

Preventative Maintenance

In your business affairs, you hope to forge bonds and relationships that will not only increase your bottom line, but also create opportunities to work with others toward innovation, partnerships and new opportunities. You never expect those relationships to end up in court and I sincerely hope that they do not. However, after you or your business is involved in litigation, it is too late to “go back” and amend a document that is at issue, such as a contract or lease. As such, it is imperative that you do everything in your power to ensure the documents governing your business relationships have provisions that will benefit you if things turn sour.

The following are some examples of provisions you should discuss with your attorney before entering into any agreement so that you can protect yourself if you end up at odds with the other party:

- Choice of Law – specifies that the law of your state will govern the contract and this is especially important when contracting with an out of state company or the subject of the contract takes place in another state;
- Venue Selection – determines the only locations where suit can be filed and protects you from being hailed into a court in a foreign state or even a foreign country;
- Alternative Dispute Resolution – this provision can mandate that the parties engage in mediation or even binding arbitration, thereby likely reducing the cost of litigation in open court;
- Attorney Fees – unless you have a contract or statute that entitles you to your attorney fees, you must “pay your own way”;
- Indemnity – provides that you be compensated by the other party for any loss you may suffer during the performance of the contract;
- Personal Guaranty – when the other party is required to pay you money under the contract, a personal guaranty from an additional person or business to ensure payments provides you with additional security; and/or
- Limitation of Liability – the damages sought by a party claiming breach of contract can be limited so your exposure is capped at a specific amount.

You service your car with your mechanic regularly and undergo physicals with your doctor, all in an effort to prevent future problems. You need to do the same with legal documents. Consulting your attorney after things go bad may be too late. The above examples are just a few of the various provisions that can significantly benefit you if you are involved in a lawsuit involving a legal document. Consult your attorney prior to entering into contracts and save yourself time, money and many headaches if you end up in a dispute

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