

COUNSELORS: PROFESSIONALLY MOTIVATED BUSINESS PEOPLE

Real estate counselors have many faces!

by John R. White, CRE

It is difficult for the general public to distinguish what constitutes truly professional services in the broad field of real estate. The word "professional" has been decidedly over-employed and not infrequently abused by those who presume to be professionals. People sometimes confuse meeting strict professional standards with pursuing professional objectives through a professional attitude.

For example, one may more properly describe the practice of real estate brokerage or real estate management as a business with professional motivations and objectives. Frequently, however, businesses do not demand the educational disciplines characteristic of the lawyer, accountant, priest or minister. I personally have never felt the need to be known as a real estate professional. I feel equally content to be thought of as a businessman possessing professional motives, and conducting myself in a professional manner.

The sale, leasing and mortgage brokers and the property managers must be thought of primarily as engaged in

a business. Very few have met the demanding educational and other requirements nor subjected themselves to the same level of ethical standards as the qualifying professional. Yet, this does not downgrade them in the eyes of the general public. The brokers are proud of their designation as REALTORS; that is, members of the National Association of Realtors.

Two separate real estate activities are perhaps closer to a true professional designation than the practice of brokerage or management. These are real estate appraising and real estate counseling. The appraiser is in the forefront in real estate today as nearly meeting the dictionary definition of a professional in terms of education, examination, internship and experience, continuing education, ethical standards and state licensing.

The accredited real estate counselors in the United States number only about 800 people. They have taxing invitational requirements, but lack the examination and educational standards characteristic of the professional person. Nevertheless, they are highly respected because of their concentration on high ethical standards and depth of experience which qualifies them for membership.

Because the counselor frequently is engaged to negotiate a transaction, the general public is understandably confused about what differences exist between the broker and the counselor. We can compare the exclusive broker or agent with the counselor, since the counselor only will accept engagement as the exclusive representative of the principal in a sale, lease or mortgage transaction. In

other words, counselors don't compare themselves with brokers on an open agency basis where brokers compete simultaneously with each other in a given transaction.

Generally, the counselor never accepts an assignment on a wholly contingent basis. Counselors receive minimum fees from their clients without regard to the outcome of the transaction. If their transaction efforts are successful, they will receive an additional performance fee, which may be similar to the commission the broker would receive. If the counselor fails in the transaction, he retains the minimum fee. Counselors are usually reimbursed for their marketing expenses, including the preparation of a brochure, travel, toll telephone charges and advertising.

The exclusive agent usually works on a wholly contingent basis. That is, he receives payment only if his efforts in attempting to sell, lease or mortgage the property are successful. He usually must pay his own marketing expenses which are an offset against the earned commission. If another broker or salesperson in the office is involved in the transaction, the employing broker must split his commission by pre-agreement.

It is customary for an exclusive agent, by agreement with the client, to be willing to split his commission with brokers in other companies, perhaps on a selective basis but normally on a multiple listing arrangement through the local real estate board. By contrast, the real estate counselor does not normally invade a broker's commission by fee splitting.

The counselor is more likely to

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attempt the transaction himself. He may also, however, have an understanding with his client to offer the property for sale or lease through brokers, with the promise of a customary full commission for a successful transaction. In these instances, the counselor receives an additional fee from the client, over and above the client's commission liability to the selling or leasing broker.

Another distinction between a counselor and an exclusive agent is the manner in which their respective offices are operated. The counselor will normally have a salaried professional staff to whom profits are distributed from a bonus pool at year's end. An atmosphere of team play usually is characteristic. In all probability, a substantial amount of business of the counselor's company is derived from other professional services for fixed fees, such as appraisals, marketability and feasibility studies or general consulting advice.

The typical real estate brokerage normally consists of a number of independent contractors acting as sales persons or brokers. Usually, their revenue is derived solely from commissions. They are paid on a split commission basis, and generally do not receive any fringe benefits for retirement or major medical. They also pay for all their own expenses (except for office services). Generally, brokerage companies do not have appraisal or counseling departments. The only

salaried persons are the proprietors and support staff. The atmosphere tends to be more entrepreneurial than what may be found in a counseling company or a counseling department in a brokerage firm.

How does one choose between an agent and a counselor? Sometimes the complexity of the transaction might influence the employment of a counselor. The depth of the support staff services frequently is a factor. The agent may have a distinct advantage in his depth of knowledge of local real estate market conditions. The counselor may be better equipped to handle a national or international transaction because he tends to conduct business on a regional or national basis as a matter of course. The counselor also has a special relationship with national industrial corporations and life insurance companies.

Quite frequently the brokers may have a distinct conflict of interest in their representation of competitive owners and developers. For example, an agent may have leasing agencies that are directly competitive with a planned project. In this instance, the developer would be well advised to engage a counselor to manage the leasing program by putting the counselor in overall charge of the leasing program and instructing him to deal with brokers directly on an open agency basis with the promise of a full commission at locally prevailing rates. In this way, the developer can

reach the brokers directly without being saddled by an exclusive agency contract.

The late James D. Landauer, the founder of Landauer Associates, commented many years ago, "In the galaxy of real estate services, there is a logical place for the counselor who serves a client on a basis not necessarily related to a wholly contingent commission. On the other hand, many sale situations are better served by brokers and agents. Surely there is a distinct place for both."

It is appropriate to consider a counselor as a business person who possesses strong professional motivations and conducts himself in an ethical, forthright manner. The modern counselor plays a more active role than his predecessors. The early vision of the counselor was that of a sage who over an extended time had participated in ownership and brokerage and who now was dispensing advisory opinions for agreed fees. The modern counselor is an activist who is not only capable of a documented study but also has the capacity to implement recommendations in buying, selling, financing, leasing or rehabilitating. Finally, age alone is no prerequisite to become a counselor. Younger people bring a special flair and verve to the advisory process. Essentially, the counseling function is best expressed as a state of mind—the creation of a special, sometimes fiduciary relationship between the client and the counselor.