

How a Handshake Can Destroy Your Business

Advice from Entrepreneur Magazine

We can be our own worst enemies. Please let me assure you, it's not "if" a partner, vendor or customer is going to drag you into a lawsuit -- it's when. I see so many investors and small-business owners lose their business and sometimes everything, including their savings, to a deal gone bad and poor documentation.

For some crazy reason, we think it is more expensive to call a lawyer and have them review a contract for one hour, then risk a multi-thousand-dollar investment to an email chain or a handshake.

In the U.S., a contract can be created with a simple verbal understanding. Not even a handshake is required. Certainly, you can imagine that emails are now considered binding contracts in court and can drag us into unsuspecting relationships and claims.

You may be thinking: "If emails are considered binding, why do I need a contract? I have the emails that state our relationship and understanding. That's all I need." Wrong.

There are several provisions that are critical in a well drafted contract that emails would never include:

- A provision for attorney's fees for the non-breaching party if they win.
- Mediation or binding arbitration clause so you don't have to go to Court if you don't want to.
- A venue or choice of law provision on which state law would be applied in a contract dispute and where the dispute would be litigated.
- Basic terms such as place and time as to the delivery of goods or services, the price for the project if it is only partially completed,

exit strategies and how losses or additional contributions would be handled in a partnership.

Essentially, emails don't include all of the worst case scenario provisions that a lawyer would easily catch in a brief review.

Don't think that by requiring a contract with a vendor, customer or a partner you are being unreasonable, or pessimistic. Instead, you should go into the negotiations or relationship with a different perspective or attitude. Be careful and cautious, yet optimistic and hopeful.

Affinity fraud is one of the greatest types of scams in the U.S. today. This is where a person in a relationship of trust talks another into investing with them and doing so without proper legal documentation or review. They will most certainly rely on emails or a handshake to take advantage of you in the situation.

The person could be a neighbor, friend, boss, church leader and oftentimes -- a family member. They have no plans of paying you back and want to risk your money not theirs.

They will often times use phrases such as:

- "We don't need an attorney...don't you trust me?"
- "We have to hurry or we are going to miss out on this deal."
- " I have done tons of deals just like this. We can use the documents I used before and save the cost of an attorney."

If you are partnering with others, consider the following:

- Create a formal entity to document the relationship and duties of each party.
- Use a quality contract and have whatever documents you sign reviewed by an attorney.
- Double check the investment and the character of your partners, even if you know them personally.

Finally, if you are the one taking the money of others, understand the seriousness of the role you are playing and be respectful and cautious. Encourage legal representation for your investors and partners, while having clear documentation.