

SHIFT COMMERCIAL

HOW TOP COMMERCIAL BROKERS TACKLE TOUGH TIMES



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TACKLE TOUGH TIMES**

SHIFT
COMMERCIAL

BUDDY NORMAN
WITH JAY PAPASAN

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Smooth seas do not make skillful sailors.

PROVERB

ACKNOWLEDGMENTS

Writing a book is rarely the result of an individual's effort but rather the efforts of many ... *SHIFT Commercial* is definitely the latter. First, I would like to thank Gary Keller for allowing me to be a part of his *New York Times* bestselling Millionaire Real Estate series. This book is a commercial adaptation of the discerning tactics and business strategies for residential agents that Gary shared in *The New York Times*, *Wall Street Journal*, and *USA Today* national bestseller *SHIFT: How Top Real Estate Agents Tackle Tough Times*.

I also want to thank Mark Willis, Mary Tennant, and Mo Anderson for encouraging and supporting me and KW Commercial while this book was being developed. Bryon Ellington and Jim Talbot also provided crucial leadership and support throughout the process. Very special thanks are owed to my dedicated staff at KW Commercial—Cory Older, Schuyler Williamson, and Gloria Sivori—for allowing me the time to commit to the book while continuing to build North America's fastest-growing commercial real estate brokerage firm.

Honestly, I probably wouldn't have been in a position to write this book without the advice and counsel of two of my most important commercial real estate mentors: Roger Staubach and Kevin Hayes. Both provided crucial coaching and support when I was building and developing my commercial real estate career. They showed me how to do this business at a high level with complete integrity in everything they did—the “high road” might well be named in their honor.

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FOREWORD

Fresh out of college in 1979 and just months into my real estate career, I immediately got my first taste of a real estate shift.

On the heels of the energy crisis, interest rates soared as high as 18 percent. As you can imagine, sales ground to a halt. I kept at it, writing four or five offers every month, but nothing would close. Things looked bleak when I went home for Christmas, having not closed a sale in almost five months. My mom suggested I get a part-time job at 7-Eleven, which I politely declined. I was confident that I was doing the right things and would eventually make it. My dad offered to loan me some money to get me through, but he didn't just write a check.

"How do I even know you've been working?" he asked. I ran out to my yellow Volkswagen Beetle and retrieved my "database." My database was in fact a 3 x 9 index-card box: my contacts organized A to Z in one half and the other half divided into twelve months with follow-up notes for all my leads and contacts. It may sound primitive, but not only was this state of the art in the pre-personal computer age, but it was also extremely effective. I sat down with my dad and walked him through my lead management system. I showed him all the leads I had in my pipeline and what I was doing and would be doing to turn those leads into closed business. After a moment's consideration, he replied, "I'll bet \$500 on that box."

Within weeks I closed an out-of-town buyer and paid my dad back. I regained my footing, went on to hit all my financial goals, and became one of the top salespeople in my firm that year.

A key distinction should be made between my challenges in the final months of 1979 and my successful 1980. After the shift, I dove into learning the fundamentals of the business. I met daily with a scripting partner and dedicated myself to mastering the language of closing for appointments and making sales presentations. I worked my lead generation plan and called and called and called. The one thing I saw quickly was that a shifted market is like a headwind and you must lean into it and work harder to make progress. Luckily, I was new enough not to realize that it was taking extraordinary effort to achieve even average results. Selling a home where the seller had to pay 12 discount points was just business as usual for a 22-year-old rookie like me. Without knowing it, I was learning the invaluable lessons of how to build a business when little business is being done.

In 1987, it happened again. Changes to the federal income tax code wrought havoc in the market and, seemingly overnight, the population of our Board of Realtors® dropped from more than 5,000 to less than 2,000. This time I knew better. I recognized the shift for what it was and what it would require. The lessons I'd learned in my first shift helped me make critical adjustments to my game plan: work smarter, as well as harder. At the time, I was building a new real estate company, and I not only had to lead myself through the shift but also the agents I worked with. Together, we adapted to the new reality and creatively worked hard to grow through the crisis. In the end, we came out on top: the number one firm in our market by any measure—a title we've never relinquished.

Real estate is cyclical ... but we forget. The good times spawn a collective amnesia until the next shift comes along to remind us that selling real estate demands the most from its career practitioners. Those who learn to recognize these shifts and adjust their mindset and action stand to emerge as market survivors and sometimes as market leaders as well.

In 2000, in the aftermath of yet another financial meltdown—the infamous dot-com bust—we created a training seminar called *Shifting Markets* to better prepare our associates for a tough buyers’ market, where sellers cling to the past and buyers fear what lies ahead. Then, in 2006, it was no real surprise to learn that agents in our company were calling in and asking for the *Shifting Markets* manuals. The first murmurs of what is now called the Great Recession had been echoing since the previous fall and agents everywhere were looking for clues to how to weather the storm. Markets that had previously been some of the hottest were the first and, often, hardest hit. Sign calls were down. Inquiries nonexistent. Buyers backed out of contracts ... Another shift began, one which we now see as the greatest economic shift since the Great Depression.

So we began to focus our research on top agents who weren’t just surviving but thriving in these tough times. That research culminated in the 2008 publication of *SHIFT: How Top Real Estate Agents Tackle Tough Times*, which went on to become a *New York Times*, *Wall Street Journal*, and *USA Today* national bestseller, as well as a series of seminars that attracted more than 30,000 attendees across North America.

Today, we look up and the real estate shift is following a now familiar course. As it has in the past and will most certainly in the future, a shift moves through the residential market to collide with the commercial market. As residential roofs multiply, a wave of commercial expansion typically follows in its wake. And the same is true when those same houses sit unsold and unoccupied or when they fold to foreclosure and face vacancy and neglect: commercial goes into retreat. And the brokers who lease and sell these properties face challenges that just a few years

ago seemed unimaginable. They are looking for answers. *How do I navigate this market? How can I first get my business back to profitability and, in turn, find opportunity here?*

With *SHIFT Commercial*, our goal is to share lessons from commercial brokers who are finding uncommon success in the midst of a historic and uncommon recession. While this book can be read as a stand-alone piece, it can also be seen as an extension of *SHIFT*. I sincerely hope you'll take the time to read it as well, since most of the tactics featured in the original work are equally effective in the commercial arena. That said, the commercial real estate business is unique. Commercial brokers have unique customers, distinctive challenges, and novel solutions. The goal of this book is to highlight those differences while acknowledging, despite many claims to the contrary, that there is much common ground as well. As with *SHIFT*, it's our intention that the commercial tactics in this book be as timeless as they are timely. So whether you're reading this book in the wake of our current shift or a decade from now when the next one is coming around the bend, the rules of the game won't have changed. Even if your current market is booming, the same game plan that will lift your business in a tough market can make it soar in a less challenging one. No matter the reason, when you want to shift your business to another gear, the strategies are always the same. The fundamentals, as we wrote in *SHIFT*, never go out of style.

For *SHIFT Commercial*, we partnered with commercial veteran Buddy Norman. For the past two and a half years, despite a shifted market of historic proportions, Buddy has been building the fastest-growing commercial brokerage firm in North America. With more than twenty years of commercial brokerage experience, Buddy has represented tenants from local entrepreneurs leasing a few thousand square feet to

Fortune 500 clients leasing more than 500,000. He's been on the front lines of the business and achieved extraordinary success through up and down markets. Buddy draws not only from his personal experience as a commercial broker and business owner but also from the more than 800 years of combined commercial real estate experience of his Commercial Leadership Council, a group of more than forty commercial veterans helping to build this new enterprise.

As you turn these pages, hopefully scribbling notes and aha's in the margins, make both a commitment to tackling these challenges with everything you have, as well as a commitment to building newer, stronger habits that will serve you in better times. One-year wonders come and go, but the measure of any professional is how well they weather the lean years. To quote Benjamin Disraeli, "There is no education like adversity." And it is a good teacher. Reservoirs of strength, faith, and ingenuity are rarely revealed in prosperous times. Tough times will strip away the gloss and help you see the latent talents you always possessed.

So if you will learn these lessons now and commit them to habit, you'll join a small class of professionals who actually yearn for tough markets to weed out the uncommitted and allow them to win new customers, market share, profitability—their unfair share of the business. Only when you shift your mindset and your actions can your business truly shift into a higher gear.



Gary Keller

COB and Cofounder of Keller Williams Realty, Inc.

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July 25, 2011

INTRODUCTION

Tough times don't last, tough people do.

GREGORY PECK

Real estate shifts are easier to recognize than they are to acknowledge. One day job growth is beginning to stall and, seemingly overnight, vacancies are on the rise. Tenants start asking to downsize. Commercial property valuations level off. Negative news stories feed the worries of buyers and tenants. New development halts. Fear creeps in. Then, the market that was quietly losing ground goes into full retreat as tenant delinquencies turn into owner delinquencies and lenders sever lines of credit. Rents go into a free fall as owners scavenge for income to offset a rising tide of red ink. Deals unravel. Buyers and tenants hunker down to wait for a steal. Bankruptcies mount. Eventually, big commercial real estate owners start selling their companies or simply close their doors. Credit freezes up. Banks begin to shut down ... Sound familiar? If you've been in the business for any length of time, it should. In our experience, this drama plays out roughly once every ten to twelve years.

There are four clear contributors to a downward trend in commercial real estate markets; any two of these can create a shifted market. The post-2007 time period has offered us a perfect storm of all four: excessive valuations, lax loan standards, overbuilding, and economic recession.

Speculation fuels bubbles, and bubbles are defined by valuations that lose touch with reality. These excessive valuations come in two forms: low cap rates and unrealistic income assumptions. When these valuations

drive commercial cap rates into the 3 to 5 percent range, you have to ask why any rational investor would risk their capital when they could get the same rate of return on a T-bill. The answer is they wouldn't. But, then again, the run-up to a market shift isn't really defined by rational behavior. Then there are income projections that effectively bail out an otherwise poor purchase decision. "So for the first few years you're building more equity than income, but as rental rates are buoyed by inflation (visualize an Excel chart with rosy rental projections driving up income year after year) the property will really hit its stride ..." The discipline of discounted cash flows gets lost and these speculative pro formas persist long after rental rates are actually in decline. Most find it hard to accept that the experience isn't just a blip and that a whole new reality has dawned.

CAUSES OF A SHIFTED MARKET

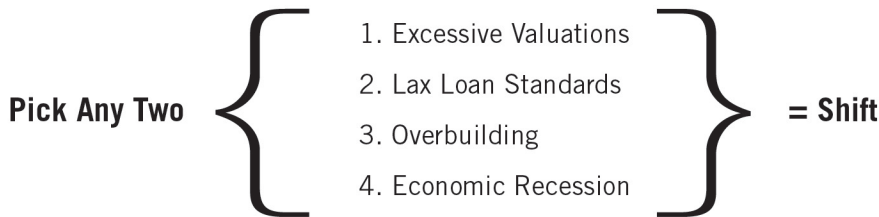


Figure 1

On the flip side of excessive valuations are the lenders who accept them. Appreciating markets can make investors numb to risk and offer the illusion of safety in numbers. The cycle begins with surprise ("Wow, the market is heating up"), then progresses to incredulity ("They paid \$_____ for that?"), and eventually the sheer volume of speculative comps gives rise to uncertainty ("Are we being too risk averse?"). This is

the moment of truth. In some cases, lenders become vocally indignant (“This is madness!”) which is rarely received warmly. After all, they are raining on everyone’s parade. Only in hindsight are they seen as courageous. In most cases, lenders uneasily relax their standards (“We’ve got to adjust to the market ... we’re losing too much business to the competition.”). The erosion of standards is usually in direct proportion to the length and size of the speculative run-up until, suddenly, the lender’s role has reversed: They are no longer serving as a check against speculation—they are unintentionally abetting it.

There is an old saying, “Give a developer money to build a building and he’ll build two.” Excessive valuation and lax loan standards also allow for speculative development to take place. Overbuilding in segments of the market is the outcome. With the long lag time between ground breaking and ribbon cutting on commercial properties, supply can stealthily outstrip demand and a low inventory sellers’ market is transformed into a buyers’ market with years of supply. Overbuilding is a deadly recipe for high vacancy rates, lower rental rates, and a slump in property values.

Finally, the fourth major factor is the economy. Just like the commercial and residential real estate markets, the economy has cycles too. Recessions happen—in fact, they are inevitable. Based on data from the National Bureau of Economic Research, the U.S. economy has cycled into recession 33 times between 1854 and 2009, or about every 4.5 years. When unemployment rises, the need for office and industrial space goes down because fewer people are working. And, because fewer people are working, there is less spending and also less demand for retail space. Depending on the depth of the recession, it may affect multifamily properties positively, if people that were previously homeowners suddenly become renters. However, for the most part, recessions are less than benevolent.

This may sound like we're oversimplifying, but please understand this: Shifts aren't complicated. Include any other measure you like, but generally speaking excessive valuations, lax loan standards, overbuilding, and economic recession are the hallmarks of a market shift. Your job as a commercial real estate professional is to be vigilant and watch for signs. If you've ever read Edward Chancellor's excellent work, *Devil Take the Hindmost: A History of Financial Speculation*, you know how this plays out time after time. As the title implies, the last ones to acknowledge the shift are often the hardest hit. So don't be the last, be the first.

The dangerous tendency is to think, "This time is different." It almost never is.

THE TACTICS

The book *SHIFT: How Top Real Estate Agents Tackle Tough Times* presents twelve tactics that residential real estate agents deploy in response to a downturn in the market. Each of these tactics is applicable to the commercial real estate professional as well, so we organized this book in the same way. The twelve tactics are listed in order of priority because we believe that what matters most at any given moment is what should command the majority of your energy and focus.

1. **Get Real, Get Right** – Mindset and Action: You can't control the market but you can control your outlook and your response to it. Get real about the market and get right in your action.
2. **Re-Margin Your Business** – Expense Management: Re-margin your business and get serious about expense management and profitability. Stop spending money "on it" and start investing money "in it."

3. **Do More with Less** – Leverage: Learn to do more with less. Maximize your productivity, upgrade your systems, and top-grade your people.
4. **Find the Motivated** – Lead Generation: Focus your lead generation on finding motivated clients. Master the tasks, skills, and scripts of your lead generation methods. Time-block to ensure this gets done every day.
5. **Get to the Table** – Lead Conversion: Converting leads to appointments to clients is the most dollar-productive thing you can do. Never assume you have a lead until you have an appointment, and never assume you have a client until you have an exclusive representation agreement.
6. **Catch People in Your Web** – Internet Lead Conversion: The Internet is one of the most untapped resources in commercial real estate. Catch people in your Web and focus your Internet strategy on capturing contact information for follow-up and conversion. Everything else about your web presence can be important, but is secondary to this.
7. **Price Tight to the Market** – Shift Pricing Strategies: Master pricing, whether for lease or for sale, so your listings aren't just "on the market," they are "in the market."
8. **Stand Out from the Competition** – Property Staging Strategies: Master strategies that will help your listings stand out from the competition, sell or lease faster, and garner a higher price.
9. **Create Urgency** – Overcoming Buyer and Tenant Reluctance: Help your clients overcome their reluctance and acquire genuine urgency. Timing the market is not an option when you are possibly missing out on the best opportunities today.

10. **Expand the Options** – Creative Financing: Build a creative finance team around you and put this to use whenever you can. Align yourself with those who have money and those who are lending money. Work creatively with sellers, buyers, and lenders to find a way to close the transaction.
11. **Master the Market of the Moment** – Identify and Establish Needed Expertise: Each shift has its own unique opportunities. Markets of the moment in commercial shifts tend to be tenant and landlord leasing representation, Small Business Administration (SBA) qualified buyers, high quality investments, as well as short sales, foreclosures, and REOs.
12. **Bulletproof the Transaction** - Issues and Solutions: Bulletproof your transactions. Assume nothing! Establish client expectations up front, involve yourself in the selection and supervision of vendors, be personally involved in due diligence, inspections, repairs, and any final negotiations.

As a commercial real estate professional, you have only one choice in how to respond: When the market shifts, so must you. It's not unusual to go through a period of denial or disbelief, but any prolonged shift will require you to adjust your tactics to achieve different results or pay the financial price of sticking to your guns. You get to choose. With a little downsizing and rationing, maybe you can ride it out. We prefer to remove the maybe and focus on first surviving and then thriving. How you choose to respond will define your outcomes. As Gary wrote in *SHIFT*, "Success isn't for the chosen few, it's for the few who choose."

TWELVE TACTICS FOR TOUGH TIMES

- #1 Get Real, Get Right – Mindset and Action
- #2 Re-Margin Your Business – Expense Management
- #3 Do More with Less – Leverage
- #4 Find the Motivated – Lead Generation
- #5 Get to the Table – Lead Conversion
- #6 Catch People in Your Web – Internet Lead Conversion
- #7 Price Tight to the Market – Shift Pricing Strategies
- #8 Stand Out from the Competition – Property Staging Strategies
- #9 Create Urgency – Overcoming Buyer and Tenant Reluctance
- #10 Expand the Options – Creative Financing
- #11 Master the Market of the Moment – Identify and Establish Needed Expertise
- #12 Bulletproof the Transaction – Issues and Solutions

TACTIC #1 GET REAL, GET RIGHT – MINDSET AND ACTION

Buckle up, we're headed to the bottom of the ninth.

ERNIE HARWELL, HALL OF FAME BASEBALL ANNOUNCER

The story is more than 2,500 years old, but it still has relevance. In Aesop's Fable "Hercules and the Wagoner," a driver hauling a heavy load comes to a muddy place where his wagon wheels sink to the axles in the muck. Seeing this, the wagoner throws down his horse whip and prays to Hercules for help "in this my hour of distress." Hercules appears, but not to lend his mythic muscle to the task. Instead, he gives the wagoner a 650 BC piece of his mind, "Tut, man, don't sprawl there! Get up and put your shoulder to the wheel ... Never more pray to me for help until you have done your best to help yourself!" The moral: Help comes to those who help themselves.

Don't judge the driver too quickly. Unless you're truly extraordinary, you've probably been there too. When the wagoner found himself in a bad circumstance, instead of looking for his own solution, he looked for someone to make the problem go away. He looked *outside* instead of *inside*. His reward? A telling off from a mythical Arnold Schwarzenegger type!

We've seen it again and again. When markets shift, brokers practically go through the five stages of grief—denial, anger, bargaining, depression, and acceptance—before they can pick themselves up and get after it again. In our experience, the faster you can move through that

process and accept your circumstances, the greater your advantage. The longer you sit and worry about the market or complain about what the banks are or are not doing, the more behind you will be in implementing the tactics in this book that can propel you forward. As the proverb goes, “You can’t change the wind; you can, however, adjust your sails.”

In short, nothing happens until you acknowledge where you are. *I’m stuck*. Change begins when you own the solution. *Now, what am I going to do about it!* It’s a two-step process of mindset and action. First you get real and then you get right.

Don’t confuse owning the solution with going it alone. As Gary constantly reminds us, no one succeeds alone—in fact, you will almost certainly need help. Just remember that help begins with self-help. When you are doing all you can, you may even be surprised at the help that will arrive from unexpected quarters. It’s human nature. It’s a lonely wait for the tow truck for the guy who runs out of gas and calls AAA on his cell. But when a driver is pushing his car down the road, there is clarity and urgency about his need for help, and total strangers will block traffic to lend a hand. “Hey, you steer and I’ll push!”

Once you’ve got your head on straight and you are ready to attack the problem, it becomes imperative that you focus, focus, focus on the basics. Of the many things you could be doing, there are only a vital few you *should be doing*. We believe the twelve tactics identified in this book are the vital few. Chances are you knew them long before you read them here. But if knowing what to do and doing it were easy, the weight loss industry would go belly-up, right? One of the best ways to bridge knowing and doing is urgency. The stark economic reality of a shift can be an immense source of this. A shift narrows your options; sometimes it only

gives you one. And, actually, that may be a gift in disguise; when you only have one option, it's no longer a question of identifying what to do. You must simply do.

The tactics that immediately follow are the most vital and urgent of the few. If you haven't yet done the tough work for remargining your business, that comes next. You can no longer afford to waste a nickel. Hand-in-hand with remargining is the top-grading of people and systems. Both cost you money, either because you've invested poorly in your business or because you're losing revenue to inefficiency or lack of commitment. You can't afford to accept anything less than excellence when you're trying to do more with less. Then, you personally will drive the business by spending the majority of your time and energy on lead generation and lead conversion—what you should have been doing all along! Often forgotten, sometimes abandoned, and rarely respected, the basics are never outdated.

Ultimately, getting real and getting right requires you to make a commitment to personal and professional growth. “Opposition is a natural part of life,” writes Stephen R. Covey. “Just as we develop our physical muscles through overcoming opposition—such as lifting weights—we develop our character muscles by overcoming challenges and adversity.” This may be the most challenging time in your business life, and what you do now will say volumes about who you are and who you are willing to become.

TRANSACTION MANAGEMENT AND INFORMATION PROCESS

1. PRELIMINARY STAGE

- Ascertain the parties' motivations for making the sale and purchase.
 - Review the parties' valuation of the property to be sold or purchased and examine whether additional consideration needs to be given to this matter.
 - Review the terms of any proposed broker or finder agreement.
 - Consider whether a confidentiality agreement is required to protect the parties and their trade secrets during preliminary negotiations.
 - Consider the appropriate form for the property sale, asset sale, ownership interest sale, merger, etc.
 - Consider the tax aspects of the transaction.
 - Consider alternative means of payment of the purchase price, such as allocation of price to covenants not to compete or consulting agreements.
 - Set up files proposed for the transaction.
-

2. DUE DILIGENCE INVESTIGATION OF SELLER'S PROPERTY

2.1 RECORDS

- Verify that the seller is duly incorporated and in good standing in the state of its incorporation.
 - Review the articles of incorporation and bylaws of the seller and any amendments.
 - Determine who are the registered owners of the issued and outstanding shares.
 - Determine whether there are options, warrants, or other rights to acquire shares outstanding.
 - Review all agreements between the seller and his/her shareholders.
-

2.2 PERSONAL PROPERTY

- Obtain a list of all machinery, equipment, furniture, and fixtures owned or leased by the seller and depreciation schedules and leases.

- Obtain a search of appropriate state and local records for Uniform Commercial Code financing statements and other evidence of liens or encumbrances on the personal property of the seller.
 - Review the seller's insurance coverage on personal property.
-

2.3 REAL PROPERTY

- Obtain legal descriptions and information about the location and character of all interests in real property owned or leased by the seller.
 - Review the seller's title insurance policies and consider the purchaser's need for title insurance.
 - Obtain copies of and review all appraisals of the seller's real property.
 - Obtain copies of all studies, site evaluations, and governmental filings and reports prepared by consultants or employees of the seller concerning the real property.
 - Review the seller's real property depreciation schedules.
 - Review copies of all leases, including amendments, and investigate whether there are any defaults under the leases.
 - Investigate the presence of hazardous materials or toxic substances on, under, or about any property owned or leased by the seller.
 - Review insurance coverage.
-

2.4 FINANCIAL AND TAX INFORMATION

- Review the financial statements of the seller for the current year and the past five years.
 - Review all bank loan agreements.
 - Obtain copies of property tax assessments for the past five years.
-

2.5 LEGAL COMPLIANCE AND LITIGATION MATTERS

- Determine whether the purchaser can obtain all necessary licenses and permits by transfer from the seller or otherwise.
 - Review all regulatory reports filed by the seller with governmental agencies within the past five years.
-

3. LETTER OF INTENT

- Prepare a letter of intent after a preliminary decision has been made by the parties to proceed with the sale, and have the letter of intent signed by the parties.
 - Determine to what extent the letter of intent is going to be binding and on whom.
 - Prepare timetable, list of responsibilities, and closing memorandum.
-

4. PURCHASE AGREEMENT

4.1 PRELIMINARY MATTERS

Identification of parties:

- Names
 - Addresses
 - State or states of incorporation
-

4.2 ASSETS AND LIABILITIES SUBJECT TO AGREEMENT

Assets subject to agreement:

- Business building and other real property
- Equipment, furniture, and fixtures
- Insurance policies
- Other assets

Liabilities subject to agreement:

- Contracts
 - Other liabilities
-

4.3 PURCHASE PRICE AND PAYMENT TERMS

Amount of consideration:

- Single sum
- Aggregate of separate sums allocated to various properties and assets

Nature of consideration:

- Payment of money
- Other consideration

Allocation of purchase price to various assets sold:

Time and manner of payment:

- All cash on closing
 - Part payment on signing and balance on closing
 - Deposit held in escrow until closing
 - Installment payments
 - Mortgage or other collateral security
 - Forfeiture of deposit for default in paying purchase price
 - Other methods of payment
 - Personal guaranty of payment by buyer
-

4.4 CLOSING CONDITIONS AND PROCEDURES

Closing conditions:

- Verify date and location of closing
- Consent of shareholders/owners and/or directors/managers
- Tax rulings
- Approval by counsel or accountants or both
- Compliance with UCC Article 6 or other bulk transfer provisions

Closing deliveries:

- Delivery of instruments of transfer (bill of sale, warranty deed, etc.)
 - Payment of purchase price
 - Estoppel certificates from named organizations
-

4.5 REPRESENTATIONS AND WARRANTIES

Representations by seller:

- Authorization of sale
- All outstanding liens, contracts, judgments, and other obligations disclosed
- Title to property and assets
- Care and preservation of property and assets
- Compliance with all laws affecting property
- Survival of representations

Representations by buyer:

- Corporation validly organized and in good standing
 - Authorization of acquisition by directors and by shareholders
 - Other representations
-

4.6 INDEMNIFICATION OF BUYER

- Events or actions triggering indemnification
 - Escrow requirements
-

4.7 DEFAULTS AND TERMINATION

- Events constituting default
 - Notice and cure requirements
 - Remedies and penalties
 - Other events triggering termination of purchase agreement
-

5. POSTCLOSING ACTIONS

- Record security interests.
- Arrange for the creation of any escrows that may be required.
- Implement procedures for postclosing adjustment of purchase price, if required.

Pay broker's commission.

Organize documents.

6. CONTACT INFORMATION

Buyer:

Buyer's counsel:

Buyer's accountant:

Buyer's financial adviser:

Seller:

Seller's counsel:

Seller's accountant:

Seller's financial adviser:

Other Contacts:

Regulatory bodies

Lienholders

Other parties from whom consents or approvals are required

Figure 33: You can download a copy of this checklist at www.KellerInk.com/SHIFTCommercial.

Regardless of the technique you use, be active in every aspect of the transaction or else an unknown variable could surface and kill the deal.

3. ALIGN INTERESTS TO SOLVE PROBLEMS

In a shifted market, your buyers and sellers will be exceedingly cautious, the appraiser is not your friend because comparable sales are almost meaningless, inspectors are more concerned about litigation, and lenders have much tighter lending standards. Despite all of your hard work, a transaction can begin to unravel at any time. The more work you put in up front, the less likely this is to happen, but when it does, you need to be ready to leap into problem-solving mode.

First, keep an eye out for any signs that a problem is brewing. Use the rational-man theory: When a transaction is going the way it should go, everyone will behave rationally. Therefore, when anything irrational happens—if someone goes quiet, becomes nonresponsive, is avoiding your calls, has a strange tone of voice—you can be sure there's a reason, and you need to know what it is immediately. If you discover the issue too late, the deal may have already blown up. If there's bad news, you want to get to it as quickly as possible. So don't just call them—set up an appointment or go to their office and camp out on their doorstep until they see you. Don't be afraid to ask them the tough questions. Explain that if you have all of the information, you can most likely offer a remedy to the issue. *Be professionally tenacious.*

Second, once you understand the problem, make sure all parties who should know about it do know about it. Don't brush anything under the rug; it will all come out eventually. If everybody is informed early on, the chances of finding a mutually agreeable solution are much higher. That said, be careful about sharing information before you've fully verified it. There is no point in sending anybody into a panic over a nonissue.

Third, remember that part of a commercial broker's role is to align interests between buyers and sellers or between landlords and tenants. It's just that in a shifted market you will have to dig a little deeper to determine what those interests really are. Cliff Bogart explained that brokers "have to look beyond the positions that various parties take on

As a broker, you have to be totally involved in the transaction and make sure that all terms of the contracts are being met by all parties.

*Rhonda West,
Austin, Texas*

particular issues. Find the reasoning behind the position. Once you understand the reasoning, you may be able to find a different solution that still meets the actual need." So ask all parties what they really need and then listen carefully for the truth in the answer. Remember the

story of creative financing from Chris Sands in *Tactic #10*: If he didn't know what each party really wanted, the transaction would have fallen apart. And as you seek solutions, keep all parties focused on the core reasons they are at the table. Review *Tactic #9* for the best ways to overcome reluctance. Help everybody focus on the big picture issues rather than the smaller variables affecting the transaction. On every occasion, remind them of their core interests to keep them front of mind.

There are many facets of a transaction that are beyond your control. But brokers are problem solvers, negotiators, and mediators. In a normalized market, a transaction may die once or twice; in a shift, count on it dying many more times. A strong commercial broker instinctively knows how to resuscitate a transaction. Rely on that skill set to approach every problem with a solution-oriented attitude and help find the win-win that will keep the transaction on course.

4. AVOID THE “COMMISSION-ECTOMY”

I can't tell you how many calls I get from brokers complaining that clients aren't paying them the commissions they believe they've earned. In fairness to our esteemed clients, it's not necessarily because they are trying to shirk their bills: In a shifted market, clients may be financially unprepared for all of the aspects of a transaction. Or they may have been prepared, but in the time it takes to complete a transaction, their financial situations may have shifted. Or, the broker may not have communicated the fees or commissions effectively.

Surprisingly, there are simple steps that any broker can take to ensure that they earn the income they deserve on every transaction. Yet even veteran brokers make rookie mistakes by abandoning the basics. Use these proactive tactics to effectively communicate with clients and to forge mutually beneficial and professional relationships.

1. Before you begin to negotiate on the behalf of a client, you must first negotiate on your own behalf. While we absolutely advocate helping clients and providing exceptional service, it is also in everyone's best interest to be up front about the fact that you are not a nonprofit organization—you need to be paid for your valuable knowledge and expertise either through consulting fees or commissions. If your client won't agree to your commission structure up front and in writing, it may be better to move on to other clients.
2. Too many commercial brokers are fearful about speaking candidly with their clients about the commission dollars because the fees can be perceived as high. This is a huge mistake. Your clients will take those fees into account as they are planning the financials of

each transaction and weigh that against your perceived value to the assignment. Don't leave them in the dark and don't set yourself up for a "commission-ectomy" at a later date.

3. Get all fee agreements *in writing!* Signed agreements ensure that everybody is clear on the nature of your commission or fee. Set out the terms, conditions, and services you will provide to your client and how you are to be paid. You are a commercial brokerage professional and should work as such. Make your commission or fee agreement simple and clearly outline how you will earn your payment. Additionally, recall from Tactic #5 that I suggested to include a statement in the agreement that would allow the client to access the commission if they are dissatisfied with your performance—proof positive in your confidence and ability to add value to the transaction.
4. In the shifted market, some commercial brokers are changing from a traditional, transaction-based commission model to a consulting fee arrangement. Be creative in your compensation model. Work out a win-win to ensure your payment motivations align with your client's best interests, which is your ultimate fiduciary duty. For example, you could establish a fee schedule for the better you perform, the more money your client makes, or the faster the building leases up, the higher your brokerage compensation could be.
5. Leverage any other tools you need to protect your business. Get everything in writing, and don't fall victim to the trap of assumptions. Use your full arsenal of commercial brokerage documentation to ensure you get paid, including engagement agreements, listing

agreements, commission agreements, nondisclosure agreements, purchase and sale documents, letters of intent (LOIs), and lease documents.

Follow these fundamentals and you'll avoid the dreaded last-minute "commission-ectomy." Once a deal is underway, it is imperative to keep a constant finger on the pulse of the transaction. A shifted market means that your attention will need to be focused on all aspects of the transaction, through and even after closing. Be sure you're working a viable transaction, make communication clear and consistent, get everything in writing, and be prepared to offer creative solutions to problems that arise. Do whatever is necessary—and legal and ethical—to keep transactions intact and moving forward.

SHIFT INTO ACTION

Success never comes to the chosen few, but the few who choose. These can be the worst of times; these can be the best of times. You get to choose.

GARY KELLER, FROM *SHIFT*

Not long after I began my career in commercial real estate, I decided to leverage what I had learned and try my hand at a different type of brokerage. In many ways, the skill sets and motivations of the two were the same. Becoming an investment broker seemed like an opportunity to try something new, something exciting. And hey, Wall Street brokers seem to have a certain swagger—at least in movies.

Instead, what I discovered is how much I truly enjoy commercial real estate. Yes, many of the skill sets were the same, and to be honest, working for an investment brokerage is where I really honed my cold-calling technique. But for me, nothing is as satisfying as working with owners and investors, tenants, and landlords to negotiate win-win solutions. So approximately six years after leaving the commercial real estate industry, I called my former boss and asked if he could find a place for me again. He opened his doors to me, thank goodness, and I've never looked back.

If you feel the same way about commercial real estate, if it gets your blood pumping in the morning, if you can't wait for your next call with a client or a prospect, if you love what you do and enjoy the rewards it offers, you have no choice but to follow the advice in this book. You can't let a shift keep you from your chosen profession, from exercising the expertise you've developed, and from success in your brokerage practice.

You have to dig deep and find the drive and the wherewithal to make it through. John F. Kennedy said it best: “There are risks and costs to a program of action, but they are far less than the long-range risks and costs of comfortable inaction.” No matter how successful you’ve been, taking the path of comfortable inaction through a shift will surely lead to a diminished career.

Other than offering words of encouragement and thoughts on a shift-survival mindset in Tactic #1, I can’t create drive and desire in you. I can’t force you to choose success. It’s on you to put in the effort required, to choose a *massive action* approach. But what I sincerely hope you have found in these pages is practical tips and techniques that will help you focus your efforts—that will help you earn while others succumb to market churn. By showing you a path through a shifted market, I offer hope that may help you get past the market doldrums to take action today.

Which brings us back to the message of Tactic #1: You must adopt the right mindset in order to take appropriate action. From there, the most important thing you can do is improve your P&L *today* by controlling your expenses, the focus of Tactic #2. Tactic #3 explores the flip side of expenses—leveraging your current resources (both systems and teams) to be as productive as possible by focusing your team on what should be your number one priority: *business development*.

Because business development is the heart of your practice, Tactics #4 through #6 are the heart of the book. In them, we explore how to focus your prospecting, conversion, and online marketing efforts. These tactics are essential, because if you are not pushing your team to expand your business development avenues, you’ll come out of the shift weaker rather than stronger. These tactics might hold some of the most important lessons of the book.

Once you have clients to represent and listings to bring to the market, you must find ways to make transactions happen, combating an array of shift-specific obstacles. The first is pricing properties and lease spaces tight to the market, which we cover in Tactic #7. Next, you have to make properties as appealing as possible by focusing on flexibility, as we discuss in Tactic #8. In Tactic #9, we offer advice for helping buyers and tenants get past their hesitancy, their fear, and their belief that somewhere there's a better deal to be had. And Tactic #10 explores the nonconventional sources of funding so that you can advise your clients appropriately and make sure a deal doesn't fall through because of poor credit and capital conditions.

In Tactics #11 and #12, we explore the all-important topic of how to maximize your income in a shifted market. First by expanding your expertise to capitalize on markets of the moment, and then by bulletproofing every transaction to combat the higher rate of deal fallout in a shift, a situation that can eat away at your earning potential if you don't protect your time and your commissions.

Throughout these tactics, we've told stories of other brokers who aren't just scraping by in a shifted market—they're thriving. Those individuals will come out of the shift as market leaders. They are pursuing smart, strategic action and they're driven to take advantage of any opportunities the market presents, no matter how few and far between they might be.

Famed writer and allegorist Gilbert K. Chesterton once wrote, "How you think when you lose determines how long it will be until you win." And I would take that notion further to say that it also determines *how much* you will win. That must be your takeaway. A shifted market

does not have to foretell your doom; instead, it can herald in a new stage of your commercial practice—it can be the impetus you need to do what is necessary to capture market share. Seize this opportunity today and use it to leverage the future of your broker practice.

Go out and get your unfair share!