

# **Virginia**

## **Regulatory Hot Tip 2010 –Four**

*Professional Insurance Agents Association of Virginia and DC, Inc.*

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### **Form Agreements: WARNING! One Size Does Not Fit All!**

Contracts, bills of sale, wills, agreements, and other documents creating legal rights are easily accessible today without the help of an attorney. All you need is Internet access. These documents, collectively called form agreements, are pre-drafted and usually require the user to fill in only minimal information, often not much more than the names and addresses of the parties. Business owners are often tempted to use such form agreements to speed up the process of getting to “yes” when negotiating a deal, and also to keep legal costs down. But with these advantages come significant risks, and you must ask yourself whether it is ever possible for a form document to fit your proposed business deal.

There are certainly advantages to using a form agreement. Anyone can search for these form agreements online, print them at home or in the office and complete them on their own. Many of these form agreements are free and readily available for downloading. Using a form agreement is certainly faster than having an attorney go through the particulars of a deal with you and prepare a custom-drafted document. And keeping the lawyers out of the deal saves money. However, saving money in the beginning may end up costing you more money in the end. A lot more. Almost all form agreements require editing before they will be in your best interest to sign. Unfortunately, many people do not realize this until it is too late.

Before executing a form agreement keep the following tips in mind: (1) Know what end result you want from the document; (2) Read the entire form agreement and be sure that you understand all its terms and conditions; (3) Be sure your form document incorporates provisions that address what will happen in the worst case scenario; and (4) verify that your agreement complies with the law and regulations of your state.

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In an earlier Hot Tip about doing deals, we discussed the need to put all the elements of a proposed transaction down in bullet point format on one side of a single sheet of paper, and we suggested that if you find yourself unable to do this, your deal is not yet ready for prime time. Doing this task will certainly make dealing with your lawyer faster and less expensive, but if you are planning to use a form document for that transaction, this task becomes even more critical since you won't be getting the benefit of that lawyer's advice. After you have that deal point list in hand, make sure that every one of those points is incorporated into the form agreement you are using. This will almost surely require editing of the form document. If you don't put all the points in the document, how can you be sure the other party (or the judge!) will know about them? Write them down. Be sure they all can be found in the document.

Next, it is imperative you read the entire form agreement. This may sound like a silly reminder but signing legal documents without a careful reading occurs more frequently than you can imagine. Sometimes a party may not read the entire form agreement because they trust the other side to be honest or forthcoming, or perhaps everything looks acceptable with a quick glancing over. It is too late when you realize you did not read the entire form agreement and now find yourself in a hostile situation with another party, or forced to do something you did not realize was part of the agreement.

A big reason people do not carefully read form agreements, or, indeed, any legal document is they cannot understand them. Form agreements are usually drafted in vague "legalese" and use archaic terms such as "witnesseth," "aforesaid parties", "hereunder", and other terms that could and should be stated in plain English. Fancy legal terms, verbose provisions, and complicated definitions do not create a better agreement. In fact, the opposite is true. But legal documents do create legal rights and obligations. When you sign your name to such documents, you are on the hook to deliver. Unfortunately, it is not a good excuse to try and explain to the judge that you really didn't understand what you were signing when you were the drafter, at least to the extent of filling in the blanks. Read the document before you sign. Read it carefully. Ask yourself whether you understand all of its contents. If you find that you do not feel comfortable: Don't sign it!

Finally, in order for a form agreement to fully realize your goal, you must be sure that the document anticipates the worst case scenario. This includes when one party does not perform, wants out of the deal, gets sick or dies. In the beginning, when a transaction or deal is in the works, it is hard to imagine how the deal could turn sour, especially since both parties are usually excited and ready to get things in order. You should anticipate this, and make sure that your own deal-making process includes thinking about and planning for what would happen if the other party does not hold up his or her side of the deal. You need to protect yourself and this can be accomplished by including provisions in the form agreement.

These tips are by no means exhaustive, but they are a good starting place. We are corporate attorneys. We represent a lot of businesses, small and not so small, and our bias against use of form agreements is probably clear. In our opinion, using them is a risky proposition at best. But if you are going to use a form agreement, at the very least, take your time and go through each part of the agreement to make sure it adequately and correctly sets forth the terms and conditions of your deal. Be sure you understand everything and know what you signing before you put the pen to paper. And even in the most straight forward business transactions, it is always a good idea to have your attorney or an outside third party to review the proposed document BEFORE you sign. And remember, with legal documents, one size does NOT fit all!