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# **Why You Need A Proper Contract**

*And How To Keep The Costs Low*

“You need a contract.” Every lawyer you have ever spoken to has likely uttered those words at one time or another. Of course to the business owner, someone who has perhaps been successful for years on a handshake or a one page do-it-yourself document, it sounds like a waste of money.

Yes, having a contract drafted for your particular needs will cost you something, but your involvement in the process can keep those costs low, and in the end you can avoid a much more expensive problem.

## **WHY YOU NEED A PROPERLY DRAFTED CONTRACT**

A handshake or verbal agreement is only useful when things are going smoothly. Generally speaking, neither is enforceable by law, nor do they anticipate future problems and how the parties involved will address them.

We see some clients who recognize this problem, but think they can save a couple dollars by using a fill-in-the-blank contract off the internet. This might address some major issues of the business deal, but it is impossible for a pre-fabricated contract to address all the elements of a particular transaction. There are deficiencies in these contracts, and it is not uncommon to see a problem that the contract does not address essentially render the entire document useless.

When a problem occurs, and a client says he only has a handshake deal, or a one page contract, we know that resolution of the issue will be expensive and time consuming. That is what happens when you have to determine the intent of the parties, and what form of resolution was intended, after the fact.

## **ELEMENTS OF THE CONTRACT**

“I want something short and in English.” A lot of people are intimidated by properly drafted contracts, and feel that the extra pages of text, much of which they have trouble understanding, are simply an unnecessary expense. While contracts can certainly be longer or shorter depending on the level of detail required by the parties, there are certain clauses common to all well constructed contracts.

A contract establishes rules, and it is easier to establish these rules when both parties are getting along and want to enter into an agreement. It is much more difficult to resolve an issue once a problem exists, and this is where legal costs can skyrocket. Clients will many times request a short contract, something “simple.” Unfortunately a good lawyer cannot always do his job and protect the client by drafting a one page contract. As mentioned above, a contract establishes a set of rules. A shorter contract invariably has to leave some of those rules out.

Consider the game of baseball, and what would happen if you only used the first page of the rulebook. We would still know that there are nine innings and three strikes for an out, but we wouldn't know what to do when the batter kept bunting balls foul all day long. A thousand different things can happen on a baseball field, and the rulebook attempts to address each situation. The same can be said with a business deal, so many different contingencies can occur, and the more of those possibilities your contract anticipates and addresses, the fewer problems can arise in the future.

While this list is not exhaustive, the following are components and issues which are addressed in most contracts:

**The Parties:** Generally the contract begins by identifying the parties to the contract. Frequently, this also includes the mailing or principal address of the companies or individuals involved.

**The Reason:** Between the WHEREASes and THEREFOREs, you will typically see a very generic and basic explanation of what the parties do and why they are executing this contract.

**The Terms:** This is the meat of the contract. The work to be completed or goods to be delivered are defined; timelines are set. This is where the interactions of the parties are defined. Each business deal is different, and the terms of each contract should be drafted for that particular transaction. By using old contracts or "model" contracts, you risk leaving out important details.

**The Legal Stuff (sometimes called "Boilerplate"):** This is the language that most clients would like to leave out. It is generally longer than the rest of the contract (sometimes many times over), it is more difficult to read, and sometimes means very little to the client; however, it is also important to include. This is what protects you. What happens if the other party can't complete his responsibilities? What happens if payment is late? Can the contract be assigned? If there is a disagreement, in what forum and under what rules is it resolved? How can you terminate the agreement? What happens if you are sued for the actions (or inactions) of the other party? These are just a few of the issues that are addressed in a customized contract, tailored to anticipate problems and provide a roadmap as to how the parties will address those problems.

## **KEEPING COSTS LOW**

How can you keep the costs of drafting a contract low? Be organized, and pro-active. The expense of having a contract drafted is in large part dependant on the time an attorney must spend. Generally speaking, the disorganized client is the one who ends up spending more money on a contract. If you do some work upfront to define the scope of the contract, and the details involved, and relay those to your attorney early on in the process, it makes things much easier and more efficient. Contract costs rise significantly when terms are vague and an attorney must "guess" at the details involved. Often times this leads to numerous revisions, all of which equate to additional cost.

By providing organized and detailed responses to your attorney upfront and during the drafting process, you can keep your costs low while ensuring that your contract is thorough and properly protects your interests.

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