

WHAT CONTRACTS NEED TO BE IN WRITING

WHAT CONTRACTS NEED TO BE IN WRITING IS A QUESTION THAT OFTEN ARISES IN BOTH PERSONAL AND PROFESSIONAL CONTEXTS. THE NECESSITY FOR A WRITTEN CONTRACT STEMS FROM THE DESIRE FOR CLARITY, ENFORCEABILITY, AND PROTECTION OF THE PARTIES INVOLVED. WHILE VERBAL AGREEMENTS CAN BE VALID IN MANY SCENARIOS, CERTAIN CONTRACTS MUST BE IN WRITING TO COMPLY WITH LEGAL STANDARDS AND TO BE RECOGNIZED BY COURTS. THIS ARTICLE WILL EXPLORE THE TYPES OF CONTRACTS THAT GENERALLY NEED TO BE IN WRITING, THE REASONS FOR THESE REQUIREMENTS, AND THE EXCEPTIONS TO THE RULE.

THE STATUTE OF FRAUDS

ONE OF THE PRIMARY LEGAL PRINCIPLES THAT GOVERNS THE REQUIREMENT FOR WRITTEN CONTRACTS IS THE STATUTE OF FRAUDS. ESTABLISHED IN ENGLAND IN THE 17TH CENTURY, THE STATUTE OF FRAUDS AIMS TO PREVENT FRAUD AND MISUNDERSTANDINGS IN CONTRACTUAL AGREEMENTS. WHILE THE SPECIFICS CAN VARY BY JURISDICTION, THE STATUTE GENERALLY OUTLINES SEVERAL CATEGORIES OF CONTRACTS THAT MUST BE IN WRITING TO BE ENFORCEABLE.

CATEGORIES OF CONTRACTS REQUIRING WRITTEN FORM

THE FOLLOWING CATEGORIES TYPICALLY REQUIRE WRITTEN CONTRACTS:

1. **REAL ESTATE TRANSACTIONS:** CONTRACTS INVOLVING THE SALE, LEASE, OR TRANSFER OF REAL PROPERTY MUST BE IN WRITING. THIS INCLUDES PURCHASE AGREEMENTS, LEASE AGREEMENTS LONGER THAN ONE YEAR, AND DEEDS.
2. **CONTRACTS THAT CANNOT BE PERFORMED WITHIN ONE YEAR:** IF A CONTRACT CANNOT BE COMPLETED WITHIN A YEAR FROM THE DATE IT WAS MADE, IT GENERALLY NEEDS TO BE IN WRITING. FOR EXAMPLE, A TWO-YEAR SERVICE CONTRACT SHOULD BE DOCUMENTED.
3. **MARRIAGE CONTRACTS:** AGREEMENTS MADE IN CONSIDERATION OF MARRIAGE, SUCH AS PRENUPTIAL AGREEMENTS, MUST BE IN WRITING.
4. **CONTRACTS FOR THE SALE OF GOODS:** UNDER THE UNIFORM COMMERCIAL CODE (UCC), CONTRACTS FOR THE SALE OF GOODS VALUED AT \$500 OR MORE MUST BE IN WRITING TO BE ENFORCEABLE.
5. **SURETYSHIP AGREEMENTS:** IF A PARTY AGREES TO PAY THE DEBT OF ANOTHER PERSON, THIS AGREEMENT MUST BE IN WRITING. THIS OFTEN APPLIES TO PERSONAL GUARANTEES IN BUSINESS LOANS.

REASONS FOR WRITTEN CONTRACTS

WRITTEN CONTRACTS SERVE SEVERAL IMPORTANT FUNCTIONS:

- **CLARITY:** A WRITTEN DOCUMENT CLEARLY OUTLINES THE TERMS AND CONDITIONS AGREED UPON BY THE PARTIES, MINIMIZING THE POTENTIAL FOR MISUNDERSTANDINGS.
- **EVIDENCE:** IN THE EVENT OF A DISPUTE, A WRITTEN CONTRACT SERVES AS TANGIBLE EVIDENCE OF THE AGREEMENT, WHICH CAN BE PRESENTED IN COURT.
- **LEGAL PROTECTION:** WRITTEN CONTRACTS PROVIDE LEGAL PROTECTION FOR ALL PARTIES INVOLVED, AS THEY CAN

SPECIFY THE RIGHTS AND OBLIGATIONS OF EACH PARTY.

- **CONSISTENCY:** A WRITTEN CONTRACT ENSURES THAT ALL PARTIES ARE ON THE SAME PAGE REGARDING THE TERMS, REDUCING DISCREPANCIES THAT MIGHT ARISE FROM VERBAL AGREEMENTS.

ENFORCEABILITY OF ORAL CONTRACTS

WHILE MOST CONTRACTS CAN BE MADE ORALLY AND ARE LEGALLY BINDING, ENFORCEABILITY CAN BE A SIGNIFICANT ISSUE. ORAL CONTRACTS MAY LEAD TO MISUNDERSTANDINGS, AND WITHOUT WRITTEN EVIDENCE, IT CAN BE CHALLENGING TO PROVE THE TERMS OF THE AGREEMENT IN COURT. COURTS MAY ENFORCE ORAL CONTRACTS IN CERTAIN CIRCUMSTANCES, BUT THEY ARE OFTEN HARDER TO UPHOLD, ESPECIALLY IN THE CATEGORIES OUTLINED BY THE STATUTE OF FRAUDS.

EXCEPTIONS TO THE WRITTEN REQUIREMENT

THERE ARE SOME EXCEPTIONS WHERE ORAL CONTRACTS MAY STILL BE ENFORCEABLE, EVEN IF THEY FALL WITHIN THE CATEGORIES TYPICALLY REQUIRING WRITTEN AGREEMENTS. THESE EXCEPTIONS CAN INCLUDE:

1. **PARTIAL PERFORMANCE:** IF ONE PARTY HAS PARTIALLY PERFORMED THEIR OBLIGATIONS UNDER AN ORAL CONTRACT, IT MAY BE ENFORCEABLE TO PREVENT UNJUST ENRICHMENT.
2. **ADMISSIONS:** IF ONE PARTY ADMITS TO THE EXISTENCE OF AN AGREEMENT IN A LEGAL PROCEEDING, THE CONTRACT MAY BE ENFORCEABLE EVEN IF IT IS NOT IN WRITING.
3. **PROMISSORY ESTOPPEL:** THIS LEGAL DOCTRINE CAN SOMETIMES ENFORCE AN ORAL PROMISE IF ONE PARTY HAS RELIED ON THAT PROMISE TO THEIR DETRIMENT.

BEST PRACTICES FOR DRAFTING WRITTEN CONTRACTS

TO ENSURE THAT CONTRACTS ARE PROPERLY DRAFTED AND ENFORCEABLE, PARTIES SHOULD FOLLOW SEVERAL BEST PRACTICES:

1. USE CLEAR LANGUAGE

AVOID LEGAL JARGON AND COMPLEX LANGUAGE. THE CONTRACT SHOULD BE EASILY UNDERSTOOD BY ALL PARTIES INVOLVED. CLEAR DEFINITIONS OF TERMS CAN HELP ELIMINATE AMBIGUITIES.

2. INCLUDE ESSENTIAL ELEMENTS

A VALID CONTRACT SHOULD INCLUDE:

- **OFFER AND ACCEPTANCE:** CLEARLY STATE WHAT IS BEING OFFERED AND THE ACCEPTANCE OF THAT OFFER.
- **CONSIDERATION:** IDENTIFY WHAT EACH PARTY WILL GAIN FROM THE CONTRACT.
- **MUTUAL CONSENT:** BOTH PARTIES SHOULD AGREE TO THE TERMS VOLUNTARILY.

- **CAPACITY:** ENSURE ALL PARTIES HAVE THE LEGAL CAPACITY TO ENTER INTO A CONTRACT.
- **LEGALITY:** THE CONTRACT'S PURPOSE MUST BE LEGAL.

3. SPECIFY THE TERMS CLEARLY

DETAIL THE TERMS OF THE AGREEMENT, INCLUDING PAYMENT TERMS, DEADLINES, AND OBLIGATIONS OF EACH PARTY. THIS INCLUDES OUTLINING WHAT HAPPENS IN THE EVENT OF A BREACH.

4. SEEK LEGAL ADVICE

IF THE CONTRACT IS COMPLEX OR INVOLVES SIGNIFICANT OBLIGATIONS, IT MAY BE WISE TO CONSULT AN ATTORNEY. LEGAL PROFESSIONALS CAN HELP ENSURE THAT THE CONTRACT IS ENFORCEABLE AND COMPLIES WITH RELEVANT LAWS.

CONCLUSION

UNDERSTANDING WHAT CONTRACTS NEED TO BE IN WRITING IS CRUCIAL FOR ANYONE ENTERING INTO AGREEMENTS, WHETHER IN PERSONAL RELATIONSHIPS OR BUSINESS TRANSACTIONS. THE REQUIREMENTS SET FORTH BY THE STATUTE OF FRAUDS PROVIDE A FRAMEWORK FOR ENSURING THAT CERTAIN TYPES OF CONTRACTS ARE ENFORCEABLE IN A COURT OF LAW. BY ADHERING TO BEST PRACTICES FOR DRAFTING WRITTEN CONTRACTS, PARTIES CAN PROTECT THEIR INTERESTS, MINIMIZE MISUNDERSTANDINGS, AND CREATE A CLEAR RECORD OF THEIR AGREEMENTS. ALWAYS REMEMBER THAT WHEN IN DOUBT, SEEKING LEGAL COUNSEL CAN PROVIDE GUIDANCE TAILORED TO SPECIFIC CIRCUMSTANCES.

FREQUENTLY ASKED QUESTIONS

WHAT TYPES OF CONTRACTS MUST BE IN WRITING TO BE ENFORCEABLE?

CONTRACTS INVOLVING THE SALE OF REAL ESTATE, CONTRACTS THAT CANNOT BE PERFORMED WITHIN ONE YEAR, AND CONTRACTS FOR THE SALE OF GOODS OVER A CERTAIN AMOUNT (USUALLY \$500) MUST TYPICALLY BE IN WRITING TO BE ENFORCEABLE.

ARE VERBAL AGREEMENTS EVER ENFORCEABLE?

YES, VERBAL AGREEMENTS CAN BE ENFORCEABLE, BUT PROVING THEIR TERMS CAN BE DIFFICULT. CERTAIN CONTRACTS, LIKE THOSE INVOLVING REAL ESTATE OR THOSE THAT CANNOT BE PERFORMED WITHIN A YEAR, MUST BE IN WRITING.

WHAT IS THE PURPOSE OF THE STATUTE OF FRAUDS?

THE STATUTE OF FRAUDS IS A LEGAL DOCTRINE THAT REQUIRES CERTAIN TYPES OF CONTRACTS TO BE IN WRITING TO PREVENT FRAUD AND ENSURE CLEAR EVIDENCE OF THE AGREEMENT.

DO EMPLOYMENT CONTRACTS NEED TO BE IN WRITING?

WHILE EMPLOYMENT CONTRACTS DO NOT ALWAYS NEED TO BE IN WRITING, IT IS ADVISABLE TO HAVE THEM DOCUMENTED TO CLARIFY TERMS AND CONDITIONS OF EMPLOYMENT, ESPECIALLY FOR LONG-TERM OR SPECIALIZED POSITIONS.

WHAT HAPPENS IF A CONTRACT THAT REQUIRES WRITING IS NOT DOCUMENTED?

IF A CONTRACT THAT REQUIRES WRITING IS NOT DOCUMENTED, IT MAY BE DEEMED UNENFORCEABLE IN A COURT OF LAW, MEANING THAT PARTIES MAY NOT BE ABLE TO CLAIM ANY RIGHTS OR REMEDIES BASED ON THE AGREEMENT.

CAN A WRITTEN CONTRACT BE MODIFIED VERBALLY?

GENERALLY, MODIFICATIONS TO A WRITTEN CONTRACT SHOULD ALSO BE MADE IN WRITING, ESPECIALLY IF THE ORIGINAL CONTRACT SPECIFIES THAT CHANGES NEED TO BE DOCUMENTED. VERBAL CHANGES CAN LEAD TO DISPUTES OVER WHAT WAS AGREED UPON.

ARE THERE EXCEPTIONS TO THE REQUIREMENT FOR CONTRACTS TO BE IN WRITING?

YES, EXCEPTIONS INCLUDE SITUATIONS WHERE THERE HAS BEEN PARTIAL PERFORMANCE, DETRIMENTAL RELIANCE, OR WHEN THE PARTIES HAVE A HISTORY OF DEALING THAT IMPLIES AN AGREEMENT DESPITE THE LACK OF A WRITTEN CONTRACT.

WHAT IS THE RISK OF NOT HAVING A WRITTEN CONTRACT?

THE RISK OF NOT HAVING A WRITTEN CONTRACT INCLUDES THE POTENTIAL FOR MISUNDERSTANDINGS, DISPUTES OVER TERMS, AND THE INABILITY TO ENFORCE THE AGREEMENT IN COURT IF THE OTHER PARTY DOES NOT FULFILL THEIR OBLIGATIONS.

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