

The Florida Bar Continuing Legal Education Committee and
the Young Lawyers Division



Basic Transactional Law 2016

COURSE CLASSIFICATION: BASIC LEVEL

March 24, 2016

**One Location:
Tampa Airport Marriott
4200 George J. Bean Parkway
Tampa, FL 33607**

Course No. 2064R

BASICS OF CONTRACT DRAFTING

Copyright 2016 James W. Martin
James W. Martin, P.A.
www.jamesmartinpa.com
St. Petersburg, Florida

I. BEFORE YOU WRITE THE FIRST WORD

- A. Ask your client to list the deal points
- B. Engage your client in "what if" scenarios
- C. Ask your client for a similar contract
- D. Search your forms library and online for a similar form
- E. Don't let your client sign a letter of intent without this wording

II. WRITING THAT FIRST WORD

- A. Start with a simple, generic contract form
- B. Name the file "Contract draft #1 2016.03.24"
- C. State the correct legal names of the parties in the first paragraph
- D. Identify the parties by nicknames
- E. Be careful when using legal terms for nicknames
- F. Include a blank for the date in the first paragraph
- G. Include recitals to provide background
- H. Outline the contract by writing out and underlining paragraph headings in their logical order
- I. Complete each paragraph by writing the contract terms that apply to that paragraph
- J. Keep a legal pad at hand to remember clauses to add
- K. Repeat yourself only when repetition is necessary to improve clarity

III. WHAT TO WATCH OUT FOR WHEN WRITING

- A. Title it "Contract"
- B. Write in short sentences
- C. Write in active tense, rather than passive
- D. Don't use the word "biweekly"

- E. Don't say things like "active termites and organisms"
- F. Don't say "Lessor" and "Lessee"
- G. Watch out when using "herein"
- H. Write numbers as both words and numerals: ten (10)
- I. When you write "including" consider adding "but not limited to"
- J. Don't rely on the rules of grammar
- K. Test: Remove all periods and commas, then read it
- L. Don't be creative with words
- M. Be consistent in using words
- N. Be consistent in grammar and punctuation
- O. Consider including choice of law, venue selection, and attorneys fees clauses

IV. WRITE FOR THE JUDGE AND JURY

- A. Assume the reader is a knowledgeable layman
- B. Define a word by capitalizing it and putting it in quotes; e.g., "Goods" means...
- C. Define words when first used
- D. Explain technical terms and concepts

V. KEEP YOUR CLIENT INFORMED WHILE YOU WRITE

- A. All contracts should come with a cover letter
- B. Tell your client the ideas that come as you write
- C. Inform your client of the risks

VI. WHAT TO DO AFTER THE FIRST DRAFT IS WRITTEN

- A. Check spelling (manually)
- B. Check paragraph numbering
- C. Check section cross references
- D. Let your associate, partner, secretary or paralegal read it
- E. Let your client read it
- F. Name the second draft "Contract draft #2 2016.03.24"
- G. Make a redline comparison of draft #2 to #1

VII. HOW TO PRINT AND SIGN THE FINAL DRAFT

- A. Print all pages using the same type of paper

- B. Sign the contract in blue ink, not black ink
- C. Initial every page of the contract
- D. Identify the parties and witnesses who sign by providing blank lines below their signature lines for their printed names and addresses
- E. Be sure that corporate officers include their titles, the corporation name and the words "by" and "as"; example:

ABC Corporation, a Florida corporation

By: _____
John H. Jones, as its President

- F. Add a notary clause that complies with the notary law

VIII. USEFUL REFERENCES

- A. Strunk & White, The Elements of Style
- B. Garner, Bryan A., The Elements of Legal Style, Oxford University Press 2002
- C. Adams, Kenneth A., A Manual of Style for Contract Drafting, 3d Ed., ABA 2013
- D. Kuney, George W., The Elements of Contract Drafting, 3d Ed, West 2011
- E. Garner, Bryan A., Garner's Modern American Usage, Oxford University Press 2009

IX. SAMPLE FORMS

- A. Basic Form of Contract
- B. Basic Form of Notary Acknowledgement
- C. Basic Form of Letter of Intent

Appendix A (Basic Form of Contract)

CONTRACT

AGREEMENT made this _____ day of _____,
20_____, between _____, hereinafter
called "_____", and _____,
hereinafter called "_____".

WHEREAS, _____;
WHEREAS, _____; and
WHEREAS, _____;

NOW THEREFORE, in consideration of their mutual
promises made herein and the sum of \$_____,
receipt of which is hereby acknowledged by
_____ from _____, the parties,
intending to be legally bound, hereby agree as follows:

1. Recitals. The parties agree that the foregoing
recitals are true and correct and incorporated herein
by this reference.

2. _____.

3. _____.

_____. Miscellaneous. Time is of the essence of this
agreement. This agreement is made in the State of
Florida and shall be governed by Florida law. This is
the entire agreement between the parties and may not be
modified or amended except by a written document signed
by the party against whom enforcement is sought. This
agreement may be signed in more than one counterpart,
in which case each counterpart shall constitute an
original of this agreement. Paragraph headings are for

convenience only and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Wherever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires. The prevailing party in any litigation, arbitration or mediation relating to this agreement shall be entitled to recover its reasonable attorneys fees from the other party for all matters, including but not limited to appeals. _____ County, Florida, shall be proper venue for any litigation involving this agreement. This agreement may not be assigned or delegated by either party without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have signed this agreement as of the day and year first above written.

Witnesses

Witnesses

Appendix B (Basic Form of Notary Acknowledgement)
Source F.S. §117.05

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this
_____ day of _____, 20____, by _____.

Notary Public-State of Florida: sign _____
print _____

Personally Known _____; OR Produced Identification _____
Type of Identification Produced: _____

Affix Seal Below:

Appendix C (Basic Form of Letter of Intent)

LETTER OF INTENT FOR POSSIBLE
CONTRACT FOR SALE

Possible Seller: _____

Possible Buyer: _____

Property: _____

Date: _____, 20_____

This is a non-binding letter of intent that contains provisions that are being discussed for a possible sale of the Property named above from the possible Seller named above to the possible Buyer named above. This is not a contract. This is not a legally binding agreement. This is merely an outline of possible contract terms for discussion purposes only. This is being signed in order to enable the Possible Buyer to apply for financing of the purchase price. This letter of intent is confidential and shall not be disclosed to anyone other than the parties and their employees, attorneys and accountants and the possible lenders of the Possible Buyer. The terms of the transaction being discussed are attached hereto, but the terms (and the possible sale itself) are not binding unless and until they are set forth in a written contract signed by Possible Seller and Possible Buyer. This is not such a contract. The attached terms are written only as an example of how a contract might read, and it does not mean that the attached terms are or ever will be legally binding.

Witnesses

Witnesses