

# THE ART OF PRINCIPLED NEGOTIATION

## A professional approach to mediation

*BY DAVID E. BESON, CRS*

Picture this scenario. Two students are studying at the same table in the public library on a warm summer day. One of them, feeling that the room is too warm, gets up and opens a window.

After a few minutes, the second student is disturbed by a draft and he goes over to the window and slams it shut. The two students argue, and the librarian comes over to see what the trouble is. The students both protest that they are right, and neither one will give way. The librarian listens to their arguments for a few minutes, and then goes to an adjoining room and opens a window. This gives better air circulation to the first room, without causing a draft.

How did this happen? It took the intervention of a third party. Neither of the principals to the "transaction" could get beyond themselves to get to the real problem. Their personal bias and interest kept them from being good negotiators.

The same type of thing happens numerous times every day in our lives. In real estate sales and listing, in your home life, in social situations—we are called to become negotiators, both as an impartial third party and as active participants.

## Types of Negotiations

Unfortunately, most people think there are only two types of negotiation—hard negotiation where you have to "beat" on your opponent until he gives in, and soft negotiation where you give in to avoid being beaten upon.

The hard style of negotiations either brings about an agreement for the parties involved, or such irreconcilable differences that the whole process grinds to a halt. The process begins to resemble a complicated kind of minuet, with both sides starting in extreme positions, withholding their true views and making small concessions only to keep the negotiations moving. Hard-style negotiation is extremely time consuming, and can often keep both sides from achieving a compromise.

Soft negotiators (most often seen within families) are usually at the mercy of the hard negotiators. They may yield in order to avoid confrontation, only to find that the subsequent agreement gives unfair advantage to their opponent.

There is an alternative to these negotiation methods—principled negotiation, where the main

strength lies in the fact that it is hard on problems, but soft on people. This concept was outlined in the book, *Getting to Yes*, by William Fisher and Roger Ury, Penguin Books, 1983.

Principled negotiation breaks down into four main elements:

1. Separate the people from the problem.
2. Focus on interests, not positions.
3. Invent options for mutual gain.
4. Insist on using objective criteria.

### **Separate People from the Problem**

Remember that people are human—we all have strong emotions and egos, and communicating those emotions and desires is often difficult even under the most positive circumstances.

People also have a tendency to let their emotions become entangled in the problem's objective merits. They then take positions on the problem, and ultimately they identify themselves so strongly with the position they have taken that they can't back down from it.

Before any solution can be achieved, you first have to focus on the people involved. Try to really understand the perceptions of the people you are negotiating with. Don't assume you automatically know how they feel. Being able to see the other side as the other side sees itself is a key to being an effective negotiator. The ability to have empathy with their point of view will help you influence them later.

One way to deal with different perceptions is to discuss them openly. Each side has the chance to discuss how they view the problem, without blaming anyone for the problem.

### **Focus on Interests, Not Positions**

The problem in negotiations is most often the difference in ideas, needs and desires, not the differences in the two positions.

Even though the positions of the two sides may be at odds, often the underlying interests are quite compatible. Sometimes looking at these interests will show that the two sides are not as opposed as they seem.

How do you take advantage of looking for the other side's interests? One way is to look at each position from the other person's perspective. You can, of course, ask him why he takes a particular position, but to get an unbiased answer you have to assure him that you are looking to understand the needs and wants behind it, not a justification of his position.

Remember that the basic needs of life are the most important. These include: security, economic well-being, a sense of belonging, recognition and control over one's life. Although these needs seem obvious, they are often easy to overlook. Often we believe that the only thing that matters in negotiation is money. Yet even when the matter being discussed does involve money, often there is a more fundamental need behind it. When a homeowner wants to set the price of his home too high, it could be because he wants recognition for the superiority of his house over others, or because he wants to retain control over his life.

Talk about interests: It's important for both sides to discuss their interests. After all, the two sides may not be aware of what the interests are. However, it's important that this discussion focus on the interests, not on the positions. Remember that they should be specific; concrete details should be used as often as possible to make the interests more credible. This helps establish the interests as being real and valid.

It's also important to recognize the other side's interests; if you acknowledge their interests, they'll be more likely to acknowledge yours. If you show that you understand their interests and are sympathetic, they will be more likely to listen to you.

Remember that people often get "stuck" in the negotiation process. They sometimes will seem to be negotiating, get waylaid by one particular point, and begin to argue back and forth. An argument is simply that; it does not seek to find a solution, it only perpetuates the problem.

If this happens, ask the two people what outcome they would like to achieve. Often the two sides get more involved in the actual argument itself, and react to what has been said or done. They lose sight of their main objective. By putting them back on track and focusing their attention on the future, you can help in the negotiation process. And remember, one of the most important points of negotiating is to be flexible.

### **Invent Options for Mutual Gain**

Instead of arguing who should get the biggest piece of the pie, try to find ways to enlarge the pie. This means generating the largest number of options possible.

People involved in a negotiation often believe that their offer is the only acceptable solution. They don't see the value of generating different options to get the best possible result for both parties.

Be aware that there are four barriers that prevent generating enough options:

- **Premature judgment:** Brainstorming is the most effective way to come up with options. However, we often make critical judgments on the ideas that a brainstorming session generates, and throw the ideas out without examining them more carefully. Don't judge these ideas too quickly; they could lead to a solution.
- **Searching for a single answer:** People often are looking for one possible answer instead of being able to select from a large number of possible answers. They see negotiations as narrowing the gap between the two sides, not expanding the number of possibilities.
- **Assumption of a fixed pie:** Many people see negotiation as an either/or situation. This also severely limits the number of options that are generated.
- **Their problem is solving their problem:** Many people fail to create different options because they limit their concern to their own immediate interests. Instead of coming up with different options that have some appeal to both sides, these people are only concerned with solutions to their own problems.

Consider the seller who demanded all cash for the sale of her office building. She explained that the cash would be used to send her sons to college, and that if she didn't have the cash, she wouldn't be able to send them at all.

Because both sides generated a number of options, the owner learned how the down payment could be invested in zero coupon bonds to provide for the first year of school, and to amend the annual payments on the owner-carried financing to better conform to the cash-flow needs of the student.

The sale of this office building might have never been closed if the parties had not sought to solve each others' problem.

### **Insist on Objective Criteria**

The more often you bring standards of fairness or scientific merit to the particular problem, the more likely you are to arrive at a solution that is fair to everyone.

In a real estate transaction, the standards for setting the price of the house include the recent sale prices of comparable houses in the neighborhood, the adjustment for depreciation and inflation and the opinion of an independent appraiser.

**Be specific:** Take a moment to ask yourself, could you assist this buyer who says, "I'm looking for a good, secure investment with lots of future potential." You probably wouldn't, even if he were an astute and experienced investor with more than \$100,000 in ready cash. The reason you wouldn't assist him is the specifications he listed are not specific. The words he used—good, secure, future, potential—are all fluff words and are not measurable criteria.

Insist on developing specific criteria. If you have buyers who say they want to see only two-story homes, they may really be looking for a four-bedroom home, privacy or an image of success.

**Never yield to pressure:** There are many forms of pressure—a threat, bribe or simply a refusal to compromise. To diffuse this tactic, ask the person who is trying to pressure you why he is doing it, offer some objective criteria and refuse to change your mind except under the conditions you've outlined. This is the principled approach, and although you may not always win, it will usually give you an edge.

### **Alternatives**

What do you do if the other side is more powerful than yours? There are several alternatives you can try. These include:

Develop your BATNA (Best Alternatives to a Negotiated Agreement): This serves as a standard by which any proposed agreement would be evaluated. To develop your BATNA, ask yourself the following questions:

- What will you do if you do not reach agreement?
- Which of your options is most attractive, all things considered?
- How does that option compare to the best offer you have received?

To protect yourself from negotiation "with your eyes closed," the BATNA works because it establishes an early warning system, or buffer which allows you to stop negotiating at an appropriate time.

Leverage: This is based to a great degree on how attractive it is to you to leave a meeting without reaching agreement. To maximize leverage you need to:

- Write a list of actions you could take if no agreement is reached.
- Try to improve on the most promising ideas and convert them to practical options.

- Select, on a tentative basis, the one option that seems best.
- Determine if both sides have attractive alternatives; in this case, maybe the best alternative is not to reach an agreement.

As an example of how leverage is used, look at the release of the Iranian hostages in 1981. The timing of their release coincided with the inauguration of President Reagan. Why?

Herb Cohen, noted negotiation expert and author, predicted the time of the release within approximately 19 minutes. How did he do it? By understanding leverage. The Iranians had a substantial investment in the negotiations with President Carter. The limit of their negotiation was eliminating him as president. The release was a last-hour settlement. (By the way, it is interesting to note that Cohen was only wrong by a few minutes because the plane carrying the hostages was late in leaving for the United States.)

The similarity to real estate in a "hot" market of multiple offers may be that the sellers feel it is appropriate to negotiate as though they had unlimited leverage. After all, another buyer will come along tomorrow, right? Not always!

### **Then What?**

If all this material doesn't work, then what do you do?

- Continue to negotiate on a basis of principled negotiation.
- Concentrate on using their strategy against them. If they offer a ridiculous idea, it's all right. If they attack your idea, that's all right too. This method is sometimes referred to as negotiation jujitsu. When attacked, do not push back. Instead, deflect the attack against the problem. Acknowledge their efforts to solve the problem, and look for interest behind the position. Treat their position as a possible option.

If all else fails, sit there! Silence creates the impression of a stalemate, and this puts the pressure on the party to make a new suggestion or offer.

### **Conclusion**

Perhaps the greatest value we as professional real estate sales associates bring to any buyer-seller negotiation is our third party limited negotiation authority. Our job is to keep buyers and sellers apart, so they can get together. By using the techniques of principled negotiation, you will be using an efficient method that will generate a wise and fair decision.

This article was based on *Getting to Yes*, by Roger Fisher and William Ury, Penguin Books, 1983.

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