

# "If I'm Selling My Commercial Project, Should I Let the Buyer Talk to My Tenants?"

Leases give an office building or shopping center its value. And good tenants give leases *their* value. Good tenants are those who are paying market rents, are happy, are paying their rent on time, don't have beefs with the landlord and are likely to renew. Bad tenants are those who pay late, create management headaches, complain, have long-term leases at below market rates and are likely to stay forever. For that reason, a careful buyer of a commercial property will want to find out whether the income stream it is buying is generated by good tenants or bad tenants.

**One of the best ways the buyer can find this out is to meet the tenants personally. This presents two risks to the seller.**

The first risk is that the buyer will scare away the good tenants. Good tenants may feel threatened by a change in management, especially if they don't like the potential new buyer. Even if the sale to that particular buyer falls through, the fact that the landlord put the building on the market may make the good tenants feel insecure and cause them to start shopping around.

The second risk is that the good tenants will fall in love with the buyer. If that happens, and the sale falls through, the seller has now introduced its tenants to a competitor. . .worse yet, a competitor who now knows the expiration date of each lease.

There are several measures the seller can take to lower the risk of either scenario. These include:

- Prohibiting all personal contact with tenants. In this case, the buyer will simply have to rely on lease file reviews, landlord representations and warranties, and tenant estoppel letters. This may decrease the marketability of the building by creating the impression that the seller has something to hide.
- Requiring the buyer to sign a confidentiality agreement and a non-poaching agreement prior to allowing direct contact with tenants. These agreements give the seller legal rights, but are hard to police.
- Requiring that a representative of the seller be present at each tenant meeting. This is probably the most effective way to ensure that the buyer behaves. The

## **POSTED:**

Aug 10, 2008

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seller's mere presence may deter the buyer from either frightening or seducing the tenants.

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