



Virginia Business Lawyers

How to simplify and improve any contract

By: **Thomas L. Bowden, Sr.** *Wednesday, January 18th, 2012*

You get an agreement from a new vendor. You start to read it and your eyes glaze over. “In the event that....provided, however,.....including but not limited to..... For the avoidance of doubt.....” And on and on it goes. What gobbledygook.

Of course this stuff is hard to read! So is **quantum physics**, but that’s because quantum physics is, in fact, hard, no matter how well you write it (**even for quantum physicists**). Contracts, however, should be easy to read – clear declarative sentences organized into paragraphs arranged in a logical order.

Contracts are like computer programs. They set some initial conditions (names of parties, date, etc.). Then they list a series of basic directions and “if...then” statements which, if properly thought through, should cover most any eventuality governed by the agreement. That’s what computer code does.

You can run computer code on a computer processor and you will know pretty quickly if the code runs smoothly or if it hangs. The problem with contract language is that for now, there is no contract processor to run the code, except the gray matter of the reader, who may be a judge, another attorney, or just a contract party.

Here are some tricks I use to make sense of **contracts**.

If you have the electronic file (in Word or something similar), do these simple “search and replace” operations. Your altered contract may not read perfectly, but it will be improved and more understandable.

<u>Find:</u>	<u>Replace with:</u>
In the event that	If
For the avoidance of doubt...	nothing – as in a blank space
at no time	never
shall use its best efforts to	shall
covenants	promises or agrees
hereinafter referred to as	just create a (“Defined Term”)
including but not limited to	including – or delete the phrase entirely
including without limitation	ditto above
in consideration of the foregoing	Therefore (or blank space)
indemnify, defend and hold harmless	indemnify
may at its sole discretion	may
prior to	before
provided, however, that	if

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provided that
pursuant to
represents and warrants
reserves the right to

if
under
promises
may

After this, your contract will be shorter and reading it may seem less daunting. More importantly, it will be dramatically clearer and more understandable. I actually have a software tool that will do all of this automatically in one pass, which is very helpful.

All of these legalisms have crept into the language of contracts over the years, and now most lawyers just accept them, and even feel uncomfortable without them. Some actually think that adding them is chargeable work. This does not make them necessary or even helpful. In many cases, they are just crutches for sloppy drafting, which is often a symptom of sloppy thinking.

In particular, I despise “For the avoidance of doubt.....” followed by anything. I was taught that a good drafter says things once and says them clearly. If you have to repeat it, you need to rewrite it. “For the avoidance of doubt” is the legal equivalent of “I mean, you know, it’s like, blah, blah, blah.....right?” Repetition of the same idea with different wording merely opens up cracks for ambiguity to seep into the contract. If litigators get a hold of that language, they will pry those cracks open with industrial strength jackhammer arguments and corrosive cross-examination leaving your “iron clad” agreement in a pile of rusty rivets and crumbling boilerplate. It’s worth knowing that **an infamous case** not so long ago turned on the presence or absence of a comma, and millions were at stake. Clarity matters.

So, if you have to read a contract, you can either mentally make these adjustments, or let your word processor do it for you – either way, you will find the contract much more understandable and less soporific. Your eyelid muscles will thank you. And of course, it goes without saying, (but I will say it anyway, for the avoidance of doubt 😊), you can send me or any of our **Virginia business attorneys** your contracts and we will be happy to interpret them for you!

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