



Management Advisory

Oral Agreements

In most situations, an agreement need not be in writing to be enforceable. However, there are no business or risk management advantages to oral agreements.

Relatively small or unsophisticated clients may be reluctant to execute a written agreement, causing the design professional to agree to “dispense with the formality” of a written agreement. This can be perilous since a client’s unwillingness to sign a written agreement may indicate reservations about making a formal commitment to the project, to payment, or to the design professional. Even if the design professional has worked for the client in the past without a written contract and without incident, there remain many compelling reasons to formulate a written agreement. Beyond the financial considerations, there are other important aspects of a professional relationship that should be understood and confirmed in writing in a written agreement.

The advantages of a written agreement include the following:

Documented Evidence of an Agreement: A written professional services contract provides objective, documented evidence of the scope and terms of the agreement. This is distinct from an oral agreement, in which the terms are left to the subjective, often biased recollection of each party. By definition, an agreement is intended to reflect the mutual assent of the parties regarding the contract and their respective obligations to one another. Putting agreements in writing allows each party to review the terms and make certain that it is comfortable with the rights and obligations it is assuming.

Specificity in Contract Terms and Conditions: Putting pen to paper encourages, if not compels, the parties to be more conscientious about addressing and memorializing the complete terms of their agreement. Negotiating a written agreement provides an opportunity for careful selection of the language to reflect those terms. The absence of agreement or mutual assent on a material term may lead to the legal conclusion that no agreement existed at all. The absence of other contract terms may lead a court to infer terms that do not necessarily reflect the intention of the contracting parties.

The Basis for Third-Party Analysis: In the event that a contractual dispute between the design professional and the client cannot be resolved directly, a written agreement provides an objective basis upon which some third party (a judge, jury, or arbitrator, for example) may resolve the dispute. Without the written agreement, the third party will inevitably be required to resolve credibility issues based upon hearing conflicting testimony from the parties regarding their subjective and biased recollection of the terms of the relationship.

Testing the Tenor of the Relationship: Another advantage of the written agreement is that its negotiation provides a unique opportunity, early in the professional relationship, to evaluate the client’s responsiveness and reasonableness toward risk allocation and other liability-related concerns.

The Contract as a Management Tool: The uses of a written agreement go beyond the immediate project under consideration. A well-drafted agreement may be used by the design professional in the management of the firm as well as the project. The contract can form a basis for reviewing the firm’s progress in satisfying project commitments. It also aids in determining whether or not principals or employees of the firm are entering into agreements whose terms are consistent with firm policy and reflect sound business and risk management judgments.



Providing services under oral agreements should be considered with great caution. While many firms have practiced successfully without written agreements, such oral contractual relationships, while usually valid and binding, often result in an unclear understanding of the scope of services and inconsistent levels of expectations on the part of each party. The relationship between the design professional and the client, the quality of the services being provided by the design professional, and the level of communication that exists all factor into the determination of risk. The use of a written professional service agreement can clearly establish expectations and provide protections for both the design professional and the client.

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