



ATTENZA LAW
YOUR LEGAL ADVOCATE

Make fair agreements and stick to them. ~Confucius

Contracts: The Bread and Butter of Your Business

Whether you are signing a lease, entering into a distribution agreement or orally agreeing to paint someone’s home, contracts and agreements play a pivotal role in any business. Well-drafted and well-negotiated agreements are even more important for business owners who want to protect their legal and business interests. This issue of the Attenza Law newsletter will look at contracts and agreements and explain some of the most important points that you as a business owner need to know.

Unlike what many people think, oral agreements are often as binding as written agreements. On page 2 of the newsletter, we look briefly at which types of agreements must be in writing in order to be enforceable. On the same page, we will also look at issues that come up in agreements in an employment context. Specifically, we will discuss whether an employment agreement is recommended and also look at two of the most common agreements signed with employees: non-competition and non-solicitation.

Finally, we will look at another common type of agreement that almost all businesses enter into: commercial leases. Many business owners enter into one with experience just in residential leases, which differ in many ways from commercial ones. We will explain some of the more common provisions that you encounter in commercial leases. 2011 will likely continue to be an excellent year for tenants, as the commercial real estate market remains soft, with vacancy around 20% in the Twin Cities area. It will be worth your while to read up and learn about this important type of agreement.

As always, feel free to [contact us](#) with any questions about your specific situation.

Passion for Law. Passion for Business.



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Si parla italiano
Se habla español



Does it have to be in writing?

Many people think that in order to be enforceable, an agreement has to be in writing. That isn't the case. Except for a few exceptions, an oral agreement is as enforceable as a written one. Of course, that doesn't mean that it is as easy to prove the existence or the terms of an oral agreement, but from a legal point of view only the following agreements must be in writing:

- Contracts that can't be performed within a year.
- Contracts in consideration of marriage (including pre-nuptial agreements).
- Contracts for the transfer of an interest in land, including not just the sale but also a mortgage or easement.
- Contracts where one party agrees to be guarantor for the debt of another
- Contracts for the sale of goods with a

price of \$500 or more.

A contract doesn't have to follow a certain format or be on a certain form in order to be enforceable. In fact, a contract can even be made up of various writings, provided that the essential terms (such as price or quantity if the contract is for the sale of goods) are present. The writing must also be signed by one party, if the other party tries to enforce the agreement against the other.

What does this mean in practical terms? This means that a series of faxes or emails that discuss the terms of an agreement can constitute an enforceable agreement. If you have begun negotiations with someone and decide to cut those negotiations off, the best advice is to review carefully the communications to make sure that you haven't unknowingly formed an agreement that you might breach if you don't perform.

Did you know that employment agreements date back to the times of the Roman Empire? Lex Romana distinguished between a contract for work and a contract for service, as we still do today.

Lunchtime Legal Workshops

As part of our effort to educate our clients, partners and colleagues about the law, Attenza Law and HR Techies are organizing a series of lunchtime legal workshop this winter. The series is

TATTOOS, TURBANS AND TWITTER: UNDERSTANDING HR AND LEGAL ISSUES IN THE MODERN WORKPLACE

The seminar on January 11, 2011 is free, while the other seminars are \$35.00 each, or \$120 for the series of 4 workshops. To RSVP call 952-921-8322 or 612-414-4537 or at <http://lunchtimeworkshops.eventbrite.com> Space is limited to 24 attendees.

January 11, 2011: Religion in the Workplace

February 1, 2011: Hiring Employees

March 1, 2011: Language, Culture and Diversity

April 5, 2011: Employee Privacy and Monitoring

May 3, 2011: Defensive writing, documentation and performance evaluations

11:30am – 12:45pm
Conference Room - Lower Level
8500 Normandale Lake Blvd.
Bloomington, MN 55437

Employment Agreements: What To Do?

When faced with hiring their first employee, many clients and potential clients will ask us to draft an employment agreement or contract. The question they should be asking is whether that is a good idea. Our answer is usually no.

A fundamental tenet of US employment law is employment "at will." This means that either the employer or the employee can terminate the work relationship at any time and for any reason, provided it is not an illegal one. An employment agreement, with often binding terms such as termination for "just cause" or the length of employment, risks altering the "at-will" status and can needlessly hinder an employer's ability to end the employment at any time or for any reason or to change the terms of it.

We usually recommend an offer letter with the important points such as salary, title, general job duties, benefits, and start date included. Other terms of the employment relationship, such as discipline or termination, are included in the employee handbook, which should be written in a way that doesn't bind an employer into taking certain steps. Otherwise, the manual can be seen as a modification of the at-will relationship.

Nowadays, many employers also ask their employees to enter into non-competition or non-solicitation agreements. These agreements prevent an employee from carrying out the same job for a competing company for a period of time after the employment has ended. In essence, you are preventing someone from earning a living, which is why they are carefully scrutinized or not enforced at all in some states, such as California. Minnesota courts will enforce a non-competition agreement provided it is reasonable. This means it must be reasonable in the geographic area (for example, a hair dresser can't work for a competing business or open another salon within a 5 mile radius from his previous employer) and for the temporal limitation (1 year is often considered reasonable).

Often, a non-solicitation agreement will sufficiently protect an employer's interests, while allowing an employee to earn a living. A non-solicitation agreement prohibits an individual from contacting clients or prospective clients of the employer for a certain period of time, such as one year, from when the employment ends. Sometimes, this is the real threat to the business: that a former employee, now working for a competitor or for himself, would try to solicit business from the clients with whom he developed a relationship while working at the former employer. Carefully examining your situation will help determine the best way to protect your interests, while not unduly burdening your employees.



Commercial Leases: A Different Animal

Most people are familiar with residential leases. However, many people, when starting a business and renting commercial space for the first time, do not realize that residential and commercial leases are very different. This article will briefly address some of the most significant differences between the two types of agreements and provide useful information on how to approach a commercial lease negotiation.

Residential leases are “gross” leases, which means that all expenses, except sometime s utilities, are included. In contrast, commercial leases are “net,” meaning that the tenant pays not only rent but also additional expenses such as real estate taxes, special assessments, insurance and maintenance for common areas. These expenses, known as CAM, for Common Area Maintenance, include services to maintain areas like hallways, parking lots and lobbies. Sometimes they include the salaries of the administrative staff who manage the property. Tenants are usually charged a pro-rated amount, so the more square footage a tenant rents, the greater percentage of CAM expenses he will pay. With the softer real estate market and the high vacancy rates for commercial spaces, tenants can attempt to negotiate terms like 3 months of gross rent, meaning that the tenant is responsible for only the rent and not the additional expenses for these first months.

Another common and critical provision in a commercial lease, absent in residential leases, is a non-competition provision. This means that if you are renting space in a shopping mall, the landlord cannot rent space to a competing business within the same mall. Such provisions are important to protect the traffic that comes to your store and ultimately, your bottom line. Disputes have arisen over whether another business that the tenant sees as competing is in fact competing according to the terms of the lease. For example, the lease might provide a jewelry store with exclusivity in a mall as the only store whose primary purpose is the sale of fine jewelry. The landlord rents to another business that sells expensive watches. Do watches fall into the category of “fine jewelry?” Perhaps they do. However, if the tenant, during the contract negotiations, is not careful about defining as broadly as possible what “fine jewelry” means in the lease, she could find another business in the mall that potentially competes and takes away business, without legal grounds to challenge the landlord on his actions.

The short space in our newsletter doesn’t allow us to examine in depth the many provisions in commercial lease agreements. If you have any questions about your lease, or are considering entering into a new lease in 2011, it is always wise to seek the advice of an attorney or other commercial real estate professional before doing so.



Meet one of our trusted partners

We have many trusted partners that we refer our clients to when they have business needs outside of our areas of expertise. [Robert Stewart of StewartHomeTeam](#) is one of our trusted partners.

Robert is one of the most successful real estate agents in Minnesota and consistently ranks among the top in the country. He specializes in residential property in Eagan and Dakota County, although he has contacts throughout the Twin Cities Metro area if you are looking for either commercial or residential property in other counties. Trust us that you can put your faith in Robert and his team if you are looking to sell your home.



Disclaimer: This newsletter most likely contains legal advice. However, that does not mean that you should rely on it without consulting an attorney, whether us or another one, about your specific situation. That the newsletter is legal advice doesn't mean that an attorney-client relationship exists without a agreement signed by you and Attenza Law.

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