



## Ten Tips for Writing Clear Contracts

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Contracts are meant to be read – and that means they must be readable. Parties who understand their contracts are more likely to comply with them, and clearly written contracts are less likely to be challenged in court. Clients, judges, and even other lawyers prefer reading documents drafted in plain language.

Here are 10 tips for writing clear contracts:

### **1. Use short sentences.**

Lawyers sometimes assume that complicated agreements require long, multipart sentences. But they don't. I recently reviewed a contract provision with three sentences that totaled 295 words. This is painful for the reader and can lead to ambiguities. Your contract will be clearer if you write shorter sentences and include vertical lists or subparagraphs to break up complex concepts.

### **2. Draft in the active voice.**

Whenever possible, draft in the active voice – subject + verb + object, rather than object + verb + subject (or worse, object + verb without a subject/actor).

"Tenant must pay utilities on the first day of each month" is clearer than "Utilities must be paid on the first day of each month." In the second sentence, the tenant isn't even obligated to pay!

### **3. Avoid nominalizations.**

A quick way to improve your contracts is to use action verbs instead of nouns masquerading as verbs (nominalizations). Here are some quick fixes:

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- "Give consideration to" = "consider"
- "Obtain verification of" = "verify"
- "Make an agreement" = "agree"
- "Remit payment" = "pay"
- "Effectuate modification" = "modify"

This change will instantly make your writing clearer.

#### **4. Don't repeat the agreement.**

Why do we constantly remind parties to a contract that they are "agreeing to" or "expressly agreeing to" or "specifically acknowledging" every term of the deal?

We don't need to do this. The contract starts with a statement of mutual assent ("the parties agree as follows"). After that, we don't need to keep affirming the agreement.

Instead of this: "Buyer hereby agrees to pay Seller on the first day of June."

Write this: "Buyer must pay Seller on the first day of June."

Instead of this: "The parties expressly acknowledge that time is of the essence."

Write this: "Time is of the essence."

If the parties are signing it, they've agreed to it. We can eliminate unnecessary wordiness and improve readability by just writing the terms.

#### **5. Watch out for "doublets."**

Lawyers often use two words that mean the same thing for no good reason. These are "doublets," and one study found that legal writers use these phrases five times more often than other writers.

Unless a statute or other binding law uses the doublet, try to skip them. Just pick one word.

Examples:

- Alter or change
- Made and entered into
- Full and complete
- True and correct
- Order and direct
- By and between

#### **6. Use "shall" correctly.**





"Shall" usually means "mandatory." In a contract, "shall" imposes a mandatory duty – which means the subject of the sentence must be capable of assuming the duty.

Correct use: "Buyer shall pay seller \$1,000." The buyer has a duty to pay the seller.

Incorrect use: "Notice shall be provided within 10 days." Notice is intangible and is not a legal person; "notice" cannot have a duty to do anything. (Fix this by writing, "Seller must notify Buyer within 10 days.")

You can reduce the incorrect usage of "shall" by drafting in the active voice (see #2).

### **7. Strike unnecessary words.**

I like my red pen – and I love crossing out unnecessary words. When you strike excess words and replace clunky phrases, you improve readability.

Examples:

During such time as = when

Due to the fact that = because

In order to = to

Notwithstanding the fact that = despite

### **8. Drop the legalese.**

"Legalese" words inhibit understanding by readers and can create ambiguity. Frequent offenders are herein, heretofore, hereinafter, said, such, same, provided that, and "and/or."

Also watch out for spelling out numbers in words. I remain haunted by the case I read in which a lawyer wrote a contract that said, "ONE MILLION SEVEN THOUSAND AND NO/100 (\$1,700,000.00) DOLLARS."

See the mistake? The words say "one million seven thousand" – \$1,007,000 – but the number reads \$1,700,000. That's a \$693,000 difference – and the court held that the words controlled over the number. Yikes.

### **9. Use white space.**

When a contract provision spans half a page without a paragraph break (and sometimes without a sentence break – see #1), my head starts to hurt.

The solution? Add white space. Break a paragraph into multiple subsections with a hard indent in between. Use headings to direct the reader's attention. When documents are visually appealing, they become more usable because people will actually read them.

### **10. Remember your reader.**





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Whenever you are writing, think about your reader. For contracts, first consider who will use this document and how you can draft it to be as clear and concise as possible. Then consider how the other party (or a court) could construe it. Is the language ambiguous? Do you understand everything you have drafted? Will the parties and the court understand it the same way?

Drafting in plain language requires practice, but eventually you'll find yourself mentally scratching out legalese before it hits the page – and your contracts will be better off for it.

