

Let's Get Everyone in a Room and Hammer it Out

By Joshua Stein PLLC



Negotiations for any significant commercial real estate transaction often take longer than anyone expects. Issues don't go away. Every time an issue gets resolved, something else comes along.

The lawyers take turns distributing redrafts, each marked to show incomprehensible and often trivial changes from the last redraft. The miracles of word processing allow endless changes. And the delay between redrafts seems inordinately long. When you multiply that by the number of drafts, the deal drags on forever.

This process frustrates people who want to sign deals and move forward, rather than run up legal bills.

Can't we just get everyone in a room, negotiate all the issues and not let anyone leave until we reach a final agreement and sign it? After all, that is how people used to sign contracts and leases in the dark old days of the middle and late 20th century. The landlord or seller would send out a lease or a contract. A few days later, the parties and their lawyers would meet, yell at each other for a while, mark up the document to make whatever limited changes they agreed to, sign and exchange documents and then everyone would go home. At least that's how we remember it happening sometimes.

In today's era of word processing and ever more complex documents, can't we do something similar? Instead of endless emailing of redrafts punctuated by occasional conference calls, can't we get everyone in a room and hammer out all the issues and sign?

Yes, of course we can. Sometimes it makes a lot of sense. Other times it doesn't, particularly if done prematurely.

If the parties want to sit in a room and hammer out all the issues, they must limit the number of issues they plan on hammering out. They and their lawyers need to try to cut the list down to size before the summit meeting. People at the meeting should only deal with genuine intractable business issues – not the intricate legal issues that take so long to explain that the resulting legal fees outweigh the practical value of the issues. Resolving lesser issues beforehand will help pave the way for a productive "hammering-out" meeting.

It will often make sense to agree on an agenda, but not always. One party or the other might not want to show all their cards in advance.

Once the parties agree to "get everyone in a room and hammer out all the issues," that process works best if the parties and their counsel – all of them – actually do get in a room. If almost everyone gets in the room but one or two people participate by speakerphone, the entire tone of the meeting changes, communications aren't as effective, and it often won't work as well.

If the parties truly want to sign a document at the end of the meeting, then if possible someone should actually edit the document as the parties negotiate. No one wants to wait while a lawyer in the back room updates the document after the meeting – a process that often leads to more iterations of dreaded redrafts.

When we have a meeting to "hammer out all the issues" in my own conference room, I often edit the document on a laptop as we negotiate it and agree on changes. A large video monitor on the wall, connected to my laptop, displays every change as I make it. Everyone in the room can watch what I do, comment and agree on exact words as we go. Once we agree, we are done with that provision.

This works really well, but only if the issues are finite, limited and don't require lots of changes throughout. For better or worse, this format also limits my ability to think through alternative phrasings and figure out which one will work best for my client.

For any "hammering out" meeting to work well, the parties and their lawyers also must think about a few minor practical details. If the document will have exhibits attached, you can't leave them for the last minute. The same goes for blanks, names and other minutiae. All those things should be in place before the meeting, subject only to resolving the open issues. Otherwise, even if the parties "hammer out all the issues," they still don't have anything they can sign.

Everyone involved also needs to have all their deal approvals in place, or else the people who need to approve ~~need~~ ^{be} must be in the conference room. All "internal" loose ends must be tied up before the meeting starts.

If done right, meetings of this type can work really well to cut off redrafts and tail chasing. Done wrong, they just waste more time and pave the way for more redrafts and tail chasing.

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