



LEGAL ASSISTANCE TO MICROENTERPRISES PROJECT (LAMP)

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You've Got Yourself a Deal! **Contract Issues for Small Businesses**

By: Andrea Beleno

1. What is a contract?

A contract is a legally enforceable agreement. There must be an agreement, which means that you and the other party must be on the same page regarding your obligations to each other, and the benefit you will each receive! A valid contract requires: an agreement and consideration (exchange of things of value). An enforceable contract does not necessarily have to be in writing, although there are some times that a contract will need to be in writing to be enforceable. **It is always a good idea to put a contract in writing.**

Formation of contract requires offer and acceptance. This means that one person makes an offer with specific terms; this can be accepted or rejected by the second person. If the other person rejects the offer, she can make a counter-offer changing the terms of the contract. If you change the terms of the contract with a counter-offer, there is no contract unless the other side agrees to your counter offer! Until an offer is accepted it can be revoked by the person who made it. Once an offer is accepted, there is a binding contract.

Some examples of contracts you may be a part of are: loan agreements, service contracts, lease agreements, employment agreements.

2. When does a contract have to be in writing?

To be enforceable, some types of agreements must be in writing, and signed by the party against whom it is being enforced. To be enforceable, the following types of agreements must be in writing:

- a promise to pay another's debts;
- some marital agreements;
- agreements regarding the sale of real estate;

- leases for longer than one year;
- contracts which will take longer than one year to perform;
- contracts regarding oil, gas, or mineral leases, interests, or royalties;
- promises of medical cures;
- loan agreements for more than \$50,000.

3. What does a written contract look like?

All that is typically required is a letter, memo or any other writing signed by the party against whom the contract is being enforced. A written contract can be handwritten, it does not have to be typed, or written on a computer. The signatures do not have to be notarized.

4. What types of information should be put in a written contract?

- a. names and addresses of parties;
- b. date contract is signed;
- c. brief background of agreement;
- d. what each party is promising to do;
- e. when work will be done or product delivered;
- f. how long contract will remain in effect;
- g. price or how price is to be determined;
- h. when payment is due;
- i. conditions under which contract can be terminated and damages for failure to perform;
- j. how to resolve disputes.

Be aware that you should put **all** terms of the contract in the written agreement. This includes any and all “side deals or promises!” If they are not included in the written agreement, then they are probably not enforceable!

5. We need to modify the terms of a written contract. How do we do that?

Refer to earlier contract by date, names of parties and subject matter. Write out all the changes. State that if there is a conflict between the old and the new contract, the new contract is superior, and that all terms of original contract that are not explicitly changed remain in effect. Have the parties sign and date the new document and keep it with the original contract.

Legal Assistance to Micro-enterprises Project (LAMP) provides free legal services for qualified low-income residents of the Texas RioGrande Legal Aid service area to start up or sustain a small business. LAMP provides useful legal advice and assistance on the laws that may affect proposed and existing businesses, including: formation, contracts, employment issues, tax, health and safety laws, commercial landlord/tenant leases, and lending laws. To complete an application, call toll-free: 1-888-988-9996 or 1-800-369-9270.