

Virginia

Regulatory Hot Tip 2017 – 2

Professional Insurance Agents Association of Virginia and DC, Inc.

I executed a bad agreement---what to do?

As a business person you are conflicted between saving money and doing the work yourself, versus hiring professionals to walk you through the process. Everyone who has opened a new business has struggled with balancing what you can do yourself and what you should do through others. I will let you in on a secret: Oftentimes it would be cheaper for businessmen to come to me for assistance prior to executing the bad agreement than it is for me to clean up the mess (so to speak); particularly if litigation is involved.

Over the last couple of months, I have met with a number of business people who had executed agreements, sometimes very complicated agreements without the help or advice of a professional. Their question to me in each case: How can I get out of this? Daily business life often mandates that we enter into transactions involving written, binding agreements. On a personal basis, people often laughingly say, when signing a contract, that they are signing their life away, and quite frankly, they could be doing something very much like that.

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NolteLaw's practice focuses on general business matters (such as business formation, acquisitions, dissolutions and employment questions) and administrative law issues (such as rulemaking and compliance) affecting regulated entities. Our diverse client base includes restaurants, healthcare providers, contractors, fiber-optic and conduit installers, business entrepreneurs, telecommunications companies, insurance entities, financial institutions, mortgage loan originators, water & sewer providers, and insurance receiverships. Jo has served as attorney for the Virginia State Corporation Commission and as in-house counsel to a privately owned national corporation. She also owned and operated an insurance surplus lines brokerage agency and an insurance consulting business.

This hot tip is not intended to frighten you but to make you aware of certain items that you should pay particular attention to, especially if you elect not to engage a professional to assist you in your review. However, keep in mind that even if you pay attention to all of these matters, something else could still go awry, there are no guarantees and every contract is different. So much of the integrity of the deal depends upon the integrity of the parties involved in the contract negotiation and finalization processes.

1. Keep a copy of whatever you sign. Regardless of whether you are signing a document personally or for business; retain a copy in case you need to act on the agreement.
2. Make sure that you are clear on the term of the agreement and of any renewal terms.
3. Make sure that you are aware of any responsibilities for performance, for quality assurance, for carrying the ball forward (including any liabilities that you have assumed on your agency's behalf or that your agency has assumed from the entity/individual with whom you are contracting).
4. Know your rights as to termination of the agreement (what triggers termination, what do you/the other side have to do to effect proper termination).
5. Know your rights about outstanding invoices upon proper termination of the agreement,
6. Are there fees and costs for which you will be liable in the future post termination?
7. Are there performance standards that you have to meet or that the other party has to meet (how is success measured),
8. Are there any penalties or interest payments for which you are responsible in the event that you can't perform,
9. If the contract requires negotiations and you are not a good negotiator, seek the assistance of someone who is, and
10. Read the entire agreement (we know it is painful but you simply have to if you are going to be your own advocate.

In summary, before you sign that agreement on behalf of your agency, know what you are getting yourself and your agency into. READ the entire contract (regardless of how boring it may be)! Make sure you understand the full implications of the terms. When you do sign a contract, be sure to keep an executed copy for your business records (and make sure that you have the proper authority from the owners to execute the document). If you do not feel comfortable with or don't feel that you really understand a contract's terms, do

not sign it. Get help from someone else, or consider hiring a lawyer or a business/financial advisor so you are sure you are not unwittingly binding your agency to undesirable terms.

Finally, and perhaps most importantly don't permit yourself to be pushed into signing anything. Take a few minutes, overnight, or a few days, whatever is needed, and familiarize yourself with what you are getting into before you sign on the dotted line. As the sage observed, "Act in haste. Repent at leisure."