



# No-Lose Negotiation

By: Gary G. Tharp, CCIM

## **No-Lose Negotiating**

*Keeping the Other Side in Mind Will Improve Your Success at the Bargaining Table.*

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### **“You just have to put last things first!”**

I was having lunch with a CCIM recently when he uttered this boomerang phrase. We were discussing the art of negotiating, and I had asked him for his best strategy. “You’ve got to see the outcome before you can get the income,” he continued.

With those short statements, he summarized a technique that I have followed for years but never thought of as a formal strategy: Visualize the outcome you want a negotiation to have, then go to work on the agenda, interests, issues, and positions that will lead to that outcome.

Sounds easy, doesn’t it? “The outcome I want is I win,” you may say. Me too. I want to hit a home run every time. Unlike sports, however, successful negotiations shouldn’t have winners and losers. In negotiating, losers tend not to play again and even may try to overturn the outcome of a game that seemed won.

### **Last Things First**

Take the last-things-first idea. Before sitting down to negotiate a deal, try to determine the possible outcomes and the best possible outcome for you. Then, slip into your opponents’ shoes and visualize their best possible outcome. How far apart are you? A lot? (And that is with you doing the other side’s thinking!)

A friend of mine is a top-level manager. Before going into any meeting, he dictates a memo to each participant that is to be sent at the conclusion of the meeting. In the memo he outlines the highlights from the discussion, establishes what has to happen next, and delegates the jobs established by the action plan that was determined. All this, remember, is *before* he goes to the meeting. He says he often doesn’t have to revise the memo much afterwards! This last-things-first exercise makes him concentrate on the outcomes he desires, including specific actions to take, which influences his success running the meeting.

The same wisdom applies to high-stakes negotiating. For example, when attempting to buy an office building, potential purchasers nearly always analyze the property's performance to determine how it will behave in the future. But how often do they consider how the sale will affect the seller? That's right, the seller. Limiting thinking to your own goals seldom produces the best solution.

Recently, a class B office building was offered for sale. A look at the package suggested a value in the \$4.9 million to \$5 million range, but it was offered for nearly \$6 million. In fact, the owner's book value was about \$5.5 million. About to pass, I called the broker to ask how the owner got into this mess, and the answer was the key to the deal.

The owner originally bought the building with a "user" attitude, planning to occupy a significant block of space in the building for years and maybe even grow into the entire property. He financed only about 60 percent of the purchase. Within a year, however, because of competitive and regulatory pressures, the owner's company had to relocate to another state and he was anxious to get the responsibility for the building behind him.

The key word was *responsibility*. That was the actual word the broker used, or I might not have been bright enough to make the deal. By lowering the price to book, getting the seller to leave substantial equity (not debt) in the deal, and arranging for the seller to support that part of the pro forma income stream that represented his prior occupancy, we came to a meeting of the minds.

Some people might conclude that we over-paid. What actually happened was that I took a look at what my buyer wanted — including income stream, safety of principal, and appreciation — and tried to balance it with what the seller seemed to want — no hassle, fair price, and ease of exit. A few years from now it may look like a great bargain — for both sides!

### **Great Expectations**

"Dear Jack, I thought I would put down on paper what we hope to accomplish in our meeting on Friday. If you think of anything I've left out, please call right away so we can be sure to cover all the important issues. Thanks, Gary."

The success of a negotiating session quite frequently depends on the expectations of the participants. Writing an agenda letter can give you the right to direct which issues will be on the table, and, perhaps most importantly, the order in which they will be discussed.



An agenda letter can be as informal as a one-page list or run several pages with supporting documents. I prefer the one-page agenda, even for complicated negotiations. If the important points are on a single page, the talks tend to proceed in order and people don't get bogged down flipping pages and confusing one issue with another.

If you are initiating the agenda, as mentioned, you have a shot at setting the tone of the meeting by what you include and in what order. This does not mean that you steer the meeting away from issues important to others and highlight only your most advantageous points. Quite the contrary: By establishing that you are looking at all facets of the deal, even issues that seem to favor the other side, you encourage everyone to be more open in the process. They may think of you as being fair-minded and honest, which can aid your success in the actual deliberations.

On the other hand, you don't have to abdicate the leverage that being the agenda initiator gives you. The timing of discussion for certain issues can be as important as the positions themselves. If you are happy with the price, for example, you may lead with that item so that everyone feels good about settling a major point early. If you hate the price, put it further down the list to give yourself a chance to explore the hardness or softness of terms that might mitigate price.

Some negotiators like to put the deal breakers first on the agenda, while others like to save those issues until last. Neither strategy is automatically correct. Think about the outcome you want and tailor the agenda accordingly.

### **Reveal, Don't Conceal**

Nearly 40 years ago, I heard a highly paid negotiator describe his technique as the "open kimono" strategy. I have known few people who habitually follow his model — revealing everything about all possible positions at the outset of negotiations — but it seemed to work well for him and it has for me.

Many win/lose negotiators try to increase their leverage by concealing data rather than providing information about their situation, interests, and positions. In fact, many, if not most, negotiators seem to be intent on keeping the other side in the dark. Interestingly, much of the time the other side is doing the same thing — mirroring the deceptiveness. Trust is hard to build when each side acts in an untrustworthy manner. In addition, keeping your opponents in the dark makes it hard for them to figure out how to make a deal with you, or makes them think you don't want to deal.

A few years ago, we built a medium-sized office/showroom complex entirely on spec with a high loan-to-value construction loan. The market was in transition and we were under great pressure to lease it quickly. I decided we should present our entire position to each prospective tenant: “Our pro forma rental rate is \$9.50 per square foot. That is the number we have to reach according to our deal with the lender.” “I cannot go below that number, but I can stretch it for you. If you need some time to move in, I will give you a month or two of free rent — but our rate may go up to \$9.75 psf. If you need to get a better tenant allowance, I can amortize that over the initial term, or we can start the base rent higher.” This explanation would go on until the prospect understood my message: “When the smoke clears, I am going to be able to show my lender that I am getting the exact equivalent of \$9.50 psf per year.”

Although I had some difficulty getting my fellow brokers to understand that I was opening with my bottom line, the tenants seemed to appreciate avoiding the smoke and mirrors, and we leased the project in a short time, relative to market conditions.

### **Magic Words and Power Phrases**

“That’s fair, isn’t it?”

“Congratulations!”

“We can summarize this right now, and let the lawyers OK it later.”

“Surely we can work this out together.”

“That’s reasonable.”

Certain words and phrases should be avoided, just as others must find their way into our vocabulary. The words, and how we say them, can influence the other side’s acceptance of you and attitude toward you. You don’t have to be a silver-tongued devil, but you do have to get the words right.

Magic words and power phrases are mostly personal; the ones that work for you may not work as well for me. Everyone should recognize phrases that get good results for them and be alert for opportunities to practice using them. Carry a notebook and record instances where you turned a pretty phrase that seemed to have an unusually beneficial effect on a co-worker, or your spouse, child, or friend. The same effective word use in non-business situations will work in negotiating.

## A Few Absolute No-No's

**Don't** tell your opponents they are wrong — especially when you can prove it. If you ask enough questions they may admit the inadequacy. In any case, being told you are wrong often hardens your position. And, because it's most often taken as a personal attack, at least unconsciously, it can affect the attitude of the person you're trying to enlighten.

**Don't** say you won't consider changing your position. Nothing is accomplished by impasse, and often your position is indeed subject to change, at which time your loss of face makes it harder to do the right thing.

**Don't** use win/lose tactics, such as giving the other side a deadline, a bluff, or indicating that there is competition for the deal (sometimes even if there is). Nobody likes being bullied, and many legitimate negotiators end talks when you introduce false tactics.

### Just testing:

"How do you feel about this approach, so far?"

"Would that be fair?"

"How do you think we would implement that element if we were to go forward from here?"

Salespeople know they should "always be closing." Likewise, good negotiators test the progress of negotiations not by asking for the order, but by frequently testing how the other side currently feels. Are its interests being met? Does the other team buy into a particular solution? The Godfather's lawyer said that his client "insists on hearing bad news immediately," and so should you.

If members of the other side aren't going down the same path you are headed, stop and find out where they are. Testing accomplishes that.

Asking such questions also can influence the other side to participate more in the discussion. Good negotiators strive to do less than a majority of the talking, allowing the other side to make most of your side's points by asking questions that lead to the desired result.

In addition, questions often can deflect confrontation: "Setting aside the due diligence issue, is there anything else that we see as a deal point?" Sometimes a deal-killing position will soften in the context of all the other things the other side is getting.

A successful negotiator reviews the agenda and develops open-ended and nonthreatening questions that are appropriate for each stage of the meeting. Don't be guilty of talking too much — the side that has the most information about the other has more strength; information comes more from asking than from telling.

### **What's the Next Step?**

Sloppy documents have unraveled more than one negotiation. Send minutes after every session, inviting corrections, so that everyone agrees. Send or take contracts, addenda, and amendments in a timely fashion. The rapid expansion of e-mail has made follow-up easier and faster.

At the end of every negotiating session, some necessary action usually must be taken before the next session, or if a settlement has been reached, to implement that settlement. It can help to ask several questions in the meeting: "What is to be done? Who will do it? When is it to be finished? How will it be done? How will we know?"

Don't leave the session without making sure what comes next. If a settlement is reached, how is it documented? How is it made durable? What feedback loop is necessary? Without nailing these things down, some will go undone, often undermining the progress that has been made.

### **We Did a Good Thing**

From a great negotiator I learned a simple technique for enhancing the psychological satisfaction at the end of a negotiating session. Shake hands with each person on the other team, and warmly say, "Congratulations, we did a good thing here," or variations on that theme.

No matter what the outcome, both sides of any negotiation should be made to feel good about the process, which trainers call psychological satisfaction. Psychological satisfaction is more important than substantive satisfaction, the actual tangible results of the transaction.

Even if the negotiation has not reached a settlement (no-one makes every deal), your future success with this person or team is tied to how you have made them feel. Make sure you attend to this detail.

### **In negotiating, there is no last round!**

*Gary G. Tharp, CCIM, is president of GT Commercial Inc. in Orlando, Florida, is a frequent speaker on negotiating and other real estate topics, and a coach for the Massimo Group. Contact him at 800-517-5542 ext.107 or [gary@massimo-group.com](mailto:gary@massimo-group.com).*