

# **BUSINESS BASICS- READ THE CONTRACT!**

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A couple of years ago, I met with a client who was involved in a contract dispute over the sale of a large commercial property. My client had negotiated the sale of his building, but delays on both sides had prevented the deal from being closed. Because both sides were still interested in getting the deal done, they signed three agreements to extend the initial sales contract. Despite their general good feelings for each other, my client eventually felt the delays were unnecessary and was contacted by another potential purchaser. He sent a letter to the first buyer saying he was walking away from the deal, and three days later, he was served with a lawsuit for breach of contract.

When we met, my client expressed confusion over a few points. His first question was how he could be sued when both sides had agreed to settle any disputes in arbitration. A quick review of the documents he had brought revealed the answer. The last two agreements to extend the time for closing the sale had dropped the arbitration requirements in the initial contract. Despite his signature appearing on the last page of each contract, my client admitted that he had not bothered to read the extensions and assumed that each extended all the terms of the original agreement. Luckily, we were able to negotiate a settlement to close the sale to the initial purchaser at a higher price, so they got their building, dropped the lawsuit, and our client got the extra money he had hoped to get selling to the second purchaser.

However, it brought up a frightening point in my practice. Clients sometimes sign contracts without reading what they are signing. This is one of the most dangerous practices I have seen in business law and cause any number of unexpected problems. This client was an experienced business man who had been managing his own company for more than 20 years, yet when pressed, he admitted that he often took contracts at face value as they were explained to him by vendors, his employees, or outside advisors. This led to one of my most important rules for all clients: Read the Contract!

## **What Is a Contract?**

A contract is an agreement that can be enforced in court. It is generally formed when two parties agree (in writing or orally) to perform some act in the future. Disputes tend to arise when a promise for future performance is not fulfilled. For a contract to be binding, it must include:

1. An agreement to form a contract, with an offer and acceptance by the parties.
2. The promise must include legally sufficient and bargained for consideration, i.e. something of value that the parties want.
3. Both parties must be legally competent to enter a contract.
4. The contract must be for a purpose that does not violate the law or public policy.

As a general rule, the law recognizes that everyone is free to enter almost any contractual relationship that they desire. Courts will rarely interfere with a contract if it was voluntarily made.

### **Why Do I Have to Read Every Contract?**

If a valid contract must show an agreement, then you may wonder why I stress reading the contract entirely to my clients. You may ask, “Can’t I just tell the court that I didn’t read the contract and there was no agreement?”

The short answer is most likely, no. Most modern contracts include provisions that by signing the contract, the party is admitting that they read the contract, understood all of its terms, agreed that the contract is the only agreement between the parties (despite any oral representations), and agreed to be bound by those terms. Most courts will not respond favorably to the argument that the contract should not be binding because you didn’t read it unless there is a showing of some outside duress or other factor that negates the contract.

Rather than risk losing your rights, it is simpler to read the contract and deal with the agreement that is being presented.

### **How Do I Read the Contract?**

Despite the fact that most contracts look like they were written to be difficult to read, anyone with a basic business understanding should be able to read a contract and understand what is being said. If you don’t understand the contract, don’t sign it. Purposefully confusing contracts are a sign of either bad work by the other side’s lawyer or an attempt to keep you from making an informed decision about the contract. Obviously, hiring an attorney is a good first step to protecting your rights, but I also understand that sometimes the legal costs don’t make sense for a small contract.

If you decide to review the contract yourself, try to do it in a quiet place where you can give the contract your full attention. The quickest way to understand a contract is by beginning with the “common terms” section of the contract. This section defines the words that will be appearing throughout the contract, and it will give you a quick road map of who the parties are and what key issues may appear.

Once you understand the basic terms, grab a red pen and a copy of the contract and start reading. I encourage that you make notes in the margin as you read. Don’t skim! Read the entire document word by word, sentence by sentence, and section by section. Consider the following as you read:

1. Who is benefitted by each section?
2. How does the language affect my rights?
3. Does the section need to be clarified?
4. Does the section match what the other party has told me during our conversations?
5. Does the section limit my rights to enforce the contract?

When you discuss the contract with the other party and they say things that are not represented in the written documents, don’t count on those verbal promises coming into the case. If they are serious about

doing business with you, they should be willing to revise the contract so both sides are happy with the written terms. If they do not want to make changes, consider why they might be taking such a hard position and whether or not this will influence their later behavior.

After considering those issues, you should address how important this contract is to your business. If it is the sort of contract that could make or break your business, hire a lawyer to review the contract and help you with any revisions. While attorneys are expensive, they are much cheaper in the long run than the cost of making a mistake that can cost you your business.

### **Conclusion**

In litigation, I frequently get involved in business disputes months or years after the parties began working together. I advise all of my clients to take all necessary steps to protect themselves by reading and understanding each contract before they sign it. Once you enter the agreement, keep a copy of it and any related correspondence so you can quickly discover if your rights have been violated.