

NEGOTIATING

A REAL ESTATE CONTRACT

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Is the price of residential real estate negotiable? The simple answer is: sometimes yes, sometimes no – or in the words of a past instructor: yes, no, probably, or maybe not. Depending on market conditions and the parties involved, price, along with other aspects of the real estate contract very often are negotiable. Is price always negotiated down? Certainly not – in a strong sellers' market like the one we experienced in 2005, prices were often negotiated upward dramatically with competing bids for the same property.

Some people love to negotiate and some people loathe doing so. There are many times people find themselves in a negotiating role. Think of all the places it is customary in this country. Automobile sales (except for Saturn), wages and salaries, swap meets (also known as flea markets, tag sales, garage sales, yard sales, etc).

Some people actually enjoy negotiating and seek out opportunities to do so. Some are very competitive and just have to feel that they've "won" even if the victory is only pennies or dollars. Sometimes it is best to let these folks feel like they have won by making some small concession. Surprisingly, some people get caught up in "the principal of the thing" rather than the money. This is certainly not the best mindset for successful negotiating. Lose the ego and strengthen your logic.

Regardless of your taste for negotiating, selling and buying houses is most often subject to some amount of it. Of course, it doesn't have to be. Some people make their minds up and stand firm. Chances of a completed transaction though are greatly reduced in most markets with that posture.

The first step in successful negotiating is to make sure you are in the best possible position to do so. Anything that might be perceived as a weakness or shortcoming to the other party should be minimized or eliminated. Plan to make your offer as strong as it can be on all points other than price. If possible, concede some flexibility up front on something like the proposed closing date and perhaps the other party will then be willing to concede on the dollars in exchange.

Perhaps it could go without saying, but buyers and sellers both need to be completely informed about their current real estate market. Know what is happening in general with real estate sales, interest rates, and market trends. Are multiple offers currently commonplace? How many days supply of inventory is on the market? What is the average Days on Market time? Specifically, know what your Comparative Market Analysis (CMA) data is. Your real estate agent will be able to provide this information about competing properties for sale, properties currently under contract, ones that didn't sell and were taken off the market, and most importantly, those comparable properties that have sold recently.

Also, be informed about what percent of list price, comparable properties have actually sold for. And, it is absolutely vital to know what the average and median price per square foot of comparable properties has been. Also, keep in mind the part about being "comparable". Is the property under consideration truly comparable?

Is it actually better or worse for some reason or another?

Also, be informed about the new home construction market. Are builders getting away with \$10,000 price increases every month, or are they offering all types of concessions in order to make sales?

Even though you may not be buying new construction, that market can definitely influence resale property value – especially if there are construction sites nearby.

If you are a buyer, unless you are an all cash buyer, obtain preapproval from a lender for your financing. And, have it in writing on an official letter of

pre-approval that will be attached to any purchase offer you make. Reduce your limitations and contingencies to the extent possible. If your offer is going to be contingent on the sale and/or closing of an existing home, your position to negotiate may not be as strong. Understandably, this may not be avoidable, but keep in mind that it may also necessitate paying a slightly higher price or losing out to another offer without contingencies.

If you are a seller, list your property at reasonable market value – overpricing a property is often counterproductive. Be certain that you know what you are willing and able to sell for. Make sure the property shows as well as it possibly can. Be readily available and responsive to all inquiries and/or offers. Follow the advice of your real estate agent – that's what you are paying them for.

Both sides of any negotiation should always be courteous and mature in their dealings. Cooperative attitudes usually fare better than combative ones. If face-to-face contact is made, remember that facial expressions and body language can be important. Do not argue. Calm demonstration of the reason for your position is good.

And obviously, what is said verbally can be critical to future negotiations. Compliments can be very powerful. This is why it is most often best if you let your trained representative, the real estate agent handle all of the contact with the other party – or their agent.

The finding of common ground between the parties can also be beneficial. Do the buyers have young children – just like the sellers?

Do they also have pets? Are they originally from the same part of the country? Do they practice the same religion or belong to the same club? Are they both gardeners? Such things don't necessarily come up, but when they do, they can influence negotiations.

Negotiation will always evoke some level of emotion or excitement – no matter the skill level of the negotiator. Just like a seasoned deer hunter – some level of jitters is involved when firing the shot. To the extent possible,

keep your emotions in check. The option to walk away from a deal should always be present.

“Professional” business negotiators often advise things like; act dumb and let the other party feel like they are helping you, ask them to explain something over again, ask them to tell you what they think and why. They also advise tactics like stalling – defer a decision to check with someone else (spouse, attorney, parents, friends, relatives, etc.) or just asking for more time to “think it over” or “sleep on it”. Well, if these tactics are employed via your real estate agent, they may work, but not always – they can also backfire.

If you are the buyer: whenever possible, find out as much as you can about the other party’s circumstances. Who has deeper pockets?

What are their motivations and time line considerations? Is there a divorce, a pending retirement, or a job transfer? Are they downsizing, upsizing, moving across town? Find out what you can. Try to determine who has more options, the buyer or the seller. Is this perception or reality? How reliable is the information about this status? Though these things are not material facts and are often considered confidential information, sometimes the principle or their agent will disclose such information. Obviously, seller and their agents should normally not reveal such information unless they feel it is in their best interest.

Try to identify and anticipate things other than sale price itself to negotiate that may affect the other party’s willingness to accept a certain sale price. Inclusion or exclusion of fixtures (e.g., an expensive chandelier or some other item that the seller has identified as not conveying) and/or personal property (e.g., refrigerator or furniture) may affect price negotiations. Does one party have a strong preference or need for a specific closing date? Can you bargain for a home warranty to be paid for by the seller? Would the seller be willing to pay some or all of the buyer’s closing costs? What about the amount of earnest money? Sometimes something other than sale price itself can be the key to a successful negotiation.

Sellers are sometimes motivated by the type of person (or their perception of the type of person) who is going to buy their house and are going to be their friends' new neighbors. They may actually care enough about their neighbors to turn down an offer from a "cheapskate" or "jerk" – as they perceive it. They may just want their house to go to a "good home" – much like adopting out a family pet.

As a buyer, here is a scenario you may want to consider avoiding.

Let's say you find a nice house that really suits your needs and desires – it's not perfect, but it is awfully close to it and it is in better condition than every other listing in the neighborhood. It is a very strong buyers' market – there is a lot of inventory and prices have been cooling off and you are anxious to get a great deal on a house. You do your homework and find out that comparable properties in this subdivision have been selling from \$284,000 to \$297,000. This range is about 95% of what the asking prices were while they were on the market an average of 45 days. This property has been on the market 62 days. It started off being listed at \$310,000 but after thirty days reduced to \$295,000.

You decide to do a little "bottom-feeding" or "low-balling" and see how low the seller will go – you just can't wait to tell all of your friends and coworkers what a great deal you got on this house – how you "stole" it. Just imagine how jealous your friend that just bought in that same subdivision is going to be. You submit an offer for \$250,000.

Most sellers are going to be either: disappointed, disgusted and angry, or outright livid on receiving such an offer. Their agent will probably have to convince them to make some kind of counter offer rather than relaying the message they would like to send (#!@*&!!#).

So they calm down and counter back at full price, or maybe at say, \$294,000.

You are not put off by this and are convinced that you can steal this property and counter back at \$260,000. The sellers are once again upset with such a low offer and are stewing about what to do.

Out of the blue there is word that another offer is coming in near full price. Panicked by this news, you decide that you really do want this property and submit a new offer for the full price of \$295,000. The other offer comes in at \$290,000 and is immediately accepted by the sellers. They decided to sell it to that nice couple and give up the \$5,000 difference. Who won?

In a strong buyers' market, make an offer that is conservative and aggressive – not obnoxious and offensive. Low-bidders rarely win.

Sellers and buyers must both understand and remember that, as in all things in the real estate contract, “time is of the essence” when negotiating. The Buyer(s) may withdraw the offer at any time prior to receipt of the Seller(s) signed acceptance. If no signed acceptance is received prior to written notice of withdrawal, the offer shall be deemed withdrawn and the Buyer's Earnest Money shall be returned.

In the standard Maryland Purchase Contract, when an offer is made it doesn't have a specified expiration date and time (unless one is written in by hand). The seller(s) can respond immediately or can choose to wait for as long as they want to. As long as an acceptance hasn't been received by the buyer, they are free to withdraw their offer. If the sellers accept the offer – the contract begins. If the sellers choose to counter the offer, the original offer expires and there is no obligation on the part of the buyer. If the buyer rejects the counter offer, the seller does not have the option of saying, “OK, I'll take the original offer and we are under contract.” This is not the case.

Likewise, if the counter offer has been made by the seller, the buyer will have as long as they want to respond. If they accept the counteroffer immediately, both parties are under contract. If the buyer decides to wait, they give the seller the opportunity of withdrawing their counteroffer at any time. Perhaps the sellers receive another offer that is better. Their first step should be to withdraw their counter offer in writing and ensure that it is “delivered” to the first buyer, and then accept the new offer from the second buyer. They don't want to be in the position of having two purchase contracts and only one house to sell.

Some people like to play the waiting game to make the other party “sweat it out”, but there are obviously risks with this strategy.

And, last but not least important; be sure to communicate honestly with your agent. Let them represent you in the negotiations. If you are absolutely certain that you will only buy or sell the property at “your price”, tell them that. If the truth is that you absolutely want “this property” but you want to get it at the best price possible, tell them that. It is to your advantage if the agent has an accurate understanding of your true position.

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

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