

# How to Get Paid

Understanding a fee agreement allows brokers to present a united front to their clients

By **Jeff Rauth**, president, Commercial Finance Advisors

**B**ROKERS ACCUSTOMED TO FULL-lender agreements and full yield-spread disclosures on residential loans often are shocked at how vulnerable their fees can be on commercial loans.

It is up to commercial mortgage brokers, however, to take care of their pay and to ensure that fee agreements are signed, understood and in hand at the beginning of the process. Here's a look at why.

## Today's dilemma

In the past five years or so, conduit and commercial-mortgage-backed-securities-type lenders often paid brokers their fees at closing. As more of these lenders are against the ropes, they are restricting their broker payouts or no longer taking new loan applications.

Thus, many commercial brokers are submitting their deals to traditional, local banks. The idea that brokers should get paid for their hard work is not on these banks' agenda — and certainly not on the borrowers' minds.

The last thing you want to hear from your borrower after working on a loan is: "What do you mean, there is a fee? I would never have done this deal had I realized that."

## Understanding agreements

To get paid for your work on a deal, you should understand your fee agreement well enough to explain it to borrowers.

A good fee agreement can be complex — your attorney should review its terms. Often, fee agree-

ments specify the arrangement's details and are structured to hold up in court. Good agreements go beyond the 1-percent loan-placement fee.

Arrangements can be exclusive or nonexclusive. Usually, they also answer the following questions:

- **Will brokers coordinate the entire shopping phase and negotiation process for the borrower?**
- **Will brokers be paid no matter which bank funds the loan?** Or will the arrangement only ensure payment after a successful closing with the noted bank?

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- **Are brokers asking for a retainer and for their costs to be covered by the borrower** as the loan request is assembled? If so, how and when will broker expenses be reimbursed?
- **Will there be a minimum fee granted if the loan amount is reduced** or changes to a level that is unprofitable for brokers?
- **What will be the length of the arrangement between the parties?** When will it end?

Your attorney also can address legal components to these agreements, which include the rights to jury or arbitration, indemnification, information disclosure, confidentiality and governing law.

## Borrowers on board

At times, borrowers will want to start on the loan first and then address the fees after you bring them a deal. There often are only three ways to handle this.

1. **You quote the deal without revealing the funding bank.**

2. **You produce a term sheet**, then deliver it and the fee agreement at the same time, trusting that borrowers won't jump ship.

3. **You drop the deal.**

Many brokers choose option No. 1, with No. 2 a possibility if they already have a strong relationship with the borrower. Often, if no payment arrangement is possible, brokers can walk from the deal.

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Although a fee agreement can provide an additional step in the loan process — and even one that will scare off some borrowers — many clients will respect brokers who take the time and effort to explain its purpose. This can establish the relationship properly and allow clients to realize that they are working with an experienced professional. **■**



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