

**Business
Formation**

Contracts

Finance

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SMALL BUSINESS UPDATE

Contract Basics

August 2007

THE DOs

- **DO** start with a generic form as a guide, and adapt it to your particular situation.
- **DO** entitle the document “CONTRACT” so that there can be no mistake as to its intent.
- **DO** make sure the parties are properly identified in the first paragraph, that names are spelled correctly, and that addresses are accurate.
- **DO** include the date in the first paragraph so that it is easy to refer back to after contract execution, and so that the contract can later be identified by date, such as “the November 20, 2001 Contract for the Sale of Goods.”
- **DO** use common-sense headings to make it easier to find particular provisions in the contract.
- **DO** number the paragraphs for ease of reference.
- **DO** use plain language whenever possible.
- **DO** define all technical terms.
- **DO** consider the placement of punctuation marks, since even a misplaced comma can change the meaning of a sentence.
- **DO** carefully review the use of conjunctions, especially “and” and “or,” since the word you choose can have a dramatic impact on meaning.
- **DO** make sure the contract addresses all possible contingencies and that nothing is left to chance.
- **DO** have your attorney review every form contract before you implement it and every important contract before you sign it.
- **DO** ask your attorney any questions you may have about the contract — remember, there is no such thing as a stupid question, but it can be stupid to let a question go unanswered and pay for it later.
- **DO** sign in blue or other colored ink to make the original easily distinguishable from photocopies.
- **DO** initial every page of the contract and make sure the other party does the same so that nothing is missed.
- **DO** include notarization if required by applicable law.
- **DO** retain a copy of the contract for your records.

THE DON'Ts

- **DON'T** include legalese or archaic phrases like “the party of the first part.” “heretofore,” etc. They generally add little in terms of clarity.
- **DON'T** include overly long sentences; rather, break sentences down into easily digestible thoughts.
- **DON'T** be repetitive unless it is absolutely necessary. It is preferable to refer back to a previous provision according to its number or heading rather than to repeat it verbatim.
- **DON'T** assume the other party defines terms the way you do. If there is any doubt, include a definition in the contract.
- **DON'T** read the contract over hurriedly. It takes time to understand all of the possible nuances of the language used.
- **DON'T** accept the other party’s oral explanation of a confusing term. Include everything in writing.
- **DON'T** start acting according to the terms of the contract until both parties have executed it.
- **DON'T** agree to a modification of the contract without memorializing it in writing.
- **DON'T** assume that use of a standard or form contract eliminates the need for your lawyer’s review. Even if a standard contract worked well in one instance, a change of circumstances, date, or party can change the whole equation.

Top 10 Reasons to Avoid Breaching a Contract

10. **YOUR BUSINESS REPUTATION.** You could damage your reputation in the business community.
9. **YOUR BUSINESS RELATIONSHIPS.** You could sever your business relationship with the other party.
8. **LAWSUITS.** You could be sued.
7. **TIME AWAY FROM YOUR BUSINESS.** If sued, you could be forced to spend valuable time away from your business in order to respond to discovery requests, attend depositions, and litigate the matter in court.
6. **LEGAL FEES.** You could incur significant legal fees.
5. **SPECIFIC PERFORMANCE.** Depending on the nature of the contract, you could be ordered by the court to perform your obligations under the contract.
4. **CONTEMPT.** If you don't obey the court's order, you could be held in contempt, fined, and/or imprisoned.
3. **COMPENSATORY AND CONSEQUENTIAL DAMAGES.** You could be forced to pay money damages to the nonbreaching party, in an amount that puts that party in as good a position as it would have been in were it not for the breach.
2. **PUNITIVE DAMAGES.** You could be ordered to pay punitive damages, which are not limited by the amount of the other party's losses and can be very significant.
1. **YOU LOSE ALL THE WAY AROUND.** You could end up spending much more time, money, and mental and physical energy resolving the breach than you would have spent performing your obligations under the contract.