



Commercial Classroom: Assumption Agreements - by Edward Smith

April 16, 2024 - Long Island

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Often a lease will have an option for renewal by the tenant. If the option is exercised the Broker is usually entitled to an additional commission. But what happens if the building is sold before the option becomes due? Is the new owner responsible to pay the Brokers commission? The answer is no, unless the listing agreement or lease addresses the issue.

The original listing agreement (contract) is between the original owner and the Broker. Upon sale of the building (title passing) that relationship ends. The Broker has no agreement (contract) with the new owner. The new owner has no obligation to pay a commission to the Broker. This may also apply to an Exchange or Assignment of a Lease.

Listing agreements should contain a clause to address this contingency. Typically, the clause directs the building owner, if they decide to sell the property, to have the buyer sign an Assumption Agreement (in recordable form). In doing so the new owner accepts the liability for future Brokers' commissions that may become due if a tenant exercises their option(s) to extend the lease.

Without such a clause in your listing agreement an option commission could be lost upon the sale of the building.

In a large building many tenants may have an option to extend or renew their leases; different Brokers may be eligible for future commissions. The amount of money involved could be significant and require adjustments in closing the transaction.

From a marketing point of view, this sale should not come as a surprise. Once you place a tenant in a building you should communicate regularly with the tenant and the owner to develop future opportunities.

Even though a tenant is in a lease, their business could require more, or less space before the lease term ends. Consistent communication would allow the Broker to become aware of the problem and

solve it. Finding and leasing larger or smaller quarters to the tenant, while sub-leasing their current space to a new tenant.

Regular communication with the landlord can lead to an inside track as to when other tenants may be leaving the building creating available space you can rent. Constant communication with the landlord should lead you to having the opportunity to sell the building or sell them another investment property.

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