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[https://www.100test.com/kao\\_ti2020/150/2021\\_2022\\_\\_E5\\_86\\_99\\_E5\\_A5\\_BD\\_E5\\_90\\_88\\_E5\\_c85\\_150884.htm](https://www.100test.com/kao_ti2020/150/2021_2022__E5_86_99_E5_A5_BD_E5_90_88_E5_c85_150884.htm) Published in The Florida Bar Journal, Nov. 2000 Note: This article is for background purposes only and is not intended as legal advice. Welcome to the 21st Century. Where practicing law requires us to don the garb of computers and the Internet. And where litigation is as costly as ever. Lawyer bills running \$10,000 a month are not unusual in a hotly contested breach of contract lawsuit. With every word, phrase and sentence carrying the potential for winning or losing, the stakes are high. Simple logic, therefore, directs us to cautious and thoughtful drafting. Drafting contracts is actually one of the simple pleasures of practicing law. Just 3 years ago at this Convention I presented 50 tips for contract writing. This article updates those tips in the context of our new tools and abilities. Following these tips could result in your writing a contract so clear no one will want to litigate it, saving your client from the trials and tribulations of litigation, truly a good reason to write the contract that stays out of court. These tips apply to writing all kinds of agreements: office leases, real estate contracts, sales agreements, employment contracts, equipment leases, prenuptial agreements. They even apply to stipulations and settlements in litigation, where you want an agreement so clear that it avoids future litigation. Wherever clarity and simplicity are important, these tips will guide you there. The Appendix provides a few sample forms to illustrate these tips. Before You Write the First

Word 1. Ask your client to list the deal points. This can be in the form of a list, outline or narration. Doing this will help the client focus on the terms of the agreement. 2. Engage your client in "what if" scenarios. A good contract will anticipate many possible factual situations and express the parties understanding in case those facts arise. Talking to your client about this will generate many issues you may not otherwise consider. 3. Ask your client for a similar contract. Frequently, clients have had similar transactions in the past or they have access to contracts for similar transactions. 4. Search your office computer or the Internet for a similar form. Many times you can find a similar form on your computer. It may be one you prepared for another client or one you negotiated with another lawyer. Just remember to find and replace the old clients name. Starting with an existing form saves time and avoids the errors of typing. Here are some Web sites where you can find forms: <http://www.flcourts.org/> <http://www.flabarrpptl.org/library.html> <http://www.gate.net/~wyman/flo.html> <http://www.westgroup.com> <http://www.lexis.com/> 5. Obtain forms in books or CD-ROM. Typical forms of contracts can be found in form books, such as Wests Legal Forms ( a nationwide set ) and Florida Jur Forms, as well as in treatises and Florida Bar CLE publications. These can be used as the starting point for drafting the contract or as checklists of typical provisions and wording to include in the contract. Many treatises and form books now come with forms on disk or CD-ROM. 6. Dont let your client sign a letter of intent without this wording. Sometimes clients are anxious to sign something to show

good faith before the contract is prepared. A properly worded letter of intent is useful at such times. Just be sure that the letter of intent clearly states that it is not a contract, but that it is merely an outline of possible terms for discussion purposes. See Appendix C Writing that First Word 7. Start with a simple, generic contract form. The form in Appendix A is such a form. It provides a solid starting point for the structure of the contract. Like a house, a contract must have a good, solid foundation. 8. State the correct legal names of the parties in the first paragraph. As obvious as this is, it is one of the most common problems in contracts. For individuals, include full first and last name, and middle initials if available, and other identifying information, if appropriate, such as Jr., M.D., etc. For corporations, check with the Secretary of State where incorporated. 9. Identify the parties by nicknames. Giving each party a nickname in the first paragraph will make the contract easier to read. For example, James W. Martin would be nicknamed "Martin." 10. Be careful when using legal terms for nicknames. Do not use "Contractor" as a nickname unless that party is legally a contractor. Do not use "Agent" unless you intend for that party to be an agent, and if you do, then you better specify the scope of authority and other agency issues to avoid future disagreements. 11. Include a blank for the date in the first paragraph. Putting the date in the first paragraph makes it easy to find after the contract is signed. It also makes it easy to describe the contract in other documents in a precise way, such as the "December 20, 2000, Contract for Sale of Real Estate." 12. Include to provide background. Recitals are the "whereas" clauses that precede the body

of a contract. They provide a simple way to bring the contracts reader ( party, judge or jury ) up to speed on what the contract is about, who the parties are, why they are signing a contract, etc. The first paragraph in the body of the contract can incorporate the recitals by reference and state that they are true and correct. This will avoid a later argument as to whether or not the recitals are a legally binding part of the contract.

13. Outline the contract by writing out and underlining paragraph headings in their logical order. The paragraphs should flow in logical, organized fashion. It is not necessary to write them all at once ; you can write them as you think of them. Try to group related concepts in the same paragraphs or in adjacent paragraphs. For example, write an employment contracts initial paragraph headings like this: Recitals. Employment. Duties. Term. Compensation.

14. Complete each paragraph by writing the contract terms that apply to that paragraph. This is simple. You learned this in elementary school. Just explain in words what the parties agree to do or not do paragraph by paragraph.

15. Keep a pad at hand to remember clauses to add. It is normal to think of additional clauses, wording and issues while writing a contract. Jot these down on a pad as you write ; they are easily forgotten. Also keep your clients outline and other forms in front of you as you write, and check off items as you write them.

16. Repeat yourself only when repetition is necessary to improve clarity. Ambiguity is created by saying the same thing more than once ; it is almost impossible to say it twice without creating ambiguity. Only if the concept is a difficult one should you write it in more than one way. In addition, if

you use an example to clarify a difficult concept or formula, be sure that all possible meanings are considered and that the example is accurate and consistent with the concept as worded. What to Watch Out for When Writing 17. Title it "Contract." Do not leave this one to chance. If your client wants a contract, call it a contract. A judge now sitting on the federal bench once ruled that a document entitled "Proposal" was not a contract even though signed by both parties. The lesson learned is, "Say what you mean." If you intend the document to be a legally binding contract, use the word "Contract" in the title. 18. Write in short sentences. Short sentences are easier to understand than long ones. 19. Write in active tense, rather than passive. Active tense sentences are shorter and use words more efficiently, and their meaning is more apparent. Example of active: "Sellers shall sell the Property to Buyer." Example of passive: "The Property shall be sold to Buyer by Seller." 20. Don't use the word "biweekly." It has two meanings: twice a week and every other week. The same applies to "bimonthly." Instead, write "every other week" or "twice a week." 21. Don't say things like "active termites and organisms". Avoid ambiguity by writing either "active termites and active organisms" or "organisms and active termites." When adding a modifier like "active" before a compound of nouns like "termites and organisms", be sure to clarify whether you intend the modifier to apply to both nouns or just the first one. If you intend it to apply to both, use parallel construction and write the modifier in front of each noun. If you intend it to apply to just one noun, place that one noun at the end of the list and the modifier directly in front of it. 22. Don't

say "Lessor" and "Lessee." These are bad nicknames for a lease because they are easily reversed or mistyped. Use "Landlord" and "Tenant" instead. The same applies to lienor and lienee, mortgagor and mortgagee, grantor and grantee, licensor and licensee, party A and party B. This is where you can use your creativity to come up with a different nickname for a party, as long as you use it consistently throughout the contract.

23. Watch out when using "herein." Does "wherever used herein" mean anywhere in the contract or anywhere in the paragraph ? Clarify this ambiguity if it matters.

24. Write numbers as both words and numerals: ten (10). This will reduce the chance for errors.

25. When you write "including" consider adding "but not limited to." Unless you intend the list to be all-inclusive, you had better clarify your intent that it is merely an example.

26. Don't rely on the rules of grammar. The rules of grammar that you learned in school are not universal. The judge or jury interpreting the meaning of your contract may have learned different rules. Write the contract so that no matter what rules they learned, the contract is clear and unambiguous. Follow this test for clear writing: Remove all periods and commas, then read it. Choosing the right words and placing them in the right place makes the writing clear without punctuation.

27. Don't be creative with words. Contract writing is not creative writing and is not meant to provoke reflective thoughts or controversies about nuances of meaning. Contract writing is clear, direct and precise. Therefore, use common words and common meanings. Write for the common man and the common woman.

28. Be consistent in using words. If

you refer to the subject matter of a sales contract as "goods" use that term throughout the contract ; do not alternately call them "goods" and "items." Maintaining consistency is more important than avoiding repetition. Dont worry about putting the reader to sleep ; worry about the opposing lawyer a year from now hunting for ambiguities to get your contract into court. 29. Be consistent in grammar and punctuation. The rules of grammar and punctuation you learned may differ from others, but you had better be consistent in your use of them. Be aware of such things as where you put ending quote marks, whether you place commas after years and states, and similar variations in style. 30. Consider including choice of law, venue 0selection, and attorneys fee clauses. If your contract gets litigated, you might as well give your client some "ammunition" for the fight. Examples of these clauses appear in Appendices A and C.

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