

# Contracts – A Primer

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So much of what we do is governed by the law of contracts. We lease apartments and cars; we enter into a contract of marriage; we buy and sell real estate and personal items; we have our cars fixed and clothing altered; and all of these activities are governed by contracts. A contract is nothing more than an agreement between or among two or more parties. It may be in writing or sealed with a handshake. A written contract is preferable because it spells out the intent of the parties and is easier to enforce in the event of a breach.

A contract is rather like a sandwich built from the top down. The top slice states who the parties are and the reasons for the agreement; the middle sets forth the meat (i.e., the terms to which the parties have agreed) – of the contract; and the bottom slice contains all of the standard contract verbiage.

## The Parties and “Whereas” Clauses

The first ‘paragraph’ of most agreements sets forth the date of the agreement and the names of the parties to it, followed by the ‘whereas’ clauses that establish the reasons for the contract; e.g.:

Whereas Party A contracted to purchase 100 widgets from Party B for the sum of \$100.00; and

Whereas, Party B delivered 100 widgets to Party A; and

Whereas, 60 of the 100 widgets were damaged in transit from Party B to Party A; and

Whereas, Party A has refused to pay the \$100.00 contract price to Party B; and

Whereas, Party B has filed suit against Party A for the \$100.00 contract price; and

Whereas, the parties wish to resolve their dispute without litigation.

Immediately following the ‘whereas’ clauses is the paragraph which legally binds the parties to their agreement, e.g.:

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions of this agreement, and intending to be legally bound thereby, the parties agree as follows:

## The Body of the Agreement

The ‘meat of the parties’ agreement is set forth next. To what are the parties agreeing? Is Party B going to refund all or part of the contract price? Is Party B going to replace the damaged widgets with undamaged widgets? Must Party A return the damaged widgets to Party B? If so, who will bear the cost? If the widgets were insured, will Party A first have to seek coverage through its carrier and then Party B will compensate the difference to Party A?

## “Boilerplate” Contract Clauses

Boilerplate (also “Miscellaneous”) clauses usually appear at the end of a contract. Because they are at the end, people often assume that they are unimportant, but boilerplate provisions are important because they affect your

legal rights under the contract as much as do all other clauses. While the purpose of boilerplate provisions is to save time by utilizing commonly used and understood language, it is nonetheless important to understand the meaning and the impact of such provisions in order to choose which ones are important for your particular contract. What if one party breaches the agreement? Will one party have to pay the other party's attorneys' fees? May the parties modify their agreement and, if so, with what formalities? Which state's law will govern in the event of a dispute? One very important standard contract provision is acknowledgment by the parties that all of the terms and conditions to which they have agreed are contained in the contract. Every promise or understanding between the parties must be written in the agreement! If it is not included in the contract, it is not part of the contract and is not enforceable! Although boilerplate provisions may seem "standard," they can still be tailored to meet your specific requirements.

Every contract may be negotiated — even the boilerplate provisions. Every contract should be reviewed by your attorney before you sign it! Once you have signed on the dotted line, it's too late!



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