

5 IMPORTANT TIPS TO REMEMBER FOR CONTRACTS

By Linda O. Hatcher, Esq.

1. ***Get The Parties Right.*** The names used for the parties should be their actual legal names. If a party is an individual, use the full legal name of the individual. If a party is an entity, use the name of the entity as registered with the state in which the entity is organized. If that entity operates its business under a fictitious name (commonly referred to as a “dba,” which stands for “doing business as”), then include the fictitious name, too. For example, “ABC Company, Inc., dba Westside Services Corp.” If your business is organized as an entity (e.g., a corporation, a limited liability company, a partnership), be sure to use your entity name for the contract, rather than your individual name, in order to control your personal liability exposure and to assure the related rights, interests, and obligations are properly in the name of the entity.
2. ***Include All Important Terms.*** Create a list of the key terms you want or need to have included in the contract, including in exhibits and attachments. Then be sure all those key terms are in fact included in the final version of the contract. If you fail to include a term in the contract, you are generally precluded from enforcing that term if there is a dispute. Although there are some limited exceptions to that general rule, you do not want to be in a position to have to rely on those exceptions -- as there will no doubt be a fight over whether or not an exception should apply, you may not win that fight, and fighting over exceptions can be costly.
3. ***Avoid Ambiguities.*** A common problem with contracts is ambiguities. For example, contract provisions are unclear and could be interpreted in more than one way. Or contract provisions might be clear, but are inconsistent, and the parties disagree on how to reconcile them. Ambiguities create some of the biggest battles in contract disputes. Be sure the contract provisions are clearly written and that they accurately reflect your intentions. Look for inconsistent provisions, and delete any that should be excluded, and clarify those that may simply need clarified to be reconcilable. Also look for whether the particular obligation at issue includes the elements of who, what, where, when and how. Then ask yourself: could someone who is relatively smart, but who was not involved in the negotiations and does not have first-hand knowledge of what the parties intended, and who may not be familiar with the particular line of business, be able to read the contract and know what are the parties’ obligations? If yes, then it will be clear to the parties when they refer back to the contract (even after their memories have faded), which helps avoid disputes; and it should be easier for lawyers and for an arbitrator, mediator or judge to interpret the contract if there is a dispute.
4. ***Get It Signed.*** It is surprising how often parties negotiate a written contract, and then fail to get it fully executed. This creates issues regarding what the parties truly agreed to and what is enforceable. Be sure your contracts are signed by all the parties, get a complete copy with all the signatures, and keep a complete, fully-signed copy of the contract in a safe place for subsequent retrieval and reference, as necessary.

5. ***Amend Properly, If Modifications Agreed Upon.*** It is common for parties to agree to change the terms of their existing contract (for example, for new services or products, new pricing, changes in obligations). If you agree to a change, put the modification/amendment in writing and specifically refer back to the original agreement by its name and date (and also refer to any prior written amendments by name and date). Most contracts specifically state that modifications/amendments must be in writing and signed by the parties, or they will not be enforceable. Also, follow tips 1 through 4 above as to the written amendment.

The above “5 important tips” are not intended to be all inclusive of what may be considered important for contracts. I am sure anyone reading this article will be able to identify other important tips. The 5 above are simply among the more common that are applicable to most contracts.

LINDA O. HATCHER

Attorney at Law
Theodora Oringher PC
1840 Century Park East, Suite 500
Los Angeles, CA 90067
(310) 557-2009
lhatcher@tocounsel.com
www.tocounsel.com