

WHEN IS LEGAL HELP APPROPRIATE?

Many large companies have firmly established principles regarding when legal help should be engaged to assist with a transaction or contract. Most of these large companies have budgeted for the cost of legal help, and it is part of the normal day-to-day business for the company. However, many small and medium size enterprises often do not have the luxury of budget line items for legal help, and therefore may agonize over when it is appropriate to spend the resources on legal help.

For small and medium size enterprises, a good rule of thumb may be that they should involve legal help whenever they are uncertain of their rights or responsibilities relative to a particular transaction, or they are concerned that the party on the other side may not be on the same page. The idea of a contract is to bring the parties to a meeting of the minds, so that they both understand the nature of their rights and responsibilities. Also, a business should keep in mind that if there is any problem regarding a contract or transaction, ultimately somebody (a judge or other fact finder) will need to review the documents and try to determine their meaning. If the documents are susceptible to more than one meaning, this can lead to problems.

Where funds are tight, it may not always be necessary to involve a lawyer in every transaction. However, in these cases, it is very important that you closely review all documents. If you don't have the time to read all of the fine print, and you don't have the funds to pay a lawyer to read the fine print for you, you are heading for problems. The fine print will often contain provisions that would make you liable, such as particular warranties or indemnifications in favor of the other party. You should try to remove any of these provisions that are not in your favor, and any other provisions that seem to favor the other party should be made mutual so that it also protects you.

It has become very customary for parties to exchange "mutual non-disclosure agreements (NDAs)" and have various versions signed. Even though the documents are termed "mutual," it is very important to review the language and make sure you understand that your rights and responsibilities (and the rights and responsibilities of the other party to the agreement) before signing. If the document is so innocuous that it has no legal effect, why sign it? Obviously, the NDA is intended to have some legal effect, and you should know your rights and responsibilities under the document before you sign it.

When purchasing services and supplies, many vendors provide standard, pre-printed forms that contain much boilerplate and fine print. These types of agreements can obligate you to early termination fees, automatic renewal provisions that you may not intend, and other contractual obligations that are not necessarily in your favor. The Uniform Commercial Code (UCC) generally recognizes the validity of such terms. Many of these provisions can simply be deleted from the contract by scratching them out and initialing where the deletion has occurred. This will prevent a small or medium sized business from being obligated to a provision it never intended. Many times, suppliers and vendors will not even read the contract or notice that a particularly onerous provision has been deleted. You do not necessarily need a lawyer to do this for you. However, if the vendor or supplier refuses to supply because you have changed their "standard form," you should proceed with caution. The supplier's business model may be built

upon the revenue stream anticipated to be generated from the obligations in the standard form, and this means that they may not let you out of an agreement when you determine that it is no longer appropriate for your business.

If you anticipate entering into numerous similar agreements as part of your own business model, you should have the documentation appropriately prepared and reviewed by competent counsel on your behalf. Obviously, you do not want to be producing documents and entering into transactions on a repeated basis that will ultimately put you under. However, each transaction does not need to be “overlawyered;” as long as the template is set up appropriately, specific transactions can be modified to reflect the intentions of the parties without significant effort or expense. It may often be useful to find a lawyer who is interested enough in becoming familiar with your business so that some standard documents can be produced to address the majority of situations you will encounter. Once a lawyer is familiar with your business and the types of documents you use, it should not require significant resources or funds expenditure to receive direction and assistance from the lawyer on specific transactions. It should not be necessary to reinvent the wheel for each transaction, but the flip side of that proposition is that you do not want to be trying to fit a round peg into a square hole. If your standard document does not fit the transaction, don’t use it.

Obtaining competent legal advice may be one of the best investments you can make in your own business. Due to budgetary factors that affect small and medium sized enterprises, the business should not waste time, money, or other resources on unnecessary advice. Ultimately, it is up to business management to determine when legal help should be brought in, and the extent of resources to be applied toward that help.