



## Let's talk money: What's the commission?

March 09, 2015 - Front Section

We all enjoy payday, right? In the real estate industry, our compensation typically flows from commission. The New York Times reports that "In a typical year, real estate brokers in the United States sell more than \$1 trillion worth of homes, making a total average commission of 5.4% on each sale." If you are counting, that is roughly \$54 billion in commissions. That figure is no pittance. Furthermore, in New York City, stackable living makes for an abundance of varied property types - residential and commercial - creating opportunity for diverse assignments, each with different commission structures. Change the transaction type and the commission calculation changes. How do we learn what's customary in each scenario and keep them all straight? Let's explore.

In New York, real estate brokers and real estate salespersons, by definition, work "for a fee, commission or other valuable consideration." These are legal terms of art that each have significance. However, fees, commission, and valuable consideration are generally contracted for and can be negotiated. Depending on your concentration or specialization, the commission structure may take different forms. Similarly, geographic location and market dynamics cause variations in rates and terms. Therefore, the following is simply a broad overview of how different commissions may be computed. This piece is in no way comprehensive, and simply provides a starting point for you to start your research, investigation and inquiry. With that said, the following is for informational purposes only. Always follow applicable laws and regulations and consult your broker and/or an attorney as appropriate.

For many of us, the most familiar commission calculation is the residential sale. Here, the commission is the fee a real estate professional charges the seller for their real estate services. Generally speaking, the commission is an agreed upon percentage of the total sale price, which is negotiated between the seller and seller's agent at the time of listing. Historically, residential sale commission rates hover between 5 - 6% of the sale price. Alternatively, some real estate professionals accept "fee-for-service" or flat fee arrangements. Ultimately, the commission structure is negotiated in advance and specified in the listing agreement. When applicable, the commission may be split between the seller's agency and a buyer's agency, which may then be subject to further internal broker-salesperson commission split agreements (or the like).

The residential lease commission calculation is also common. Residential rental commissions tend to be calculated as either a percentage of the first year's rent or the equivalent of one or two month's rent. For apartment rentals, although the broker may represent the landlord, the tenant is frequently asked to pay the commission. In New York City, that distinction is drawn with the notation of a "Fee" (tenant pays broker's fee) or "No Fee" (landlord pays broker's fee) apartment. The tenant may negotiate with the landlord's broker as to when and how the commission is earned and may request a written commission agreement outlining terms. Tenants may also engage their own broker, and that relationship would be controlled by separate agreement. Absent a written commission

agreement specifying terms, the commission tends to be earned when the broker has obtained oral agreement between the landlord and tenant on the essential terms of the tenancy, even if the tenant never takes occupancy or signs a lease. But, again, this arrangement can be altered by contract. In the commercial context, the commission structures are again different. As a general rule, commercial commissions are always negotiable, whether the transaction is an office lease, retail lease, or investment sale.

For New York City Office Leases, it is customary for landlords to pay commercial brokerage commissions, unless otherwise stated. If a tenant is not represented, the landlord's agent typically receives one full commission for successfully leasing the subject premises. The full commission can be calculated using a percentage schedule on the scheduled base rent during the initial lease term (i.e. 5% for Years 1-2, 4% for Years 3-5, etc.). Certain landlords are willing to pay 150 percent commission, with one full commission paid to tenant's agent and the other 50 percent commission attributed to the landlord's representative. Landlords and their agents do, however, negotiate variations of rates and terms of this commission structure. Notably, in the case of a sublease, the exiting tenant (sublandlord) is responsible to pay one full commission to any commercial real estate agent they engage; the commission would not be the landlord's responsibility.

Retail Lease commissions are also negotiable. In New York City, unless otherwise stated, landlords typically agree to pay one full brokerage commission. Again, the commission tends to be calculated using a percentage schedule based on the scheduled base rent during the initial lease term. A retail commission tends to be split evenly between the landlord's agent and the tenant's agent.

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