

二十一世纪写好合同的五十招 PDF转换可能丢失图片或格式
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https://www.100test.com/kao_ti2020/452/2021_2022__E4_BA_8C_E5_8D_81_E4_B8_80_E4_c29_452864.htm 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. 新世纪的到来，要求我们在法律实践中应该多用电脑和互联网，不过，诉讼成本还是那么地高，面对日益竞争激烈的违约诉讼，律师每月开出1万美元的账单也是常有的事。合同中的每一个字，每一个词，每一句话，都意味着潜在的输或赢，换句话说，押在这上面下的赌注也很大，所以，在起草合同时要把握两条原则：小心谨慎和深思熟虑。 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. 然而，起草合同的确又是法律实践中一件有意思的事儿。大约三年前，也是在这样一个会议上，我提出了合同起草的50招。本文在那些招数的基础上，结合一些新的工具和技能，推出了下面这个新版本

，但愿它们能帮助你起草无可挑剔的合同，让你的客户免受诉讼的困扰。 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. 这些招数适用于各种合同，比如，办公租赁合同、不动产合同、买卖合同、劳动合同、设备租赁合同、婚前协议。同样，如果你不想让你在诉讼中所起草的和解条款与协议再起争议的话，也可以参考一下这些招数。另外，通过了解这些招数，你就会明白，起草合同，清晰、的简明是多么地重要。本文的附录提供了一些简单的法律文书范本，这将有助于你理解这些招数。 Before You Write the First Word 第一部分：在动笔之前

- 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. 1、 要求你的客户列出合同交易的要点，也可以说是合同的清单、目录或概述。这一招首先帮助你的客户弄清合同的重点所在。
- 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. 2、 让你的客户提供一些假设可能发生的情况。好的合同不仅能够预见到许多可能发生的情况，而且还能清楚地描述出发生这些情况后合同

双方的立场。和客户聊这些情况将有助于你发现一些你可能没有考虑到的问题。

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. 3、 请求你的客户提供类似的合同。通常情况下，客户都保留着过去的交易记录或者是类似合同。

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 client ' ' s name. Starting with an existing form saves time and avoids the errors of typing. Here are some Web sites where you can find forms: 4、 在办公室的电脑中或是在因特网上搜索类似的合同范本。通常你会在你的电脑上找到你想要的东西，这些类似的合同范本要么是你给其他客户准备的，要么是你和其他的律师共同协商起草的。使用这些旧合同可以为你节省时间和避免打印错误，不过，用这些合同范本时别忘了替换掉老客户的名字。

5、 Obtain forms in books or CD-ROM. Typical forms of contracts can be found in form books, such as West ' ' s 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. 5、 从书中或者是光盘上获取合同范本。典型的合同范本在一些范例书中都可能找到：比如西方法律文书（全国版）佛罗里达州文书期刊，另外，在有些论文和佛罗里达州律师协会的法

律继续教育出版物中也可以找到一些。起草合同时，你可以把这些范本当做原始资料，利用其中某些典型的条款和措词。更为方便的是，许多论文和书中的合同范本都有电子文本储存在磁盘或光盘中。

6、Don't 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.

6、如果没有特别申明，不要让你的客户在意向书上签字。有时候，在合同未准备好之前，客户为了表示诚意，往往急于签署某些东西，当然，在这种情况下，如果客户急于签署的是有特别申明的意向书，这也是可以的，但一定要注明：本意向书并非合同，只是双方为了更好地沟通协商，而拟定的对未来条款的概述。类似意向书的范例见附录C。

Writing that First Word 第二部分：开始起草合同

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.

7、从简单、的典型的合同入手。附录A就是一个简单、的典型的合同，它提供了一个合同的基本支架。像房子一样，一个合同必须有一个牢固的根基。

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.

8、在合同的第一段要写清楚双方的名称，这是个简单而又不得不引起重视的问题。如果是个人，要写清姓和名，中间有大写字母和其他身份信息的，也要注明，例如：jr.,M.D等等；如果是公司，为避免弄错，写名称时可以到公司注册地的相应机构去核对一下。

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."

9、确定合同双方的别称（简称）。为便于阅读，一般要在合同的第一段为双方弄一个别称，如：将詹姆士.马丁简写为“马丁”。

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.

10、使用法定术语作为双方当事人的别称时，要小心。除非一方当事人在法定上就是承包人，否则不要将“承包人”作为其别称。同样，除非你想让一方当事人成为法定上的代理人，否则不要称其为“代理人”，如果坚持要用，最好明确一下代理范围并找到其他可以避免将来争执的方案。

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