

*“Becoming a Landlord”*  
*Basic Real Estate Negotiation*

**Instructor Notes  
& Background**

**Title**

William and Olivia (Basic Real Estate Negotiation)

**Skills Addressed**

Negotiating (and some math)

**Target Audience**

2Ls and 3Ls / Professionals

**Overview**

This is a basic real estate negotiation between two siblings who have entered the commercial real estate business together. Olivia has provided the initial monetary resources and signed the mortgage. William, who has bad credit and no cash, has been providing some labor and oversight of the property. The siblings never made a formal agreement on how to share profits,

what to do about the eventual sale of the property, and how to handle ongoing management responsibilities. The siblings are now coming together to iron out the details. The scenario is designed for use in one class period (less than two hours):

1. Preparation / reading the materials (5 minutes)
2. Meeting with partners<sup>1</sup> to prepare strategy (or preparation time for students working alone) (1/2 hour)
3. Meeting with the other side to negotiate an agreement (1 hour)
4. Collection of deals (or last proposals, if no agreement<sup>2</sup>) and discussion

### **Scenario Background**

Olivia and her brother William recently decided to enter into the business of commercial real estate. Their father had left them a \$100,000 inheritance to split 50-50 and had told them both that they should invest it in commercial property. They purchased a small strip mall together with solid, stable tenants and had hoped to sell the property at a profit in five to ten years.

While there is no formal agreement, the basic understanding had been that Olivia would put up the additional money necessary for the down payment, and William would find the property and manage it. Olivia lives in New York, while William lives in San Diego.

William's good friend Sonia is a local commercial real estate agent in the San Diego area. Sonia agreed to help identify possible properties and handle everything through the purchase of the property by Olivia and William for a 5% commission of the sales price (to be split between the sellers and buyers, so that Olivia and William would owe her 2.5%).

Sonia found an ideal strip mall that was for sale at \$1 million dollars (significantly below market rates according to Sonia), and it was not too far from William's home. All of the units were rented by stable businesses with multi-year leases. Some of the tenants were a little demanding over the last few years, however, concerning repairs and maintenance issues.

The opportunity was so good that Olivia and William decided to go ahead with the venture, and Olivia put in \$100,000 of her own money for a total down payment of \$200,000 (Olivia's

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<sup>1</sup> Traditionally, students have worked on their own, but this exercise can work with assigning students as negotiation coaches to help students assigned as the role. The coaches are usually silent partners who provide feedback. Students could also be assigned as the lawyers for the parties, although traditionally students have been assigned just as the role, because the exercise is used before introducing attorney-client concepts.

<sup>2</sup> Students should be encouraged to evaluate whether the final proposal on the table at the end of the available time is better than the consequences of no agreement. No agreement may be the better choice, and the students should not develop the bad habit of agreeing to anything just to have the deal done in time.

\$100K plus the combined \$100K inheritance). Olivia also signed a mortgage to borrow \$800,000 to cover the remaining payment for the property. In addition, Olivia had to pay Sonia's commission of \$25,000 and also \$10,000 in various initial expenses and other minor costs.

The building earns about \$75,000 per year. Mortgage payments and other expenses add up to about \$75,000 per year, depending on any additional repairs.

After signing the agreement and taking ownership of the property, Olivia and William realized that they had not yet agreed on what compensation William would receive for managing the property. They had talked about an arrangement where Olivia has 75% ownership and William has 25% ownership of the property. Olivia has just arrived in San Diego on other business, and the two have set up a meeting to figure out the details of William's compensation.

Students traditionally play the actual roles of Olivia and William (rather than their legal representatives). Each student receives background information and instructions for their role. Students playing William are instructed to lead the discussion and be ready to justify what they might propose. Students playing Olivia are instructed to be patient and let William suggest ideas first.

### **Learning Objectives**

- ✓ Introduce basic negotiation concepts using an easy-to-understand commercial real estate scenario
- ✓ Compare and contrast the virtues and drawbacks of initiating discussions, making the first proposal and driving the main agenda
- ✓ Understand the value (and challenge) of fully comprehending the subject matter of a deal, including knowing enough to figure out the math in advance
- ✓ Recognize the importance of clarifying agreements as early as practicable (what could the siblings have done to avoid the conflict?)

### **Possible Debriefing Points:**

1. The risks and advantages to initiating a negotiation. Students playing William are instructed to lead the discussion and be ready to justify what they might propose. Students playing Olivia are instructed to be patient and let William suggest ideas first. What are the risks of initiating discussions generally? How do we contact the other side safely, without the perception that we are over eager (or even desperate) for a deal? How have rules of mandatory ADR discussions helped in the litigation context? On the other hand, what are the advantages to initiating the discussions? How does one take advantage of leading the process on initiation?
2. Comparing and contrasting taking the lead versus letting the other side do so. On a related point, what risks and advantages are there to starting the discussions (once initiated) and managing the agenda throughout the discussions? How does one take the

lead? Students will see firsthand at least one side of this issue in their discussions between Olivia and William. They will notice that leading the discussions is not necessarily as easy as it might first appear. The ability to “negotiate the negotiation” and reach agreement on the agenda and how the discussions may play out may require some deeper discussion.

3. Who should make the first offer? What criteria might be useful? Related to the above points, William will likely assume that the instructions also require making the first offer. When is it better to make the first offer (assuming it ever is)? Why might parties prefer to make the first offer (e.g., to avoid receiving a bad first offer or to set the tone about what offers might include and how they will be shared, to “anchor” certain expectations)? When is it better to let the other side go first (assuming it ever is)? Why might parties want to wait on the other side (e.g., when there is a lack of good information on what the appropriate offer might be, power dynamics, other strategic issues)?
4. Dealing with positional tactics and hard bargaining. Because of the explicit instructions to William, students playing William may take more positional approaches. Traditionally, students playing William have focused exclusively on their needs and have emphasized the salary compensation for his work. Students should understand how to work through (or how they could have worked through) the challenge of positional bargaining and focusing on the money issue exclusively. They should begin to see how enforcing a productive process built around interests and generating possible solutions can help keep difficult counterparts in line. They should also begin to understand how and when to say no and how to share potential consequences of no agreement.
5. How to handle negotiators who focus exclusively on the money issue. Many students think all negotiations are meant to focus exclusively on money. After all, it is easy to quantify and everyone certainly cares about money. When the other side focuses on money, helping to expand the topics of discussion can be difficult. Managing the process and agenda can help. Explaining that the first order of business in the negotiations is to identify the major issues (plural emphasized) can open up the discussion to other possible issues. Confirming how the other side has other concerns (such as timing, reputation, future work, autonomy, etc.) can also broaden the discussion, even if you have to make certain presumptions about what those other issues might be (not as hard as it might sound, particularly where a client may have information about the other side to help fill in any gaps).
6. The architecture of a negotiation and the importance of stages. This scenario is traditionally used early in a negotiation course, where topics like agenda-setting and information-gathering have yet to be put into practice. Too many times, students without training will launch into proposals immediately after discussions begin. The scenario provides enough breadth to explore how critical it is to understand how the negotiation will take place (agenda) and what information is required in order to craft optimal proposals (and evaluate them).

7. Sometimes no agreement is better than a bad deal. The scenario is designed so that an agreement that satisfies the parties' needs better than no agreement is not difficult to reach, but students can get stuck in positional bargaining (and sometimes get confused by the math), so it is possible that discussions will end in impasse. Students sometimes feel pressure to reach an agreement as time expires and will neglect an analysis of what is best for the client under the rush of finishing the deal. It is important for students to recognize that no does not necessarily mean no deal, but merely that an agreement is not possible at this moment (not yet).

### **Handouts**

1. Role information for Olivia
2. Role information for William