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Secrets to a Successful Business Contract

By Laura Plimpton - Entrepreneur.com

Note: This article was excerpted from Business Contracts: Turn Any Business Contract to Your Advantage, which is available from [EntrepreneurPress.com](#).

John, the owner of a rapidly expanding limited liability company called Carpet Glow, buys his company's cleaning supplies from Acme. Acme sent a contract to Carpet Glow to cover an order for \$100,000 in supplies. The contract seemed pretty simple, requiring half of the amount due on signing and the rest a month later, so John signed it. A month later Carpet Glow had not paid the remaining balance to Acme due to a cash flow problem. Acme sued John.

John went to court and argued that he couldn't be sued because he'd formed Carpet Glow as a limited liability company to protect his personal assets. The court ruled against him because of the way he signed the contract with Acme. A very simple change in the way the signature section of the Acme contract was written would've saved John from this threat to his personal assets. If you want to avoid this mistake, read on.

How a Company Name Can Be Good as Gold

Well over half of the contracts I review have the name of one of the parties wrong. I don't mean spelled wrong, although that is a basic starting point, but legally wrong. The parties' names are the most basic part of the contract and they must be:

- included in the agreement
- indicated as a party to the agreement
- spelled correctly
- legally correct

What does this mean?

Miff Company, Moff Company, and Muff Company agree to share the cost and use of a booth at a trade show. They, smartly,

draft a written agreement to document this. The agreement goes as follows:

Example A: Miff Co., Moff, and Muff Company agree they'll split the cost of a booth at the Uffelhoop trade show. Each of us gets to use it.

Signed: Peter Pink, Georgia Grey, Steven Silver.

Go back to the list above. This agreement has all the parties included. It's clear that each company named is a party to the agreement. It's not necessary that you specifically state, "The parties to this agreement are," but the parties to the agreement should be obvious from the context. It seems like the names are spelled correctly. But are these the real names of these companies? Probably not.

Most companies have an official legal name stated on a "birth certificate." Sole proprietorships will not have birth certificates; partnerships may or may not have them; but every other type of company will. A company's birth certificate is the form filed with the state where the company was started, which states the company's name, the type of company it is, and its ownership. These forms may be called "Articles of Incorporation," "Articles of Organization," "Certificate of Limited Partnership," "Statement of Qualification," or other similar titles. The name stated on these forms, as filed with the state agency overseeing formations of companies (usually the Secretary of State or Corporation Commission) is the company's real name.

Whenever you use your company's name or the name of a company you're contracting with it should be the exact name stated on the company's birth certificate. For example, let's say Miff Company was incorporated as "Miff Company Inc. of Boston." That would be its legal name.

It's possible to have a legal name that differs from the name your company is conducting business under. For this to be legally effective, often a notice must be filed with the state where the company is doing business that indicates the real name of the company is one thing but the company is doing business under another name. These are usually called "DBA" filings, which is shorthand for "doing business as" filings. If your company is doing business under a name different from its legal name, contracts it enters into should state the legal name of your company followed by the DBA such as Miff Company Inc. of Boston DBA Harry's Pillow Shop.

Why is it important to state the legal name of the company? Because if you don't, it can be used as evidence that it wasn't the company that entered into the agreement but the individual who signed the contract. If you sign the agreement, your personal assets could be tapped to pay contract damages. Whether you're the owner of the company or an employee of a business signing a contract on behalf of that business, you probably don't intend to risk your personal assets when you sign the contract. Failing to use the company's real name could jeopardize your intentions.

Incorporated businesses must act as entities separate from the people that run them, and evidence of that is consistent use of the actual legal name of the company. This is a simple step that can save controversy in a lawsuit. Determine the correct legal name of your company and use it consistently in contracts. Is it good enough for the agreement above to state "Miff Co." if the legal name is Miff Company Inc. of Boston"? It's always best to use the exact official legal name of the company as reflected on its birth certificate. Otherwise it creates the opportunity for disputes, and the whole point of a contract is to avoid disputes and create rules for resolving controversies. Use your company's actual correct legal name consistently in contracts.

What if Peter Pink, the purchasing officer for Miff Company, drafts and signs the following contract:

Example B: Joan Miff and Miff Co., Moff, and Muff Company agree that they'll split the cost of a booth at the Uffelhoop trade show. Each of us gets to use it.

Signed: Peter Pink, Georgia Grey, Steven Silver.

By including Joan Miff in the list of parties to the agreement, the agreement may be enforceable against Joan Miff's personal assets, as well as the assets of Miff Company, Moff Company, and Muff Company. Do you think Peter Pink has a long career in purchasing at Miff Company? Draft your contracts to avoid controversies--they should state very clearly who has agreed to what. If Joan Miff doesn't intend to be personally responsible for this contract, her name shouldn't be there.

To meet the basic requirements above we'd revise this agreement as follows:

Example C: Miff Company Inc. of Boston, Moff Inc., and Muff Company LLC agree that they'll split the cost of a booth at the Uffelhoop trade show. Each of us gets to use it.

Signed: Peter Pink, Georgia Grey, Steven Silver.

When Signing a Contract Can Threaten Your Home and Savings

Refer to Example C. The signature section contains three names, presumably one name associated with each company. By signing the contract this way, a controversy lies in wait. Were these individuals signing for the companies? Or were they really signing on behalf of themselves, even if the agreement itself contains the correct legal names of the companies? Because the way they signed the agreement makes it appear they signed on behalf of themselves, the signers' personal assets could be at risk.

The purpose of signatures on contracts is to memorialize the party's agreement to what's written down. Signatures, or signature blocks as you will often see them referred to in legal discussions, should clearly indicate who's agreeing. In this case it's not Peter Pink but Peter Pink on behalf of a company.

The signature block should start with who's agreeing to the contract. If it's Miff Company of Boston, that's how the signature block should start. If it's a person, the signature block would start with that person's name. This is how the Uffelhoop contract should be drafted:

Example D: Miff Company Inc. of Boston, Moff Inc., and Muff Company LLC agree that they'll split the cost of a booth at the Uffelhoop trade show. Each of us gets to use it.

Signed:

Miff Company Inc. of Boston

Peter Pink, Purchasing Officer

Moff Inc.

Georgia Gray, Officer

Muff Company LLC

Steven Silver, Treasurer

These signature blocks start with the names of the parties agreeing to the contract, then follow with evidence of the agreement (an actual signature), and then documentation of who belongs to the signature and that person's status with the contracting party.

It's important to think this through. Who or what do you want to enforce this agreement against if there's a conflict? Is it the company? Is it the company's rich owner? I have seen the signature block used to "capture" an unknowing person or business as a party to a contract. If you want to potentially have access to the owner's personal assets in a contract dispute then draft the signature block like Example C above--it's likely the person signing won't realize the legal implications. If Peter Pink was a billionaire and had signed the agreement in Example C it's possible his personal assets could be used to satisfy a judgment issued against Muff Company resulting from a dispute over the contract. But if you're the one signing a signature block like the "Peter Pink" example and you don't want your assets to be at risk, then don't sign. If it's your intention to bind only your company's assets in the contract then make sure that the signature block is drafted to reflect that the company is the one signing the contract.

Who can bind a company to a contract? This differs according to state law, but in general if the person signing appears to have the authority to sign on behalf of the company, as evidenced by business cards, title, and other "trappings of authority" conferred by that company, the company will have to stand behind whatever is signed. If you intend only certain people in your company to be able to bind your company to a contract, then make sure that's stated on invoices, purchase orders, and other forms and contracts. It's common to see statements like, "Only the signature of the president of Muff Inc. will bind the company to an agreement. Any other signature has no binding effect."

If you're concerned the person signing a contract on behalf of the other party may not have the authority to bind the company, check to see if that company's purchase orders or other contractual agreements indicate only an officer or some other designated person can execute the agreement, or changes to the agreement. Call the owner or president of the company and ask who has the authority to bind the company. Does the person signing appear to have the authority and title you'd give someone in your company whom you would authorize to sign contracts?

You can ask that the agreement be signed by an officer of the company, if the company is a corporation, by the managing member, if the company is a limited liability company, or by the general partner if the company is a partnership. State law gives these individuals authority to bind a company. You can often determine who's designated in these capacities for the company you're dealing with by calling the state agency that regulates business entities in the state where the company was formed. Sometimes the state agency's web site has this information.

What if the business entity is a sole proprietorship or a partnership? If it's a sole proprietorship, the sole proprietor must sign. In

community property states, the sole proprietor's spouse may also have to sign in order to allow recovery of any damages against the community assets. You may want to consult an attorney about this. If a partnership is involved, the general partner should sign for the partnership. An example of both types of signature blocks follows:

Example E: Piff Partnership and James Elliott agree that they will split the cost of a booth at the Uffelhoop trade show. Each of us gets to use it.

Signed:

Piff Partnership

June Ellis, General Partner

James Elliott, Sole Proprietor

For more information on how to avoid common contract pitfalls, read Business Contracts: Turn Any Business Contract to Your Advantage from EntrepreneurPress.com.

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