

# Negotiation Made Easy

**Okay, maybe negotiation is never easy. But the more you know about it, the more skilled you'll be.**

*BY GARY G. THARP*

The owners of a 12,000-square-foot industrial building aren't getting enough rent from their sole tenant to earn a return on their investment. The tenant's last several payments have been late, it feels that its rent is higher than that for comparable buildings in the area, and it's undergoing a painful reorganization that dictates a 20 percent rent reduction to survive.

The lender, a large regional bank, has had the loan flagged for the past couple of years because of the area's decline in values and the tenant's apparent difficulty. It's six months before the loan comes up for renewal, two years before the lease expires, and the day after you've agreed to help the owners solve their problem.

If there's any hope for this property to return to investment status, at least one principal needs well-developed negotiating skills or a representative with those skills. But it's always astonishing to discover how few commercial brokers think they need training in negotiation.

Perhaps many practitioners think of negotiating as just another, more aggressive word for selling. It's not. And even though some of the same skills are involved in both, most people put on their negotiating hat only when they clearly see themselves as a principal in a deal or as being threatened.

You need negotiation skills much more often than that. No matter whom you represent, you need to be a smart negotiator when the talk gets tense.

## **You're on Top If You Draw Up the Agenda**

If possible, you should meticulously plan the entire negotiating process. To help the owners of that industrial building, develop at least three things in your planning stage: an agenda, a list of questions, and a power analysis.

A good negotiator tries to influence the negotiating session's agenda. If you've ever watched small-town mayors push their pet projects toward the end of a commission meeting (hoping people will get bored and leave), you know that both the content and the order of agenda items are important.

So after you make separate appointments to see the lender and the tenant, send each a letter to confirm your appointment and set the agenda for the meeting.

## Sketch Out the Whole Negotiating Session

The owners have a great payment history, and past appraisals have been strong, so your letter to the lender might read: "I appreciate your agreeing to see me Tuesday on such short notice. As you know, the owners want me to get to know all the players as soon as possible. Since the loan goes back a ways, I wonder whether we could look at

- The tenant's payment history
- Appraisal and assessment information
- Your assessment of the tenant
- Conditions for an extension of the current loan
- Conditions for renewing the current loan for five years

That's your attempt to put the focus on what you want the lender to think about in the transaction (in this case, the tenant's performance rather than the owners'). Maybe your letter will be enough to get the lender to think about letting the owners have more time to deal with what has become a tenuous situation.

Your letter to the tenant should try to set up a smooth information-gathering session. Since the tenant has a net lease and is responsible for such expenses as taxes, insurance, and maintenance, your letter might read: "My visit should acquaint me with the property and your situation. The owners specifically asked that I look at a few things, so I'd appreciate it if you'd bring your air-conditioning maintenance log and maintenance contracts. If you'd also like to talk about the possibility of an early modification of your lease, please bring income statements and sales figures for the last quarter. "

The very existence of the agenda lends importance to your meeting, its content prepares the other side to talk about what you consider real issues, and its sequence may help you talk about the issues in an order you find favorable.

The research you do to develop the agenda and list of questions should also focus on the balance of power between the principals. You analyze that balance for two reasons: first, to try to neutralize your opponents' excess power and, second, to examine how the perception that your side has power can intimidate your opponents and keep them from revealing interests that are vital to you.

But don't ever forget that power is best when you use it responsibly, as a negotiating device, not a weapon. For instance, you may discover that although the lender looks very powerful in most categories, it might be so strong that it's weak.

In other words, in a slow market, the lender probably doesn't want any more real estate deeded back to it. And if both the owners and the tenant failed because the lender rejected reasonable terms, the courts might provide relief from such a big gun. A responsible negotiator will undoubtedly sneak in that implication without ever seeming to threaten.

## **When That Infamous Win-Win Is Really a Lose-Lose**

When you go into such a difficult negotiating session, it's easy to say you're going to create a win-win situation (that's the catch phrase of anybody who says anything about negotiating).

But how can there be a win-win if you don't win? Or how can there be a win-win if the other party doesn't win? For example, you believe you deserve a certain commission for marketing a ten-acre tract. The owners want you to market the land but feel you're asking 3 percent more than the job is worth. You propose a compromise of 1.5 percent less. They accept.

Many people would say you've created a win-win situation. Actually, both sides have lost and are probably resentful. The fact is, both sides concentrated on positions, those tacky little details of negotiation, instead of interests, which are the motives that make things happen.

## **Rather Than Splitting the Difference ...**

A sensitive negotiator might have tried to discover the underlying interest (survival, recognition, belonging, self-actualization, love, and so on) that was at the root of the owners' position to try to establish a lower commission rate (see "Winging It Is for the Birds").

If the owners are simply going through the motions of trying to get you to split the difference even though they really have strong emotional incentives to move the property as soon as possible, you can skip right past the commission issue without spending the time or energy that might make it seem more important than it is.

On the other hand, if the owners have an emotional interest (such as esteem) in not wanting to be thought of as fools for paying you so much money, you should carefully cover the commission issue.

After you've discussed it with them, the owners may come to feel that it's important to pay the higher commission to ensure the fastest, most complete marketing job possible. Or you may become convinced that because of other, non-commission-related issues the owners will agree to (pricing, paying for advertising, and so on), you'll get more dollars per hour even if you lower your commission.

By concentrating on interests instead of trying to split the difference on positions, you're more likely to reach an equitable, truly win-win solution.

## **You'll Got Nowhere If You Don't 'Play Nice'**

In that initial example, the owners hired me to resolve their problem, and during a three-year period, I got the bank to extend the loan twice, helped the tenant reduce its rent, and, through owner pay-downs and a modest, onetime charge to bank reserves, eventually sold the property for a fair price.

At various times during negotiations, one party or another took a seemingly intransigent position ("We'll never allow that," "That rent is ludicrous," "The price is too high," or "That's not a serious offer"). But when the parties examined their demands in terms of what they really wanted, they became flexible again.

The hardest thing to learn in high-stakes negotiating, and it's true no matter which side you're on, how powerful you seem to be, or what the timetable is, is that you should be tough on problems but soft on people. Such phrases as "You're out of the ballpark," "We wouldn't dignify that with a counteroffer," and "Any reasonable person could see I'm right" are all designed to intimidate or put the other side off balance.

If both sides are really to win—that is, satisfy their interests--you have to pay more attention to the why of the transaction. For instance:

**YOU:** Ms. Prospect, when we talked on the phone, you said you probably wouldn't list your property with anyone but a national broker [position]. Why do you feel that way?

**PROSPECT:** Well, I don't want some local yokel to simply put a sign on the building and never show it.

**YOU:** I see, so you're interested in selling quickly?

**PROSPECT:** Sure! Who isn't?

**YOU:** What will you do after you close on this property?

**PROSPECT:** Go for some fresh air. I'll finally get out of this dumpy little town and get up to that horse ranch in Centerville I have my eye on.

The prospect just told you how to get her listing. If you concentrate on helping her get to Centerville, horses, and fresh air, you may not have to worry about the fact that the shingle over your door doesn't carry a national name or that your commission is a wee bit more than she wants to pay.

if she wins, you win. It's that simple.

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## WINGING IT IS FOR THE BIRDS

Just as an agenda helps structure a meeting, a list of prepared questions helps you keep your own thinking straight during a negotiating session.

I know a negotiator who says, "I like to freewheel. It makes people think I'm more flexible." Perhaps. But what actually happens is that the other parties often get him off on a tangent so that they discover more about his side's weaknesses, strengths, and interests than he does about theirs.

In a negotiation, positions (price, timing, terms, conditions) that harden too soon become stumbling blocks. So steer clear of what the other side's positions will be and focus on learning what its interests are. Develop a list of questions designed to learn about the party's interests. For example:

- How long have you been a [the party's profession]?
- How did you get started?
- What do you like best about your situation here?
- What do you find most difficult and challenging? a How do you spend your free time.
- If you could have anything you wanted, what would you change in the deal you have now?

Investing the time it takes to have the questions answered--even if it's considerable--helps you discover something about the other negotiators as people. That helps ease tensions and give direction to the proceedings, and it may even give you a chance to discover the other negotiators' real motivators (their beliefs, values, convictions, motives, desires).

Negotiation Made Easy, by GARY G. THARP  
Real Estate Today, August 1993, pp. 48-50.

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