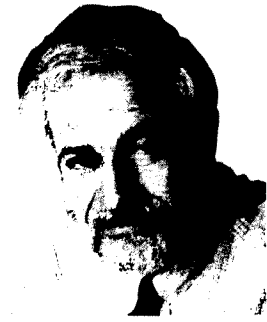


# The Record Business

Tue. 04.07.09



**CHARITY WATCH:**  
Congress is on track to give non-profits help to plan for the long term.

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## ASK A LAWYER

### Nasty surprise for a new landlord

**Q. Should commercial property buyers beware of the seller's brokerage commission agreements?**

Commercial landlords often strike deals with brokers to pay, over the life of the lease, the brokerage commissions due for obtaining a tenant. Who is responsible for paying the commissions if the landlord sells the building before the balance of the commissions comes due? The New Jersey Supreme Court recently decided that a buyer of an office building became responsible, even though that buyer did not specifically agree to it.

In that case, the purchase contract gave the buyer 30 days to inspect business records relating to the property. Those records included the existing leases. Each lease mentioned the broker's role

in obtaining the tenants and the existence of the separate commission agreement, without detailing its terms. At closing, the buyer took a general assignment of leases and assumed the obligations under the leases, but the buyer did not specifically assume obligations to the broker under the separate commission agreement.

Because the leases referred to the separate brokerage commission agreement and the buyer assumed those leases, the Supreme Court, construing these circumstances as an "affirmative assumption," concluded that the buyer is on the hook for the commissions.

**Lesson:** Due diligence is essential. The buyer is well advised at minimum to: (1) read all the leases carefully; (2) check for refer-

ences in the leases to the possible existence of a broker having procured the tenant; (3) inquire as to the existence of separate commission agreements and their terms and; (4) negotiate and agree in the written sales contract who will bear the broker commissions due after closing.

*Michael S. Meisel is co-chairman of the litigation department of Cole, Schotz, Meisel, Forman & Leonard PA, Bergen County's largest law firm. This information is not intended as legal advice, which can be given only after the attorney understands the facts of a particular matter and the goals of a client.*

Do you have a business question for a lawyer? E-mail [business-news@northjersey.com](mailto:business-news@northjersey.com).