it is not initially obvious to the organization why it should retain outside professional assistance for its real estate transac-

tion, it may become unpleasantly obvious before the transaction is completed.

IDENTIFYING THE RIGHT OUTSIDE REAL ESTATE PROFESSIONAL:

How do you find the right commercial real estate professional to assist your agency? The following criteria can help you:

Retain the person, not the company.

A typical practice in large commercial real estate companies is to delegate nonprofit agencies to the less experienced brokers. Make sure you hire an experienced broker.

Look for a broker who has experience serving on nonprofit community boards.

This experience will help the broker understand the decision-making process and the tight budgets of nonprofit agencies.

Ask other nonprofit agencies who they have successfully used.

They may know people who have developed a special expertise with nonprofits.

Review the nonprofit representation history of the broker.

You want someone who has experience working with nonprofits.

Meet with the broker at least once to determine his or her level of interest in your agency's specific needs.

Frequently, nonprofit real estate projects are for leases under 5,000 square feet in Class B or C buildings. These do not generate large commissions. Therefore, you need someone who is not representing your agency just for the commission.

Determine the broker's level of knowledge about your location criteria.

This would include understanding your targeted geographical area, unique facility requirements and public transportation access.

Formally retain the broker through a written agreement.

This should spell out the broker's role, the agency's responsibility, how the broker will be paid and the length of time the agreement will be in force.

Have the broker explain to the board and staff typical real estate commission fee structures and the work the broker will be performing to earn the fee.

Again, the fees are often paid by the seller or the landlord. To the board and staff, fee structures can be confusing and lump sum fee payments can appear large. However, they should understand the amount of work and time normally involved, and that commissions are typically split.

Do not ask the broker to donate the fee or commission back to the agency.

If you want to be high on his or her list of assignments, your project must be viewed as a commercial venture. Many brokers may voluntarily donate a portion of their commission, but do not demand it.

Once the broker is retained to represent your agency, empower the real estate professional board member and the executive director to serve as the liaisons between the broker and the board. All real estate calls should be referred to the broker. Confusion occurs when staff and/or board members set up meetings on their own.

TREAT REAL ESTATE AS A BUSINESS DECISION

Today, nonprofit organizations are eagerly embracing business practices to run their organizations more effectively. They willingly retaining accounting firms, law firms, public relations agencies, fund raising experts and other consultants with special expertise in nonprofit organizations. The same policy should apply to real estate transactions. A nonprofit organization needs to obtain outside professional assistance from real estate professionals who have an understanding of the special needs of nonprofit agencies. This relationship has the best opportunity for success and good, long-term real estate decisions.

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