



Get it in Writing: The Importance of Written Agreements in Business

Andrew C. Vredenburg

Foster Swift Commercial Litigation News

October 13, 2015

Many business deals are done by a handshake. Handshake deals work fine - until they don't. Things go wrong in business. Relationships sour. Conditions change. And when they do, and you have to get lawyers involved, one of the first questions you'll be asked is, "Did you get it in writing?" If you've ever been in this situation, and you didn't have a written agreement in place, you know that protecting interests and enforcing rights is much harder if there is no written document in place setting forth the terms of the parties' agreement.

The reason that verbal contracts can be problematic is that parties change, memories fade and, yes, people lie. Without a written agreement, a judge or jury will have a hard time determining which version of events to believe in a "your word against theirs" scenario.

There are many other reasons to have a written contract besides having evidence to point to during litigation. A written contract ensures that all of the terms of your agreement are documented. If a disagreement arises, there will be a document that the parties can refer back to in order to get the relationship back on track. In short, a solid written contract can save money and strengthen a business relationship by helping to avoid litigation altogether.

In order for a contract to serve these purposes, though, it must be detailed. The rights and duties of each party should be defined clearly, with little room for interpretation. Issues such as time for performance, payment terms, termination rights, and rights upon default (to name a few) should all be clearly documented.

Not only do clear, specific terms help guide performance and limit ambiguity in the event of a dispute, but the negotiation process can also make clear whether there is a deal at all to document. The questions that oral contracts often leave unanswered frequently lead parties to begin performance under an "agreement" only to find - after time and resources have been spent - that there are major areas of disagreement between them. Negotiation over a written contract likely

AUTHORS/ CONTRIBUTORS

Andrew C. Vredenburg

PRACTICE AREAS

Business & Commercial Litigation

Commercial Litigation



would have unearthed these issues early on. The “devil is in the details,” in other words.

Not only is it advisable to get business contracts in writing, some types of contracts **must** be in writing to be enforceable. These include (but are not limited to) contracts for the sale of real property, real estate leases for more than one year, and agreements to pay the debts of another. In addition, certain contracts for the sale of goods under the Uniform Commercial Code - such as the sale of goods with a price of \$500 or more - must be in writing.

Also keep in mind that simply writing down an agreement is not the same as crafting an enforceable contract - let alone an enforceable contract that protects your business. That’s why it’s important to seek an experienced attorney’s advice when contemplating entering into any business agreement.

The benefits of a detailed, unambiguous and well-written contract are immense. It should be a basic best business practice to enter into written agreements with parties you do business with - including customers, suppliers, contractors, partners, shareholders, co-members of an LLC and investors.

Remember these four words the next time you shake hands after a business meeting: Get it in writing. You’ll save a lot of time and money for your business if you do.
