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WHEN TO HIRE A LAWYER (AND IF YOU DO, DO NOT TIE HIS OR HER HANDS BEHIND THEIR BACK)

(Note: The information in this article applies only to people in the State of Wisconsin)

To Our Clients and Friends:

April 10, 2017

Anyone about to enter into a major contract should consider consulting an attorney—especially if it is a contract for the purchase or sale of real estate or a business.

A contract which seems clear on its face, even a form contract, can have hidden pitfalls and provisions which may be unenforceable or which create more liability than one might expect. Sometimes important issues are completely overlooked. Having a trained professional review the document is usually a good idea and well worth the cost. It is always cheaper than litigating a bad contract later.

Deal Killers. Sometimes the parties to a transaction are warned against going to an attorney on the grounds that they are “deal killers.” The truth is that an attorney has no interest in telling his client he should not enter into a deal he wants to enter because the client is then typically disappointed and the attorney generally earns a smaller fee. A good attorney will do his/her best to correct the problems so the deal can go forward.

It is true that an attorney will point out any legal problems he/she sees. In some cases, he/she might even recommend against the transaction. If a client chooses not to go forward after receiving good legal advice, it is hard to see how that client has been ill-served. On the other hand, if a client should ever feel that his/her attorney has a negative attitude or some sort of perverse interest in killing a deal, he/she should seek other counsel.

I have never heard a client complain that his own attorney “killed a deal”—that is a complaint that seems to come only from the other party to the transaction. The attorney’s job is to fully and fairly advise his client in order to help his client achieve his objectives, not to “kill deals.”

If You Hire a Lawyer. If you do decide to hire an attorney--do not tie his or her hands behind their back! By this I mean that you should bring the deal to your lawyer

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before you sign anything. This sounds so obvious that it hardly needs to be stated—but every lawyer is at some time faced with the situation where a client brings in a contract for his or her review after it has been signed by both parties. Of course, the lawyer can still review the contract and advise the client of its legal consequences. Sometimes he/she can even reopen negotiations if necessary to correct problems or omissions. But, it places you at a disadvantage because the other party may refuse to negotiate any necessary revisions or may ask for something in return. The best practice is to tell the other party that you just do not sign anything until your lawyer looks it over.

What if you feel that a deal is so good that it will get away if a contract is not signed on the spot? This is understandable, and it happens all the time. The best advice is to try to insert a provision in the contract, handwritten if necessary, stating that the contract is subject to your lawyer's review. This does not give your lawyer as much leeway to correct any problems because the other party will feel like you are renegotiating the deal and may react adversely to any changes your lawyer suggests. On the other hand, it is better than being legally bound to a bad contract with no escape.

Conclusion. Give serious consideration to having an attorney review every major contract before you sign. If you cannot resist signing the contract on the spot, at least try to insert a provision stating that it is subject to your attorney's review.

(Newsletter by: William A. Abbott)

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