

What Ever Happened to the Hand-shake Agreement?

By: Kim Douglas Sherman, Esquire

Some of us remember a time when people gave their “word”, shook hands, and did what they promised to do. Unfortunately, that is not now and not here in South Florida. So, let’s talk about contracts—written contracts. They are good to have.

This is what is recommended for a good enforceable written contract. First, you should identify the exchange of something of value. For example, you promise to pay a certain sum and the other person promises to do something in exchange. Second, the agreement must contain all of the essential and important terms. What terms are “essential” will vary depending upon the nature of the contract. Third, both parties should sign the document. Simple, it works. How about some bells and whistles?

If time is important to your agreement, you should specify when it is to be performed and what happens if there is delay. You would not want to pay for hurricane shutters in January and not have them installed before the hurricane season. I like to ask the salesman to tell me when I can expect my job to be done. Then, I ask what is the absolute latest that the job will be done, and I insist that we put that “latest” date into the contract with some appropriate provision for failure to meet that “essential” term. If you follow this tact, you will certainly get the “feel” of whether you will be getting what you expect.

Written agreements are not just for goods or services, they are very important to relationships. For example, two good friends want to have a company formed for their new business venture. Just having trust in each other will not answer the issues raised if one dies or becomes unable to work in the business or if one wants to sell their share. Those are the kind of “essential” terms to be addressed in a good partnership agreement. The best working partnerships are founded upon a solid agreement.

Your rights to enforce your agreement should also be part of the contract. Consider putting in a right to receive interest for sums not paid on time. Put in a provision that the prevailing party should recover their attorney’s fees and court costs. Holding back money and not paying before you receive your goods or services is one of the mightiest ways to get performance by the other party. Of course, there is no substitute for doing your homework. Take the time to make a reasonable investigation of the person or company with whom you intend to contract.

We have only touched the surface on legal matters relating to contracts. If the deal is important to you, it is important enough to have your lawyer take a look...

before you sign!