



Do I Need a Contract?

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Most likely, you already have one. So the real question is, do you want it clearly set out in writing or dependent on memories and perceptions of what people said and did?

What is a Contract?

A contract is an agreement between two or more parties, in relation to a particular subject. Contracts can cover an extremely broad range of matters, including the sale of goods or real property, the terms of employment or of an independent contractor relationship, the settlement of a dispute, and ownership of intellectual property developed as part of a work for hire. So, you have contracts with people you sell to, buy from, or employ.

The Elements of a Contract

To enforce a contract, one must usually show the following:

A "Meeting of the Minds" (Mutual Consent)

The parties to the contract must reasonably have a similar understanding of what the agreement covers. For example, when contracting for the sale of a mouse, the buyer may think he's purchasing a live animal. If the seller is agreeing to sell a computer accessory, there is no meeting of the minds. This does not mean that some misunderstandings, such as whether the project will be finished in two days or two years, will negate the entire contract. In those instances, only the issue in which there was never a meeting of the minds, i.e. time frame for completion, will be difficult to enforce.

Offer and Acceptance

The contract involves an offer to another party, who then must accept the offer. For example, a seller may offer to sell a TV to the buyer for \$800.00. The buyer's acceptance of that offer is a necessary part of creating a binding contract for the sale of the TV. The buyer may accept by word or deed.

A counter-offer is not an acceptance. Rather, counteroffers are usually treated as rejections of the initial offer. In the example above, if the buyer comes back with a counter-offer to buy the TV for \$600, which will generally be considered a rejection of the original offer made by the seller. If the seller accepts the counter-offer, then a contract will be found to exist. However, by making the counter-offer, the buyer will not ordinarily be entitled to enforce the prior \$800.00 price if the seller decides either to raise the price or to sell the TV to someone else.

Mutual Consideration (Exchange of Value)

In order to be valid, the parties to a contract must both give and receive something of value. In the example of the sale of the television, the buyer receives value in the form of the TV, and the seller receives money. However, where one party isn't really giving any additional value, then there may not be an enforceable contract. For example, if a landlord agrees to fix the collapsed roof in exchange for more rent, there will not likely be an enforceable contract. That is because the landlord probably already had the obligation to provide habitable conditions, including a working roof. Since the landlord isn't giving any additional value to the tenant, the tenant will not be obligated to provide the additional value of the rent increase.

The issue of consideration doesn't allow one party to get out of a bad deal. In our example of the television sale, if the seller enters into a contract to sell for \$800, and later gets an offer from somebody else for \$8,000, the seller can't revoke the contract arguing that he could have received a better value elsewhere.

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Performance or Delivery

In order to be enforceable, at least one of the promises made in the contract must be performed. For example, by giving the seller \$800, the buyer has performed his promise to pay. Therefore, the buyer can enforce the contract to require the delivery of the TV. However, unless the contract provides that delivery will occur before payment, the buyer may not be able to enforce the contract if he does not "perform" by paying the \$800. On a similar note, the seller may not be able to enforce the contract without first delivering the TV.

Oral Contracts

Comedians joke that "an oral contract isn't worth the paper it's written on". However, except in most instances other than real estate transactions, a contract that isn't written is still enforceable. The problem lies in proving the contract and its terms. If it's not in writing, it will be much harder to prove the terms of the parties' agreement. Thus, it is often advisable to make some sort of writing, signed by both parties, to memorialize the key terms of an agreement.