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Negotiating for fun and profit

Whether you're selling an office building, compiling a tract for a build-to-suit, or getting a great lease rate on that perfect retail location for your client, negotiating is the lifeblood of commercial real estate. And it's also part of the fun, says Ted Crisell, vice president of the commercial division at Coldwell Banker George in California's San Gabriel Valley. Crisell believes that passion and enthusiasm—combined with likeability and a high degree of integrity—are what makes a great negotiator. “I can teach the financial skills, but people skills and confidence are essential.”

Let's face it, though, anything is more fun if you're good at it. With these insights and advice from some top negotiators, both in and out of real estate, you can learn a few new strategies and gain a competitive advantage for yourself and your clients.

Preparation is key

One of the most critical aspects of any negotiation takes place well before you ever sit down at the table. Step one for any negotiator is to learn all you can about your client's needs and goals for the transaction. This knowledge lets you a game plan of must-haves and like-to-haves that will help your negotiation succeed. This knowledge extends beyond just the bottom line price and terms and is critical to setting priorities in the negotiation, says Richard Muhlebach, CPM, senior managing director at Kennedy-Wilson in Bellevue, Washington. For example, if an owner wants to sell a property soon, it might be better to offer more tenant building out instead of lower rent that could negatively impact NOI and affect the sale price. Of perhaps an owner needs to complete a 1031 exchange by a deadline.

Getting to the heart of an owner's needs requires some questioning and probing, especially for smaller, less sophisticated clients who may not understand investment criteria such as opportunity costs, says Todd Clarke, CCIM, president of New Mexico Apartments in Albuquerque and co-author of a new CCIM Institute course on negotiation.

To learn more, Clarke suggests a technique he terms “the power of silence.” Sit quietly and let the other party do two-thirds of the talking. Then repeat what you've heard back to the client to ensure that you've understood the key points. “Silence is often difficult for a real estate professional, but it's very effective,” says Clarke.

Probing also helps you help clients realize that their initial goals may not be viable, says Michael Lescher, a commercial broker and manager of four RE/MAX Showcase offices in Northwest Chicago. Talking with the client is also a good way to understand the emotional issues of a deal, which are more prevalent than you may think in commercial transactions, says Lescher. “Sometimes a buyer will pay more than a property is worth if they really want it.”

But understanding your client is only half of a negotiator's preparation. It's just as critical to learn as much as possible about the other party and its representative, suggests Steven Cohen, president of the Negotiation Skills Company (www.negotiationskills.com) and a former commercial practitioner. Doing your research helps you make assumptions on what the other party wants from the negotiation and how strong your position is. Research the company's financial position and current goals through articles in business journals and filings from the Securities and Exchange Commission, if the company is public. Also try to get a sense of the company's attitude and culture through printed articles and networking with peers.

Knowing the marketplace is just as critical in the preparation stage. Assess what other options a tenant or buyer has for similar property in your area and where your property's amenities or performance rank in relation to the competition. Such assessments allow you determine what alternatives you or the other party has and thus evaluate the power of your position in the negotiation, says Dr. Michael Benoliel, president of the Center for Negotiation in Potomac, Md., and author of *Done Deal* (Platinum Press, 2005).

For example, notes Muhlebach, if there are only two top malls in your area that fit the needs of a national retail tenant, you know you're in a strong position and can ask for more concessions than you might if your property was an also ran.

Still it doesn't pay to be too confident even if you think you have the upper hand, says Richard Minker, president of R.D. Minker Co. in Fort Worth. A perfect example was a 120,000 lease renewal Minker negotiated for a client. His client had fairly specific space needs, and the landlord felt the company had no other options for space. "The landlord was dragging his feet on the renewal, and my client was not getting what it wanted. A developer made a proposal for a build-to-suit, and that landlord lost a tenant. It always pays to have a viable alternative," says Minker, who won the 2005 award for the deal from the Texas Association of REALTORS®.

"If you're desperate for a deal, you'll lose power and undermine your credibility," says Dr. Kathleen Kelley Reardon, director of the Presidential Fellows Program at the University of Southern California. "You have to tell yourself mentally that no matter what happens, you'll eat tomorrow."

Knowing when to walk away from a negotiation is also part of the preparation. You should never begin a negotiation without establishing a BATNA, a best alternative to a negotiated agreement, or what you will do if you can't reach an agreement, says Cohen, who is also the author of *Negotiating Skills for Managers* (McGraw-Hill, 2002). That BATNA can change as the negotiation progresses and you gain more information, but you should have a point of no return.

Getting down to terms

While preparation is information, gathering information doesn't stop once you sit down to the table. Once again, listening is the best way to learn more and acquire a competitive edge, says Bob Clements, executive vice president of Grubb & Ellis in the Philadelphia area.

Of primary importance is watching for clues to a person's negotiating style, and then adapting your approach to that of your counterpart's style and attention span, says Reardon, the author of several books on negotiating, including her latest, *It's All Politics* (Currency Doubleday, 2005). (See Figure 1 for a summary of negotiating styles.)

"You have to recognize that people learn and process information in different ways and present the material to fit your audience," says Clarke. Analytical types may be happy just sitting and reading the contract terms, while mediators may want to discuss every term and look to you for reinforcement, he notes.

And don't be afraid to ask for clarification if you're not sure what your opposite number intends, says Benoiel. "The best negotiators are honest and open. Tell the other side what your interests are and have them tell what your what their needs are," he advises.

Silence and patience are also effective tools during the negotiation itself. "Sometimes, silence is golden. Let the other party come up with the suggestions," says Muhlebach.

Settling on the order of the negotiation can be another contributing factor to success. "Leave the important points for last; people tend to be a little more lenient at the end of the process," suggests Clements. Negotiating small points first helps create a momentum and a sense of agreement and trust, agrees Benoiel. It also gives you more time to assess your opponent's negotiating style, says Clements. And if at all possible, avoid making the first concession, he adds.

Conversely, if there's an absolute deal breaker, it may make sense to get in on the table first, says Lescher. After all, if you can reach an agreement on that point, the deal may not be able to move forward.

The course of a negotiation can also be influenced by how points are presented, or "framed," says Reardon. For example, the feelings created by a statement such as, "Well, we don't seem to be able to agree on point D" are very different from the response you'll get to "Well, we've reached an agreement on A, B, and C, so all we have left to agree upon is D," she notes.

Be flexible and look for options

While you may plan your negotiating moves in advance, it's the ability to be flexible and look for creative alternatives during the process that sets the great negotiator apart, says Reardon. She equates finding a solution to a negotiating impasse to entering a house. You can use front door, but if that's locked, try the back, or the window, or the garage. A good negotiator tries every possibility before giving up.

One way to have more than one option in mind is to brainstorm with colleagues before you begin the negotiation, suggests Clements, who teaches negotiating skills at Grubb & Ellis University.

If you do reach what appears to be an impasse, a common practice is to just take a time out to consider new options and let the atmosphere cool. "If the other party has raised the stakes, ask for a recess to discuss it with your partner or your client," says Clements. If all else fails, just say

you have to use the facilities to stop the discussion. This strategy is particularly effective if the impasse seems to grow out of the heat of the moment.

Different strategies may be the best if your impasse is over an issue, such as price, says Benoliel. In such cases, useful strategies might be include moving on to another issue and returning to the point of dispute later or asking a question that will help clarify why a particular point is so critical to the other side.

Also remember that impasses are just a part of the negotiating process. Just because you reach an impasse doesn't mean you should quit. "One of the biggest mistakes negotiators make is walking away too soon," says Benoliel.

At the same time, don't expect that every deal will produce an agreement, especially in today's overheated market where your offer may be just one of many, notes Clarke.

If the deal fails, don't be afraid to move on. Think of each negotiation in terms of baseball, suggests Criswell. "A player with a .334 average is considered a good hitter, but he's still missed two-thirds of the time. That's why it's important to work on a lot of deals at once and not invest too much time in any one."

Finish on a positive note

Lastly, keep in mind that even after you reach an agreement, the deal isn't over. Ensuring that both sides have an agreement that they are willing to fulfill is critical, says Cohen. Otherwise, the deal may not close. A comfortable level on both sides is especially important in lease transactions where the landlord and tenant have to live with each other long-term, says Minker.

"You want to maximize what you get for your client, but you don't want bad feelings that will show up as late rent or poor service," he says. Minker maintains contact with both parties to a deal after it's signed to help diffuse any frictions.

In addition, in many markets, you may find yourself facing the same person in another negotiation in the near future. If so, you may pay the price for devastating win, says Muhlebach. "If a landlord gets a reputation as a deal killer, no one will want to bring him tenants."

After all, notes Cohen, "negotiation isn't a competitive sport."

(Box/Chart)

Figure 1

Know your negotiating style

Recognizing your own style and that of your opponent lets you get your points across in the most effective way.

Analyzer: Focuses on logic and data, makes rational arguments, prioritizes outcomes.

Achiever: Focuses on control, focuses on outcomes, seeks compliance.

Motivator: Focuses on creativity, uses analogies, fosters collaboration.

Mediator: Focuses on rapport, listens intensely, favors consensus.

*Adapted from *The Skilled Negotiator: Mastering the Language of Engagement*, Kathleen Kelley Reardon, Jossey-Bass (A Wiley Imprint), 2004.*