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Contracts Basics

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Small business owners enter into contracts more frequently than t
company agree t
in exchange for a
been created, ev
formal contract.

purchase orders, employment agreements, and other
common business transactions are legally enforceable
contracts. The following is a discussion to help you
understand the basics of contracts.

What is a contract?

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A [contract is a legally enforceable agreement](#) between two or more parties that creates an obligation to do or not do particular things. The term “party” can mean an individual person, company, or other legal entity. No matter who the parties are, contracts almost always contain the following essential elements:

- Parties who are competent to enter into a contract. For example, a mentally disabled person could not enter into a contract. Minors can enter into contracts but can sometimes void them before they reach majority age.
- Mutual agreement by all the parties. In other words, all parties have a meeting of the minds on a specific subject. Each party either promises to perform an act that the party is not legally required to perform or promises to abstain from performing an act that it is legally entitled to perform.
- Details such as the scope of the work or items to be bought/sold, payment terms, and length of the contract.

Why should I use a written contract?

To be enforceable, [some agreements must be in writing](#). The situations in which an agreement must be in writing can differ from state to state but usually include transfers of real estate, sales of goods valued at over \$500, and contracts that require more than a year to perform.

Whether or not it must be in writing, the legal document becomes your proof of what was agreed upon and prevents someone from forgetting or changing the story later. Writing the contract down also helps the parties focus on the essential points and come to a definite

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agreement.

Can and should I write my own business contracts?

Yes, you can [write your own business contracts](#). If there is much at stake or if the matter is complex, you may want to use a lawyer. Your money may be best spent upfront to prevent any potential legal problems rather than battling it out in a lawsuit later.

There are several types of business contracts. Many business owners get an attorney to draft:

- Employment offers
- Non-compete agreements
- Non-disclosure agreements
- Service contracts
- Contracts used for independent contractors

If the amount at stake in your business contract is low or the terms simple, you may opt to use a legal form that both sides understand. There are templates available that might have the information you need.

What laws govern contracts?

Contracts are usually governed by the laws of the state where the agreement was made. The majority of contracts are controlled by the state's [common law](#), a tradition-based but constantly evolving set of laws that are mostly made by judges. Contracts controlled by the common law include:

- Employment agreements
- Leases
- General business agreements

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date
with
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The common law does not control contracts that are primarily for the sale of goods. Such contracts are instead governed by the [Uniform Commercial Code](#) (UCC). The UCC is a standardized collection of guidelines governing the law of commerce. Most states have adopted the UCC in whole or in part.

What is “breaching” a contract?

In the business world, disputes can arise over contracts. One party (or both) may accuse the other of breaking their obligations under the agreement. In legal terms, a party’s failure to fulfill their end of the bargain under a contract is “[breaching](#)” the contract. When a [breach of contract](#) happens, the injured party may:

- Ask to have the contract enforced, or
- Try to recover for the financial harm caused by the alleged breach.

How are contracts enforced?

Lawsuits are the most common way to enforce a business contract. If the amount is below a certain dollar figure, the parties may be able to use “small claims” court to resolve the issue.

[Lawsuits](#) are not the only option. The parties also may agree to have a mediator review a contract dispute. The parties are not bound by a mediator’s decision but may be convinced to avoid a costly court battle by how the mediator rules. The parties can also agree to binding arbitration of a contract dispute. In binding arbitration, a neutral party listens to the arguments from both sides and issues a binding decision.

When attempting to enforce a contract, an individual or

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business should always consider the effect any dispute will have on any long-term business relationship between the parties.

Federal Government Contracts

One type of contract that small business owners, especially entrepreneurs, often overlook is government contracting. The federal government offers many contracting opportunities.

Many small businesses can tap into the resources offered by the [Small Business Administration](#) (SBA). The federal agency supports entrepreneurs and small businesses. Through the SBA's programs, small businesses can explore various types of contracts including sole source contracts, set-asides, and subcontracts. Special considerations are given to businesses that meet certain criteria, such as small disadvantaged businesses, service-disabled veteran-owned small businesses, and women-owned businesses.

The [HUBZone](#) (Historically Underutilized Business Zones) program is an SBA initiative. Small businesses operating full-time in certain areas have preferential access to procurement opportunities. Joining HubZone makes your small business eligible for the program's set-aside contracts. Small business set aside helps small businesses compete with larger businesses for federal contracts. This could lead to substantial contract awards in a fiscal year.

Entrepreneurs entering these contracts might need non-disclosure agreements (NDAs) to safeguard the proprietary details of their business. The SBA can provide guidance to businesses in terms of these

agreements and other partnership legalities.

It's important to note that just like any other business contract, these contracts are also governed by state and federal laws. In case of a breach, the parties involved may go to court, seek mediation, or request binding arbitration. Careful planning and understanding of key terms will help prevent disputes and litigation.

Get Legal Help Understanding Contracts Basics

Contracts are an important part of running a business, so you'll want to make sure the contracts you draft are legally enforceable. The best way to do this is to consult with a business [contracts attorney](#) whenever you need to draft or enter into a contract for your small business. A small business contracts attorney can give you valuable legal advice.

Meeting with a lawyer can help you understand your options and how to best protect your rights. While the SBA may be able to provide guidance, there's no substitute for [an attorney](#) experienced in these complex legal matters.

Was this helpful?

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No 

Next Steps

Contact a qualified attorney to make sure your rights and interests get protected.

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