



Urban Land Institute
2008
**ULI Fall Meeting
and Urban Land Expo**

October 27-30, 2008
Miami Beach Convention Center

Negotiations: What Works What Doesn't

**Tuesday,
October 28**

11:15 a.m. – 12:30 p.m.

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Effective Negotiating

ULI
10/28/08

Presented By: Joshua Kahr
www.kahrrealestate.com

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Effective Negotiating

- Negotiation Strategy
- Negotiation Analysis
- Dealing with Emotions in Business Negotiations
- Case Studies

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Acme Homes Case Study

- Two sellers, one buyer.
- 10 minutes to read and brainstorm
- 15 minutes to negotiate
- 15 minutes to discuss

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Acme Homes Case Study

- What was the range of agreed-upon prices?
- What did you notice about the other negotiator(s) that you used to your advantage?
- Which side did you perceive to have more power?

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Case Study Debrief

- Did opening statements reveal any true interests?
- Did either party share relevant information?
- What sources of power did each party appear to have?
- What sources of power did each party appear to use?
- Did either party use commitment tactics?
- Did either party try to exploit weaknesses of the other?
- What bargaining style did the parties exhibit: accommodating, competitive, compromising, avoiding, collaborative, mixed?
- What strategy was each party using: distributive, integrative, mixed motive?
- What tactics of either party were especially noteworthy?
- Did either party seek to understand and respect the interests of the other?
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- Did either party emphasize the relationship as much as the settlement?
- Subjectively speaking, do you trust the other party?

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Negotiation Strategy

Negotiation Strategies

Negotiation Styles

Pattern Recognition



Negotiation Strategy

Negotiation Strategies

Distributive: Claiming all the profit or the maximum share for oneself – winning it all

Integrative: Creating value (expanding the pie) and finding solutions that best fit the needs of all or most parties – especially over time

Mixed-Motive: Expanding the pie and meeting the needs of all or most parties as much as possible while claiming an appropriate share




Negotiation Strategy

Negotiation Styles

Competitive: Better than all others

Cooperative: Feelings are properly dealt with

Independent: Best possible outcome regardless of the achievements and feelings of others



Negotiation Strategy

Negotiation Conflict Styles

Competitive: Gain all there is to gain

Accommodative: Yield all there is to yield

Avoiding: Stay out of the negotiation

Compromising: Find an intermediate point according to some principle

Collaborative: Maximum possible gain for both parties

Revengeful: Injure the other negotiator(s)

Self-Injurious: Injure oneself

Revengeful and Self-Injurious: Injure everyone



Negotiation Strategy

Negotiation Conflict Styles – When to Use Which Style?

Competing

Often Appropriate When:

- An emergency looms
- You're sure you're right, and being right matters more than preserving relationships
- The issue is trivial and other's don't really care what happens

Often Inappropriate When:

- Collaboration has not yet been attempted
- Cooperation from others is important
- Used routinely for most issues
- Self-respect of others is diminished needlessly



Negotiation Strategy

Negotiation Conflict Styles – When to Use Which Style?

Collaborating

Often Appropriate When:

- The issues and relationship are both significant
- Cooperation is important
- A creative end is important
- Reasonable hope exists to address all concerns

Often Inappropriate When:

- Time is short
- The issues are unimportant
- You're overloaded
- The goals of the other person certainly are wrong



Negotiation Strategy

Negotiation Conflict Styles – When to Use Which Style?

Compromising

Often Appropriate When:

- Cooperation is important but time or resources are limited
- When finding some solution, even less than the best, is better than a complete stalemate
- When efforts to collaborate will be misunderstood as forcing

Often Inappropriate When:

- Finding the most creative solution possible is essential
- When you can't live with the consequences

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Negotiation Strategy

Negotiation Conflict Styles – When to Use Which Style?

Avoiding

Often Appropriate When:

- The issue is trivial
- The relationship is insignificant
- Time is short and a decision not necessary
- You have little power but still wish to block the other person

Often Inappropriate When:

- You care about both the relationship and the issue involved
- Used habitually for most issues
- Negative feelings may linger
- Others would benefit from caring confrontation

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Negotiation Strategy

Negotiation Conflict Styles – When to Use Which Style?

Accommodating

Often Appropriate When:

- You really don't care about the issue
- You're powerless but have no wish to block the other person
- When you realize you are wrong

Often Inappropriate When:

- You are likely to harbor resentment
- Use habitually in order to gain acceptance (outcome: depression and lack of self-respect)
- When others wish to collaborate and will feel like enforcers if you accommodate

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Negotiation Strategy

Pattern Recognition

1. Recognize what type of negotiation is taking place
2. Recognize opportunities to change the negotiation
3. Recognize your own routines

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Negotiation Strategy

Recognize your own routines

"How To"

- Intuition allows us to make sense of things even prior to conscious awareness
- It is easy to imagine patterns that are not really there
- We are easily fooled by randomness
- Fundamental Attribution Error- the tendency to believe that other people's actions reflect their personality and character instead of the circumstances into which they are thrust

Experience helps improve one's art, but humility is key.

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The Atkinson Aspiration Model

The Atkinson Aspiration Model suggests individuals set aspiration levels by evaluating the pleasure of success against the displeasure of failure. Individuals strive to reach goals that maximize the total attractiveness of the task. However, note the diagram suggests persons with a strong desire for success do not look at risk in the same way as those who stress the avoidance of failure. The "success" type prefers risks in the 50-50 range, while the "failure" type prefers short or long odds. Success-oriented people maximize task attractiveness by setting aspiration levels where success can be attributed to their own abilities. People with a high fear of failure avoid reasonable challenges because it threatens their self-image. If they set low goals, they cannot fail. If they set goals so high that the probability of success is slight, they can feel comforted by the fact that failure was inevitable anyway. In either case, their goal-setting behavior preserves rather than threatens self esteem.

The graph plots 'Relative attractiveness of tasks' on the y-axis against 'Probability of success (Ps)' on the x-axis, ranging from 0 to 1.00. A solid line labeled 'Motive to achieve (Ma)' starts at 0, rises to a peak at 0.50, and then declines. A dashed line labeled 'Motive to avoid failure (Mf)' starts at a high point at 0, drops to a minimum at 0.50, and then rises again towards 1.00.

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Negotiation Analysis

Tactical questions (“Should I put the first number on the table,” “Should I negotiate on their turf,” etc...) cannot be intelligently answered without first developing a coherent strategic framework.

There are seven basic questions that any negotiator should ask before he or she goes to the bargaining table.



Negotiation Analysis

The questions negotiators and analysts must ask:

1. BATNAs: What will the respective parties do if they don't come to an agreement?
2. Parties: Who are the real parties in the negotiation?
3. Interests: What are their fundamental needs and priorities?
4. Value: How can value be created and who is likely to get it?
5. Barriers: What obstacles might prevent agreement and how can they be overcome?
6. Power: How can the various parties influence the negotiation process and its outcome?
7. Ethics: What is the right thing to do?



Negotiation Analysis

BATNA – Best Alternative To Negotiated Agreement

At some point in a negotiation, one ultimately has to choose between accepting a deal or pursuing more attractive alternatives.

Consider the sale of a small municipal real estate company.

- Properties, Inc, a regional operator offered \$10MM cash
- Also negotiating with Huge RE, a national real estate giant
- What is your BATNA in negotiations with Huge RE?

Your BATNA is *not* your bottom line.



Negotiation Analysis

Assessing BATNA

- Science & Art
- Research shows most people poor evaluators of BATNA

Only by considering perceived BATNA of both the potential buyer and seller can one see if agreement is really possible

Example

ZOPA – Zone of Possible Agreement

- Offers and counteroffers simultaneously test ZOPA dimensions



Negotiation Analysis

Assessing BATNA

Determining BATNAs and walkaways is a cornerstone of negotiation analysis

...but it is **tough**.



Negotiation Analysis

Parties

Who are the real parties in the negotiation?

Identifying the current and potential parties in negotiation may raise a host of other important questions and can expose potential pit falls and opportunities.

Would getting the support of Party A increase or decrease the subsequent chances of getting Party B on board?



Negotiation Analysis

Interests

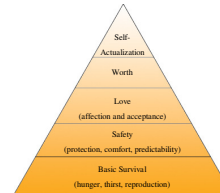
What are the interests and priorities of the key parties?

- Not always maximizing your price
 - Example: as part of your plan to sell the real estate operation, you intend to roll-up other small, local operators to make a more attractive target for the larger potential purchasers. During negotiations with another small operator, you set a maximum price of \$11M. He refuses to sell for less than \$15M. What do you do?
 - Focus on interest, not position. He believes his similar operation much more highly than either of your current offers; ask him what he would pay for your operation.
 - Real world outcome: sold for \$14.5M.



Maslow's Hierarchy of Needs

- One useful and intuitively appealing way to understand behavior was developed by Abraham H. Maslow, who suggested people organize needs, ranking them from most to least important. Since it is never possible to satisfy all needs, those most pressing get in line first. It is popularly called Maslow's Hierarchy of Needs



Maslow's Hierarchy of Needs



Negotiation Strategy

Needs → Goals → Negotiation



Case Study – Lakeside Center

“The ability to negotiate is especially valuable to the real estate investor because of the inefficiency of the markets which permit one to capitalize on differing perceptions of value.” –William J. Poorvu, *The Real Estate Challenge*, Harvard Business School

Day One - Lakeside Center

- Lessor/Lessee negotiation
- 20 minutes to read
- Discuss



Case Study – Lakeside Center

Discussion Questions:

1. Lakeside assessment: overbuilt, rates down, concessions up, premium hurting
Leasing strategy: drop rates, examine lost leases, shop qualitative aspects
2. SFS rates/terms: full floor, \$20/SF, 5 yrs (ex: 1x5, 90% mkt), \$18/SF T.L., 1 yr free
A&G rates/terms: 8K SF, \$20/SF, 10 yrs, \$20/SF T.L., 1 yr free, tenant pays structural
BCI rates/terms: 3K SF, \$18/SF/yr rising to \$21, 4 yrs, \$15/SF T.L., no free rent
Presentation structure: emphasize qualitative aspects, Southern's reputation
Handle Negotiations: SFS- build-out; A&G- detailed; BCI- be price sensitive
3. Financial Implications: est. \$3.7M deficit
Deficit Matters: take steps to get an 8% cap rate in 1994.
4. CREA Options: lower interest rate to 8% in return for additional percentage
CREA Response: let Southern walk, fund deficit and hire third parties



Case Study Debrief

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- Subjectively speaking, do you trust the other party?



Office Building Case Study

- One seller, one buyer.
- 10 minutes to read and brainstorm
- 15 minutes to negotiate
- 15 minutes to discuss

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Office Building Case Study

- What was the range of agreed-upon prices?
- What concessions did you find attractive?
- Which negotiating tactics we have discussed did you utilize?

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Case Study Debrief

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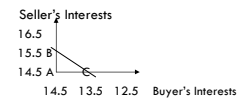
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Negotiation Analysis

Value

How can value be created—and who will get it?

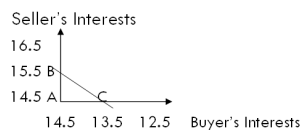
- Ask these questions, but answer them only tentatively
- Differences are the core material for value creation in negotiation



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Negotiation Analysis

Value



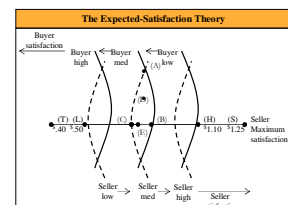
1. It is possible to reach agreements that create gain for both parties. All of the points on the BC line are superior to the original deal at point A.
2. The creation of mutual gains does not necessarily mean that they will be evenly divided. Most or all of the gain may go to one party.
3. Expanding the pie and dividing it are part of the same process.
 - Pareto Optimal

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The Expected-Satisfaction Theory

Satisfaction Model of Negotiation

Imagine for a moment that a buyer is negotiating the purchase of 1 to 5 buildings on a cost-per-SF basis. He would not object to buying all five at the right price, but would settle for one. The buyer would be delighted to pay \$0.40 ("T") but is prepared to pay as much as \$1.10 ("H") if necessary. As the price moves from \$0.40 to \$1.10, the buyer becomes less and less satisfied. The seller would rather do without a sale than sell at less than \$0.50 ("L"), and is confident all five buildings will be sold at prices between \$0.50 and \$1.25 ("S").



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The Expected-Satisfaction Theory

PROPOSAL A – The buyer offers to buy one building for \$0.75. The seller's total profit is \$0.25.

PROPOSAL B – If the seller were wise, he would offer to sell the three building for \$2.25; the profit would be \$0.75. The buyer's average price would remain \$0.75. This proposal would represent an improvement for the seller at no loss to the buyer.

PROPOSAL C – The buyer might counter with an offer to buy all five buildings at \$2.75, which would provide a large improvement and still leave the seller with Proposal A's \$0.25 profit.

Proposal	Price	Satisfaction Model of Negotiation		Gain or loss of satisfaction relative to proposal (A)	
		Average Bldg price, cents	Seller's total profit, cents	Buyer	Seller
(A)	1 for \$0.75	75	25	--	--
(B)	3 for \$2.25	75	75	None	Gain
(C)	5 for \$2.75	55	25	Gain	None
(D)	2 for \$1.40	70	40	Gain	Gain
(E)	5 for \$3.15	63	65	Gain	Gain

PROPOSAL D – If the above offer were refused, the buyer could propose to buy two buildings for \$1.40. In this case, both parties would be better off because the seller's profit would rise to \$0.40, and the buyer's average cost would fall to \$0.70.

PROPOSAL E – Finally, they would be wise to conclude a deal at five buildings for \$3.15, where the seller earns \$0.65 and the buyer pays only \$0.63 per building. There is no better deal possible for both in relation to the first offer.

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Negotiation Analysis

Value

In sum, value is generated in negotiation by capitalizing on differences, *not necessarily* by finding common ground. Differences may be in valuation, expectations, discount rates, or attitudes toward risk. Unless they are creatively exploited, the parties will squander opportunities that could benefit them both.

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Negotiation Analysis

Barriers

What obstacles might prevent agreement (or the maximization of value) and how can they be overcome?

- Identifying such obstacles—and the means for overcoming them—is a key component of negotiation analysis
- Three common obstacles
 1. Strategic Behavior
 2. Psychological or Interpersonal
 3. Institutional

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Negotiation Analysis

Barriers

Strategic Behavior

- Parties overplay their hands
 - Drawing a firm line on what is acceptable may increase your chances of getting a fair share of value, but involves the risk that your demand will exceed what the other party is willing to accept.

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Negotiation Analysis

Barriers

Psychological or Interpersonal

- Parties can lack trust or have trouble communicating
 - It is easy to regard other parties as opponents. Such attitudes can breed defensiveness, even hostility.
 - Interpersonal issues are largely addressed through skillful management of the negotiation process itself

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Negotiation Analysis

Barriers

Institutional

- Ideas might run afoul of policy back at corporate headquarters
 - Overcoming institutional barriers may require crafting new policies

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Negotiation Analysis

Power

How can the various parties influence the negotiation process and its outcomes?

- What is power
- How to use it



Negotiation Analysis

Power

Perceived Sources of Power

- BATNA
- Commitment
- Elegant Solution
- Expertise
- Force
- Information
- Legitimate Authority
- Moral Authority and Charisma
- Relationship
- Rewards
- Sanction



Negotiation Analysis

Power

Bargaining power often said to be the strength or weakness of your BATNA

- The other side may not know that you have few options, and in any event, may prize what you have to offer
- How the other side sees its own BATNA may have more bearing on your power than how you see your own

"Owe the bank \$10,000, and you've got a problem. Owe the bank \$10,000,000, and they have a problem."



Negotiation Analysis

Power

Identify ways in which you can favorably change the basic architecture of a negotiation

- Redefine the set of parties
- Define time constraints
- Attack the other party's BATNA



Negotiation Analysis

Power

- Bargaining power is a matter of perception
 - Having an attractive BATNA will give you little advantage unless the other parties are convinced that you really are prepared to walk away
 - Conversely, there is power in convincing the other parties you will wait forever to get the terms that you want.

Bargaining power is also a reflection of knowledge and skill. Unsophisticated negotiators bungle opportunities without ever knowing it.



Negotiation Analysis

Ethics

What is the right thing to do?

There are five sets of questions that negotiators should ask themselves if they are to act responsibly:

1. What—if anything—do you owe other parties in the way of candor?
2. Should you be concerned with the fairness of the agreement?
3. Is it wrong to apply economic pressure?
4. Even if the parties themselves are content with their agreement, are they obliged to think about how it will affect people who are not at the bargaining table?
5. How do parties handle moral dilemmas when negotiating on behalf of others?

Acting first, then constructing a rationale after the fact to justify your behavior, can be dangerous for others – and for yourself.



Negotiation Analysis

Summary

Effective negotiation requires a coherent framework linking means and ends. The framework presented here requires clear-eyed assessment of all the parties' non-agreement alternatives (BATNAs). Identifying their fundamental interests as the source of potential value-creating trades is equally important. Careful negotiation analysis also means recognizing possible barriers to agreement, as well as structural elements that might well be advantageously rearranged. All of these tasks can reveal important moral and ethical issues, as well.

Through formal study and reflection on your own experience and that of others, you can develop a conceptual framework that will allow you to craft negotiation strategy, rather than just improvising it.



Using Emotions As You Negotiate

Addressing the Five Core Concerns

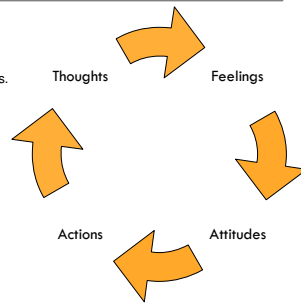
1. The Need to Feel Appreciated
2. The Need to Feel Affiliated
3. The Need to Feel Autonomy Respected
4. The Need to Feel Status Acknowledged
5. The Need to Feel a Role is Fulfilling



Using Emotions As You Negotiate

Cognitive-Emotional Reframing

- Emotions are thought-feelings. Changing the thoughts, or "cognitive framing" of a situation changes the associated emotions.



Examples?



Using Emotions As You Negotiate

Summary

Emotionally Intelligent Negotiators

- Plan for "people issues"
- Analyze potential emotional traps
- Have strategies for managing emotions
 - Active listening
 - Cognitive-Emotion Reframing
 - Empathic Actions
 - Perspective Analysis
 - Perspective Testing



Case Study – Textile Corp.

"The ability to negotiate is especially valuable to the real estate investor because of the inefficiency of the markets which permit one to capitalize on differing perceptions of value." –William J. Poorvu, *The Real Estate Challenge*, Harvard Business School

Day Two - The Textile Corporation

- 20 minutes to read
- Submit bid
- Discuss



Case Study – Textile Corp.

Discussion Questions:

1. Bid Amount: \$16M? \$17.8M?
Why: NPV @ 12% = \$1.8M
2. Grow CF: \$1.675M advantage
Opinion: OK to bid based on what one guesses others will do?
3. Improv/Rehab vs. Re-measuring, creating value through improvements.
new construction: improvements.
4. Best disposition: 3 methods; each pluses and minuses. Textile should include covenants of sale.



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Contact Information

Joshua Kahr
Kahr Real Estate Services
55 Broad Street
7th Floor
New York, NY 10004
O: (212) 566-4085
C: (646) 286-0128
www.kahrrealestate.com
josh@kahrrealestate.com

