

How to Win the Negotiation ... Without Being a Jerk

By focusing on collaboration and shared goals rather than hardball tactics, you'll increase your odds of coming out ahead. Here's how to do it.

By Mariwyn Evans | September 2008

You won't get through even one day without the need to negotiate. So if you have to do it, why not get better at it?

Perhaps the first thing to learn about negotiating is that “better” doesn't necessarily mean being the nasty guy. “There are basically two approaches to negotiation—the adversarial and the interest-based,” says Richard Reuben, associate professor at the University of Missouri—Columbia School of Law.

Today, most negotiators favor the interest-based approach. This method, popularized by negotiating guru Roger Fisher, director of the Harvard Negotiation Project and co-author of the negotiation classic *Getting to Yes: Negotiating Agreement Without Giving In* (Houghton Mifflin, 1992), emphasizes collaboration and shared goals over hardball tactics. But don't think interest-based negotiation equates to weakness.

“You can still negotiate aggressively on your interests; you just don't want to be a jerk,” Reuben says.

Part 1: Pre-negotiation Planning

Scope Out the Goals. At the core of interest-based negotiation is understanding the goals and desires of all parties to a negotiation. In a real estate transaction, that includes you, your client, the other associate, and the other associate's client, says Adorna Carroll, ABR®, ABRM(sm), vice president of Realty3 Carroll & Agostini in Berlin, Conn.

Another part of preparing to negotiate involves compiling objective criteria, from CMAs and relative ratings of local school districts to the maximum mortgage a buyer can qualify for. These facts are key tools in what Fisher calls principled negotiation—the ability to negotiate on facts, not emotions. Armed with the facts, you don't need to argue when a buyer indignantly claims your client's house couldn't possibly be worth that much. Instead, you point to the objective criteria of what comparable houses have sold for in the last few months. “Real estate is a classic example of the objective standard. You can calculate replacement cost and market value; you can create a formula for value outside the transactions,” says Palm Springs, Calif., attorney John Patrick Dolan, author of *Negotiate Like the Pros*.

Asking the person on whose behalf you're negotiating about factors such as bottom line price, timing, and terms is your next step, says Tom Hayman, president of Negotiation Expertise LLC in Peoria, Ariz. “You have to set the ceiling and the floor.”

But while facts are critical, don't focus on the nuts and bolts and ignore a client's emotional needs, says John Ritchie, an associate broker with Gables & Gates, REALTORS®, in Knoxville, Tenn., and a certified trainer. "People make an objective decision after they satisfy their emotional needs."

Emotions may play a particularly large part in today's market, which features longer times on market, sellers who may have lost equity to dropping prices, and buyers convinced they can bid down the price further.

The way to understand these emotions is simple: Just listen, says Laurence Tamkin, broker-owner of Total Success Realty in Austin, Texas. "Really listen to what the other person is saying and repeat back what you've heard to validate their opinions," he suggests. "You've made the emotional deposit by listening, so now they're willing to let you make the withdrawal."

Understanding goals is also a matter of questioning your assumptions about what another party wants and values, says Steven Cohen, president of Negotiation Skills Co. in Pride's Crossing, Mass. "You have to try to put yourself in the other person's shoes and understand his or her view of the issue. Often a conflict is not about facts, but about how those facts are perceived," he says.

For example, says Cohen, a sales associate who came to list his house assumed that the property's nearness to a train line was a negative. "She didn't work downtown so she thought only about the noise from the train. I commuted every day so I thought being able to walk to the train was a big plus."

Decide on the Bottom Line. Another important aspect of prenegotiation research is determining your client's best alternative to a negotiated agreement, or BATNA, says Cohen. Having a BATNA lets you weigh the risks and rewards of not making a deal against these alternatives.

For real estate buyers, a BATNA can be walking away from the deal and looking for another home, renting until you find what you want, or staying where you are.

One form of BATNA might be to continue to look at other homes during the negotiation or to have a second home already selected before you make your first offer, suggests Joeann Fossland, e-PRO®, PMN, a master certified coach with Advantage Solutions Group in Cortaro, Ariz.

The strength of your alternatives is a big factor in who holds the power during the negotiation. The more powerful your client's position—whether that results from market conditions, the ability to buy for cash, or a greater willingness to walk away from a deal—the more aggressive your negotiating tactics can be, says Michael Benoliel, director of the Center for Negotiation in Potomac, Md.

Also remember that in a negotiation, power can be real or perceived, says Rhonda Hamilton, ABR®, LTG, a speaker and trainer who heads LiveWire Presentations in Longview, Texas. If you have a strong personality or are much more knowledgeable about your local market than the other sales associate, for example, it might create a perception of power that actual market dynamics don't justify.

Scope Out the Other Side. Researching the goals and motivations of those on the other side of the transaction—both the client and the sales associate—is just as important to negotiating a mutually acceptable agreement. Before you begin a negotiation, ask peers in your office about the other sales associate and how he or she negotiates.

Find out how long the house has been on the market. Search Google for information about the sellers and read up on their local job and charity activities, suggests Cohen. Everything you know works to your and your client's advantage.

“People behave based upon their backgrounds and experience. Knowing the past is a good predictor of the future,” says Herb Cohen, founder of Power Negotiations Institute in Delray Beach, Fla. “You need to understand what's of long-term importance to all parties so that they'll be satisfied with the transaction.”

One of the biggest untapped sources of information on the other party is that party's agent, says Carroll, author of the revised “Effective Negotiating for Real Estate Professionals” course offered by the Women's Council of REALTORS®. “Ask questions like ‘Are your clients in a hurry to buy?’ or ‘How long has your client been looking?’ or even ‘What is it about the property that appeals to your client?’ You'll be amazed at the information other sales associates will share with you.”

“Before presenting an offer, I'll often ask the other sales associate what it's going to take to make a deal. Most of the time people will tell me,” says Ritchie, instructor for the REALTOR® University course “The 3 Ps of Negotiating” and author of *Leading the Real Estate Transaction*. Ritchie uses the information he gains to subtly “train” the other sales associate in how to present his offer.

For example, he'll tell the other associate how he and his client arrived at the price they're offering. Then if a question arises, the other salesperson will be able to explain the offer more fully. “Someone has to manage the negotiation; it may as well be you,” he says.

Part 2: In the Thick of the Deal

Listen and Learn. If asking questions and listening are critical before beginning a negotiation, they're just as vital during the give-and-take portion. “The words ‘tell me’ are golden,” says Hamilton. When the other party makes a statement, say, “Tell me again what is most appealing to you about this neighborhood” or “Tell me what about the price seems inconsistent to you.”

Keep questions gentle, suggests Reuben. You don't want your questions to seem like an interrogation that puts anyone on the defensive.

Also, pay attention to seemingly irrelevant or throw-away comments spoken as asides or at the end of a conversation, suggests Rich Birke, director of the Center for Dispute Resolution at Willamette University in Salem, Ore. “People say things when they think no one is listening that will often ring true,” he says. Listening—without agreeing with the other party's position—also shows that you're a nice person and makes the other person more willing to hear your position.

Once you've received a response to your question, paraphrase the answer back to your counterpart, and then ask if that's what the other party meant.

"Often it won't be, so it gives you a chance to clarify a position," says Herb Cohen, who has negotiated on behalf of presidents and corporations. He also favors taking notes of responses to your questions, both to ensure you get key information right and as a way to show respect for the other person's point of view. "Always show respect for the other party and set a positive tone for the negotiation," he says. "That isn't a sign of weakness, only of decency."

Connect Through Emotions. Listening is also a way to understand another party's emotions and build rapport. Emotions are present in every negotiation, says Daniel L. Shapiro, associate director of Harvard Law School's Harvard Negotiation Project and co-author of *Beyond Reason: Using Emotions as You Negotiate* (Viking, 2005).

"Buying a house is an incredibly emotional experience. Clients will trust you more if you appreciate their emotions—their fear of getting a bad deal, their excitement about moving, their sadness at leaving their home of 30 years. Connecting with them on a human level will make the whole negotiation flow better," he says.

Shapiro recounts his own attempt to buy a newly constructed home. The developer refused to live up to some of the terms of the purchase agreement—and refused to talk to Shapiro about his concerns. When they finally did connect, days before closing, Shapiro started the conversation by appreciating the developer's craftsmanship in the house and asking questions to understand the developer's perspective, not berating him for what hadn't been done.

"I listened first," says Shapiro. "Once he felt heard, then I asked him to appreciate my perspective on wanting the terms fulfilled. This set a tone of collegiality, and it paid off." Shapiro and his wife live in the house.

Another important way to build rapport is through affiliation, says Shapiro. Turn an adversary into a partner, like Shapiro did with the developer. When the two spoke, he said, "It looks like we have a shared problem. You want to sell; I'm interested in buying, but we have some obstacles, no? What's your advice on moving forward?" Asking for advice immediately turned the adversarial developer into a partner seeking a mutual solution.

But while understanding and responding to the emotional context of a negotiation is essential, it's also important not to let emotions control you. "The crucial thing is to use your emotions rather than letting them use you," says Steven Cohen.

And no matter what, never lose your temper and escalate an angry situation. "You can address anger by saying that you feel uncomfortable with the statement a person is making, but never, ever attack someone personally," he says.

Be Flexible, Stay Focused. Keeping your emotions under control will prevent you from digging in your heels when you're pushed hard by the other side. Instead, look for ways you can alter your

positions to reach agreement without making a concession you're not comfortable with, suggests Hamilton.

It's this ability to be flexible and look for alternatives during the negotiation process that's the mark of a great negotiator, says University of Southern California professor Kathleen Reardon, who's the author of several negotiating books, including *It's All Politics* (Current Doubleday, 2005).

Hamilton suggests asking "what if" questions to elicit points for further negotiation. Try something like: "What if we offered to reduce the price by \$3,000? Would you be willing to let my client stay in the house for another two weeks?" "Such statements don't commit your client to anything, but they open the door for a way to resolve a problem," she says. If you're not sure just what to reveal, "analyze what and how the other side is disclosing information and use that as a guide for your own disclosures," Reuben suggests.

To conduct this sort of negotiating, you must have discussed with your client in advance what information you should share and how and when you're going to share that information during the negotiation, especially anything of a confidential nature. "It's part of your fiduciary duty," says Fossland. Ritchie suggests asking clients to prioritize options so that you'll know where to make concessions first.

Discussing options with your clients and letting them make the final decision on concessions also give the client a sense of autonomy that reinforces their trust in you, says Shapiro. Clients want your advice, but sometimes they want the freedom to make a decision that you may not agree with. And even if you don't agree, it's still critical to find merit in the client's point of view and communicate that understanding to the client, he says.

Even a BATNA isn't a fixed point, says Steven Cohen, who's also the author of *Negotiating Skills for Managers* (McGraw-Hill, 2002). "You'll have one BATNA when you begin a negotiation, but once you've learned more about the other parties, you'll have to modify it. Still, you should always have a point of no return."

As goals evolve, it's important to keep all parties focused and not let them get distracted over one small point in the negotiation, says Birke. "Part of the salesperson's job is to keep both parties focused on their goals, that they want to buy or sell the home."

Likewise, salespeople have to exercise care not to let egos get in the way of a settlement. Positional bargainers, those self-styled tough negotiators who refuse to budge, often hurt themselves and their clients in just this way. "Sometimes, they make a bad deal, just so they can win," says Steven Cohen.

"You have to differentiate between negotiating to produce an agreement and haggling," says Howard Chung, vice president of Washington residential operations for John L. Scott Real Estate in Bellevue, Wash. Negotiators often get caught up in getting more and use tactics like splitting differences down the middle that may not really benefit their clients, he says.

Also, keep in mind that beating down your opposite number can have a bad effect on your reputation. You will probably have to do business with this sales associate again, or someone else in the same company, so “don’t let a negotiation turn into a turf war,” says Chung.

In addition, if the other side isn’t really satisfied with the deal, they’ll place endless roadblocks in the way of getting the transaction closed. “People who have made major concessions up front will perceive even minor concessions later as major stumbling blocks,” warns Carroll.

Win-win doesn’t mean that everyone gets an equal share but rather that all parties get an agreement they can live with and fulfill, says Steven Cohen. As long as you never, never, never do or say anything contrary to your client’s interest during the negotiation, you’ll end up with a successful negotiation, whatever the market. In negotiating, as in life, having a goal and sticking to it is what gets the job done and leaves everybody satisfied.