

Writing Agreements Guidance

Checklist of Matters to Address in Complete Agreement

1. Identify the pending litigation, where applicable.
2. Identify the parties
 - Where parties to litigation
 - Where organizations or others represented
 - Where there are multiple parties
3. Intended legal effect
 - Legally binding or not
 - Issues where parts of agreements are intended to be binding and parts not
4. Principles; purposes
 - Statements of principles (first)
 - Attitude: going into arrangement with good, positive feeling
 - Not starting over from scratch if future negotiation needed
 - Inform interpretation if enforcement required (compare legislative history)
 - Especially where vagueness, unintended ambiguity
5. Promises and acknowledgement of performance
 - Specific actions promised
 - If payment of money, how is it to be paid; payment plans
 - Payments through court, pre and post judgment
 - Interest
 - If mutual promises, order of performance
 - Time/deadline
 - Performance possibilities that may help parties reach agreements in their interests
 - Information (monitoring)
6. Failure of performance and other contingencies
 - Contingencies if not performed
7. Enforcement; dispute resolution
 - How adequacy of performance to be determined if not performed to promisee's satisfaction
 - Court process, arbitration, mediation, warranties, remedies for violation
 - Sanctioning of self-help

8. Scope of dispute resolved

Scope of what is being settled

9. Disposition of cases pending in court

Dismissal (with or without prejudice)

Judgment for plaintiff or defendant with result

Continuance

Move to inactive status

Payment in litigation, before and after judgment

-Payment through Clerk's office.

Submission of agreement to court

10. Signatures

Back to who are the parties

Authority to sign

The parties' signatures, not ours

Is a comprehensive agreement important?

Mediators' role / responsibility?

Writing / articulation issues

Vagueness ← → ambiguity ← → omission

Language: Write understandably; use parties' language where appropriate.

Greater specificity and concreteness will provide a stronger agreement. E.g., dates and deadlines, what is to be done by whom.

When is vagueness useful, tolerable? (Ambiguity is never useful.)

Balance: creating a sense of equity

Avoiding moral judgment (but not necessarily expression of regret or apology)

Structure and organization

Mechanics:

- Handwritten or printed?

- On the spot, or drafted with opportunity for reflection / review?

- Opportunity for (attorney) review?

- Office laptop with connection to printer

- Drafts prepared in advance

 - Partial, alternative, just the basics

What are the likely reasons for imperfect agreements?