

10 Things Business Owners Need to Know About Contracts

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Background

- Been involved with family owned businesses since 8 years old.
- Refugee from a family business
- Small and medium businesses experience.
- Last 14 years involved in corporate, franchise, and business litigation.
- The litigation background gives me a unique perspective on business contracts.

Consequence of Signing the Bad Contract

- It can be a “bet your company” agreement.
- Hard time exiting the agreement.
- Force you to spend more time than it is worth on the small stuff (documentation, approvals, etc.)

The Overriding Rules

- Change the facts, change the law.
- Always think of the divorce, not just the wedding.
- The person you are entering into the contract is the most important thing.
- Tell your lawyer everything up front.
- No one ever came into my office and said.....

1) “I have to do what? By when?”

- Be aware of language like “time is of the essence”. Deadlines and payments are not optional.
- From the beginning create a list of what needs to get done and when.

2) Getting Something vs Getting Air

- Draw a “†” chart.
- Write what you are getting on the left and what you have to give on the right.
- Helps with employees to know what they have to do.
- If it doesn't make sense, it doesn't help either party. It could be a warning sign about the person you are entering into the agreement with.

3) Oral vs Written Contracts

- Easy to get into an oral contract, hard to get out.
- Always try to get the important terms in writing. Even if it is in an email.
- Ask them to confirm your interpretation. Better to find out now.
- Beware of people that avoid written contracts. Warning sign.
- Three sides to each story.

4) Do I Want an Attorney Fees Clause

- Can be a huge stick (carrot/stick situation). A \$10,000 loss can end up costing \$50,000 when attorney fee is added.
- Rule of thumb, if they owe you money, you want this.
- Opposite is also true.

5) The Fine Print

- Your eyes just glaze over and you move on.
- Usually under the “terms and Conditions” section or the BLAH, BLAH section.
- This section can kill you. Don't just glaze over it.

6) Location, Location, and Location

- Beware of the Venue Clause. Where do you have to file a lawsuit against them. You can find yourself having to go to New York to file a lawsuit. Additional costs.
- Small town venues can be even worse.
- International agreements require special handling (i.e.: arbitration, applicable law, etc.)

7) Fraud, Not as Common as You Think

- Almost everyone comes in and says the other side committed fraud.
- I need to know:
 - WHO SAID WHAT (Need the actual name)
 - WHEN DID THEY SAY IT
 - WHAT EXACTLY DID THEY SAY.

Detailed notes are critical. Memorialize everything via email at least.

8) Who Is Signing the Contract?

- Have you formed a corporation? LLC? If so, Make sure you sign in your capacity as CEO, President, VP, etc. and not personally. Put your title under your signature.
- If you are signing a contract and someone else is doing the work for you, then note that you will be held responsible for this.

9) Beware Cutting and Pasting Other Peoples Agreement

- Are you in the same position as the competitor?
- What about arbitration clauses? Do you need them?
- If you do this, make sure to read it from beginning to end. Make sure you are referring to the same things in the same manner throughout the document (i.e.: “Buyer” doesn’t become “purchaser” three paragraphs down.)

10) It is a Beauty Contest

- Equity doesn't help the person with the dirty hand.
- If you do something wrong, even as a reaction to something they did to you, it can and will be held against you (the second punch).
- This doesn't mean you have to back down from what is promised to you.

BONUS 11) To Lawyer Up or Not

- Again, it depends.
- Initial recommendation is to have a lawyer in the background and don't tell the other side you have one yet. Then try to get important information/evidence from them.

QUESTIONS?

- Starter: “Should I form a corporation/LLC or not?”
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