

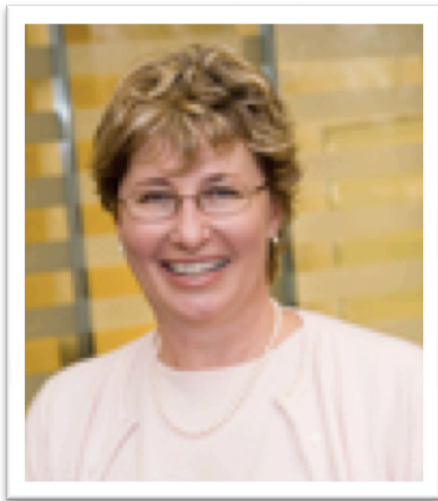
BEST PRACTICES FOR CLEAR CONTRACT DRAFTING

PRESENTED BY
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PRIMARY GOALS OF CONTRACT DRAFTING

- **BREVITY**
- **CLARITY**
- **MAKING THE
DOCUMENT USER-FRIENDLY**

BREVITY

“CAN YOU GET THAT ON ONE PAGE?”

CONTRACT NEEDS TO BE
AS SHORT AS NECESSARY

- Keeps the bill down
- Keeps the document more user friendly

BREVITY



BEST PRACTICES

Never use three words when one will do

Example:

1. “In consideration and exchange for..”
2. “...over and above and in addition to...”
3. “...any and all contract covenants and understanding...”

Note: most prevalent in Release Contracts

BREVITY



BEST PRACTICES

Avoid compound prepositions

Example:

1. "...in order to..."
2. "...with respect to..."
3. "...in the event that..."

Note: write as you would talk in terms of brevity

BREVITY



BEST PRACTICES

Avoid word wasting idioms

Example:

1. “..he was aware of the fact that..”
2. “...despite the fact that...”
3. “..because of the fact that...”

Note: Does not make your writing any more learned
and increases the size of your docket

BREVITY



BEST PRACTICES

Order in obligations

- Good organization promotes brevity
- Rethink organization based on the end-user's point of view

Use of Lists

- A great tool to eliminate repeated language
- An easy way for the reader to absorb information

CLARITY

RECOGNIZING & CORRECTING LINGUISTIC AMBIGUITY

BEST PRACTICES

- Write short simple sentences

- **Too much information** in one sentence is **fertile ground** for ambiguity
- **Example:** "...with respect to all packaged meat products entering the facility the delivery dock inspector shall certify that the USDA seal was intact at the time of delivery or the head cook may conduct bacterial tests which will be paid for by seller."

Ambiguity:

1. Is the inspection or the bacterial test alternative options to each other?
2. Does the seal inspection have to always be checked first before notifying the cook for bacterial tests?
3. Is the seller responsible of both the inspection and bacterial tests?

CLARITY



BEST PRACTICES

Do not use dangling modifiers

- **Example:**

1. "...which shall be paid for by seller."
2. "...contractor shall install loading dock with a slope ramp on each side and it will be eighteen feet long."
3. "...If damage during shipment between Boston and New York the standard rail car on which the goods were loaded in Boston will be replaced with a Conrail super-shocked rail car for further shipment to Washington D.C."

CLARITY

BEST PRACTICES

Change of language

(select standard or defined terms – stick to them!)

Example:

1. “...seller will maintain its plant structures and equipment in **good operating condition** until closing.
...(2) Noncompliance: If seller fails to keep its its plants and structures in **good condition**, seller shall pay all necessary repair costs.”

CLARITY

BEST PRACTICES

Combined persons or combined actions

- **Combined Persons Example:**

1. *“...the chair and vice chairman may nominate up to three candidates for admission.”*

Ambiguity: can each person select three or is it a total of three?

- **Combined Persons Example:**

1. *“...For this weekend only employees may apply to work overtime on Saturday or Sunday. Because only a limited number of positions are available employer shall award work to employees on the basis of seniority.”*

Ambiguity: “applying to work”

CLARITY



BEST PRACTICES

Use Lists to promote clarity

- **Combined Persons Example:**

1. *“...For this weekend only employees may apply to work overtime on Saturday or Sunday. Because only a limited number of positions are available employer shall award work to employees on the basis of seniority.”*

Ambiguity: “applying to work”

CLARITY

BEST PRACTICES

Use Lists to promote clarity (continued)

- **Example:**

1. *“...This leave policy applies to pregnant production department employees, shipping department employees and R&D employees who have not not otherwise have not exhausted their optional leave time.”*

Ambiguity: Does “pregnant” only refer to production department employees or does it modify shipping and R&D employees as well? The same applies for “who have not not otherwise have not exhausted their optional leave time.”

CLARITY

BEST PRACTICES

Use Lists to promote clarity (continued)

Example:

2. *“...Employees with less than ten years seniority are not eligible to hold first shift jobs unless the first shift supervisor consents in writing. No employees with no less than four hours of OSHA disaster response training is eligible for first shift jobs.”*

Ambiguity: If you have seniority, do you still need the four hours of OSHA disaster response training as well?

Note: Every list should have an “and” or “or” to clearly define inclusivity or exclusivity. When dealing with time, use terms like “at Least” or “no more than”

USE OF DRAFTING TOOLS

DRAFTING COVENANTS

- **Use** “Shall” or “Must”
- **Avoid** “Will”
 - Expresses how something will be in the future, and not a directive obligation

USE OF DRAFTING TOOLS

DRAFTING COVENANTS (continued)

Inanimate object covenants

Example:

1. “...*The plumbing shall comply with local and state regulations.*”

Ambiguity: The plumbing has not a person. Someone needs to be added to the sentence to make the plumbing comply with local and state regulations.

Note: Always start with **the actor**

USE OF DRAFTING TOOLS



DRAFTING COVENANTS (continued)

Non-party covenants

- When drafting a covenant involving a non-party actor, the covenant should only address the parties present.

Example: “...*The landowner shall ensure the architect deliver the floor plans by 1/1/2015.*”

USE OF DRAFTING TOOLS

DRAFTING **RIGHTS**

- Use “May” - not directive and gives a party a right

DRAFTING **DECLARATIONS**

- **Example:** Term of the contract and Definitions
- Avoid confusing **Declarations** with **Representations**

USE OF DRAFTING TOOLS

DRAFTING DATES & TIMES

- Avoid “between” and “to”
- Use “from” and “through” “From May 15th 2012 through May 31st”
- If you draft dates, you must draft the time
- If you draft “Day”, you must specify “calendar” or “business”