

LEGAL NEWS

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PREPARE BUSINESS CONTRACTS, KNOW THEM AND USE THEM

By Nancy A. Chillag and Gary Brainin, Attorneys

Business transactions are no longer done a hand shake. The business world is extremely complex regardless of the size of your business. The more complex transactions become, the more potential exists for problems to occur and litigation to ensue. The cost of litigation is so high that one small lawsuit can virtually bankrupt a business. While business owners are afraid of litigation, they know very little about how to prevent it.

One recurring source of disputes is the lack of a written contract between parties. When something goes wrong, each party inevitably "remembers" the agreement differently. While having a written contract will not prevent litigation, at least it clears up what the parties meant.

There are relationships that are established in every business setting. Those relationships may be between you and your customer/client or between you and your vender/supplier. The basis of that relationship should be documented in writing, namely a contract.

Some transactions, however, do not lend themselves to constant use of contracts. Probably the most common of these is the supplier receiving purchase orders from customers. If the supplier needed to send a written contract every time the customer wanted to order something, the delivery would most likely be delayed, the paperwork somewhat overwhelming and the customer would probably go elsewhere. However, the supplier can still establish a written contractual relationship with

the customer. For example, when a new customer is brought on board they can be sent a standard contract which sets forth the terms of the relationship and indicates that it will apply to all purchase orders sent by the customer. There will be no need to send another contract to the client unless you want to change the terms of your arrangement. There is usually a way to establish a contractual relationship with customers without excessive burden.

Some business owners run to the stationary store and pick up something that says "contract" and assume that it will apply to their business. Not necessarily true. You must read the document you intend to use and make sure that it applies to your business. If there is a provision you do not like, cross it out. You should also make a list of all problems you have had in your business and determine whether the provisions of the contract cover those types of situations. If they do not, you will need to add to the contract.

Once you have a written contract you need to be familiar with the terms and make sure everyone else in your company is familiar with the terms. You must also consistently use your contract and follow up to make sure the contract is agreed to and signed. The contract can be great, but it is useless if it is not signed.

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