



## Get It In Writing

By Thomas J. Vale

"We didn't have a written contract, but he said..." are words that open many conversations between lawyers and clients. Another common phrase begins, "I signed this piece of paper, but I didn't know about..." All too often, business people enter into transactions without a written contract or with a poorly drafted one. This is one area where an ounce of prevention is really worth a pound of cure. Many problems can be avoided, including expensive litigation, by consulting an attorney before the deal is closed.

Often an individual will say that they have been doing business with a friend with "handshake deals" and it would be an insult to ask that person to sign a contract. These deals are really oral contracts. By asking for a written contract, many people feel they are questioning the honesty of the other individual. But most contract problems are caused by misunderstandings and miscommunications and not by dishonesty. Were you buying 100 units at \$125.00 each or 125 units at \$100.00 each? Was the delivery to be the end of this month or the end of next month? The more complicated the transaction, the more likely it is that a misunderstanding will occur. Put it down in writing and the terms of the transaction will be clear to everyone.

Remember that even though you deal with your friend today, you may be looking to a successor/owner to perform the contract in the future. If the business is sold or the owner dies, you will be dealing with a new owner. That new owner is not going to be aware of the oral contract nor is he or she likely to want to be bound by the terms of such a contract.

Another problem with oral contracts is that by law certain contracts must be in writing to be valid. This law is sometimes referred to as the statute of frauds. For example, a contract not to be performed within one year must be in writing. Let's assume someone promised to provide maintenance service to your business for the sum of \$400 a month for a two-year period. That person defaults before the two-year period is up and you must now pay \$700 a month for the same service somewhere else. You probably would have no recourse to recover your damages in this case. The court simply would not recognize or enforce a two-year oral contract.

A lease for more than one year and other conveyances which create an interest in real estate must also, by law, be in writing to be enforceable. The area of landlord/tenant law and real estate transactions present a separate complicated topic that will be discussed in another column. But the message is clear, you need to get it in writing for real estate transactions as well as other types of business transactions.

The Uniform Commercial Code, which provides specific rules for business transactions, has its own statute of frauds provisions. For example, a contract for the sale of goods for \$500 or more must be in writing to be enforceable. The Uniform Commercial Code also has a statute of frauds provision that requires contracts for the sale of personal property items worth \$5,000 or more that are not considered goods to be in writing. Of course these rules lead to more questions about the differences between "goods" and personal property. A lawyer can guide you through some of these areas of the law and





you should be aware that there are many pitfalls associated with business transactions that can be avoided with a properly drafted contract.

The opposite problem of having no contract is having a contract that is poorly drafted and binds you to unfavorable terms or terms that are not easily defined or understood. Individuals sometimes sign documents when they are uncertain as whether or not they will be bound by its terms. Remember that a contract does not necessarily have to be drafted by an attorney and that a handwritten not signed by two parties may be construed as a binding contract.

There have been countless cases dealing with the creation of contracts and the interpretation and enforcement of the contracts. If you are uncertain as to the legal effect of any documents that you might sign, or the binding effect of that document, by all means have it reviewed by an attorney before signing it. Getting it in writing is only half of the formula for avoiding contract problems. The other half is getting the writing right. It is far better to be cautious prior to entering into a contractual relationship than waiting and hoping you can work things out after the contract is signed.

