

“ The Anatomy of a Contract ”

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Legal forms and agreements are an integral part of any business relationship, yet all too often people avoid written contracts. Whether you are interested in a one-time only interaction or a long-term affiliation, it is wise to delineate in writing your roles and expectations. Clear written agreements serve several purposes: they help avoid problems, provide a predetermined method for resolving conflicts, and keep you focused on your goals.

A binding contract does not have to be written on a piece of paper with the word "Contract" emblazoned across the top. In business arrangements, all that is usually required is some written form (letter, memo or a full-blown contract) that describes what is to be contracted, the terms of the exchange, and parties' signatures. Keep in mind that once you agree to the terms of a contract, you are usually stuck with it. Unfairness is rarely a legal ground for nullifying a contract (unless it is outright fraud). Also, most states uphold verbal contracts as legal and binding.

The checklist below covers the 20 major elements to include in your contracts. Sometimes this information may be provided in separate documents, although it is best to have it in one contract (the information can be included as an addendum) that is signed by all parties. Ideally, you would come to the negotiating process with a sample of your own contract and the checklist, review the other party's contract, and create a specific contract that is mutually agreeable to both of you. If the other party insists on only using their contract, make sure you have responses (preferably in writing) to all the items in the checklist. You can delete and add items to the contract, just make sure that all parties initial each change. If a contract contains a significant number of changes, it is best to simply rewrite it. The contract checklist is quite substantial, albeit most of these issues can be addressed in a one- to two-page document. This can even be done in an informal letter, sans legalese. You may be tempted not to use it for presumably simple transactions, particularly if it is just a "one-time" deed. Yet it is usually those seemingly negligible events that you live to regret! Invest the time in clarifying what is truly important to you in a business relationship. Even if you are currently involved in a business relationship and do not have a contract, you can always design one now. Each situation is unique and one contract will not suit all situations, although once you have the basics done, you will find it much simpler to alter any contract.

Contract Checklist

1. Names and addresses of all parties involved.
2. A short description and mission statement of all concerned parties.
3. A statement summarizing the desired role of the contracted party.
4. A classification of the business relationship. Many business relationships are possible. Some of the most common titles are that of salaried employee, commissioned employee, independent contractor, lessee, licensee, distributor, representative, or reseller. You need to know exactly what your status is (or that of the person/company with which you wish to work) and the ramifications of same. Your legal and financial obligations vary according to your status and the specific agreements in your contract.

5. A detailed description of what each party promises to provide. Compile a list of the equipment and supplies required and who is responsible for providing and maintaining them. Also delineate any marketing and management services. For example, let's say you want to represent a line of products. Be sure to clarify whether the company will provide you with the following items and if there is a cost to you: product samples; sales literature; and demonstration models.
6. A timetable of when the work is to be performed or the products to be delivered/sold.
7. Location of where work is to be performed. (This relates to massage service contracts.)
8. The duration of the contract. Contracts may be for a single specific event, a series of events (e.g., providing massage at all the bike races for a particular team for the next 6 months), or ongoing until either party decides to terminate the contract.
9. Payment method and schedule. If this is an employment agreement, it should also include fringe benefits and incentives.
10. Opportunities for increases in financial remuneration. Determine the parameters for direct increase in compensation for your services (such as an annual cost-of-living increase, a percentage increase after working on a specified number of clients, or an increased discount after purchasing a set number of products for resale).
11. Insurance coverage provided and insurance coverage required.
12. Guarantees.
13. Financial obligations of the contracted party. This is usually included when the contract involves subcontracting and is mainly to protect the hiring party in case the person hired does not perform the services adequately. For example, let's say a convention coordinator contracts a local practice to provide 10 massage therapists for their convention. The local company hires you as a subcontractor but for some reason you do not show up. The convention coordinator could require compensation from the local hiring party and then the local hiring party would expect compensation from you.
14. Conditions for termination of the agreement. Some conditions to consider are violation of the contracting company's policies and procedures, poor or nonwork performance, misrepresentation of the efficacy of the products or services, and untimely payment of fees due.
15. Guidelines for transfer of the contract.
16. Who retains custody of the client. (This guideline is specifically for employment contracts.) Many massage therapists work in other practitioners' offices, health clubs, salons, spas and clinics in the hopes of building up their private clientele. Problems can arise if the expectations and boundaries aren't clear. Consider the following example: You provide massage services for a health club. Several of your clients decide they would prefer to receive their sessions at home. Your ability to ethically take them on as private clients depends upon your agreement with the club. The club owner might not care whatsoever, particularly if she mainly views your services as an added value for membership. But an upset might arise if the health club regards you as a significant revenue-producing adjunct. Another common occurrence is changing locations. For whatever reason, you may no longer want to work at the hiring party's location. You will avoid a lot of hurt feelings (and possibly a lawsuit) if you've clearly defined how you'll deal with the allocation of clients.

17. Arbitration. This clause usually states that if an irreconcilable problem arises, the parties will take the matter before a mutually agreed upon mediator.

18. Who is responsible for legal fees if a breach of contract occurs. Most often contracts state that the party who breaches the contract is responsible for the other party's legal costs.

19. The location and contact to send communications regarding the contract.

20. Signature lines and date the contract is signed.

This article was brought to you by Cherie Sohnen-Moe

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