

The Devil is in the **Details**



Part 3: Avoiding Contract Pitfalls

By M. Christina Floyd, Esq.

Most business people enter into contracts on a regular basis. They sign real property agreements, vehicle and equipment leases, advertising agreements, web site development and maintenance agreements, banking documents and numerous other contracts in the usual course of business. Some of those contracts are simple, easily understandable documents, while others are all but incomprehensible, clearly written by lawyers who get paid by the word!



Termination, Deadlines, Warranties and other Contracting Pitfalls

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1. Review causes for termination. Consider including ways to terminate the contract if it is not working to your benefit. Always try to have a way out.
 2. Check dates and deadlines and keep a calendar of dates and deadlines for important events and anything required to be done by you or the other party.
 3. Review and understand warranties and representations given by you and the other party. Don't give any representation if you do not actually know it is true or if the other party is in a better position to know the facts being represented. If you must give warranties, try to limit them as much as possible. For example, a warranty in a deed might say that you warrant title to the property. You can limit the warranty by saying that you warrant title to the property only during the period of time in which you owned the property. Remember that the other party is trying to do the same, so watch for disclaimers or limitations.
 4. Know all of your rights and responsibilities under the contract. Carefully read the entire contract before you sign, because rights and responsibilities are typically scattered throughout the agreement.
 5. Determine how you want to deal with resolution of disputes. An arbitration or mediation requirement could ultimately save you lots of time and money. However, there are times when you may need to go to court to resolve the dispute. When appropriate, try to give yourself some flexibility.

This series contains a limited list of general provisions to consider when entering into a contract. The type of transaction that is the basis of the agreement, as well as the relative bargaining positions of the parties will dictate the actual terms of the contract. If you are not a lawyer, consider investing in having the contract reviewed by one, since having a good contract will pay dividends, while a bad contract can cost you.

Let me know if this series has been useful for you and your business by commenting on the Hampton Roads General Counsel Facebook page, or by leaving a comment on the HRGC website (www.hrgclaw.com).