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The Written Contract—What Should be Included?

By STANLEY HUMANN

How often do you contract for services at your tree farm? Do you need to contract for services there? If so, how elaborate does your contract need to be? Will your contract get you a better job performed? Will the job still be cost effective?

If these questions go through your mind when you contemplate having someone do some work for you, you are not unique. Almost everyone who has a service performed goes through the same gyrations. The answer to many of these and similar questions is going to depend upon a number of practical, legal and localized questions, and ultimately, on your own sense of confidence in the person or firm you have chosen to do the work.

Webster defines a contract as "an agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises; a mutual promise upon lawful consideration or cause, which binds the parties to a performance; a bargain; a compact."

Obviously, contracts take both oral and written form. Virtually any act between two or more parties in which lawful consideration is to pass in exchange for something of similar value is a contract.

We can view the simple sale of a consumer good, over the counter, as a contract, and indeed over time we have seen the courts clarify such things as implied warranties in sales transactions much like specific contract warranties have been enforced. The scale of contract examples goes upward from this simple illustration.

Most of us remember elementary school examples of "who, what, why, when, how, where and to what degree." This basic principle of English and journalism has direct and practical application to contract structure. Some of the elements will be mandatory; others may be optional, but commonly evident.

For example: Who? The parties to the contract. What? The description of the work or service to be performed and the cost or value. Why? The reason the contract is entered into. When? The time by which the contract is to be completed. How? The contract specifications. Where? The location of where the item is to be delivered. To What Degree? Limits or understandings on performance.

When one looks at a description of services that are to be performed, a checklist like the one above could be useful in deciding whether everything is adequately described.

Earlier it was stated that your own personal tastes and your relative comfort or discomfort with the situation could be instrumental in deciding how formal your contract needs to be. It has always been my belief that a contract is drawn to protect against the unforeseen, the unexpected, the things that went wrong. But, since a contract is a compact between two or more persons, it will usually stop short of total protection for either of the parties because of compromise or negotiation.

It has often been said you can have anything, if the price is right, and in contracts this may be the case. Absolute protection for the party seeking the work usually results in price increases, even in bid or competitive circumstances. The negotiation on contract terms may be driven by desire to keep prices down.

When looking at contracts, I generally break the documents into eight sections or parts. Some of these parts are mandatory if a contract is to be enforced; others are optional or useful in rounding out the composite terms of the contract.

Generally, many of the optional sections are there through implication or legal interpretation. So, it would be my recommendation that if you do not want someone else to decide what you meant, it is best for you to say it. Further, it is often best to say it as plainly as possible.

The parts that I generally describe follow.

Background or Understanding

This optional section is usually a "stage-setting" section that often answers the why question. It can be important in articulating the reasons the contract is entered, and ultimately, in determining just how one party is injured, should there be a breach of contract.

In many contracts, simple purchases for example, the why may be logical and implied. In such a case, it hardly matters why you are motivated. An example would be a sales contract to purchase a skidder.

In other cases, the why could be essential. For example, if you purchase a property for growing timber and later find out that the seller knew there was a local prohibition against cutting trees, it could be useful to you to point out that your intentions were completely clear when you entered the agreement.

Parties to the Contract

An obvious section, but it may not appear as a section per se. Contracts often refer to the signatory parties and then do not identify them until you reach the signature page. This would be the who section.

Statement of Purpose

This section may be considered optional as the purpose may be clear by

implication. Further, the background section could have covered this area adequately. However, there can be contracts in which the purpose is vital to understanding the nature of the agreement. Purpose may also overlap with a section I call the Work Description.

Term

This section is usually mandatory, but it is surprising to see significant numbers of contracts in which the term is not stated or is left relatively unclear. If one expects a job to be done by a certain time, it is essential that that point be made very clear. The Term section may include permissible starting dates and should contain completion dates, and provisions for extensions and for termination.

Work Description

This mandatory section is vital in any form of service or performance contract. It will elaborate such things as quantities, areas and specifications. It should also include any qualifiers or limitations on understandings about the work.

In my opinion, this is one of the most important sections and will have to be carefully worded and completely clear. Usually if there is a significant debate about contract interpretations, it will involve questions about what was supposed to be done. This section may link closely with the Payments and Considerations section, when payments for different parts of a job are anticipated.

Liabilities and Penalties

This section must be considered mandatory if you expect to have a contract enforced in a way favorable to you. Here is where you will detail indemnities (often called "hold harmless" clauses) where the other party agrees to protect you from suits brought because of his actions under the contract, performance deposits and bonds, insurance and payment holdbacks, and penalties for non completion. This section should also include any details on how and when bonds and holdbacks will be released. If you have concern over liens being filed, you would also include that language here. This also would be the section in which to spell out understandings on warranties, whether they be specific or implied.

Payments and Considerations

This mandatory section is relatively self-explanatory. However, it needs to be carefully structured and correlated with sections dealing with Term and Work Description whenever partial payments are considered, and with Liabilities and Penalties as it relates to release of hold-backs.

Execution

This mandatory section binds the parties by their signature. It will also include notary and witness provisions when appropriate.

Now, back to the original questions. How often do you contract? Technically, you enter a form of contract whenever you purchase anything—a consumer item, a service, or whatever, if you expect the product to perform to a certain level. Whatever understandings you have concerning performance is the promise for which you have paid a fair consideration.

The enforceability of your expectations will depend upon the clarity of the understanding and how they are documented.

Do you need a contract? Anytime you have someone do something for you, in whom lawful consideration passes, you will have a contract, in oral form, in implied form or in written form. Again, the way you see things going between you and the other party will usually govern the form your contract takes. The elaborateness of the contract will also be governed by the nature of your relationship with the other party. Whether you get a better job that is cost effective will depend upon clarity and how one-sided a contract becomes. There is nothing inherent to the contract that makes it, by nature, advantageous to one and a disadvantage to the other.

A contract, fairly struck, simply, accurately and completely documented, will protect both parties equally. Conversely, when one tries to take advantage of the other, whether orally, in writing or by deception, the outcome will often be an unsatisfactory contract document.

In concluding this overview, where do you get more information or assistance in putting a contract together? There are several obvious alternatives, beginning with an attorney or a consultant. Some other not-so-obvious choices are public agencies, such as the USDA Forest Service and state agencies, like the Washington State Department of Natural Resources.

Wherever you go, I believe it is important to have written down in as simple a form as possible the points of agreement between you and the other party to the contract. If you have documented the eight elements above in a simple form agreeable to both parties, an attorney will be able to convert your understandings into a legal contract that both parties can understand and agree upon, and at a reasonable cost. ■

When he wrote this article in 1989, **STANLEY HUMANN** *was forestland manager for the University of Washington's Pack Forest in Eatonville. He retired from that position in 2002. This outline of contracting is provided from his non-legal background and experience in writing, interpreting and administering contracts over the past 30 years. He can be reached at 425-301-0031 or humann@u.washington.edu.*