

“House-Sitter”
Introduction to Negotiating and Drafting

**Instructor Notes
& Background**

Title

House-Sitter (Introduction to Negotiating and Drafting)

Skills Addressed

Client interviewing and counseling, negotiating, drafting and some revising

Target Audience

2Ls and 3Ls who have completed Contracts

Overview

This is an introductory-level transactional scenario focused on negotiating and drafting a short house-sitting agreement. The exercise is designed to introduce all of the major aspects of transactional lawyering: client relationship management, negotiation and drafting (with some revising). The basic premise is straightforward (and a bit whimsical). A homeowner, who

owns four cats and a piano, would like to hire a law student to housesit and perform other small tasks (like take care of the cats). Typically, the students will play the attorneys for the homeowner and house sitter and negotiate and draft an agreement. Faculty members usually play the clients (Ortega, the homeowner and Robinson, the house sitter). The scenario is designed for use during class (between two and two and half hours, with breaks and de-brief).

Schedule

1. *Set-up and introduction* (1-2 minutes). Students should be cautioned that this exercise will be harder than it seems and more logistically active than typical law school courses. They should understand that they are an attorney negotiating a “house-sitting” agreement on behalf of a client. The final product will be a signed, written agreement. Their client will be available to meet before negotiations begin and during negotiations, as needed, and will need to sign the final agreement, if one is reached (students should not feel compelled to reach a bad deal).
2. *Reading and preparation* (10 minutes). Students are divided into two groups and given the background materials for their role.
3. *Client meetings* (15-20 minutes). Each client will meet with all of their lawyers at the same time, taking questions and letting the students basically run the discussion. The meetings will take place somewhat spontaneously in the hallway outside of the classroom or some other location where a larger meeting is convenient.
4. *Negotiation / Drafting* (One hour). The two students who are paired (one representing the homeowner and the other representing the house sitter) meet to negotiate and draft the house-sitting agreement. Both clients are available in the hallway to meet with the individual student lawyers, as needed. Students should be encouraged to check with their clients before finalizing any agreements.

Guidelines for Faculty Clients (students could play clients, too)

The facts are set up so that a deal should be easy. The clients should be more reluctant and difficult at the beginning of the exercise and then eventually agree to almost anything to get the deal done (provide at least 15 minutes at the end to draft the agreement). Clients should also let the students generate most of the issue identification and proposal ideas, unless circumstances require more intervention.

Major Deal Issues:

- ✓ Clarity of obligations (both parties have been burned in the past by outsized expectations and failures to adhere to common sense understandings – hence, the presence of lawyers for this arrangement)
- ✓ Money (Homeowner will pay as much as \$500/week but only with significant value in the deal; house sitter will accept as little as \$100/week but again only if there are other goodies included)

- ✓ Piano tuning (homeowner needs house sitter to coordinate with piano tuner and babysit while the piano tuner is there)
- ✓ Cats (there are 4, all of whom require lots of care and affection, with multiple cat boxes)
- ✓ Exercise equipment (sitter would like to use, but homeowner worries about damage)
- ✓ Cleanliness of the house (homeowner is a neat freak)
- ✓ Homeowner's food (homeowner is a germaphobe and does not like sharing food)
- ✓ Overnight stay (homeowner wants house sitter to be there every night, and not too late)
- ✓ Guests / parties (homeowner would prefer none, but could live with very clear rules with narrow limits; house sitter might have a significant other who would like to stay over)
- ✓ Car in garage (homeowner needs to keep the car in the garage – house sitter may not drive it)
- ✓ Use of home amenities (house sitter wants to be able to connect to Wi-Fi, watch cable TV, and read homeowner's books)
- ✓ Master bedroom (homeowner wants to keep the master bedroom off limits to sitter)

Suggested Debrief Points

1. The anatomy of deal-making. Discuss what it takes to reach a deal from start to finish (client interviews, client authority, negotiation of deal with opposing counsel, drafting and securing final agreement (w/signatures)). What hurdles or difficulties came up along the way in reaching the deal? What surprises were there at the different stages? Were any of the stages harder than others?
2. The integration of drafting and negotiating. Once drafting starts, the negotiation does not end. Details often emerge in the drafting process that were not addressed in the earlier negotiations, and those details need to be further negotiated. Did you run across new issues or things that needed further discussion? Were there some details where the parties had different expectations that did not surface until put into writing?
3. Results will vary substantially (you get what you negotiate). Deals do not make themselves; they are the results of negotiation (and to some extent the discussion with clients and the outcome of the drafting process). What could explain the spectrum of deals reached within the class? Consider using a grid to show all of the variations of outcomes and showing some examples of the actual deals students completed.

4. Addressing all of the client's concerns. Using examples from the class, discuss the positive and negative provision in the deals. What is missing? What issues were neglected? What creative solutions were included and what did they accomplish? How might this document be used again (i.e. who might read this document in the future – the parties, a judge if there is a dispute, etc)?
5. Dealing with clients and the other side. Introduce the concept of the role of counselor – it is more than simply asking questions and taking demands back to the other side; and it is more than simply listening to the other side and taking their demands back to the client.

Handouts:

1. Role information for homeowner attorney
2. Role information house sitter attorney
3. Client information (for both sides – presuming faculty are playing clients)