

CONTRACTING 101 for NON-PROFITS



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Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

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PBPA Learning Center for Georgia Nonprofits

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Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Agenda

- What is a Contract
- Purpose and Benefits of Contracts
- Common Types of Contracts
- Legal Requirements of a Contract
- Key Terms of a Contract
- Contracting Do's
- Contracting Don'ts
- Questions

What is a Contract?

A **Contract** is an agreement between two or more parties.

A **Contract** can be either **written** or oral –

- Some contracts must be in writing to be legally enforceable
- Oral contracts can be difficult to prove and enforce – “I forgot”

A well-written contract should define both parties’ rights and obligations and define how disputes will get resolved.

Purpose and Benefits

- **Main Purpose:** To memorialize key terms:

- Who
- What
- When
- Where
- How
- Cost and payment due date



- **Main Benefit:** Minimize confusion and legal disputes.

Common Types of Contracts

Purchase Contracts	Lease / License Contracts
<ul style="list-style-type: none">• Services Agreement• Bill of Sale• Maintenance Agreement• Real Property Sale Agreement	<ul style="list-style-type: none">• Office Lease• Equipment Lease• Software license Agreement
Employment Contracts	Business Contracts
<ul style="list-style-type: none">• Confidentiality Agreement (NDA)• Consulting Agreement• Independent Contractor Agreement	<ul style="list-style-type: none">• Fiscal Agency Agreement• Sponsorship / Marketing• Settlement Agreement• Media Release• Liability Waiver

Legal Requirements of a Contract

- **2 Parties:** Natural persons 18+ and valid legal entities
- **Offer:** A party's expression of its willingness to be bound to a contract with the other party on specified terms and conditions
- **Acceptance:** A party's unconditional agreement to the terms of the offer
- **Consideration:** An agreement to an exchange of value (includes payments)
- "Meeting of the Minds"
- Terms and Conditions



Key Terms of a Contract

Parties: The natural persons or legal entities entering the contract

Term: The duration of the contract

- **Effective Date:** When the contract becomes **legally** effective. Before performance begins
- **Expiration Date:** When the contract ends
- **Auto Renewal:** Should it auto-renew? Who will monitor?

Termination: The right to terminate the contract early

- **Early Termination:**
 - Termination for cause/breach
 - Termination for convenience
 - Termination fees

Key Terms of a Contract

Deliverables: Detail what is to be delivered by the Vendor, i.e. grant

Warranties: A Party's agreement to repair, replace or compensate for a defective product or service supplied under the contract at no additional cost to the other party

Compliance with Laws: A Party's agreement to comply with the laws applicable to its performance under the contract.

Confidentiality: An agreement to keep secret specified information

- What should be kept confidential
- Mark documents "confidential"
- Store and protect confidential information
- Make sure you have the right to share agency, customer, employee, and volunteer information



Indemnification

A party's agreement to pay the other party for a loss or liability incurred by such party as a result of a third-party claim.

Examples: Paint overspray and property damage and personal injury in the parking lot.

EX-GRATIA LEGISLATE SUBROGATION BANK CHARGE IMPLIEDLY DEDUCTIBILITY ANTICOMPETITIVE / UNDERPAYMENT GROSS INCOME FIDUCIARY LEGAL RESPONSIBILITY USER FEE TAX-FREE LEGAL LIABILITY ANNUITANT EX GRATIA UNJUSTIFIABLE TAXABLE WRONGFUL DISMISSAL EXTENDED WARRANTY TOR EXPATRIATION PAYOR ANTI-DUMPING NON-TAXABLE EMPLOYMENT CONTRACT UNCONSCIONABILITY INSURED UNCOMPENSATED PAYABLE OBLIGATION CLASS ACTION OFFEROR COUNTERCLAIM INHERIT OVERPAYMENT DEDUCTIBLE ESCHEAT LEGAL REMEDY INSURANCE SELL-ON OBLIGEE TAX BREAK CH LETTER OF CREDIT GRATUITY EQUITABLE INTEREST DEBT RELIEF POLICYHOLDER DEROGATION UNE REPAYMENT IRREVOCABLE PRORATE PAYEE REFUND GARNISHMENT PENSION TAX EXEMPTION TAXA INTEREST-BEARING NONPAYMENT UNSECURED CREDITOR INFRINGEMENT ENTITLEMENT FUTURE INT DEROGATE RECOUPMENT LIABILITY INSURANCE PLAINTIFF RIGHT OF ENTRY TAX DEDUCTION CONF REIMBURSE RIGHT OF POSSESSION PUNITIVE PAYMENT SEVERANCE PAY SELF-DEALING ADVANCE PAY ALLOWANCE EXCLUDABLE BREACH OF CONTRACT TAXPAYER CHARTERER PROMISEE UNPAID INSURANCE POLICY TAX ADVANTAGE WITHHOLD PROMISOR NATURAL PERSON RIGHT OF RETURN R ND MNIFY GUARANTEE BAILMENT LIABILITY TORTFEASOR DEFERRAL RESTITUTION SUBSIDY WITHH ND MNIFY WRONGFUL CONTRACTUAL TERM COMPENSATION BREACH OF CONFIDENCE DEMURRA RE RE RE RE TR ND WRITE EXECUTORY AFFIRMATIVE DEFENSE DEFAMATION NON-CASH UNJUST ENRICHMENT STE MPEMISIBLE RECUMPENSE NEGLIGENCE ABROGATION EXCLUSION / EXCLUSION / EXCLUSION / EXCLUSION REINSURER RENEGOTIATION SETTLOR TRANSFEROR DISABILITY INSURANCE EQUITABLE OBLIGOR DE ASSESSEE ASSIGNOR PAYABLES COLLECTIVE AGREEMENT UNCONSCIONABLE NON-MONETARY CO-F BONUS PAYMENT AGGRIEVE UNLAWFUL CASH ADVANCE ASSIGNEE OUT-OF-POCKET REPARATION AI MONETARY TAX REFUND SICK PAY WRITE-OFF CONSTRUCTIVE DISMISSAL ADJUDICATION SUBVENTIC EXEMPTION INSOLVENCY LOAN AGREEMENT INTERPLEADER COUNTER-CLAIM UNFAIR CREDIT INSUF VIOLATE NON-RECOURSE LUMP-SUM SECURITY AGREEMENT DOUBLE TAXATION CREDITOR OVERCH TRANSFER PAYMENT BILL OF LADING RISK OF LOSS POSSESSORY FORFEITURE RE-SALE HEAD TAX ARE ND MNIFY WRONGFUL CONTRACTUAL TERM COMPENSATION BREACH OF CONFIDENCE DEMURRA ND MNIFY GUARANTEE BAILMENT LIABILITY TORTFEASOR DEFERRAL RESTITUTION SUBSIDY WITHH INSURANCE POLICY TAX ADVANTAGE WITHHOLD PROMISOR NATURAL PERSON RIGHT OF RETURN R ALLOWANCE EXCLUDABLE BREACH OF CONTRACT TAXPAYER CHARTERER PROMISEE UNPAID INSUR REIMBURSE RIGHT OF POSSESSION PUNITIVE PAYMENT SEVERANCE PAY SELF-DEALING ADVANCE PAY DEROGATE RECOUPMENT LIABILITY INSURANCE PLAINTIFF RIGHT OF ENTRY TAX DEDUCTION CONF

INDEMNIFICATION

Key Terms of a Contract

- **Insurance:** Require your vendors to have insurance and provide an insurance certificate.
- **Limitation of Liability:** When a vendor or service provider limits their legal liability under the contract.
- **Waiver:** When a party gives up a legal right, they have a right to enforce.
- **Force Majeure:** A provision that excuses a party's performance under the contract because of events that are outside the control of such party. Examples: COVID19, blizzards, natural disasters, wars, strikes, etc.
- **Assignment:** When a Party transfers its rights and obligations under the contract to a third-party.

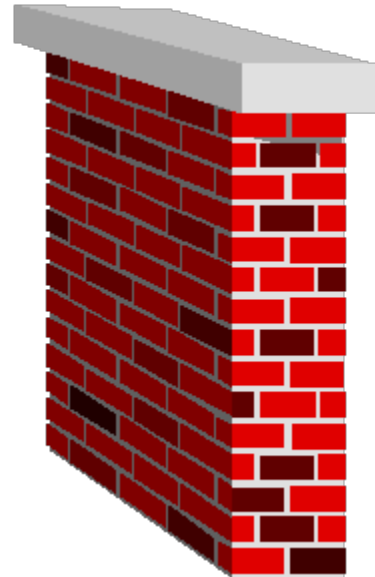
Contracting Do's

- ✓ **Do** Vendor due diligence before contracting
- ✓ **Do** Get it in writing
- ✓ **Do** Keep it simple - avoid complexity and ambiguity
- ✓ **Do** Get the vendor's name right
- ✓ **Do** Make sure the essential terms are in the contract
- ✓ **Do** Read every word and every page of the contract
- ✓ **Do** Allocate enough time for the contracting process
- ✓ **Do** Obtain the required authority, reviews, and approvals
- ✓ **Do** Keep a complete legible copy of the contract
- ✓ **Do** Document all changes to the contract in an amendment



Contracting Don'ts

- ✓ **Don't** Be afraid to "lawyer up" for complex contracts
- ✓ **Don't** Forget important dates - start, termination, etc.
- ✓ **Don't** Pre-pay for services
- ✓ **Don't** Sign a contract without the blanks filled in
- ✓ **Don't** Agree to contract terms (a) you cannot fulfill, (b) you do not understand, or (c) that violate the law or your agency's policies
- ✓ **Don't** Overlook the possibility of a dispute



Questions?

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