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https://www.100test.com/kao_ti2020/618/2021_2022__E8_80_83_E8_AF_95_E5_A4_A7__c92_618328.htm FIFTY TIPS FOR

WRITING THE 21ST CENTURY CONTRACT THAT STAYS OUT OF COURT 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 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:

<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 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.

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. 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 contract ' ' s 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. 100Test 下载频道开通，各类考试题目直接下载。详细请访问 www.100test.com