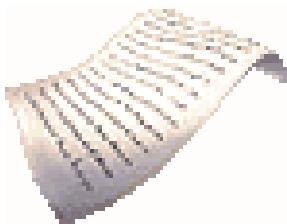


LEGAL STRATEGIES

A Legal Newsletter from Steven I. Hochfelsen

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When Should I Get It In Writing?



In today's business world, many of the relationships stem from written agreements. Many people believe that, without a written agreement, a contract is not valid. In fact, the call for written documentation of business dealings is so strong that one popular advertisement recommends that you "have them put it in writing" before you agree to switch telephone companies.

In fact, there are many reasons for having written agreements. In some cases, a contract is unenforceable unless it is in writing. But what many people do not know is that not all agreements must be in writing to be valid. Furthermore, something as simple as a letter, signed by one person, in some cases may be sufficient to create an enforceable contract.

California law adopts an old English rule called the "Statute of Frauds," which dates back to the 15th century. The Statute of Frauds was created in the belief that certain types of business dealings were so important that they should be put into writing. If they were not, it was presumed that they did not exist. Therefore, the person claiming that the contract existed when there was no writing was probably lying, or committing a "fraud." The California Statute of Frauds, which applies to business transactions today, also requires that these types of contracts be in writing, or they are unenforceable.

Actually, the language of the California Statute of Frauds invalid unless they "are in writing and [signed] by the party to be charged or by the party's agent." Thus, the law does not necessarily require a traditional contract, signed by both parties. In fact, if a writing lists the "essential terms" of the contract and is signed by a party, it is

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enforceable against that party. In the case of, say, a contract for delivery of merchandise, this could be as simple as a letter or invoice that lists the price, quantity of the merchandise to be delivered, and the date and place of delivery. (In fact, special rules apply to contracts for the sale of merchandise, which will be discussed in a later newsletter.)

Except for those contracts covered by the Statute of Frauds, an oral contract is valid, binding, and fully enforceable in court. In those cases, a person may enter into a binding agreement without ever putting a single word on paper.

*Something as simple as a signed letter
may create an enforceable contract*

Under California law, to be enforceable the following contracts must be written: 1) contracts that will take more than one year to complete; 2) leases for a period of more than one year; 3) a promise to answer for the debt of another (such as an agreement to co sign on a loan); 4) an agreement with a real estate agent or broker to buy or sell real estate; 5) an agreement with an agent or broker to help you find someone to buy or sell real estate; 6) an agreement with an agent or broker to help you lease real estate for a period of more than one year; 7) any agreement which cannot be fully performed during the lifetime of one of the parties; 8) an agreement to pay off a mortgage or deed of trust on your real estate; 9) an agreement to lend more than \$100,000 by a professional lender. The California Commercial Code also requires that any contract for the sale of more than \$500 worth of goods must be in writing.

As always, "the devil's in the details." For example, the contracts may be enforceable even if they're not in writing if one of the parties misled the other to believe that there was a written contract.

Of course, there are other reasons for having written contracts and agreements. For example, having a written contract makes it absolutely clear that the parties did, in fact enter into a contract. A well-written contract also clearly explains what the parties intended in their contract. It also prevents one person from claiming that the contract included terms that contradict the written agreement (although California is quite liberal in permitting a person to testify that the parties agreed on terms that are not listed in the written contract). Finally, documentation of any event in a letter or other writing is good evidence of what happened if the matter ever gets to the inside of a courtroom.

A good businessperson will therefore practice a little "preventive legal medicine," and make sure to document important events in his or her business dealings. Often, a letter or invoice is adequate, but sometimes a formal contract is more effective. However, even if those events are not documented, a prudent businessperson will not automatically give up his or her rights just

because no writing exists. Even more importantly, s/he will not assume that, just because there is no written contract, the other party has no rights in court. Good legal representation is important at the first sign of a dispute, and can often protect a company against costly litigation somewhere down the line.

By Steven I. Hochfelsen