

CALL THE COMMERCIAL REAL ESTATE POLICE!!

How is it possible for a tenant representative employed by a global real estate agency deriving 90% of its revenue from building owners to act in the best interest of a tenant?

Put simply, it's not, and the Californian Supreme Court and the Royal Institution of Chartered Surveyors agree. The legal industry concluded a long time ago that a single entity could not ethically serve two masters on the same matter.

Why then has the commercial real estate industry been so slow to address this obvious problem? Follow the money, and you'll see that the contest of allegiance for major agency's is no contest and is biased towards the landlord and managing the destiny of tenants and their rent is a preoccupation of landlords.

Landlords, to whom the agent has a fiduciary obligation and dependence, want the highest rates and the fewest concessions. Whereas, tenants would like the lowest rates and the best concessions they can negotiate in the process. Something must give, and, for a variety of reasons, the advantage typically goes to the landlord.

The simple reality is that agencies who represent both tenants and landlords can't possibly be entirely objective.

Agents are obligated to bring tenants to their company's listings. Given the opportunity to steer a tenant toward their own company's listing or toward a competitor's, which option is more likely to be their choice? **This arrangement is not in the tenant's best interests and more often than the tenant is denied an optimal equation and full market exposure.**

This conflict is evident when global real estate agencies partner with tenants on multiple site roll-out or expansion projects. The agency offers a tenant a reduced fee (or no fee at all) for sites currently represented by the agency. The tenant representatives then take a share of the leasing agents fee,

allowing them to deliver a saving for the tenant. By offering this financial incentive, it encourages the tenant to support the agencies collusive approach.

In the legal industry, it's common sense when one law firm represents the plaintiff, and another represents the defendant. Each side hires its advocate to ensure objectivity and accountability. Doing it any other way is, of course, a conflict of interest.

A potential remedy is for the commercial real estate industry to adopt a rule like the Australian Bar Association's Model Rule of Professional Conduct. It states that "*A conflict of interest exists if the representation of one client will be directly adverse to another client.*"

One answer you'll hear from dual agency defenders is that the conflict with a landlord/client doesn't present itself until a relationship with the tenant has proceeded a long way down the line. Whether this is a valid point or not, it's insufficient to justify the overwhelming evidence of the inherent conflict of interest found in dual agency representation.

In contrast, the independent tenant representation sector differs from the traditional commercial real estate agent sector in many ways. In addition to the apparent focus on tenants only, these firms cannot rely on deal-oriented transactions. For this reason, tenant representation firms offer comprehensive corporate real estate services such as:

- strategic property and workplace advisory
- lease administration
- lease audits
- project management and/or interior architecture services.

Some traditional brokers provide these allied services as well but may not prioritize them among their core offerings because they aren't as lucrative as their transaction-based services. For a tenant-only firm, the comprehensive service approach enhances their value proposition to the tenant client and takes the relationship beyond one based on a single transaction.

Independent tenant representation firms act as an extension of their client's corporate real estate/finance/administration departments, and

there is never any question about where their allegiance lies. With objectivity that dual agency's do not have, tenant-only firms can aggressively press a landlord for better terms without concern of compromising an existing or potential landlord-client relationship.

A tenant representatives' s role goes far beyond basic matters of the rent and the term of the lease. Instead, the goal is to build as much flexibility into the arrangement as possible, including areas such as:

- termination rights
- contraction and expansion rights
- outgoings audits
- minimum building performance standards
- comparative analysis of total occupancy costs
- candidate properties capacity to host the tenant's optimal workplace solution and changing needs over the term of the lease.

It is only common sense to wonder if an agency employed tenant advocate will push as hard for a tenant if the result creates an uncomfortable situation with a landlord who is also a client of the firm.

The unfortunate reality is that most tenant organizations seeking professional advisory services in the corporate real estate sector are unaware of the propensity for conflict and the scale of impact this conflict has upon their corporate real estate and workplace opportunity which by nature has a once every 5-10-year window of opportunity for recalibration to market and best in class practices.

We recommend every tenant and occupier, regardless of their property and industry sector, seriously consider the above and commit to a procurement methodology which entirely mitigates conflict and provides a holistic review of your corporate real estate and workplace opportunity.

This article shared courtesy of Simon Gunnis with PCG.