What is a Contract?

“Do I need a contract?” is a common question that I have gotten from new and existing small business owners. Let’s focus on some contract basics.

First, a contract is an agreement between two or more parties that creates an obligation to do or not do particular things. Contracts almost always contain the following essential elements:

- Parties who are competent to enter into a contract. For example, a mentally disabled person could not enter into a contract. Minors can enter into contracts, but can void them in most cases before they reach majority age.
- Mutual assent by all the parties; i.e., all parties have a meeting of the minds on a specific subject. Each party either promises to perform an act that the party is not legally required to perform, or promises to forebear from performing an act that it is legally entitled to perform.

Does the contract need to be written? Depending on the circumstances, a contract may or may not have to be put in writing and may or may not have to be signed.

However, having that said, to be enforceable, some agreements must be in writing. The situations in which an agreement must be in writing can differ from state to state, but usually include transfers of real estate, sales of goods valued at over $500, and contracts that require more than a year to perform.

Your written agreement becomes your proof of what was agreed upon and prevents someone from forgetting or changing the story later. Writing makes the parties focus on the essential points and come to a definite agreement.

Can and should I write my own contracts? Yes, you can write your own contracts. However, if there is much at stake or if the matter is complex, definitely use a lawyer. Your best money may be spent up front in preventing any problems. If the amount is moderate or the terms simple, you may use a legal form that both sides understand.

How do I enforce a contract? The parties can agree to have a mediator review a contract dispute. The parties are not bound by a mediator's decision, but may be convinced to avoid a costly court battle by how the mediator rules.

The parties can agree to binding arbitration of a contract dispute. A neutral party listens to the
arguments from both sides and issues a decision that is binding on the parties. This is cheaper and less time-consuming than a court battle. The parties can take their contract dispute to court to obtain a decision from a judge or a jury.

When attempting to enforce a contract, a party should consider the effect it will have on any long-term relationship such party has with the opposing party.

A contract may be unenforceable because it fails to contain an essential element, there was fraud or mistake in the making of the contract, or the contract contains an illegal subject matter or is against public policy.

To learn more about business relationship issues facing your small business, contact America’s free and confidential source of small business mentoring and coaching. Go to www.score-rochester.org.

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