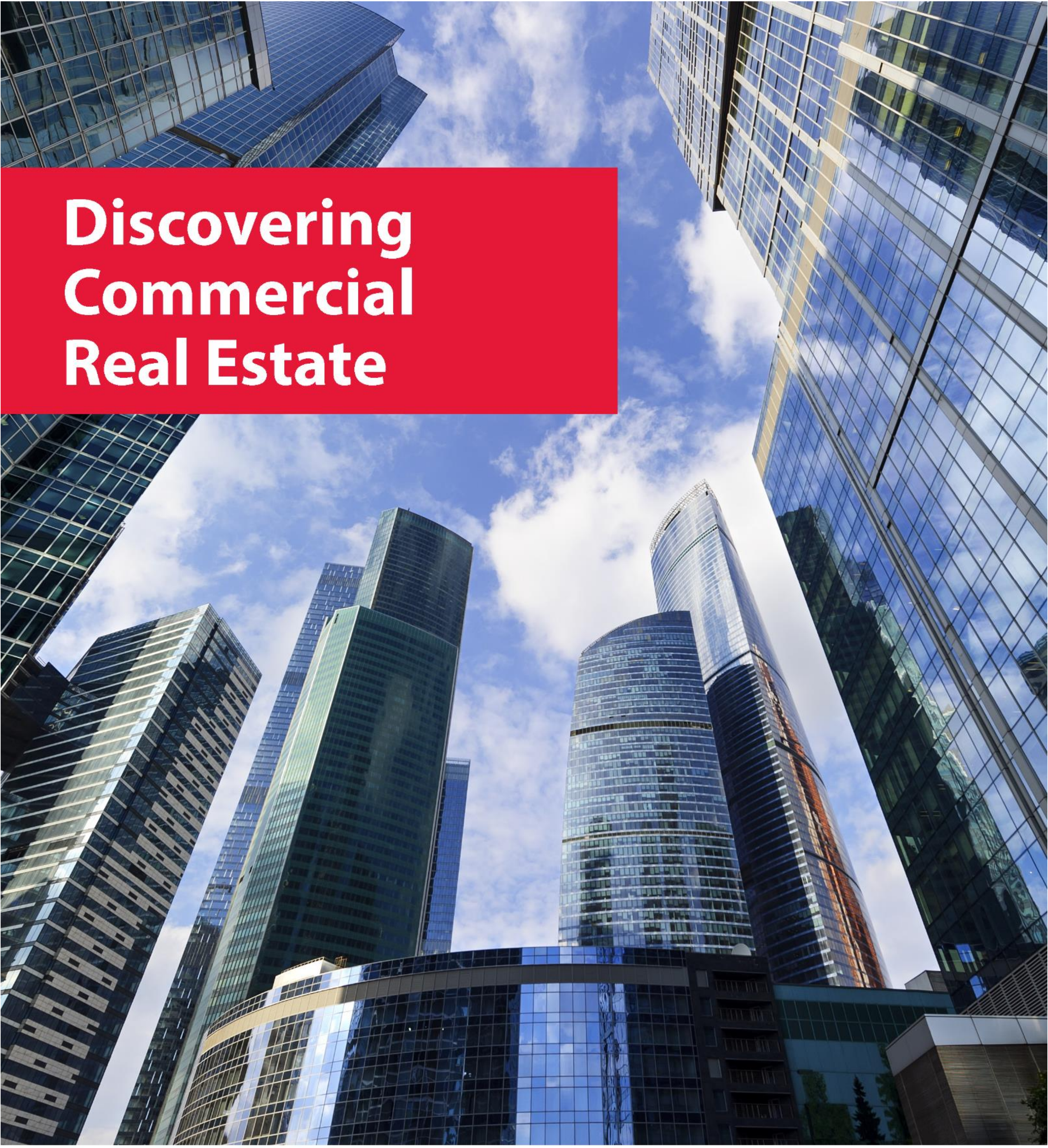
Discovering Commercial Real Estate



Student Manual

Version 2.0

COMMERCIAL Real Estate
REALTOR®
NATIONAL ASSOCIATION of REALTORS®

V2.0

Note: The Real Estate Buyer's Agent Council (REBAC) and National Association of REALTORS® (NAR), its faculty, agents and employees are not engaged in rendering legal, accounting, financial, tax, or other professional services through these course materials. If legal advice or other expert assistance is required, the student should seek competent professional advice.

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Acknowledgements

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Known simply as "Riggo" to the thousands who have laughed and learned while attending in his programs, Ed Riggins has had a career that proves you can enjoy serious success without taking it all too seriously. He learned from doing stand-up comedy that if you want to find the truth, look for the funny. He learned from improv comedy to find the natural flow and go with it. Before becoming a national top producer, being named "Who's Who of Commercial Real Estate" by the Atlanta Business Chronicle and recognized as a "Power Broker" by Costar, Riggo mowed lawns, customized cars, drove a forklift, and was a small engine mechanic, on his way to becoming a first-generation college graduate. Ed is among less than 1% of practitioners nationally to have earned both the SIOR and CCIM designations.

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INTRODUCTION

COMMERCIAL Real Estate REALTOR®

NATIONAL ASSOCIATION of REALTORS®

Welcome

NAR is pleased to welcome you to today's course on discovering the wonderful world of commercial real estate and the role of agents in the process. Please take advantage of this opportunity to engage in the subject matter, ask questions, and share your experiences and opinions. You all have something to learn and something to contribute.

Instructor and Student Introductions

About This Course

Welcome to the exciting world of commercial real estate. It is a field that can give you an opportunity to put your skills to work, grow professionally and take your career to a new level. However, it is not for everyone and that is why this course is so important.

If you are already active in residential real estate, for instance, you will find there are significant differences in the size and types of transactions, how you work with clients and the value you bring to the table. So let's take a quick look at some of the major similarities and differences, so you will have a better sense of the content that we will be covering in this course.

In both residential and commercial real estate, your duty is the same – to represent the best interest of your client. On the commercial side, that might be a business owner, an investor, a tenant or someone who owns the land that could be developed into a shopping center, warehouse or office building.

In commercial brokerage, a seller is going to want to get the highest price for the property, and a buyer wants to get the best possible deal. Property owners and tenants also want to negotiate favorable terms for themselves in their commercial leases, and being able to represent owners, property owners and tenants effectively can provide the foundation for a successful career on the commercial side.

Who Can Benefit From This Course?

- Newly licensed agents or brokers who intend to be involved in the commercial market
- Residential brokers–in–charge who supervise commercial agents;
- Residential agents who wish to learn more about commercial real estate
- Commercial agents just entering this field;
- Real estate investors seeking information about commercial real estate;
- Office assistants of commercial agents or brokers

Course Goals

The Discovering Commercial Real Estate course helps real estate professionals distinguish and clarify the broker's role and indicate the different types of commercial properties, terms, valuation methods, marketing and resources for further education. This course also explains the business and introduces many of the resources needed to pursue a commercial transaction or a career in commercial real estate.

Questions to Consider

What is your attraction to transitioning into or exploring commercial real estate as a career?

What You Will Learn

In residential, you want a buyer to fall in love with the home or condominium, make an immediate offer and close the transaction in a few weeks. In general, buyers and sellers have access to a vast quantity of online information, and the multiple listing service agreements on cooperation and compensation largely determine the rules of the game.

However, the playing field is very different in commercial real estate. Buyers and sellers, landlords and tenants are motivated by financial and business opportunities, and emotions play a much smaller role. Transactions can be far more complex and take many months or even years to complete. Not all properties for sale are listed on an MLS, and local market information may be a key value you can bring to a client. While some commercial clients will want to use all your services in identifying a site, negotiating with the other parties, and managing the transaction process, others may only need you for certain aspects of the deal. Major companies like Wal-Mart, Bank of America or General Motors, for instance, have in-house real estate divisions that handle most of a purchase or lease transaction. Finally, there are no so-called standardized representation and compensation agreements – each one is different.

In commercial real estate, you might have an opportunity to be involved in the $10 million sale of a downtown office building or a $5 million tract of land that will be developed into a new subdivision. That can be a very rewarding experience – both personally and professionally. However, you need to learn how to walk before you can run, and this course can be one of your first steps into this exciting field.

This course will cover the following topics:

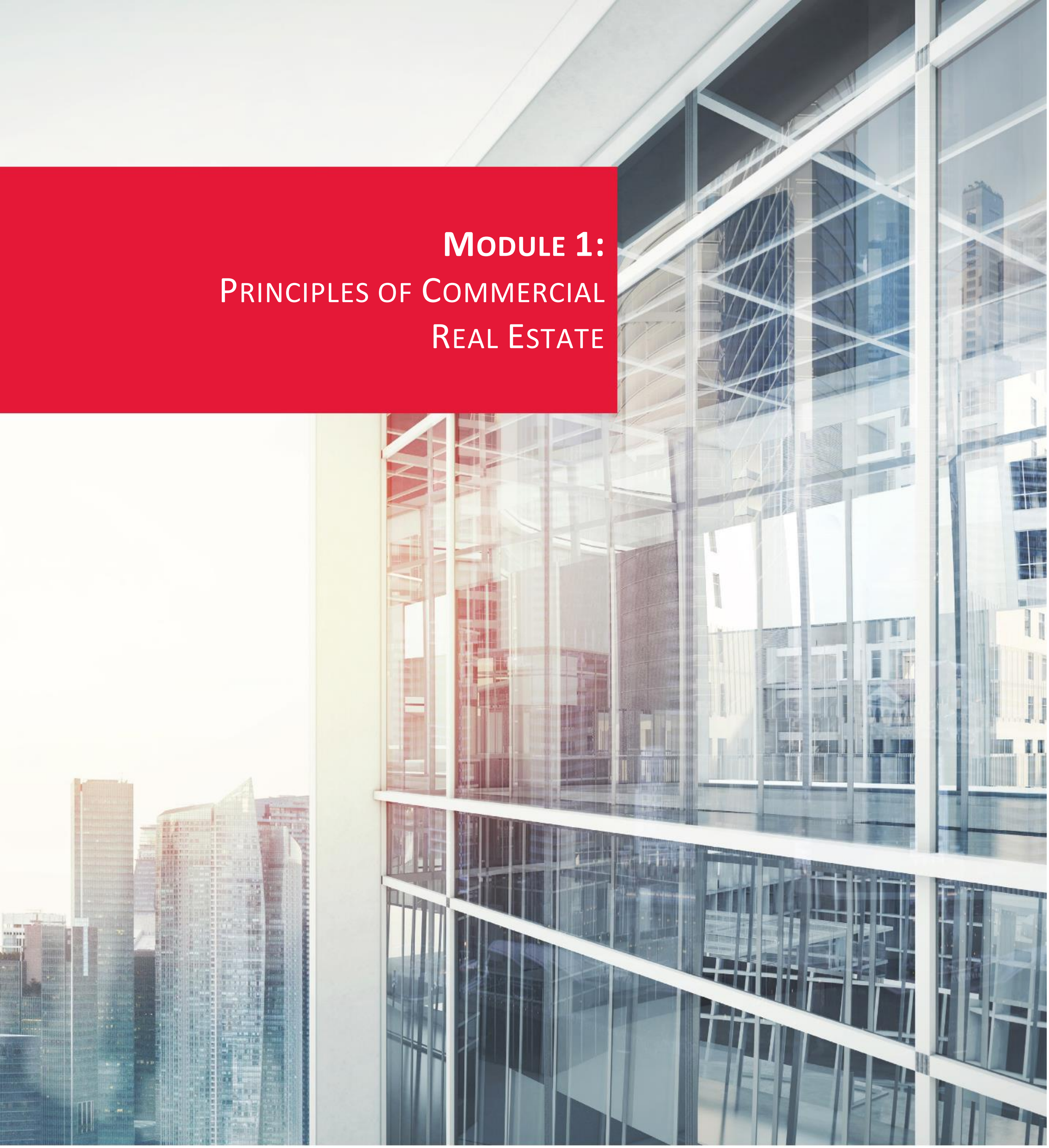
- **Module 1:**
  Principles of Commercial Real Estate: Players and Properties
- **Module 2:**
  Characteristics of Commercial Real Estate and Types of Commercial Transactions
- **Module 3:**
  Commercial Contracts and Resources for Further Exploration

At the conclusion of this course, students will be able to:

- Distinguish and clarify the broker's role in the commercial transaction
- Indicate the different types of commercial properties, terms, valuation methods, marketing and resources for further education
- Explain the business and resources needed to pursue a commercial transaction or a career in commercial real estate

Introduction Exercise

What challenges do you anticipate encountering as you proceed into commercial real estate?



Module 1:
Principles of Commercial Real Estate

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Learning Objectives

- Describe roles and functions of the key players in commercial real estate deals.
- List the characteristics of five main commercial real estate property types: office, retail, industrial, multifamily and land.
- Interpret key considerations for users of different types of commercial real estate.

Before an agent or broker undertakes a commercial transaction, he or she should ask, "Why am I doing this?" Becoming involved in an area where the agent has little to no expertise is dangerous, both for the agent and for the client because we do not know what we do not know. This could also be a violation of NAR's Code of Ethics.

Some agents venture into commercial real estate at the request of their residential clients. Even when the agent tries to refer them to a commercial agent, the client often wants to stay with their current agent. Why? Because clients frequently trust their agent. Trust is the key to all customer and client relationships. That trust will be gained and kept by being honest with the client and making certain that the client's interests are being met. Trusted clients will readily refer associates to a trusted agent (assuming the associate is not looking for the same product as the client) and be happy to provide introductions and references for the agent. Like other sales careers, networking is important to an agent's success. Being a leader in one's community provides opportunities for an agent to make valuable contacts, which can turn into long-term business relationships.

Commercial agents can tell anyone about the developments they took part in – including buildings, shops, and land parcels–with a genuine sense of pride in quality of life they added to their community. These are the win-win "deals" that every agent strives to achieve. Win-win transactions encourage future transactions and new relationships.

What is Commercial Real Estate?

For the purposes of this introductory course, we will be looking at real estate that is income producing but not residential (i.e. duplexes) except for brief references to investment grade multifamily properties (apartment complexes). We will also touch on land that could be used for commercial development. We will start with those people we will be working with. We will examine their roles in a commercial transaction and when particular players become involved.

The Players

Similar to residential sales, many professionals play a role in a commercial transaction. Depending upon the nature of the transaction, some or all of the professionals listed below may be involved. In fact, there may even be others. The role of each is briefly described.

REAL ESTATE BROKERS

Although not all commercial agents hold a broker's license (some hold a salesperson license), commercial agents tend to refer to themselves as brokers. To help get you acquainted with "commercial lingo" we will use the term "broker" to refer to the commercial agent.

Brokers bring the buyer and the seller or the landlord and the tenant together. Many times, a broker finds unlisted property that meets the buyer's requirements. Some areas use a Multiple Listing Service for commercial properties, but some do not. Therefore, the broker must go out and find suitable properties for the buyer or tenant to consider. The broker may or may not recommend professionals to use, such as an appraiser, attorney, architect, or engineer. Much of a broker's role depends upon the type of transaction and the needs of the buyer and seller or landlord and tenant. In some cases, a broker may bring the buyer and seller together, then back out per the instructions of their client. They have done their job. We will discuss how brokers do this and how the compensation and cooperation agreements are done later in this course.

LENDERS

As in most business transactions, financial resources often need to be secured. The lender may be a construction lender, an acquisition lender, an equity lender, a permanent lender or a combination thereof. It is important that brokers have relationships with all types of lenders. Buyers usually have their own sources for funds. Still, lenders can assist brokers in a preliminary valuation or be a key resource in the eventual financing of the property.

ARCHITECTS, ENGINEERS AND LAND PLANNERS

In the case of development, redevelopment or even the leasing of property, buyers or tenants may need the help of an architect, engineer or land planner.

ACCOUNTANTS

Some buyers and sellers also need financial advice on the acquisition or disposition of their property. Typically, it is outside of a broker's expertise to offer tax or financial advice. It is best for the clients to talk to their own professional. It is important that brokers stay involved in the deal so that an accountant does not make final decisions on the transaction. Offer to meet with your client's accountant to answer questions and to stay in the loop.

ATTORNEYS

Buyers and sellers or landlords and tenants also need legal advice. Unless brokers hold a law license, they are not allowed to give legal advice, draft documents, and create deeds etc. Many legal questions will arise during a transaction. With proper involvement, brokers can ensure that the attorneys become dealmakers, not deal breakers. It is critical that the attorney is experienced in commercial real estate transactions so that timely and accurate advice can be rendered.

APPRAISERS

Most lenders will ask for an appraisal in order to feel comfortable extending the loan. The appraiser must be approved by the lender and follow his instructions, while being paid by the buyer. At times sellers may want to order an appraisal in order to establish an asking price. It is important that appraisers be experienced in the type of commercial real estate being considered.

OTHER CONSULTANTS

Depending upon the transaction, other specialists may be needed to handle certain areas. A few issues that might require a specialist include:

- Rezoning/land
- Historical designation
- Traffic/Department of Transportation
- Environmental
- Business brokerage
- Geologists and archeologists

Types of Commercial Real Estate

Before addressing the different types of commercial real estate, it is important to note that there are many publications – both online and print – as well as many books on each type mentioned here. Additionally, more in-depth information can be found in the Resources section of this course.

In smaller markets, an agent may practice all types of real estate – land, residential, retail, office, and industrial. However, in larger, urban markets, a broker needs to consider specializing. A broker will have a hard time keeping up with all types of commercial property in a large and diverse market and competing with those who have specialized in a particular property type. Each type of commercial real estate has its features and demographic requirements. In other words, what is critical to a grocery store may not be important at all to an industrial facility and vice versa.

We will review the basic features of office, industrial, retail, and land. Within each, there are numerous subcategories – and in the larger markets, a broker may specialize in a particular subcategory.

It is important to note that there are other types of commercial real estate as well, including:

- Hospitality properties (hotels, motels, resorts and timeshares)
- Storage facilities (primarily self-service to renters)
- Multifamily housing developments (including for-sale condominiums, rental units, independent living and assisted living communities)

However, for the purpose of this course, we will focus on the five categories, starting with office.

OFFICE

Office space falls into many categories. These are the most common:

- **Converted Homes, also called Cottage Style**
  Typically transitional areas and suitable for small businesses.
- **Low-Rise**
  One to three stories high, found in suburban and some urban areas and typically leased on a "net, net, net" basis.
- **Mid-Rise**
  Three to ten stories high, found in suburban and some urban areas. In some markets, this might be considered a high-rise. These are typically leased on a full service basis because of the opportunity for economies of scale.
- **High-Rise**
  Over 10 stories (although in some markets, 10-15 stories may be considered mid-rise) and typically found in central business districts (CBDs) and employment centers. These typically lead to a full service basis.
- **Specialty**
  This would include medical offices, live/work units, space in historical buildings, government buildings, and institutional facilities.

Key factors considered by office users include:

- Location of labor pool
- Location of owner/CEO
- Transportation (highways, bus, rail)
- Location of customers/clients
- Visibility
- Parking
- Image
- Price
- Amenities nearby (restaurants,
- Retail, daycare)
- Space configuration
- Incentives – local, state, national
- Convenience to other businesses
- Allowed uses on the property
- Buy versus lease

Each type of office has its own kind of users. Think about the different office types and envision a likely tenant or buyer for each. What factors would a tenant consider when making their decision?

INDUSTRIAL

Industrial real estate implies an industrial use, such as manufacturing or warehousing. The most common types of industrial properties include:

- **Office/Showroom, Flex Space, Office/Warehouse**
  This is exactly what the names imply – a combination of office and industrial.
- **Warehouse**
  This could be bonded facilities, climate controlled, single user, or multiple users.
- **Manufacturing**
  The type of manufacturing that makes a difference, as does the area where the facility is located. Some areas are designated "Foreign Trade Zones" where goods may be imported and the tariff paid once they are assembled. Some cities and counties differentiate between light manufacturing and heavy manufacturing.

Key factors considered by industrial users include:

- Location of labor pool for manufacturing facilities
- Transportation – access to major highways, rail, ports, airports
- Location – proximity to end users/customers
- Price
- Space configuration
- Ceiling heights – clear
- Utilities
- Floor loads
- Sprinkler systems
- Docking areas
- Incentives – local, state, national
- Allowed uses on the property (zoning and covenants)
- Buy versus lease

For additional resources related to industrial space, check with the CCIM Institute (www.ccim.com) and the Society of Industrial and Office REALTORS® (www.sior.com).

RETAIL

Since we all visit stores on a regular basis, this one may be the easier to understand. The key to a retail location is the location of the customers.

The most common types of retail properties include:

- **Single User (Freestanding**)
  A drug store, a bank branch, or a grocery store (if it is not part of a shopping center). Destination-oriented retailers use these.

- **Credit Tenants**
  When financing retail, the lender looks at the strength of the tenant and the tenant's lease as security for the loan. Stronger tenant(s) are offered better loan terms. A tenant with a strong track record of success, a good financial statement and regional or national presence could be a credit tenant. It is important to understand that a tenant can be a credit tenant one year, then fall out of favor the next because of business issues. One example is K-Mart, which was a very strong tenant for years before suffering a downturn, losing market share and profitability, as well as their credit tenant status.

- **Big Box**
  This generally refers to stores designed for large regional or national companies. In some markets, a large user may be 25,000 + sq. ft. while other markets may place larger tenants at 50,000 sq. ft. There has been rising concern about these big boxes because as they relocate, their old stores may not be easily adaptable for a reuse. Therefore, they stand vacant and are considered a blight on the community. Because of changes to some areas' planning and zoning requirements, we are now seeing creative designs for these large "boxes."

- **Small Strip Center**
  These are seen along main roads and generally have several small, tenants. Few if any will be credit tenants. Most are referred to as local tenants or "mom & pops." The owner typically operates these retail locations. While the stores have solid financials, they would not be considered as credit tenants due to their small size.

- **Neighborhood Shopping Center**
  These centers service a neighborhood or groups of neighborhoods. Typically, they have one or more anchor tenants, such as a grocery store, and other shops providing goods and services, such as a cleaner, nail salon, frame shop, etc. In the past, you would find a drug store in these centers, but the current trend is for drug store chains to be freestanding structures. If the drug store is freestanding in a corner of the parking lot of the center, it is on an "outparcel" that may have been purchased or leased. These shopping centers range in size from 75,000 sq. ft. to 150,000+ sq. ft. Their trade area is usually 1–3 miles or more depending upon the area.

- **Community Shopping Center**
  These service a larger community. Again, trade centers depend upon the geography and the competition. Their sizes range from 200,000 – 400,000 sq. ft. The trade area can be up to 10 miles. A community shopping center can include tenants such as a big box store, movie theater, grocery store, and regional and national junior department stores.

- **Regional Shopping Center**
  services a larger region. Frequently these are called malls, although they need not be enclosed to classify as a regional center. The tenants are a mix of regional and national tenants, with some local tenants, depending upon the center. The trade area depends upon the demographics and the competition. A city of less than 1 million can have several regional shopping centers. While there will usually be some overlap, they have different trade areas and customer bases. Regional centers start at 400,000 sq. ft. and can exceed 2 million sq. ft. Once a center reaches 1 million sq. ft., it may be referred to as a "super

regional." To be a true super regional shopping center, the tenant mix and sales per square foot must also be considered.

- **Specialty Center**
  These centers can be any size. They may be in a historic building or area (ex. Faneuil Hall Marketplace in Boston), they may have tenants selling certain types of goods (such as only home décor, antiques, or automotive services), they may be outlet type centers (Sawgrass Mills in Ft. Lauderdale), or they may be part of an entertainment venue (like Navy Pier in Chicago).

For additional resources related to retail space, check with the International Council of Shopping Centers at (www.ICSC.org).

Land Sales

It all starts here! Long before any new subdivision, condominium, shopping center, warehouse or office building is constructed, land must be acquired and government approvals must be obtained before the first foundation is poured or the first street is paved. "Under all is the land." is the opening line of the REALTOR® Code of Ethics. It is also the beginning of every new development.

Unlike an office building, warehouse or a shopping center, a tract of land may resemble a fresh canvas. It may or may not:

- Be zoned for the intended use
- Have utilities available
- Have accessibility
- Have suitable soils
- Be "developable" because of soils, environmental issues, local issues, or archaeological issues
- Have needed amenities nearby

All of these things and more must be investigated to determine if the land is usable for the intended use. A site may work for a housing subdivision, but not for a high-rise office building and vice-versa. This is where due diligence starts. Every aspect of the development must be studied to ensure that the site can be used. This is best left to the experts, such as engineers, land use experts, architects, seasoned land brokers and developers. If a broker does not know to ask certain questions, then important matters may not be discovered until it is too late. Nowhere else in the brokerage profession is the danger of "unknown unknowns" more of a concern than in the brokering of undeveloped land.

Experts in land are found in the REALTORS® Land Institute (RLI). RLI offers courses in land brokerage and development and awards its designation ALC (Accredited Land Consultant) to those completing the educational and experience requirements. For more information, go to www.rliland.com.

QUESTIONS TO CONSIDER

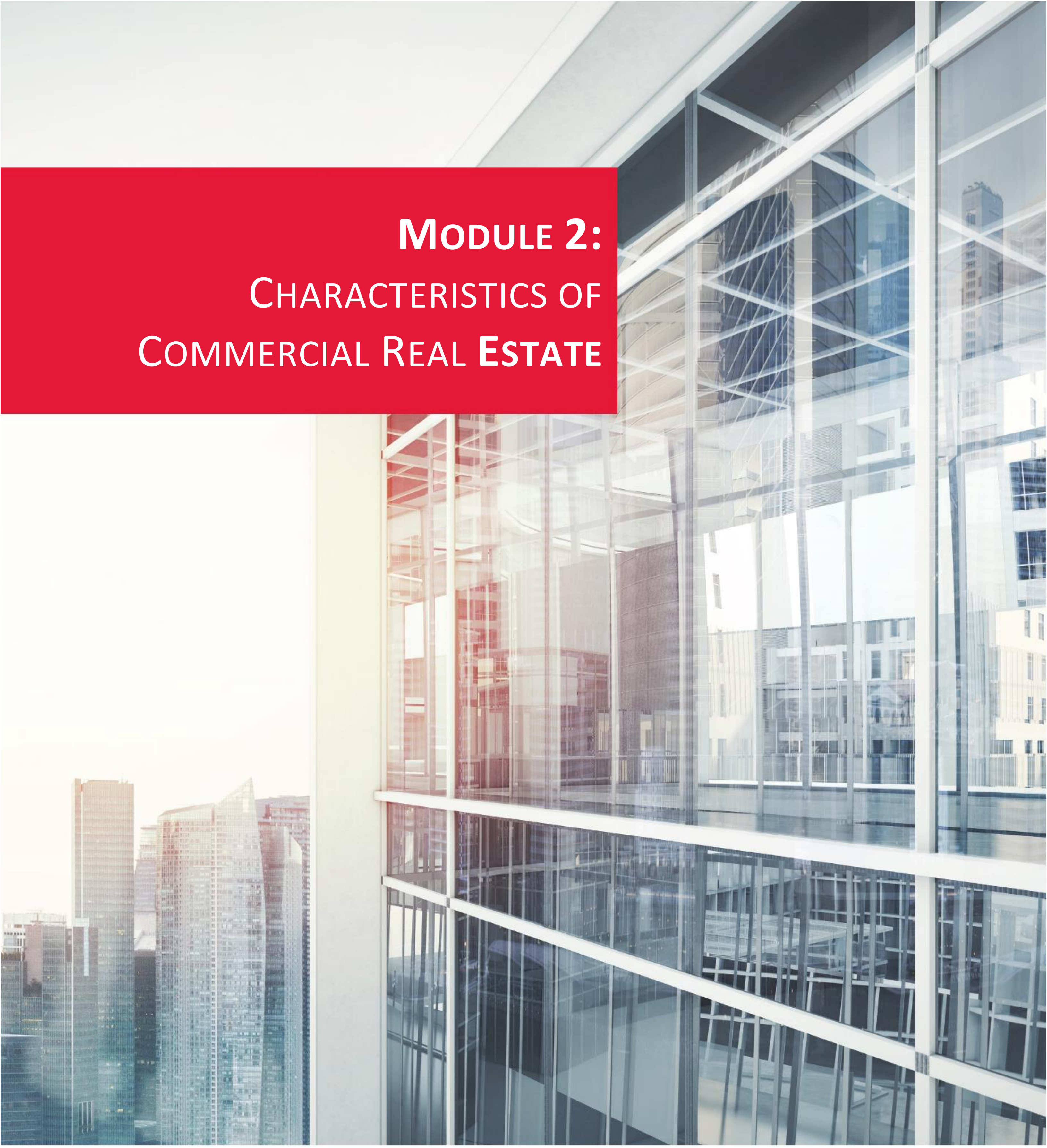
Name some of the players in a commercial transaction that may not appear in a residential transaction:

Name at least three players that would be involved early in the process of a land development project:

What are some important factors to be considered when a company is looking for office space?

What are some important factors to be considered when a company is looking for retail space?

MODULE 2:
CHARACTERISTICS OF COMMERCIAL REAL **ESTATE**



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Learning Objectives

- Describe characteristics of commercial real estate, including similarities to and differences from residential real estate.
- Explain basic mechanics of commercial transactions, including issues of compensation, contracting, timing, and property management.
- Apply understanding of commercial real estate characteristics and transactions to practical situations.

There are many common elements to all real estate transactions. This section focuses on the main differences. But first, are there similarities?

Does Residential Experience Apply? Exercise

As a residential agent, what skills and experiences do you think will translate well to a focus in commercial real estate?

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The Role of Brokers

In most residential transactions, each party has an agent and the agents guide their clients through each step of the transaction. In many instances, the buyer and seller rely on the agents for recommendations on which vendors to use, including the closing attorney(s).

Coordination of Experts

In a commercial transaction, coordinating various experts is the exception rather than the norm. Generally, buyers and sellers have their own professionals. They have done business with them in the past and feel comfortable with them. This does not mean that brokers do not suggest other experts to use. Typically, however, buyers and sellers already have those areas covered. One exception would be a new or unsophisticated buyer or seller who might rely on their broker's recommendations as if it were a residential transaction. Brokers may work with various experts and coordinate their efforts. It is one way to stay involved in the deal and continue to represent the client's best interests.

Due Diligence Issues

Brokers know the issues related to due diligence and can provide advice on contract terms, experts to use and time required to complete inspections and rezonings, coordinate with utility companies, etc.

During a due diligence period, a buyer will investigate:

- Zoning
- Environmental issues
- Traffic, roads, ingress and egress
- Utilities
- Public facilities
- Easements
- Building plans
- Soils
- Financing
- Pre-Marketing
- Costs of development
- Desirability of the project
- Physical improvements inspection
- Property boundaries (survey)
- Some title issues
- Ownership structure (LLC, partnership, etc.

Zoning/Rezoning Considerations:

- Current plans for the area
- Location of rail, transit, employment
- Planning staff recommendation
- Impact on private sector
- Other petitions in the area
- Neighborhood reaction
- Conditional plan?
- Issues with schools, flood plains, roads
- Petitioner's reputation
- Politics - elections, etc.

Representation, Compensation Agreements and Practices

Unlike residential properties, most commercial properties do not appear in any MLS. In fact, some may be unlisted. Still, brokers must follow the rules of their states regarding written representation agreements (listings, buyer or tenant rep, property management, etc.). What may differ is the flexibility brokers have with the terms.

Here are some examples:

- **One-Time Showing Agreement**
  The broker represents a seller for only one showing. If the buyer purchases the property, the agent is paid.

- **Territory Specific**
  The broker represents a client only on properties in a specified geographic area.

- **Property-Specific Representation Agreement**
  The broker represents a buyer only on specified properties.

- **Non-Exclusive**
  The buyer or seller may have multiple brokers. The one who gets the contract signed gets the commission.

- **Business Hours**
  Since most commercial real estate transactions are business-related, most showings and meetings are conducted during the day during typical business hours, Monday through Friday.

Business vs. Personal

Commercial transactions tend to be based on business issues rather than emotional or personal ones. Where to locate a store depends upon the local population, household income and buying habits. Where to lease an office depends upon the location of the work force, the services needed and the location of clients and customers. Where to place a manufacturing facility depends upon zoning, incentives, and access to rail, highways and airports. In some cases, properties may not be shown before contract if they are being acquired for investment only.

Experts Used and Time Requirements of the Broker

As discussed earlier, many specialists may be involved in a commercial transaction. The broker's role in relation to these other specialists depends upon the expertise and desires of the client. A broker may do a lot of handholding from showing to closing or, simply bring the buyer and seller or landlord and tenant together then step back. Most brokers will find their role somewhere between these two scenarios.

Timeline of the Transaction

While it may take several weeks to close on a residential property if problems occur, it is more typical for contract to closing to span is six months or longer. In a commercial transaction, just getting to contract can take months. Then reaching closing can take more months, sometimes even years. Let's look at some commercial transaction scenarios:

Transaction Scenarios

LEASING UNFINISHED OFFICE SPACE OF 10,000 SQ. FT.

Once a tenant shows interest, the listing agent needs to ascertain what physical changes might be needed for that space. (This is called ***tenant improvements*** or ***tenant upfitting***). Let's say there is already a tenant improvement allowance, but the tenant wants to negotiate that. A space designer will need to draw out the space and have it priced. A simple space design may be done in 1-2 weeks, while a complicated one may take several weeks. Yet more time will be required to have contractors provide pricing based on the design. If the tenant is part of a corporation, the home office may need to approve the lease terms and budget.

The proposed lease would be sent to the corporation's legal staff for review. Negotiations would proceed between the corporate and the building owner's representative – the broker or an attorney. Once terms are agreed upon, a revised lease is drawn up and all parties sign. This may take another week or more. Then construction on the space can begin. The time required for construction depends upon the complexity of the design and permitting complexity in the relevant municipality. It can be a few days or a few months. Then the tenant must inspect the space, errors are fixed, and move-in occurs.

The time between the tenant's initial interest and occupancy could be as little as one week or as long as nine or more months.

SELLING A CURRENTLY OPERATING CONVENIENCE STORE

Assume the property is already listed and flyers have been distributed. A buyer shows interest. What needs to happen? First, the business needs to be analyzed to see if it is profitable and how profits might be improved. A business broker or accountant can conduct this analysis. It may take a few weeks to complete the due diligence process, such as zoning, utilities, environmental, ingress and egress status. Financing must be confirmed, which could take several months. An appraisal will need to be done to secure financing and commercial appraisals take longer (and cost more) than residential ones. Overall, this transaction could take anywhere from one month to several months.

TRACT OF LAND THAT REQUIRES REZONING

This situation is very dependent upon the market. Some rezoning may take a few weeks, some a few months and some may never be approved. With land, many things must be checked including:

- Zoning
- Environmental issues
- Traffic
- Roads
- Ingress and egress
- Utilities
- Public facilities
- Visibility
- Easements
- Building plans
- Soils
- Height restrictions

What is typical? It typically depends upon the transaction and the market. Seasoned commercial brokers can estimate the time based on their experience.

Valuation Methods or "What's It Worth?"

To determine the value of commercial real estate, three approaches to valuation may be used: market, cost and income. Each has its merits, depending upon the market. If enough comparable properties have sold recently, the market approach works well. Comparable properties are evaluated and adjustments are made to determine the likely value of the subject (listed) property. Unfortunately, there are usually not enough true comparables in the local commercial market for this approach to be reliable.

If the property produces income (or is planned to produce income) the income approach may be used. Income and expenses are analyzed and a factor is used (a capitalization rate, for example) to determine value based upon economics. If there are no comparables and the property does not produce income, then the cost approach may be the best choice. At this point, an appraiser may be needed. Many states require a licensed appraiser to value property in methods other than the market approach (CMA).

Business Valuation Versus Real Estate Value

At times, brokers confuse a business sale with a real estate transaction. The business being sold might include the real estate, but, if this is the case, that will only be part of the business value. For example, if one were selling an operating restaurant, the buyer would be purchasing more than the real estate – the buyer would also be purchasing the restaurant's name, customer base, goodwill, tables and chairs, kitchen equipment, dishes, inventory, etc. A business broker can determine the value of a business, including the real estate, and may turn to an experienced commercial real estate broker for help with the real estate component. Businesses are typically valued based on Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), whereas properties are typically valued based on Net Operating Income (NOI). .

Demographics

Many businesses rely on an area's demographics when making location decisions. Retailers want to know how many potential customers live within a specific radius of their store, as well as their ages, their income, etc.

Businesses want to know if there is a labor pool convenient to their office. Demographic reports are extracted from the data collected from the U.S. Census. Companies who supply demographic reports use the Census data, but reorganize it for the business user. Anyone can view Census data, but it takes some skill to know which Census tracts to use and convert it to useful information.

Types of Commercial Transactions

This section will describe the different types of transactions an agent might perform. These examples will equip an agent with the basic understanding of commercial transactions. When in doubt, refer these transactions to an experienced agent. Or at the very least, get assistance from an experienced agent.

Sales Transactions

There are sales, and then there are *sales*. Many agents are familiar with selling a small commercial building to a buyer-occupant or to a local investor who is familiar with the area. These transactions are not unlike residential ones where the agent develops a relationship with the buyer or seller and through good questioning, ascertains their needs and wants. Still, there are other things to consider when purchasing a commercial building. These were covered previously in Section 3, Key Differences between Commercial and Residential Transactions. What we will address here are the mechanics of a sales transaction. Later we will address the contract forms.

Commission and Representation Agreements

Let's start with how commercial brokers are paid. To understand how we will be paid, we need to look at our agreements with our clients or customers. Agreements with clients will be referred to as agency agreements (although some states allow a broker to act for a buyer or seller in a non–agency capacity, such as a transaction broker or a facilitator) and will include listing agreements, and buyer representation agreements. (Depending upon your state's laws, there may also be dual–agency agreements.) In any case, our agreements need to specify whom we represent (unless we are acting in a non-agency capacity allowed by the state), what our duties will be and how we will be compensated. Note that in many areas, commercial real estate is not listed in a MLS, so there are no blanket offers of cooperation and compensation. So how do you know what you will earn?

If you are the listing agent, your compensation is shown in the listing agreement and a related fee agreement. If you are the buyer's representative (or simply, buyer's rep), you may be paid directly by your buyer-client or you may agree to seek your compensation from the listing agent or the seller. If your buyer is paying you, the amount and related details should be specified in your representation agreement or some other fee agreement you have negotiated with the buyer. This is all done before you start showing property. If you have agreed to seek compensation from the listing agent or the seller, you need to clarify the amount offered and the terms offered and get that in writing. You may also need to first seek the support for doing so from the buyer or tenant. A commission agreement between two brokerage firms is called a brokerage agreement (or sometimes called a co-broke agreement) or a cooperation and compensation agreement. If you start showing property without any of this in writing, you may find your buyer talking directly to the listing agent and leaving you out of the deal!

The amount of commissions and the split between brokers is a function of the market and the fees and terms are all negotiable. Brokers typically receive their commissions at or after closing or the sale or execution of the lease.

Contracts

Few states have a widely used standard commercial contract form. Unlike residential real estate, a commercial property can be used for many different purposes, each requiring proper investigation. In addition, it is quite common for commercial buyers to use their own sales contract forms. For this reason, most commercial contracts are drafted by attorneys, as opposed to the standard fill-in-the-blank forms completed by real estate agents. Factor in the extra time to do this, counter offers, as well as the time for attorneys to review, and you will quickly see how much additional time is needed in a commercial transaction. We will review key clauses in commercial sales contracts later.

Many times, a letter of intent will be used initially to outline the proposed terms of a transaction before the attorney starts drafting a contract. It is important to discuss these points and wording with an attorney, as there are conflicting case laws on the enforceability of a letter of intent. Certain provisions can cause a letter of intent to be treated as a contract – and brokers are not permitted to draft legal documents for others.

Timing

While unlikely, it is possible for a buyer to find a piece of commercial property, place it under contract and close in 30 days. As demonstrated previously, commercial real estate deals tend to require more time because of investigations (due diligence), the absence of standard forms, and the number of parties that need to be consulted in the transaction. How long should it take from contract to closing? The answer depends in part on what is meant by "contract." (When the inspection period starts? When the inspection period is over?) It also depends upon what needs to occur prior to closing and the market overall. A year (or more) may not be uncommon.

Lease Transactions

Many agents start their commercial exposure with small lease transactions. Do not underestimate leasing, as there are great career opportunities in this field. Most companies would rather invest their capital in their core business, not in real estate. Thus, the vast majority of office, industrial, and retail space that is located in major cities is leased by the occupant, not owned. An agent can represent the tenant or landlord (or both, or neither, in states where that is an allowed practice) and assist in the lease negotiations. There are many important parts of the lease to be negotiated besides the rent. These will be addressed later. A well-informed agent knows what is being offered in the market and important lease issues can advise accordingly.

For example, in a "soft" market a landlord may be offering extra tenant finishing, free moving expenses or the buyout of a tenant's existing lease.

Another issue found in retail leases may be trade restrictions. A good retail agent will know what is negotiable in their market. Any examples of commission structure or other compensation are for the purpose of explanation of concepts. These are not to be used as suggestions for compensation. Practitioners should refer to their office policy when structuring any commission or compensation structure.

The representation agreement can be a tenant representation agreement (tenant rep) or a landlord listing (lease listing) agreement or other fee agreement. The agent's compensation needs to be specified in writing. In other words, every agent needs to have a fee agreement with someone or may find that they are being paid by no one. If agents are sharing commission, there needs to be a co-brokerage agreement.

Commission Structure

Over the term arrangements can also be paid monthly or yearly – whatever the parties agree upon. If the tenant stops paying rent during the term, the broker may not be paid.

This can be negotiated in a variety of ways. Payment may be based upon:

1. An amount per square foot (e.g.$1.15/sq. ft. x 25,000 sq. ft. = $28750)
2. Value of the lease (e.g. $20 sq. ft. x 2000 sq. ft. x 3 year lease = $120,000 x rate of commission)
3. Value of the lease capped (paid on the 1st 10 years of lease only)
4. A combination of variation of the lease

Cash Out

Half of this will probably be due at the lease signing and the other half would be paid when the tenant occupies the space. Keep in mind that if this is a listing commission and there was a tenant rep, the commission will need to be split as agreed.

Over the Term

Commission is paid as rent is received, monthly, quarterly or annually. The gross commission for each would be e.g.

Monthly: Rent = $17.50 x 2500 ÷ 12 months = $3646 x 7% commission = $255

Quarterly: $17.50 x 2500 ÷ 4 = $10,937.50 x 7% = $766

Annually: $17.50 x 2500 = $43,750 x 7% = $3063

List the pros and cons for **cash out** vs. **over the term:**

Timeline

Due to the complex nature of large leases, it may take months to finalize the lease terms. Additionally, tenant upfitting may be necessary, which could add additional months to the transaction. On the other hand, a potential tenant could walk into a finished space, say, "it's perfect!" then sign the lease and move in next week! Not likely.

Property Management

A broker might contract with an owner to manage property for them. This usually includes collecting rent, handling repairs and routine maintenance. Responsibilities may or may not include leasing and tenant upfitting. There needs to be a written property management agreement outlining the duties of the agent. Fees to be paid should also be clearly defined in writing. They may be calculated based on rental monies collected, or a flat fee, or by some other agreed-upon method. The owner may already have staff on hand to supervise the property. Alternatively, the broker may employ his or her own staff. These details also need to be clarified in the property management agreement.

Institute of Real Estate Management (IREM)

The Institute of Real Estate Management (IREM) is an international community of real estate managers dedicated to ethical business practices, maximizing the value of investment real estate, and promoting superior management through education and information sharing.

An affiliate to NAR, IREM is the home for all industry professionals connected to real estate management.

For additional resources related to property management, visit IREM's website at www.irem.org.

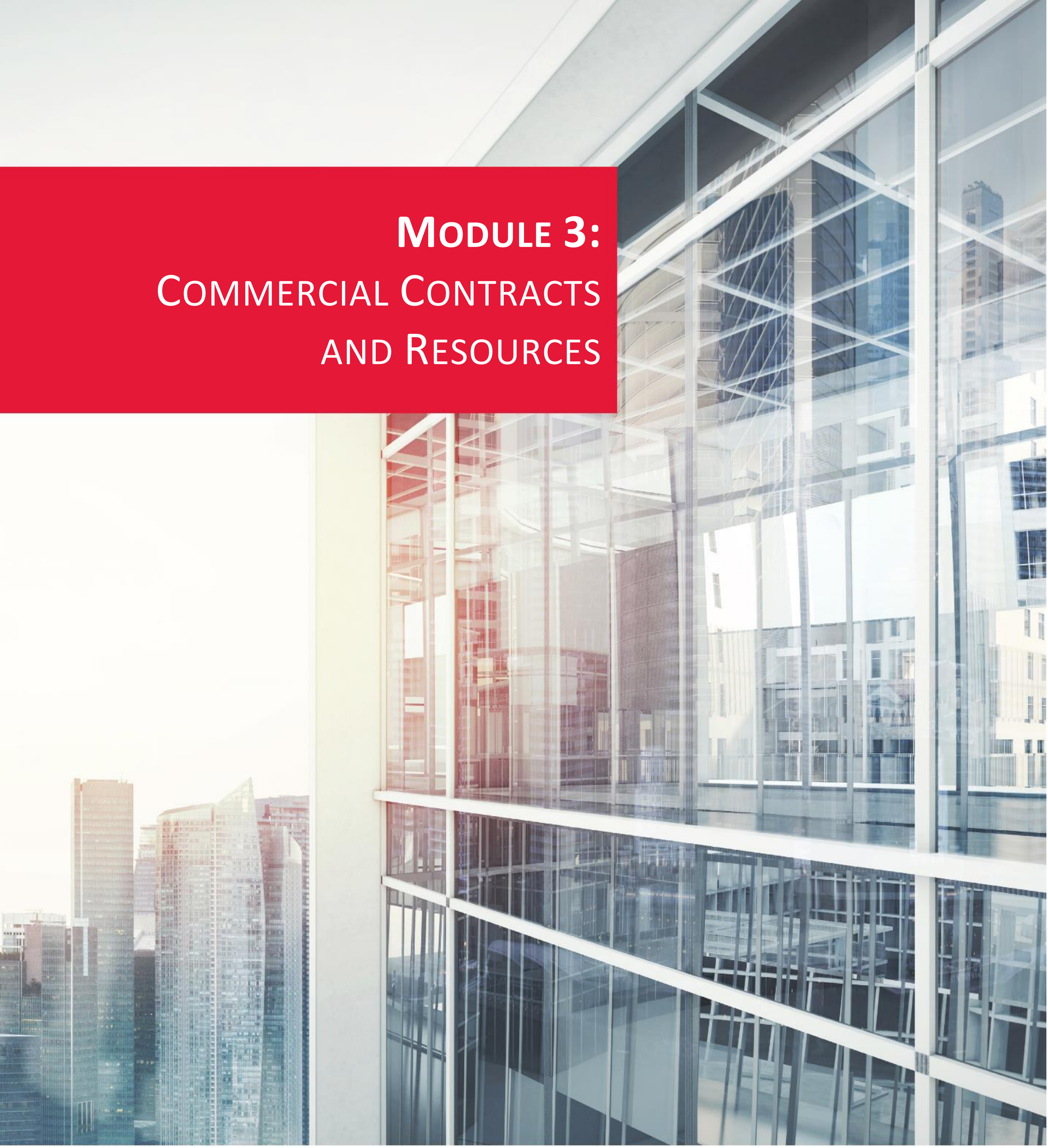
QUESTIONS TO CONSIDER

Name three similarities and three differences between residential and commercial transactions.

What is a "representation agreement?"

What agreement sets up any commission sharing between the listing broker and the selling broker?

Explain the difference between cash out and over the term when referring to a broker's commission payment:



MODULE 3:
COMMERCIAL CONTRACTS AND RESOURCES

COMMERCIAL Real Estate
REALTOR®
NATIONAL ASSOCIATION of REALTORS®

Learning Objectives

- Identify key components of purchase contracts and lease agreements for commercial real estate.
- Interpret practical implications of commercial contracts and contract clauses.
- Recognize resources for additional information on commercial real estate careers and transaction

Purchase Contract

Many states offer a standard real estate contract for agents to use in residential transactions. Few states offer such a thing for commercial transactions. The reason is simple – commercial transactions have many more variables, such as use, re-zoning requirements, building and occupancy permits and due diligence. Therefore, many commercial real estate purchase contracts are drafted by attorneys for the specific transaction at the direction of the parties.

That being said, what are some of the more common issues addressed in all commercial contracts? Of course, the property and parties must be identified. In addition, the date of the agreement and proposed date of closing must be stated. Certain warranties are made such as marketable title, clear of encumbrances except those listed. The purchase price is detailed along with the manner of payment. These terms are found in the vast majority of all real estate contracts. There could be a standard commercial contract, but because of the uniqueness of commercial transactions, many addenda would need to be added to most deals, encouraging real estate agents to draft them – which is illegal unless the agent is also an attorney.

Key Clauses in Commercial Purchase Agreements

DUE DILIGENCE

This clause allows buyers to examine many things before they are committed to proceed with the real estate purchase. Items commonly included in due diligences clause include:

- Financing
- Physical inspections
- Lease and contract review
- Zoning and land use issues
- Environmental studies
- Traffic studies
- Market studies
- Feasibility studies
- Survey
- Title
- Use
- Appraisal

Some contracts set standards for each of these, requiring buyers to proceed if the standard is met. Others may give buyers the right to purchase or not for any reason or for no reason during the due diligence period. (This is like an option in a contract. The earnest money may or may not be refundable.)

ASSIGNMENT

While this is addressed in most residential contracts with language like, "this contract may NOT be assigned unless all parties agree…" it is not uncommon to have a more detailed assignment clause in a commercial deal. It may be that one partner secures the deal as the buyer with the intention of creating new entity to eventually own the property. This new entity (such as a LLC, Sub S – Corporation, Limited or General Partnership, or C-Corporation) is created after the due diligence period is over and the sale is expected to close. The partner plans to assign the contract to this new entity prior to closing.

ENVIRONMENTAL

The buyer or seller may want detailed requirements regarding environmental issues, particularly on a suspect piece of property (such as a gas station or former industrial site). Since these issues vary with the lawsuits and legislation, there may be different clauses depending upon the timing and the property. Do keep in mind that all environmental-related issues should be addressed by attorneys, not real estate brokers or agents.

USE

One of the most important and most neglected clauses in the sales contract is the use clause. Typically, when buyers put a home under contract, they expect to use it as a home, thus maintaining the same use. In commercial real estate, the addition of something as simple as a coffee bar to a bookstore can dramatically change the zoning and building code requirements. Thus, unless buyers plan to keep using the property exactly the same way as it has been used, much investigation may be necessary to ensure that they can use the property as planned. What can interfere with a buyer's intended use? Zoning, building code, fire marshal restrictions, utility requirements, department of transportation standards, lender's requirements, restrictive covenants, deed restrictions, city, county or state requirements, tenant demands, environmental regulations, and more. A large part of due diligence may involve ascertaining that the buyer's intended use can be approved.

ASSIGNMENT OF LEASES, ESTOPPEL CERTIFICATES

When buying property that has tenants, buyers may want to verify that those tenants will be staying and that their leases are current and correct. Further, buyers will want the rights to those leases assigned to them or their lender.

It is easy for buyers to invest substantially in the purchase of a property before the sale even closes. In fact, a buyer may have several thousand dollars invested and never close! Consider the cost of inspections, appraisals, soil tests, etc. If the results are not satisfactory, the buyer may decide to walk away from the property and forfeit money spent for these due diligence items. Some sellers may already have this information available and be able to provide it to interested buyers, thus making their property more attractive due to fewer risks during inspections.

LEASES

Many businesses, institutions, governments and other commercial real estate users prefer to lease their quarters rather than purchase a property. There is a wide range of reasons for this preference, including:

- Flexibility – able to upsize or downsize space requirements in the future, depending on business needs.
- Cost – leasing space usually does not require a large commitment of capital, unlike purchasing a property.
- Mission – many organizations prefer to focus on their core business or organizational mission and let a landlord deal with the day-to-day issues of operating a commercial property.

As a result, leasing is a major aspect of the commercial real estate market and many brokers and agents have successful careers representing tenants or landlords in their communities.

Now, let's look at commercial leases. To understand the value of commercial leases, it is helpful to consider bonds. The value of a bond is largely dependent on the strength of the entity repaying it. The same is true for a lease. The stronger the tenant, the better the lease terms for the landlord, making the lease worth more. One poorly worded clause can mean thousands of dollars in value to an owner and many more to the tenant. This is where experience is invaluable. An experienced commercial agent will know what is being offered in the market and how to carefully review the clauses. While this course does not review leases in detail, below are some of the clauses that are most important to make each deal unique.

Standard Commercial Lease Clauses

All leases need to stipulate the date, term, rent, etc. In commercial leases however, these can all take on new meanings.

TERM

When does the lease begin? At occupancy? And if so, what does that mean? When the space is turned over to the tenant? When the tenant opens for business? On a specific date? When does the lease end? Is notice required?

RENT COMMENCEMENT

When does this begin? (This poses the same issues as mentioned above, for the term). What day of the month is rent due and where is it sent?

USE

Exactly how can tenants use the space? If they are a retailer, what exactly can they stock? This is one of the most important clauses for both owners and tenants, especially in a retail situation.

UPFITTING, TENANT IMPROVEMENT

What improvements will the landlord make as part of the deal and by when? Who provides the plans? If there were a cost overage, how would it be handled?

DEFAULT ISSUES

What constitutes a tenant default? How is notice handled? How much time is provided to cure the default? What constitutes a landlord default? How much time is allowed to cure it?

NOTICES

To whom should notices be sent and how?

ACQUISITIONS AND MERGERS

What are the tenant's rights if the property is acquired by or merged with another entity? This is becoming very common. What are the landlord's rights?

COMMON AREAS

These are shared areas in the development. How are they defined? Do tenants have rights to use them? This is especially important when there are expenses allocated to tenants for their share of common areas.

Examples: Does the tenant in a shopping center pay part of the common area expenses of the fast food restaurant out on an outparcel? Can the tenant put items for sale on the sidewalk outside their space? In the parking lot?

RENT CALCULATIONS

Commercial leases frequently include several items that comprise the total monies due from a tenant. (See "Net Lease versus Gross Lease" below.) How are these calculated and when are they due? How is the square footage measured? How are rent increases handled?

NET LEASE VERSUS GROSS LEASE

This in effect defines who pays what. If the landlord pays most of the expenses, the lease is more gross than net. If the tenant covers most or all of the expenses, the lease may be more net than gross. Any experienced agent will ask about these details, and then carefully review the lease proposal. Among the expenses that could be paid by either party are:

- Insurance
- Real estate taxes
- Utilities
- Janitorial
- Landscaping
- Security
- Administration
- Accounting
- Repairs and maintenance
- Capital expenses

If the tenant pays, the cost of these services may be prorated based upon the amount of the total space the tenant occupies. These expenses can be paid by the landlord, the tenant, or split. If split, there could be a pass through or a stop. In this case, the landlord (or the tenant) will pay up to a specified amount (the stop) and the other party pays the overage or difference. The point at which the other party must start paying is critical because anything over this point can add many dollars to the rent (for the tenant) or deplete the landlord's revenue. This is one of the most important clauses.

LAND LEASE

This is not a provision in a lease, but rather its own lease. A land lease allows a user to lease the land for a period of time (usually a long period) and construct a building. It may be seen in situations where a city, county or other government agency owns the land, but desires to see job-creating private development on the site. Land leases may also be used when owners do not want to sell their land or users cannot afford to purchase it. At the end of the lease, ownership of the building remains with the landowner.

DEED RESTRICTIONS, RESTRICTION COVENANTS, TRADE RESTRICTIONS

These clauses restrict the tenant from certain uses or from opening a competing business within a certain area.

ASSIGNMENT, SUBLETTING

These clauses dictate the terms under which tenants may assign their rights under their lease or may sublet their premises. These terms are important because, as stated before, the value of leases depends upon the value of their tenants. Further, a deal may have been stuck based on the reputation of the tenant. If that tenant then leaves and sublets or assigns their lease, the landlord may have a new tenant that is less popular, weaker financially or does not fit well with the tenant mix. This is also important to tenants because they may need to reinvent themselves under a new entity or may need to assign their lease. If tenants need to downsize or close a location, they may want to sublet. For example, a tenant may reorganize, merge or spin off a section and want the "new" entity to take over the lease obligations.

INSURANCE

What type of insurance is required and at what cost and level of coverage? Commercial properties are subject to a wide range of risks, including personal injuries, as well as property damage due to windstorms, earthquakes, fire, flooding, extended power outages, and even terrorist attacks.

Many insurance clauses in commercial leases are critical with office, retail and industrial leases each having their own unique issues. This is why landlords or tenants want to use experienced agents to negotiate their side of the lease. Do keep in mind that insurance issues should be addressed by attorneys or by the insurance professionals representing the respective parties.

CONTRACT EXERCISE

Access your state's Commercial Purchase and Sale Contract in your state's template forms section on their website. Identify the sections you just covered in this manual and record any challenges and potential differences you might experience in your home state:

Resources for Further Exploration

Now, let's look at some of the resources that are readily available to you if you decide to pursue a career in commercial real estate or expand your business to involve commercial real estate or land transactions.

First, the National Association of Realtors® collaborates with five of the Institutes, Societies, and Councils along with the REALTORS Property Resource®, a wholly owned subsidiary of NAR. NAR strives to promote advocacy, education, research, technology and networking which benefits the commercial member and their business.

As a point of reference, here are some demographic characteristics of NAR Commercial members:

- The median age of commercial members is 59-years-old.
- Seventy-eight percent of the practitioners are male.
- Sixty-five percent of commercial members have a bachelor's degree or higher.

The following Institutes, Societies and Councils offer education and designation programs in the areas of commercial investment, land, property and asset management, counseling, industrial and office.

CERTIFIED COMMERCIAL INSTITUTE MEMBER (CCIM)

www.ccim.com

The CCIM Institute was established in 1954 to give commercial real estate practitioners a previously unrealized opportunity to further their business practices through focused education and networking opportunities. Members close over $200 billion annually in commercial real estate deals.

Today, with the addition of advanced technology tools, CCIM is the global leader in commercial and investment real estate education and services. In addition, the coveted CCIM designation, recognized as a hallmark of professional competency, affords members an undisputed competitive advantage.

Belonging to CCIM means being part of an ethical and knowledgeable network that fosters lasting relationships based on mutual respect. Our membership represents diversity in culture, gender, and age from all disciplines in the commercial real estate industry. If you would like to learn more about how owners of commercial properties think, consider taking CI 101: Financial Analysis for Commercial Investment Real Estate.

COUNSELORS OF REAL ESTATE (CRE)

www.cre.org

The Counselors of Real Estate is the membership organization established exclusively for real estate advisors who provide intelligent, unbiased, and trusted advice for a client or employer.

Founded in 1953, the organization serves 1,100 members worldwide, all who hold the "CRE" credential. CREs are linked to one another by their commitment to integrity, competence, community, trust, and service; and they adhere to a strict Code of Ethics and Standards of Professional Practice.

The purpose of the organization is to serve as an information resource and to provide its members with opportunities for professional development, knowledge sharing, and networking, all grounded in a culture of camaraderie.

INSTITUTE OF REAL ESTATE MANAGEMENT (IREM)

www.irem.org

The Institute of Real Estate Management (IREM) is an international community of real estate managers dedicated to ethical business practices, maximizing the value of investment real estate, and promoting superior management through education and information sharing. IREM is the home for all industry professionals connected to real estate management.

REALTORS® LAND INSTITUTE (RLI)

www.rliland.com

The REALTORS® Land Institute (RLI) is a membership organization created for and by land experts, dedicated to building knowledge, building relationships and building business. For its members- the extraordinary real estate professionals - who broker, lease, sell, develop, and manage our most precious resource: the land. Originally named the Farm & Land Institute, the organization was founded in 1944 and was originally an affiliate organization of the National Association of REALTORS®.

SOCIETY OF INDUSTRIAL AND OFFICE REALTORS® (SIOR)

www.sior.com

The Society of Industrial and Office REALTORS® is the leading professional commercial and industrial real estate association. SIOR has more than 3,000 members in more than 630 cities in 34 countries. SIOR represents today's most knowledgeable, experienced, and successful commercial real estate brokerage specialists. Real estate professionals who have earned the SIOR designation are recognized by corporate real estate executives, commercial real estate brokers, agents, lenders, and other real estate professionals as the most capable and experienced brokerage practitioners in any market. SIOR designees can hold the following specialty designations industrial, office, sales manager, executive manager, or advisory service. SIOR also includes associate members who include corporate executives, developers, educators, and other involved in the commercial real estate industry.

QUESTIONS TO CONSIDER

Name two key clauses found in a commercial sales contract not typically found in a residential contract:

Explain the importance of the use clause in a commercial lease:

Conclusion

There are other resources listed in the Resources section, and we invite you to review them later while this course is still fresh in your mind. We are happy to answer any questions you may have about this course or about commercial real estate in general. Thank you for taking this course and best of luck in your careers!

RESOURCES

Helpful Websites

THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS (ICSC)

www.ICSC.org

ICSC is the leader for retail information. The purpose of The International Council of Shopping Centers (ICSC) is to advance the shopping center industry and to promote its role in the commercial distribution of consumer goods and services. Their annual convention and educational opportunities focus on leasing, developing and sales of retail real estate.

THE URBAN LAND INSTITUTE (ULI)

www.uli.org

The Urban Land Institute provides leadership in the responsible use of land and in creating and sustaining thriving communities worldwide. ULI is an independent global nonprofit supported by members representing the entire spectrum of real estate development and land use disciplines. More information is available at www.uli.org.

Working with CIE and C/I MLS

The National Association of REALTORS® has established two types of Commercial property services ("Services"): the Commercial Information Exchange and the Commercial/Industrial MLS. While both are designed for the orderly correlation and dissemination of listing information so that participants may better serve their clients and the public, there are distinct differences between them. The following summary highlights their similarities and differences. A "Frequently Asked Questions" (FAQ) section regarding the operation of CIEs may be found at the end of this document. Unless otherwise noted, the following are excerpted from the 2011 Handbook on Multiple Listing Policy Commercial/Industrial Supplement.

Please Note: This is a comparison and should not be considered a replacement for the official documents established by the National Association of REALTORS® that govern the rules and regulations for developing and operating a REALTOR® property service. All inquiries regarding CIE & C/I MLS policies and procedures should be directed to the NAR **Board Policy and Programs** Division at 312.329.8339.

PURPOSE

CIE

The CIE is an information exchange. Participants who have been retained by sellers of commercial or industrial property to market those properties may submit information on those properties to the CIE and Participants who have retained by buyers of commercial or industrial property may submit information on the type(s) of property sought to the CI. **(CIE: Part 6, Section 2)**

CI/MLS

A Commercial/Industrial MLS is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law). **(CI MLS: Part 1, Section 2)**

COMPENSATION

CIE

A CIE is not an MLS. No offers of cooperation and compensation are communicated by filling information on a property with the CIE. Any compensation agreements related to property included in the Exchange compilation must be made on an individual basis outside the CIE between the Participants involved.

CI/MLS

In filing a property with the C/I MLS, the Participant is making a blanket unilateral offer of compensation to the other Participants for their services in the sale or lease of such listing. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease). The listing broker retains the right to determine the amount of compensation offered to other Participants, which may be the same of different. **(C/I MLS: 2, 5)**

PARTICIPANTS

Any REALTOR® (principal) is eligible to participate in the Service upon agreeing in writing to conform to the rules and regulations and to pay the costs involved. **(CIE 6, 3; C/I MLS: 2)**

Brokers and salespeople other than principals are not "members" or "participants" but may use the Service through the Participant (principal) with whom they are affiliated. **(CIE: 7; C/I MLS: 2)**

No individual or firm, regardless of Board membership status, is eligible for participation or membership unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other Participants. **(CIE: 6, 3; C/I MLS: 1, 3)**

NON-MEMBERS

In states where law requires non-Board members be admitted to the Service, any limitations or restrictions imposed on participation or membership shall be no more stringent than permissible under the National Associations Qualification Criteria. However, in states where non-Board member access to the Service is not a requirement of state law, Boards may at their discretion, establish additional qualifications for non-Board member participation and membership. **(CIE: 6, 3; C/I MLS: 1.3)**

ACCESS TO INFORMATION

Current Property Information: Only Participants and their affiliated licensees may have access to and use of the current property information generated by the Service. **(CIE: 7; C/I MLS: 2)**

A Service may, as a matter of local determination, make statistical reports on sold information available to REALTORS® who don't participate in the MLS and to governmental agencies. (Policy Statement 7.3, 2009 Handbook on Multiple Listing Policy)

LISTINGS

CIE

It is not essential that a Participant retained by a property owner to market the property have an exclusive right to sell, exclusive agency, or open listing. Other forms of agreement to provide certain marketing services may be the basis for authorizing the submission of property information to the Exchange. **(CIE: 7)**

CI/MLS

The service shall accept exclusive right to sell or lease listing contracts and exclusive agency listing contracts and may accept other forms of agreement (except open listings – unless required by law – and net listings) which make it possible to offer compensation to other Participants acting as subagents, buyer agents or both **(C/I MLS: 2, 1)**

FILING PROCEDURES

CIE

Participants acting on behalf of buyers may submit information describing the type of property sought even though the Participant may not be the buyer's exclusive agent. Participants acting on behalf of sellers or lessors must submit their written authorization. **(CIE: 7)**

Submission of any property information to the CIE is voluntary. However, any property information submitted must include written authorization for the submission to the CIE. **(CIE: 7)**

CI/MLS

Listings for real or personal property located within the territorial jurisdiction of the MLS must be delivered, usually within 48 hours, after all necessary signatures or seller(s) or lessor(s) have been obtained. **(C/I MLS: 2,1)**

PROPERTY TYPES

Types of properties which may be submitted (depending on local rules) include: subdivided vacant land; land and ranch; business opportunity including some interest in real property; motel/hotel; mobile home parks; commercial income; industrial; investment; and office space (additional categories of commercial, industrial and investment property may be added by the Service.)
(CIE: 7; C/I MLS: 2, 1)

OWNERSHIP OF INFORMATION

CIE

By submitting property information, Participants represent that they are authorized and grant authority for the Board to include the property information in its copyrighted Exchange compilation and also in any comparable report, sold report, or other historical or statistical report unless expressly indicated otherwise in writing at the time the information is filed with the Exchange. **(CIE: 7, 9)**

CI/MLS

By the act of submitting any property listing data to the C/I MLS, Participants represent that they are authorized and grant authority for the Board to include the property listing data in its copyrighted C/I MLS compilation and also in any statistical report on comparables. **(C/I MLS: 2, 11)**

DISPUTE RESOLUTION

By becoming and remaining a Participant, each Participant agrees to arbitrate disputes involving contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4 of the REALTOR® Code of Ethics (with participants in different firms.) (CIE: 7,15; C/I MLS: 2,13)

Final Questions

Q May the CIE allow brokers who are not REALTORS® to participate in the CIE?

A Allowing participation by licensed brokers who are not REALTORS® is completely a local CIE decision. This is somewhat similar to a local MLS deciding whether they will allow participation in their MLS by non-member brokers. In those states where non-member broker access to the MLS is required by state law, associations should consult with legal counsel to determine if similar access should be provided to a CIE.

Q May the CIE allow REITs and other property owners to participate in the CIE?

A Whether a CIE wants to allow REITs and other unlicensed property owners to submit properties to the CIE is completely a local decision. Similarly, any other CIE privileges that are extended to these individuals (beyond the right to submit their properties for publication in the CIE) are a matter for local determination. CIEs are not precluded from publishing, at their discretion, properties submitted by unlicensed individuals or entities.

Q Institute Affiliate (IA) members are not REALTORS® but belong to the National Association of REALTORS®. May they be allowed to participate in the CIE?

A Whether participation in the CIE is available to Institute Affiliate (IA) members is completely a matter for local determination.

Q Will participation by those who are not REALTORS® disqualify the CIE from NAR insurance coverage?

A A decision by a local association to provide limited or full participatory privileges to any or all of the groups listed above or, alternatively, a decision by a local association that none of these individuals will have access to the CIE is consistent with NAR policy and does not jeopardize insurance coverage, unless criteria for determining eligibility for a particular class of Participants are not applied consistently.