

THE FINE ART OF PREPARATION, INCLUDING DRAFTING REQUESTS FOR PROPOSAL AND LETTERS OF INTENT

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It is often said that our practice as real estate professionals is more art than science. This is most appropriate in drafting both letters of intent and requests for proposal for both buyer and tenant clients. In fact, the time invested in careful and focused drafting of these documents will pay dividends, streamlining the negotiations and final transaction. A few simple, but effective, points to consider are:

1. Space Planning Checklists: Before any drafting occurs, we have found it extremely helpful to prepare a space planning checklist based on your client's input. Rule one when representing a tenant or buyer is to understand (and qualify) the client's space requirement, so you consider the right properties and not waste time or effort on pursuing properties that should have been disqualified earlier. This will save time, effort, and confusion, ensuring that you are moving forward with the client in a joint effort to achieve the identified goals. What's more, this space planning process often uncovers many aspects of occupancy that the client has not previously considered.

2. Include and Identify All Appropriate Deadlines: Though terms may vary in your simple letter of intent or request for proposals, be sure to identify all

necessary deadlines. Is financing required for a property purchase? Is municipal approval required prior to closing or a tenant taking occupancy? When does your client's present lease term expire? Be vigilant to include and identify all applicable contingencies and deadlines for your client.

3. Agreements to Agree: Keep them that way! Be sure to maintain the non-binding nature of the letter in these first-round proposals. At the same time, provide enough detail to ensure that the client is fully protected and so that the negotiation addresses the features and amenities the client seeks in the renewal, new lease, or purchase contract.

4. Potentially Binding Terms in LOI's/ RFP's: Provisions for confidentiality of negotiations, exclusivity of negotiations, and other binding terms should be considered and perhaps included. This serves to encourage meaningful negotiations between the parties and create a hierarchy of terms (essential vs. throwaway), as negotiations proceed.

5. Know The Market, Be THE Advocate: As the market conditions change, you should have a sense of what is, or is not, obtainable. In this way, you will manage your client's expectations, both upward or downward.

6. Anticipate The Parties' Best Outcomes: A realistic approach to the transaction is critical. Requests for proposals are your buyer or tenant's wish list, but if the list is too long or too detailed for a relatively small deal, you may discourage property owners from responding at all. Good requests lead to good proposals, good proposals lead to better working relationships, leases, and purchase and sale contracts, which lead to better projects and closing outcomes.

7. Who Drafts the LOI - Broker or Attorney or Both?: While these documents are usually non-binding, brokers are not attorneys. Sometimes a broker-drafted letter of intent can create problems for the purchaser or tenant down the road. Your client's lawyer should be involved in the drafting process for both letters of intent and requests for proposals. As a fallback, a brief review of your draft letter or request by the attorney may save both time and money, when negotiating the lease or final purchase and sale agreement.

The right letter of intent or request for proposals is the cornerstone to a satisfactory transaction. Start on firm ground, and the odds are that this will launch your transaction in the right direction. ▾