

# **Contract Drafting Checklist**

*Compiled by Professor Sue Payne, 12/4/07*

## **I. General**

- Accurately embodies negotiated terms
- Covers all relevant facts
- Parts of the Agreement are well coordinated – they all work together
- Defined terms prove their use and are consistently, appropriately used
- Cross-references are easy to follow and not too abundant
- Reads like good prose; clear, concise, smooth, well-organized
- Reader ends up knowing all of the rights and duties of the parties
- Reader ends up with all significant questions answered
- Reader can understand the terms of the deal even though Reader is a third party

## **II. Format**

- Font is readable
- Font size is 12 point
- Article names use Roman Numerals; centered; boldface
- Section names are regular numerals with decimals; numerals are keyed to Article names (e.g., Section 3.01 is the first section in Article III); boldfaced
- Heading of Section (e.g., Rehearsals) is indented after Section number; boldfaced
- Headings – initial caps of key words
- Pages are numbered at the bottom center
- Signature lines do not appear on a page without any text

## **III. Essential Parts**

- Title
- Preamble
- Recitals/Background
- Statement of Consideration
- Definitions
- Action Sections
- Other Substantive Provisions
- Endgame
- Boilerplate
- Signature Lines

## **IV. Review of Each Part**

### **Title**

- Appropriate for subject matter
- Not too general or too specific
- Not too long
- Initial caps of key words
- Centered; boldfaced

### **Preamble**

- Nicknames for parties are same level of generality
- Nicknames are placed in appropriate place in sentence
- Full names of parties are correct
- State of incorporation or residence included
- If address included for one party, then address included for other party

### **Recitals/Background**

- Information not confidential or embarrassing to other party
- No covenants or other substantive provisions
- Puts Agreement in context but does not say too much

### **Statement of Consideration**

- No archaic language
- Short and sweet—“Accordingly, the parties agree as follows:”
- Appears at the end of the Recitals/Background section; not set apart in separate section

### **Definitions**

- Not circular; usually doesn't use the word itself to define the word
- No covenants; each definition is a declaration only
- More than just the dictionary definition of a word
- Makes sense; doesn't define word in way so different from ordinary meaning that Reader gets confused
- Terms that need to be defined are defined, especially if need to clarify
- that parties agree to a particular meaning
- Nice balance between definitions in Definitions section and cross- references to in-text definitions
- Eliminates need to repeat a long group of words each time

## **Action Sections**

- Subject matter performance provision (parties agree to perform the main subject matter of the contract); NOTE: Each side covenants to the other that it will perform the main subject matter of the contract.
- Term of the contract is set forth; may come before the SMPP
- Closing Date is set forth
- Closing Deliveries are set forth, if any
- Makes good use of defined terms

## **Other Substantive Provisions**

- Organized by topic, usually in order of importance (most to least)
- Utilizes contract concepts within each topic (NOTE: Do not use contract concepts as headings. Use topic headings, with appropriate sub-topics.)
- Within each topic, business terms are translated into contract concepts:
  - Covenants
  - Representations and Warranties
  - Conditions Precedent
  - Discretionary Authority
  - Uses correct verbs to indicate type of provision
  - Not every contract concept appears under every topic

## **Endgame**

- Section contains or references every endgame provision in Agreement – a snapshot of the Endgame
- Spells out all of the if/thens – good consequences; bad consequences
- Incorporates right to cure, if so agreed by the parties
- Spells out procedure for carrying out endgame
- Spells out what happens to the money if contract terminates early
- May include dispute resolution procedure

## **Boilerplate**

- Shows good judgment about choices made
- Appropriately adapts precedent used
- Appropriately cites precedent used
- Consistently utilizes defined terms from THIS Agreement

## **Signature Lines**

- Uses correct full names of parties
- Does not abbreviate names
- Does not use nicknames
- Formatted properly

- Contains prefatory language (“To evidence their agreement to the terms...” or “AGREED:”)

#### **IV. Plain English**

- Agreement is written in plain English.

#### **AVOID THE FOLLOWING LANGUAGE ISSUES.**

- Archaic/elevated language
- Legalese
- Wordiness
- Choppy prose
- Passive voice
- Awkward phrases or sentences
- Inconsistency
- Vagueness
- Ambiguity
- Omission of articles (“a,” “an,” and “the”)
- Wrong Verb tenses
- Use of nominalizations instead of strong verbs
- Double negatives
- Dangling modifiers
- Covenant language needed/not needed
- Discretionary authority language needed/not needed
- Condition precedent language needed/not needed
- Dual verbs (pick one)
- Dual adjectives (pick one)
- Wrong preposition choice
- Sentence fragments
- Run-on
- Faulty parallel structure
- Inappropriate tone

#### **AVOID PROOFREADING ERRORS AND TYPOGRAPHICAL ERRORS.**

- Missing words
- Extra words
- Missing word endings
- Spell Check errors
- Failure to conform boilerplate to terms used in contract

**AVOID PUNCTUATION ISSUES.**

- Commas in the wrong place
- Semicolons used incorrectly
- Colons used incorrectly
- Periods missing
- Tabulations punctuated improperly