

YOU SIGNED WHAT?: COMMON ISSUES IN AGREEMENTS YOU'VE SIGNED

Red-Flag Terms

1. INDEMNITY: Indemnifier Reimburses Indemnified Party for Losses. Consider Limiting Your Indemnification Obligation for Only Those Losses (of Counterparty) Whose Risk of Occurrence Is Within Your Control.
2. LIMITATION OF LIABILITY: Limits Liability of a Party to a Fixed Cap, Say 1x of Contract Value.
3. INTELLECTUAL PROPERTY (IP): Protects Owner's IP, Including Derivatives. Describe IP Clearly.
4. REPRESENTATIONS & WARRANTIES: Declarations Given by Each Party. Standard and Reciprocal.
5. GOVERNING LAW: Depends on Your State.
6. DISPUTE RESOLUTION: Consider between Mediation, Arbitration, or Litigation (Non-Jury).
7. CONFIDENTIAL INFORMATION: Scope of Information Should Be Clearly Defined. Consider Asking for Return and Destruction of Confidential Information If You Are Its Owner.
8. TERM & TERMINATION: Consider Fixed Term, Auto-Renewal, or Auto-Expiry (As Applicable).
9. EVENTS OF DEFAULT: Define What Constitutes These Events and Consider Consequences to Business.
10. ASSIGNMENT: Consider If Assignment Should Be Allowed Based on Prior Written Consent.

What Not To Do & Why

Do Not Use Old Signed Contracts OR Downloaded Forms Available Online:-

1. Contract May Not Apply to Your State (e.g., Some Terms Valid in OK, but not in TX).
2. Contract May Be Suited to a Different Industry or Context (e.g., Sale of Goods v. Services).
3. Older Contract May Be a Negotiated Version (e.g., Red Flags Were Diluted But Not Completely Eliminated, in Exchange for Certain Must-Haves by Prior Counterparty).
4. Critical Terms May Be Missing (e.g., No Intellectual Property or Its Derivatives' Protection).

Disclaimer: This checklist is intended to be a planning tool to familiarize readers with some of the key provisions typically present in most contracts that are negotiated in the lifecycle of a business. This is not meant to be a comprehensive checklist for business owners. Additional advice should be sought with transaction planners including attorneys, accountants, consultants, bankers, and other professionals who can provide advice for your circumstances. This should not be treated as legal advice to any person or entity as this may not be suited to a particular context and transaction.

Speaker and Topic Information

- Speaking Topic(s) with brief description(s):

(1) Business Partnerships Are Long-Term Relationships: Are you Ready for Yours?

Description: Often business owners with common objectives quickly set up their business without discussing certain business “what ifs”, e.g., deadlocks over strategic business decisions, ownership and operation of competing businesses, exit mechanism if one owner wants to exit, etc. These issues can more often than not, bring a business to a stale-mate if not agreed upon early on. This presentation briefly discusses common issues which business owners should discuss and document to avoid business interruptions and expensive dispute resolution or litigation.

(2) LLCs Mean Limited Liability, Right?: Things You Didn’t Think Of.

Description: Often LLC owners presume that a LLC brings liability protection for the LLC owners and operators. Unfortunately, court cases have, in different situations, shown that despite having an LLC, owners can still be subjected to personal liability for business activities in many circumstances. This presentation will familiarize you with some of those circumstances and will also seek to discuss some best practices to adopt while drafting agreements that can mitigate some of those liabilities.

(3) You Signed What?: Common Issues in Agreements You’ve Signed

Description: Business owners are often surprised by the issues that develop after signing contracts. It is important for contracts to serve the purpose for which they are entered into, not only at the time of execution but also during the life of the underlying business arrangement. This presentation will focus on the contract drafting and negotiation process and discuss common issues that become problems after the execution of contracts. It will also provide helpful tips on how to avoid issues when reviewing and signing contracts.

- Speaker’s Name: R. Shawn McBride
- Business Name: The R. Shawn McBride Law Office, P.L.L.C.
- Speaker’s Bio: R. Shawn McBride is the Managing Member of The R. Shawn McBride Law Office, P.L.L.C. with offices in Dallas, Texas and New York, New York and clients in other locations throughout the world. The Mission of the Firm is to protect business owners. Mr. McBride’s practice includes company formations, multi-owner business situations including buy-sells and other exit planning, merger and acquisition transactions, corporate governance, international trade, and securities offerings.

Mr. McBride has extensive experience in business entity formation, governance, merger, conversion, financing, debt and equity issuance, dissolution, reorganization, and business combination transactions.

Primary Phone: 214-418-0258

Primary Email: shawn.mcbride@rsmlawpllc.com

Website: www.rsmlawpllc.com

Contract Issues

Presented by R. Shawn McBride

May 28, 2015 -- Comment Form

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Please rate the speaker (1 to 10, 10 being the highest): _____

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