



King & Spalding

‘Do’s and Don’ts’ of Contracting

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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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What is a Contract?

- An agreement between two or more parties to do or not do something.
- Required elements are offer, consideration, acceptance, mutuality.
- A peppercorn as consideration.

Do contracts have to be in writing?

- As a general rule, **no**, oral contracts can be enforced.
- But *the following generally must be in writing*:
 - Agreements regarding sale of real estate or more than \$500 in goods;
 - Promises to make a loan or pay another's debt; and
 - Promise that cannot be performed within one year.
- Estoppel Issues
- Invoices as contracts

Remedies for Breach

➤ Monetary damages

-or-

➤ An order that the promised be fulfilled, the contract performed.

What to do if you perceive a breach?

- Be polite but firm
- Avoid waiver/estoppel arguments
- The “Mutual Departure” doctrine in Georgia
- Save your records
- Consult an attorney!

What if you are accused of breaching a contract?

- Consult an attorney!
- Retain your records
- Respond to allegations/Silence as acquiescence
- A stitch in time....

Specific Contract Issues

- Employment issues:
 - Good to put benefits in writing
 - Good to specify employment status (at-will employment).

Other Specific Contract Issues

- Purchase Orders and Invoices:
 - Look at the small print

- Policy or standards manuals:
 - Clarify who owns the work.

Some General “Do’s”:

- ✓ Know who you are doing business with
- ✓ Make sure the party names are accurate
- ✓ Read the agreement in full
- ✓ Be sure you understand all terms
- ✓ Use plain English and definite terms
- ✓ Be sure terms of art/industry terms are defined
- ✓ Consider requiring a notice and cure provision and a negotiation provision
- ✓ Consider limitations of liability and requiring insurance

Some General 'Don'ts'

- ✓ Don't agree to ambiguous language
- ✓ Don't accept other side's interpretation of unclear terms
- ✓ Don't have redundant terms or provisions
- ✓ Don't sign agreement with blank terms or missing parts



For More Information:

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