The Top Five Ways To Ruin Your Contracts

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Good contracts are handshakes with teeth. Done correctly, they capture the parties' deal. Better still, your company's contracts can be tremendous assets that lock down your rights to money, goods and services.

But, you can ruin all of that. Here are the top five mistakes that turn contracts into liabilities:

5. Me, Me, Me — Alienate Everyone With A One-Sided Agreement

One-sided contracts often backfire. Sure, selfishness has a certain infantile "I-am-the-center-of-the-universe" appeal to it. If you're short-sighted, you'll use a contract that gives the other side no remedies even if your product or service fails. But, in the long run, karma and the courts have a way of evening things out.

Consider the following real-life provisions from a software agreement (although I changed the company name to avoid a cyber-mugging):

> "Dark Overlord LLC makes no guarantees that the software: (i) is suitable for the use intended by Customer, or (ii) contains no errors that may render the software unsuitable for Customer's intended use. The Customer agrees to defend, indemnify and hold harmless Dark Overlord LLC from all claims, liability, judgment and expense arising in any manner from use of the software."

Translation: D-Lord says, "You pay your money and you take your chances." Plus, if anything blows up, you're responsible for the mess, not the software company.

But, then, the karma/court part kicks in. Ultimately, people will grow to hate your company and do what they can to avoid doing business with you. If you end up in a dispute, a court will be tempted to find your agreement is "unconscionable" and free the other party from all obligations. This is more likely to occur if you have a lot more bargaining power than the other side. Similarly, if you do business with consumers, regulatory agencies are eager to treat your company like a piñata for bullying the “little people.” You could be investigated, fined and even barred from certain businesses.

4. Bad Drafting

More and more, people are doing business in tweets, texts and even emoji. Recently overheard from a knot-topped scooter-rider on a cellphone: “Like, you know, he sent me a smiley face with a thumbs-up. That’s gotta be a contract, right?” Um, actually, no. In the hallowed halls of American justice, they still want to see contracts drafted with a modicum of care and knowledge of the rules.

Bad drafting torpedoes even the biggest companies and richest entrepreneurs. In 2018, a New York court threw out an arbitration agreement and allowed an employee to proceed with a class action because the contract was “confusing” and “ambiguous.” In another case, Andy Warhol’s estate lost $7 million because of a badly drafted guaranty. JP Morgan jeopardized a loan for $1.5 billion (that’s “b” not “m”) in a General Motors bankruptcy because a form was improperly completed. In 2010, the owner of the Los Angeles Dodgers lost control of the team — and hundreds of millions of dollars — because of a sloppy contract. Words matter.

3. Never Update

I regularly see outdated contracts that refer to old laws or still require contingency plans for the Y2K conversion. Times change. You need a contract that does, too. Trust me, when you see an agreement that requires notice by telegram or telegraph, you wonder if you’re getting paid in large round stones.

How often to update? It depends on the contract. Real estate law moves slowly — there are still a lot of good real estate contracts originally drafted a decade ago and then updated every year or two. At the other extreme, new tax regulations are issued on almost a daily basis — and related contracts must constantly be fine-tuned. The same variability applies to contract format. Your next tech contract may be encrypted code that is never printed and is signed with a secure digital password.

2. Ignore The Law

You can write the tightest, most precise contract in the world. But, ignore the law and you’ve got a worthless — even dangerous — piece of paper.

Franchisors get slammed when their franchise agreements don’t comply with requirements that vary from state to state. They may have to refund fees, pay fines and even stop doing business in certain states. Entrepreneurs raising startup cash get in even worse trouble when they don’t provide required disclosures and notices. The government can shut down their companies and bar them from serving as an officer or director of any public company. Every business faces its own set of legal requirements. If you ignore them, you could end up with anything from an unenforceable contract, to fines and even a staycation with an ankle monitor.

1. Don’t Prioritize

Some people who write contracts are hoarders. They cram their agreements with provisions to protect against every risk and contingency. Then they fight to keep it all. But, if you can’t sacrifice a pawn, you may end up losing your king. Businesses need to be strategic with their contracts and decide what is critical to keep and where they can or must let go. Prioritize.

Recently, I dealt with a developer who saw the light. He realized that his massive commercial leases were alienating new tenants and leading to lengthy, bruising negotiations. Prospects were turned off. So, he Marie Kondo-ed his lease. He got rid of the crazy provisions that poked tenants in the eye and previously turned negotiations into grudge matches. The decluttered document was short and sweet — and still had all the key provisions. Voila! Deal-making became quick and friendly. Multiyear relationships got off on the right foot. An adversarial reputation turned into an inviting brand.

Avoid the nasty consequences. Pitch those vintage, mimeographed World Domination Contracts. Instead, turn a liability into an asset. Create a well-prepared, up-to-date agreement that protects your business without trashing someone else’s.

I’m the founder of Garson Law LLC. I lead the firm’s business practice and serve as a legal and strategic advisor for entrepreneurs and companies. Connect with me on Twitter or LinkedIn.