

Checklist: Information Needed to Write a Solid Contract

As discussed in a previous blog post, Strong & Clear Contracts are Crucial to Success – How Can You Ensure That You Have One?, a contract must contain certain elements in order to be enforceable. There are also, however, a number of additional considerations to make and clauses that might be added to a contract in order to ensure that it is not only enforceable, but also that it is “strong” and drafted so as to best protect an individual’s interests, dependent upon the circumstances.

The sheer abundance of provisions and clauses that may be found or placed in a contract, as well as the pressure that an individual may feel in preparing a contract, often results in a substandard and confusing document. As such, the following is a general, but not exhaustive, checklist of information that one should have considered, and have on hand, prior to beginning the drafting process.

Who is Involved?

- Name(s) of individual(s)
- Name(s) of business entity/ies
 - Type of business entity
 - Name and official title of person signing on behalf of business
 - Does s/he have authority to bind the business?
- Addresses of all parties identified as above

What is Involved?

- Why are the parties entering into the contract?
- What is each party required to do?
 - What is being done or accomplished?
 - By what date must each party complete the required actions?
 - If money, goods, or services are to be delivered, what is the method of delivery and who bears the cost of delivery?

Terms

- Will the contract end at a specific date/time, on the occurrence of a certain event, or will it last in perpetuity?
- Can the contract be renewed? How?
- Can the contract be terminated prior to the contract end date?
 - How?
 - When?
 - Are there consequences to early termination?

- How, if at all, can the contract be modified in the future?

What Will Be Paid and Provided?

- What is the price for the product or service, if any?
 - Is it a fixed price, or is price determined by some formula, or other method?
 - Will taxes be added to the price?
- When is payment due and by what method?
- What happens if payment(s) are late?
 - Late fee?
 - Interest charge?
- If goods or services are to be provided:
 - Description and quantity of goods
 - Detail of services
 - Performance date or date of delivery of goods

Will Liability Be Limited?

- Will there be any limitations of liability for either party?
- Are there specific circumstances in which a party will be liable?

What Law Governs?

- What law will govern the contract? (State)
 - Review default rules/laws of jurisdictions that you are considering

What Happens in the Event of a Dispute?

- Will disputes be handled through litigation, mediation, or arbitration?
- If litigation:
 - In what jurisdiction will suit be brought?
- If arbitration
 - Is arbitration mandatory?
 - What rules will govern?
 - How many arbitrators?
 - Will an arbitration decision be binding?
- Will one party be responsible for attorneys' fees?

Execution

- How many signatures are required?
- What authority must a signatory have (if a business entity is a party)
- Witnesses required?
- Effective date?

While the above checklist should prove helpful for those thinking about entering into a contract, an ounce of prevention is worth a pound of cure. Please don't hesitate to contact our offices with any questions!