

How To Negotiate

You don't have to be slick to get what you want in a negotiation, just well-prepared.



As a practice owner or manager, it's inevitable that you will need to negotiate. Whether you are leasing a new building, working out a partnership agreement or working with a vendor to obtain a new piece of equipment, developing basic skills in the art of negotiation can help you protect your interests and get the best possible deal for high-ticket items.

The most important thing to remember when negotiating is that both parties want to “win,” but both parties also want to walk away with a signed deal. When negotiating with an individual, his needs, wants and desires must be satisfied in order for the negotiation process to be successful.

Step 1: Know Your Facts

The first step in a successful negotiation is to make sure that you have your facts in order, that is, you have done your “due diligence.” Do not shoot from the hip. In many cases, the other party may be more educated in the subject matter of your negotiation, and this requires you to be convincing. Avoid opinions or assumptions. Focus on hard facts.

Second, you must always know the level of authority you are dealing with. You don't want to spend an extreme amount of time in the due diligence phase trying to educate someone who ultimately does not have the power to make a final decision. Investigate the parties or company you are dealing with to ensure there have not been any adverse actions against them in the past. You might find hidden facts and/or agendas that you were not aware of and it may be too late to back out once the contract is signed.

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What To Negotiate



Part of your initial due diligence involves understanding all of the aspects of the proposed deal that's on the table for negotiation. In the case of a real estate lease, there are several components to consider beyond the square footage cost and lease length, and each of these must be well-defined from the very beginning.

- What is the fair market value of the property?
- Who is responsible for the utilities—such as electric, water/sewer and telephones?
- Who is responsible for the maintenance fees, including the homeowners' association (HOA) dues?
- Who is responsible for the taxes?
- What is the minimum term of the lease, and are there guaranteed renewal options? (Some states do not allow for leases longer than one year.)
- Is there a cancellation clause, and if so, what are the terms and conditions?
- Are there restrictions for the hours of operation, including nights and weekends?
- What are the security deposits, and are there any nonrefundable fees?
- Are you allowed to operate your type of business in this facility, and are there any competitors that might restrict you from doing business there?
- Are you allowed to build or add to the facility, and do you have to restore it back to the original condition upon your departure?

When negotiating for equipment purchases or leases, there is often not a lot of room to negotiate. Try to find out if there are different financing options, either directly from the vendor or indirectly via third-party financing. You could also open a line of credit where you may only have to pay back the interest, while still maintaining the balance until it is paid off. This can be less expensive, since you don't have to pay additional taxes for the lease. The following are additional areas that should be part of your negotiation:

- Always ask to “test drive” the equipment. Ask the sales rep to bring the device to your facility so you can operate it and get a feel for it.
 - Is the manufacturer's warranty adequate or do you want to negotiate for an extension beyond the offered warranty?
 - Can the warranty be transferred if you sell the equipment before the negotiated warranty expires? This can be sticky, but I have found it can be negotiated into the deal.
 - Is the warranty or extended warranty for parts or labor, or parts and labor? Read the fine print carefully.
 - Are the freight charges for delivery included in the upfront costs or are they extra?
 - Are you responsible for freight costs when you have to ship the equipment back for repair?
 - Will you get a “loaner” piece of equipment when your unit is out of service?
 - Try to negotiate additional consumables in the deal, such as tips, grounding pads and fee-per-use provisions.
- Often when you negotiate for capital equipment, you will hear that there is a set standard in the industry. Do not be afraid to alter the standard terms and conditions, and never settle for the explanation that it wouldn't be fair to the other practices' contracts. Every negotiation must stand alone.

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Once you have determined what you want out of the deal, you must be willing to compromise, if necessary. Sometimes you have to give something up in order to solidify the negotiation and move forward in a positive direction.

If the other party comes back to you with a deal that is not acceptable, always counteroffer. You have nothing to lose. When making a counteroffer, you want to make clear that you were put off by the original offer. Frown, flinch or twitch to show the other party you are uncomfortable. He will pick up this sign immediately. I recommend hosting the negotiations in your own facility, as it will give you a better comfort level. You have the option to excuse yourself, go for a quick break and then come back to negotiating. The ball is in your court. However, Robb Mandelbaum stated in an article (*Inc. Magazine*, Nov. 1, 2010) that it is not always a bad idea to negotiate on your opponent's turf. It shows respect and removes the excuse that the file is "back at the office."

Once you are in the midst of negotiations, it's natural to feel as if you have to win this and get your new building, device or partner, but try not to be married to the deal. If you feel you are being pressured or you feel the deal just isn't right for you, walk away. There is always another deal in the future. Not all are worth pursuing. We all want to feel successful, but entering into a mediocre contract will haunt you. If something else becomes available, you are already committed and may be unable to afford the new opportunity. If you're using a third party to help you negotiate, insist on exclusivity and make sure there is no back-end compensation to your consultant. He has a fiduciary relationship with you that should never be violated. Before concluding any meeting, phone conversation or written documentation, you must summarize everything. Once you have a final consensus, always insist on putting terms and conditions in writing, signed by all parties—as the legal process for breach of contract does not support verbal communication. Written terms are also helpful if disputes arise in the future regarding the agreed-upon terms. I have personally had incidents in which I thought I was entitled to something different than what was originally agreed upon. When I went back to the original agreement, I found my assumption was wrong.

Try to initiate a memorandum of understanding (MOU) regarding your intentions to engage into a bona fide written agreement. This directly affects your bottom line when it comes to legal fees. An MOU is an agreement given to one attorney for legal drafting when both parties agree in principle. Traditionally, one party draws up an original agreement, then the other party has their own attorney review, correct and/or change it and resubmit it to opposing counsel. This creates an unneeded expense.

Finally, once you have verbally solidified the deal to your satisfaction, stop talking. All you can do at this point is talk yourself out of the deal.

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