



Seven Ways You Might Hurt if Your Agreements Are Not in the Right Form

*By: Tawfiq I. Ali **

To run a successful business where you are making the kind of money you want without too much stress and anxiety, you must have agreements with other people. This is true for two rather obvious reasons:

- You cannot make money unless it changes hands in a transaction. And (minus few exceptions), you cannot legally make money unless you have a legal agreement first.
- You cannot leverage other people's time, money, or talent unless you have commitments from them that they will honor (or that you can enforce).

But far too often, small businesses fail to put their agreements in writing and in the right form. Then, when things don't go as planned (or someone forgets the plan), they have a hard time making things right. For at least these seven reasons, it is smart business to make sure your key arrangements are written and formed correctly:

- **Marketing and Sales:** Whenever you can, use your legal materials as marketing and sales tools to increase perceived value and trust. Yes, you can phrase your legal materials in a business friendly way without putting yourself in danger. Keep relationships good, and you will generally have fewer problems.
- **Interpretation:** To avoid disputes, this is critical: start by getting the agreement in writing. If you try to negotiate an agreement without reducing it to writing, you have just increased your chances of someone

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After joining the Illinois bar, he practiced at Kirkland & Ellis LLP and Grippo & Elden LLC, firms known nationally and internationally for their excellence in business legal advice and lawsuits. During those years, he represented large companies in business disputes involving several millions (sometimes billions) of dollars. He established Ali Law Practice LLC to fulfill his commitment to help conscious professionals and businesses solve problems and to fight for them effectively in court, so they live more happily and make more money.

misunderstanding the deal. Think for a moment. Has your spouse, friend, or family member ever misinterpreted something you said even though it made complete sense to you at the time? By putting it in writing (and having your trusted legal advisor review it), you are much more likely to notice terms where you and the other party might have missed a meeting of the minds.

- **Statutory Requirements:** Some contracts must be in writing to be enforceable. Don't bank on your oral agreement to be enforced if your state's statute of frauds or other formal requirements apply.
- **Limitations Period:** Even if your agreement might be enforceable, your time limit to enforce it will often be a lot shorter if it isn't written.
- **Memory:** Every agreement is complex because all human relationships are complex. There is no way the average human (or even super-average human) is likely to remember every term of any key agreement that it has with another person or business. Do what your smart teachers or parents have always taught you: If you want to remember something important, write it down (and put it in a safe place).
- **Proof:** Even if you could remember every term, how will you prove that you are right? The other side has its own "memory" of the agreement, and you are setting yourself up for a contentious battle if you can't point to a document that explicitly and clearly states the whole agreement.
- **Dispute Resolution:** If you want to avoid having to go to court (particularly by using mediation or arbitration), or if you want the other side to pay your attorney fees, you will almost always need good language in writing. You may pay a big price if you do not detail how you want disputes to be resolved.

Every agreement you have with any partner, customer, vendor, or anyone else has legal opportunities and risks associated with it. Start by looking at your relationships and consider whether you have proper agreements and structures in place. A good business lawyer focuses on protecting you against risk and proactively helping you gain speed in creating opportunities to (1) increase your bottom line and (2) eliminate the stress. If you hire a lawyer, make sure you are relying on someone who has the right knowledge and dedication.

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