



TOP 10 DO'S & DON'TS OF CONTRACTS

Do's

1. Short, Simple, and Accurate Title

- A contract title should convey the primary purpose of the agreement (ex: Lease, Sales Agreement, Settlement, etc.). The title does not need to include every purpose of a contract. Select the primary purposes and use those for the title.

2. Ex Toto Pagination & Formatting

- Have a clean and consistent format and use ex toto pagination. Both foster clarity. Ex toto pagination establishes how many pages the contract should include and supports authenticating the document later should it become necessary (ex: Page 1 of 10). Formatting considerations commonly include the following: paragraph numbering or lettering; margins and indentations for general language, paragraphs, or other special language; font style and size; alignment; etc. There are many guides for formatting examples. (Ex: *The Redbook: A Manual on Legal Style* by Bryan A. Garner).

3. Legal Names & Titles

- Using the proper titles for parties is essential. For individuals, use their legal names. If an individual uses a nickname or an assumed name for a sole proprietorship, identify them by their legal name followed by "otherwise known as [nickname]," " a/k/a [nickname]," or, for assumed names or DBAs, "d/b/a [assumed name]." For business entities, identify them by their legal name followed by any associated assumed names. You should also expressly include any and all capacities in which a party is signing the agreement (Ex: individually, Administrator, Executor, Custodian, President of XYZ, Inc., etc.).



4. Definitions

- Define any terms of art or terms of particular meaning in the contract. You can either define those terms within the text of the contract when the term is first used (ex: John Doe is the owner of the real property (“**Owner**”) or in a separate definitions section of the contract.

5. Construction Rules

- You may consider expressly stating rules for construction of the contract, such as the extent to which common terms should be interpreted or the way in which time periods shall be calculated. For example: “the meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term, and words denoting any gender shall include all genders and gender-neutral terms as the context requires.”

6. Consistency

- Be consistent in your use and formatting of terms or phrases. If you refer to “Land” continue to use that term as opposed to another (such as “Property”). Similarly, while most selections on formatting of dates, numbers, or other terms are generally based on personal preference, the general rule is “the clearer the better.” If you choose to use multiple formats – such as “one (1)” – ensure that both terms are consistent.

7. Watermarking

- Watermark drafts as “DRAFT” to prevent their erroneous use as final versions. Parties may sometimes mistakenly use a draft as a finished product and you want to avoid that problem as much as possible. Watermarking drafts helps to distinguish prior versions from the final, execution-ready version of the contract.

8. Oxford Comma

- Use it! The Oxford comma (otherwise known as a serial comma) is used to separate the last two items in a list of three or more. (Ex: the property includes accounts receivable, confidential information, and intellectual property). Use of the Oxford comma creates precise language with more clarity, which is the ultimate goal of most contracts.



9. Incorporate any Background/Recitals (if containing binding terms) and Exhibits into the contract.

- Generally, your recitals should not contain binding terms of the contract. However, if a recital would be definitive or its removal would affect the meaning or effect of the contract, then make sure to incorporate it into the binding terms by reference (Ex: "All Recitals stated herein are incorporated in the binding terms of this Contract for all purposes ...") Similarly, any Exhibits should be identified in the contract and expressly incorporated (Ex: "A copy of the survey is attached hereto and incorporated herein for all purposes as Exhibit A.")

10. Electronic Signatures and Counterparts

- If the parties intend to use electronic signatures, expressly include a provision permitting electronic execution of the contract. Depending upon applicable law, you may also need to have a separate consent to electronic signatures executed by the parties. Additionally, if the parties will be signing separate copies of the contract, include language authorizing the use of counterparts to compile a singular contract after execution.



Don'ts

1. Don't use nicknames.
 - Do not use nicknames to refer to any specific persons, places, or things in the contract.
2. Don't use undefined acronyms.
 - If using acronyms, ensure that you have defined those acronyms first. Otherwise, acronyms only cause confusion.
3. Don't use interlineations.
 - Interlineations (written changes between or over prior language – such as striking something out with a pen, etc.) can be binding in many documents – though not all. However, if at all possible, you should avoid interlineations and instead make any necessary corrections, print or send a clean copy, and have a clean version of the contract executed by the parties.
4. Don't use industry terms or “terms of art” without reference or definition.
 - Use industry terms without reference or definition. Many contracts will be drafted for transactions occurring within a particular industry and therefore may include many terms which have a special meaning within that industry. However, without either (1) expressly defining the term or (2) identifying the term as an industry-specific word or phrase, you may be subjecting the contract to multiple interpretations and ambiguity.
5. Don't agree to incorporation or references to other documents without reviewing.
 - When working with other counsel in drafting a suitable contract, they may want to incorporate or reference other documents. If this is the case, ensure you have reviewed every word of the other documents and perhaps consider incorporating those documents into the final contract.



6. Don't allow for blanks in your final document.

- If you have blanks to be filled out by the other side when they are executing, do not sign/finalize the contract unless *all* blanks have been filled in.

7. Don't agree to obligations which your client cannot legally fulfill.

- Your client may fall under certain legislation such as the Freedom of Information Act, Open Meetings Act, FERPA, and other legislation that can limit your client's ability to maintain confidentiality.

8. Don't agree to obligations that are adverse to your client's policies.

- Ensure all agreements will comply with the client's current policies.

9. Don't agree to obligations without ensuring you have contractual authority to do so.

- Check with your client on their contractual authority and ensure all obligations are aligned with this authority.

10. Don't assume form contracts are valid.

- Many parties have form contracts already drafted and will ask you to simply fill in the blanks. Such contracts usually heavily favor the other party and you will need to read every word to ensure that it properly includes the exact agreement between the parties and that your client is equally protected.