

As a Modeling Lawyer who has advised and represented models from Los Angeles to New York and internationally as well, many models have a number of common questions when they first enter the modeling business. As an attorney who has practiced law from London to California, this article attempts to answer some of the most important questions a model faces from day one.

If you're a model and have a modeling law issue, dispute or have a modeling or agency contract that needs review, visit our law firm website at <http://www.SebastianGibsonLaw.com> for more information and call us at any of the numbers easily found on our website.

1. What are the things you should pay attention to when signing a modeling contract?

This is a tough one to answer briefly. First, a model should have an experienced attorney look over any modeling contract before signing it, but if you don't have the money for one or can't find one experienced in reviewing this type of contract, here are some pointers.

There are primarily three types of modeling contracts out there. With an exclusive contract, the agency is your exclusive manager and booking agency and you will not be allowed to sign with any other agency for the length of the contract. Therefore, as discussed below, make sure you are signing with a reputable agency that can advance your career and not an agency that will simply tie you up.

A non-exclusive contract allows you to find work on your own without the requirement that you pay the agency a commission. You may also sign other non-exclusive contracts with other agencies. If the agency you are meeting with does not have the money to advance your initial costs of building a portfolio and the like, this type of contract is better suited for you.

A one-time contract is one that is signed for just one job and one job only. When the project is complete, the contract has been fulfilled as long as you have also been paid. If you have not been paid, you can sue for breach of contract.

A fourth type of contract is a mother agency contract. This type of contract allows your agency to receive a commission even after you are signed by a subsequent agency. In this type of agreement, the agency may simply be looking to sell your rights to a bigger agency and still take a cut or they may even be a reputable agency, but one seeking to make every cent they can.

To understand how a mother agency contract works, you need to understand a little bit about how agencies are paid, and this is one of the key provisions of your contract. It is common for top-rated agencies to charge 20% commission on all monies a model receives for his or her work. Only a small percentage of very successful models over the years have been allowed by the agencies to bargain their commission down to 15% and an even smaller percentage of very successful models have been able to negotiate their own contracts with their own managers and lawyers.

On top of the standard 20% commission, such agencies have routinely been able to charge an additional 20% of the model's fee for the job to the model's employers and to pocket that 20% without giving any of it to the model. And in compensation for the agency advancing the model payments without having to wait until the agency is actually paid by the model's employers, the agencies have often charged a further 5% commission to the model.

The mother agency clause of a contract, where an agency seeks to employ it, then further provides that the agency claims a commission on any modeling job the model ever obtains, even if that job is obtained by another agency. This is similar to where a scout discovers a model and obtains a percentage (often 5%) of the model's earnings from the agency the scout directs the model to. A mother agency is often the first one that discovers a model. It is no coincidence that at the time when the model has the least amount of money and the least clout that there is no more important time, than at this early stage to have an attorney reviewing the model's contracts.

Next, as discussed above, you need to research the modeling agency from whom you are being offered a contract. In a large market city such as New York, a reputable model agency should have the work and the money to invest in you to train you. That means they will advance the monies against your future earnings for a quality portfolio, comp cards, test shoots and the like. This is an important part of the contract and you need to understand what you will be responsible to repay. You do not want to owe the agency money if you or they do not find you work and payment for your work.

In a medium sized market, the agency may be able to direct you where to go for photos for your portfolio, training and composites, but they may not be financially able to advance you the costs. If you wind up paying for these items, you need to ensure that the agency you are signing with and the city you are in provide a sufficient amount of work to get you reimbursed for these costs.

In a small market (as well as larger ones) the only agencies you may find are those connected with modeling schools who use the agency simply as a hook to lure you into attending the modeling school. Be wary of such an agency that may either have no idea what they are doing or who seek to profit from your inexperience by profiting from every expense you will be directed to incur.

You want to read the sections of any contract that you ever sign that provide what constitutes a breach of contract by you or by the other party and what remedies or damages the parties are entitled to in the event of a breach. If the only person who can breach a contract is you, and if you are the only person who may owe anyone money in the event of a breach, run away as fast as you can.

## 2. Is a contract signed in the United States valid in other countries?

This question is easy. Yes, it is valid. A contract, however, can limit it's terms or the geographical area (countries) to which it applies. In addition, you should ensure that the contract states that it is governed by the law of the state in the U.S. that is most convenient to you. If you live in Connecticut, you don't want it governed by the law of North Dakota, much less the law of

China, because you will be all but ensuring that to get your day in court, you will have to file suit in some far off jurisdiction. The contract should provide that in the event of any dispute in connection with the contract that either a lawsuit or mediation or arbitration shall take place in your state. If you want to save some costs, provide that the parties shall mediate or arbitrate any disputes. If you think you are always going to be in the right, then also provide that the prevailing party shall be entitled to any costs and attorney fees. If you don't provide for that, you will not be entitled to be reimbursed for your attorney's fees and costs, even if you win the mediation, arbitration or litigation.

3. What should a Model Release form include and what should be emphasized in it, in order to defend the rights of the model?

Models, especially when they are just starting out, often feel intimidated. They fear that if they question the slightest thing in a model release, they will not get the job, more work, or be branded as being trouble. The problem is, if a model simply signs whatever she is given to sign, it will almost certainly favor the photographer and the client and take away almost every right a model may have to prevent the photos of her from being misused.

While it is true that a photographer needs some leeway, if you give an unscrupulous photographer the right to do anything he or she may conceive of doing with their photos of you, they may just use them in a very offensive way, and there is little a model can do to know what is in the mind or heart of a photographer he or she has just met.

Models who are just starting out rarely have confidence in any clout they may have. However, if the client or the photographer has selected you from all the other models they could have chosen, you may have more clout than you realize. And if you are willing to sign away every right you have in your images, you are in the wrong business to begin with.

People will tell you that only as you become more in demand that you can demand your fees for only certain uses of your images and allow their use for a limited amount of time. But it is at the very start of your career that you are most vulnerable to having your images being misused and if they are misused, you may find your career ending before it's begun. Thus, if you see this type of term in a model release, you need to either run from the building, have it altered, or accept the consequences that may result from agreeing to: "I hereby release, discharge and save harmless the photographer or any other person distributing the finished product, even if the finished product is distorted, blurred, altered or used in such a way, intentionally or otherwise, such as to subject me to scandal, scorn, indignity or ridicule and waive any right to approve any use of the finished photograph or its use."

On the other hand, a photographer must be allowed to enlarge a negative, manipulate the photograph, convert it to digital form, use photoshop or other software to enhance the quality of the photograph. While it is difficult to obtain the right to approve the uses of the photographs taken of you, you can limit the uses by excluding those uses that would be harmful to your career or reputation. If you want to prevent a photographer from using the photographs in such a manner, seek a provision that in the event of intentional humiliation of you in the use of the photos by the photographer, the release will be void. Some models who are unsuccessful

obtaining such provisions will at least write restrictions in the margins of releases such as, “Photos may not be used on sexually explicit web sites or pornographic materials.” Be wary of allowing any use in the release and then limiting those uses only in a separate waiver of copyright. Conflicting provisions are a nightmare for the courts to weigh.

In the entertainment field, and that includes modeling, talent is king. You can still be friendly and cooperative while protecting your rights. Be kind to many, keep a healthy but skeptical distrust of those who would use you, and do harm to none and you will go far.

4. In which circumstances a cancellation of a contract is possible?

Fraud, duress, illegality, lack of age of consent. However, those defenses rarely come up unless a minor is involved and the contract was not signed by the minor’s parents or guardians. Even then, a parent or guardian’s signature may not be binding, if for instance, the intended use of the photographs is illegal.

That being said, there are still some ways to either void a contract or obtain damages when your images are misused. However, keep in mind that the broader the release you signed and the more rights you gave away, the harder it may be to assert these defenses or allegations in a lawsuit.

Here are four common ways in which photographers can get into trouble. First, if a photographer has intruded upon your seclusion to make the photographs, the photographer may be sued. While some courts have even ruled that such an intrusion can occur in a public as well as a private place, you will have a much easier case to pursue if the photographer used false pretenses to spy upon you in a private place such as your home. Second, if the photographs of you portray you in a false light, they may also entitle you to your day in court. Third, use of photographs of you for commercial gain without a model release may also entitle you to damages. Fourth, photographs used in an unexpected manner such as promoting pornographic products may also be deemed to constitute an invasion of privacy.

It is therefore imperative, that if you sign a model release, that you ensure it describes the subject matter it will be used in conjunction with or its intended use, in order to preserve your rights and your reputation.

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