



*Over 30 Years' Experience Handling Buy/Sells And Automotive Law*

## Negotiation Do's and Don'ts

By [Erin K. Tenner](#), Partner, Gray-Duffy, LLP



Many years ago, when I was buying my first house, I was going into a negotiation with the builder. He started the negotiation by telling me he didn't negotiate on the price of new homes. I had no intention of buying the house unless I could get the price down. It wasn't that I thought their price was unreasonable; I just had it in my head that I wanted a reduced price and I was not going to buy the house unless I got it. Before the negotiation, I told my husband not to get too attached to the house because we may not get it.

Staying detached is key in any negotiation. Once you have an emotional attachment to the outcome, you are at a disadvantage. It also makes the negotiation stressful, when it doesn't need to be. Dealers know this when they are selling cars, but often forget it when negotiating the purchase or sale of a dealership, or negotiating for revisions to their Dealer Sales and Service Agreement.

I walked out of the house negotiation with exactly what I wanted. My husband walked out and told me it was the most stressful meeting he had ever been in. I asked him why; I didn't find it stressful at all. On the contrary, I thought it was fun. He said it was because one minute we had the house and next we didn't and it kept going back and forth. But that's what a negotiation is. It's a lot of back and forth, and you have to know what you want and believe you can get it. It was fun

for me because I knew exactly what I wanted and I was not emotionally attached to the outcome. It was stressful for my husband because he was emotionally attached to the outcome and had no control over it.

Negotiation is about asking questions to find out what the other party can do, and is willing to do, to find common ground where an agreement can be reached. Getting angry or pushy may seem like a good idea, but it rarely is.

It may be likely that what you want may come in a different package than the one you expected. I got my reduced price by a credit in the design center. Because the house was new construction and I had to buy window coverings (and the house had a lot of windows, including some on walls with vaulted ceilings) the builder was willing to give us a credit in the design center rather than a direct reduction on the price of the house. That worked for me because I had already decided on window coverings I wanted from the design center and they were going to cost every penny of the reduced price I was looking for.

### **Why lying is not a good negotiation strategy**

Many people think that a good negotiator lies to get what they want. While this may be a common strategy among some unscrupulous New York real estate developers, having negotiated deals for over 30 years, I can tell you that all lying does is build distrust and muddy up negotiations, making them more like a train wreck than the smooth sailing they can and should be. During his campaign, I heard President Trump say that he lies all the time in negotiations. I realize that most of my clients voted for him, and on some level I understand why. He is a business man. Business men have to take risks to succeed. They know how to get things done. His voters were hoping he was a kindred spirit – and maybe still are. Whether you like him or not, don't fall into the trap of believing that lying is a good negotiating strategy. We have all seen this before. You buy a product because of a promise only to find out that the seller lied about it. Would you ever buy from that seller again? If your answer is no, it's safe to assume other people are no different than you.

Lying to make a sale or to win an issue in negotiations is not a negotiating strategy. It is fraud. So why do people continue to use lying as a selling tactic? Maybe they don't understand the consequences. Why pay for false advertising when it will ultimately result in losing customers (it's almost like reverse advertising – advertising to lose business)?

It's fine not to put all your cards on the table at the beginning of a negotiation, but what was Trump talking about when he said he lies all the time in negotiations? Was he talking about not putting all his cards on the table, or was he talking about telling people what he thinks they want to hear to get a deal done? When does lying become fraud? According to Black's Law Dictionary Fraud is defined as: "an intentional perversion of truth in order to induce another to part with something of value or surrender a legal right for personal gain." If you lie enough that you have convinced yourself that your lies are the truth, perhaps that is a defense to fraud, but it's not the way to win trust or respect. Although it is difficult to prove fraud, if a person wins a fraud cause of action, they are entitled to collect punitive damages,

which can be considerable.

Although having an entity can provide protection from an individual fraud claim, fraud is also an element considered in determining whether shareholders should be personally liable for corporate conduct in California. Although in California, cases lean toward finding against plaintiffs who attempt to pierce the corporate veil, an exception exists when the outcome would be unjust as a result of fraud. If fraud is involved, the possibility of winning increases dramatically. Courts generally don't like unjust outcomes and will use the law to find in favor of a plaintiff when they otherwise might not, if there is evidence that fraud is involved.

Bottom line, keep it clean. In the end, people who commit fraud tend to lose business and eventually self-destruct. People who strive for integrity prosper in the long term.

Does that mean you should give away the farm in a negotiation? No. But telling the other party something they didn't know that helps them can go a long way to building trust and making for a smoother transaction. In any negotiation, prepare for the worst and plan for the best. Keeping the focus on the outcome you want, without getting too attached to it, and asking a lot of questions, is the best way to get what you want in a negotiation and in life.

[Click here to return to the newsletter.](#)

**Visit our website at [www.grayduffy.com](http://www.grayduffy.com)  
to learn more about this and other topics affecting businesses.**

---

**Please Note:**

These articles are necessarily general in nature and do not substitute for legal advice with respect to any particular case. Readers should consult with an attorney before taking any action affecting their interests.

California Auto Dealer is a registered trademark. The content of this Newsletter may not be duplicated without permission.  
(818) 907-4071  
[etenner@grayduffy.com](mailto:etenner@grayduffy.com)