

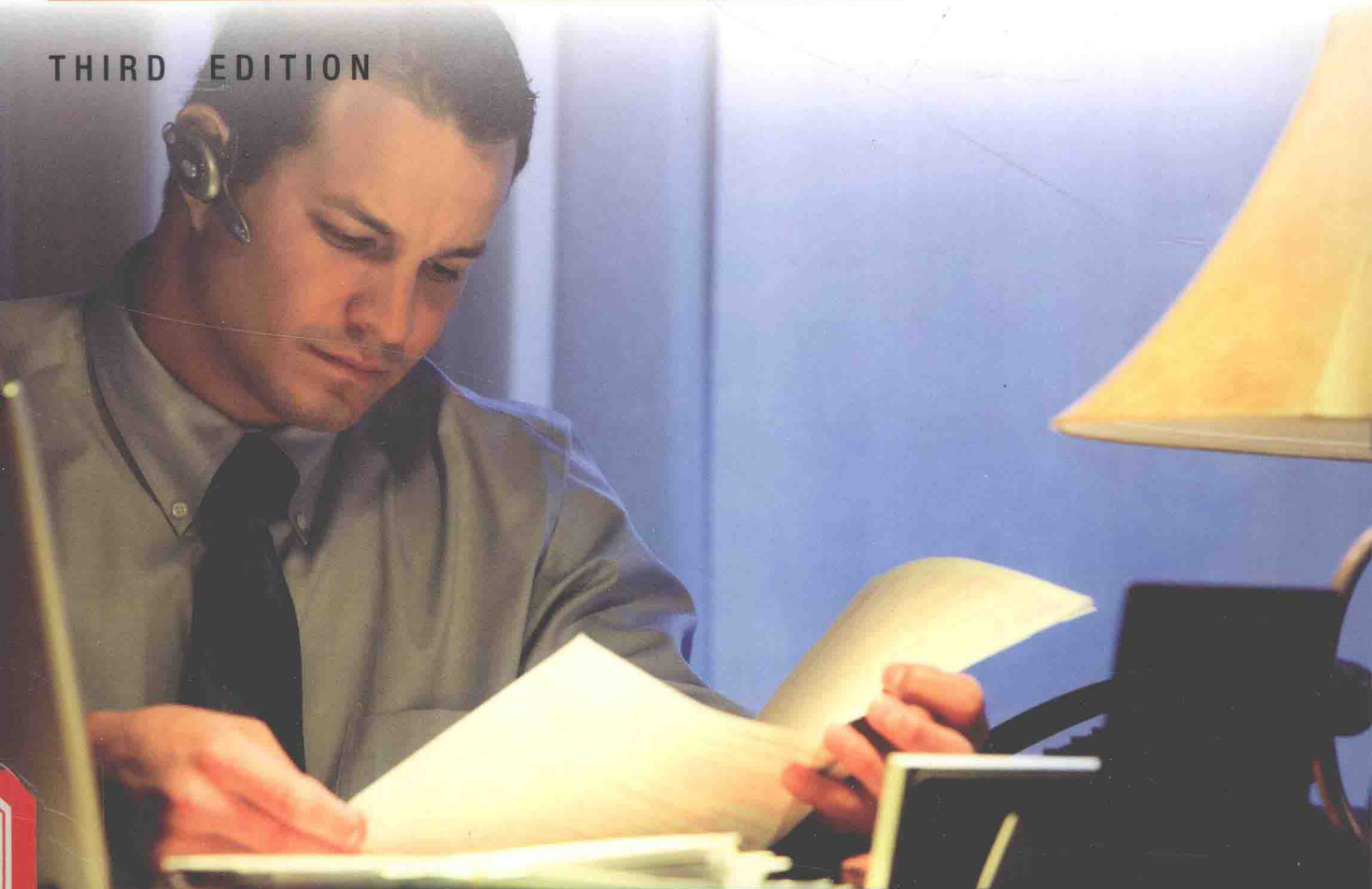
ASPEN COLLEGE SERIES

■ Laurel A. Vietzen

# PRACTICAL CONTRACT LAW FOR PARALEGALS

An Activities-Based Approach

THIRD EDITION



Wolters Kluwer

Law & Business

ASPEN COLLEGE SERIES

# Practical Contract Law for Paralegals



An Activities-Based Approach

**Third Edition**

**Laurel A. Vietzen**

Professor and Instructional Coordinator  
Elgin Community College



**Wolters Kluwer**  
Law & Business

Copyright © 2013 CCH Incorporated.

Published by Wolters Kluwer Law & Business in New York.

Wolters Kluwer Law & Business serves customers worldwide with CCH, Aspen Publishers, and Kluwer Law International products. ([www.wolterskluwerlb.com](http://www.wolterskluwerlb.com))

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at [www.wolterskluwerlb.com](http://www.wolterskluwerlb.com), or a written request may be faxed to our permissions department at 212-771-0803.

To contact Customer Service, e-mail [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.com), call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Wolters Kluwer Law & Business  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-2802-0

### Library of Congress Cataloging-in-Publication Data

Vietzen, Laurel A.

[Understanding, creating, and implementing contracts]

Practical contract law for paralegals : an activities-based approach /

Laurel A. Vietzen, Elgin Community College. — Third edition.

pages cm

Revision of author's Understanding, creating, and implementing contracts.

Includes an index.

ISBN 978-1-4548-2802-0 (alk. paper)—ISBN 1-4548-2802-1 (alk. paper)

1. Contracts—United States. 2. Legal assistants—United States—Handbooks, manuals, etc. I. Title.

KF801.Z9V54 2013

346.7302—dc23

2012049351



# Practical Contract Law for Paralegals



An Activities-Based Approach

## **EDITORIAL ADVISORS**

**Deborah E. Bouchoux, Esq.**  
Georgetown University

**Therese A. Cannon**  
Executive Vice President  
Western Association of Schools and Colleges

**Katherine A. Currier**  
Chair, Department of Paralegal and Legal Studies  
Elms College

**Cathy Kennedy**  
Paralegal Program Director  
Legal Studies Department  
Globe University/Minnesota School of Business

**Susan M. Sullivan**  
Director, Graduate Career Programs  
University of San Diego

**Laurel A. Vietzen**  
Professor and Instructional Coordinator  
Elgin Community College

## About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading global provider of intelligent information and digital solutions for legal and business professionals in key specialty areas, and respected educational resources for professors and law students. Wolters Kluwer Law & Business connects legal and business professionals as well as those in the education market with timely, specialized authoritative content and information-enabled solutions to support success through productivity, accuracy and mobility.

Serving customers worldwide, Wolters Kluwer Law & Business products include those under the Aspen Publishers, CCH, Kluwer Law International, Loislaw, Best Case, ftwilliam.com and MediRegs family of products.

**CCH** products have been a trusted resource since 1913, and are highly regarded resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

**Aspen Publishers** products provide essential information to attorneys, business professionals and law students. Written by preeminent authorities, the product line offers analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

**Kluwer Law International** products provide the global business community with reliable international legal information in English. Legal practitioners, corporate counsel and business executives around the world rely on Kluwer Law journals, looseleaves, books, and electronic products for comprehensive information in many areas of international legal practice.

**Loislaw** is a comprehensive online legal research product providing legal content to law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

**Best Case Solutions** is the leading bankruptcy software product to the bankruptcy industry. It provides software and workflow tools to flawlessly streamline petition preparation and the electronic filing process, while timely incorporating ever-changing court requirements.

**ftwilliam.com** offers employee benefits professionals the highest quality plan documents (retirement, welfare and non-qualified) and government forms (5500/PBGC, 1099 and IRS) software at highly competitive prices.

**MediRegs** products provide integrated health care compliance content and software solutions for professionals in healthcare, higher education and life sciences, including professionals in accounting, law and consulting.

Wolters Kluwer Law & Business, a division of Wolters Kluwer, is headquartered in New York. Wolters Kluwer is a market-leading global information services company focused on professionals.

---

# List of Contracts and Clauses

---

Option to Purchase Land	7
Consignment	7-9
Software Limited Warranty	43
Premarital Agreement Acknowledgments	77
Plea Agreement	77-78
Formal Recital of Consideration	94-95
Confession of Judgment	114
Exculpatory Clause	117
Indemnification	117
Declaration of Self-sufficient Minor	135
Power of Attorney for Property	141-146
Premarital Agreement	160-161
Surety	164-165
Buyer-Broker Agency	184-185
Property Insurance Clause from Mortgage	186-187
Prohibition on Assignment	191
Sublease Clause	191
Boilerplate: singular/plural; masculine/feminine; joint and several liability	192
Mortgage Contingency	201
Assignment/Novation	202
Force Majeure	204
Time Is of the Essence	207
Satisfaction Clause	208
Jury Instructions	222-223



Consequential Damages	226
Liquidated Damages	227
Attorneys, Fees, and Costs	228
Parts of Sample Employment Contract	
Identifications	242
Recitals	243
Consideration	243-244
Defined Terms	245
Body	245
Signatures	246
Merger Clause	248
Sample Construction Contract	252
Severability Clause	268



---

# Preface

---

Since 1989 I have been a teacher in, and coordinator of, an ABA-approved paralegal program. Before that, I was a transactional lawyer in private practice and worked with many excellent paralegals. My experiences in practice, in surveying countless graduates and employers, and in working to obtain initial approval and reapproval by the ABA have taught me the importance of:

- Teaching students to be independent learners so that they can arrive on the job as self-starters
- Integrating ethics into every topic
- Integrating the use of research and communications skills into every topic
- Ensuring that students have adequate computer skills
- Encouraging students to engage with the material so that they retain what they learn
- Teaching state-specific law and procedures

It is not easy to achieve these goals with a traditional textbook. Many such books tend to speak in generalities. Many paralegal teachers are adjuncts and may not have the time or resources to create challenging, practical, state-specific assignments to supplement the texts. They may want to develop alternatives to the lecture format, or they may be trying to offer the class alternative formats: online, hybrid, or even independent study.

This book is intended to go beyond the limitations of the traditional textbook and lecture format to:

- Engage students by making them responsible for finding local law
- Require students to use computer skills to complete assignments
- Include enough hands-on assignments (and guidance for doing those assignments) to ensure that a course offered in an alternative format will be the equivalent of a traditional class
- Include assignments requiring student-led discussion of cases as an alternative to lecture in a classroom setting or to stimulate interaction in an online setting
- Ensure hands-on experience doing legal research, summarizing cases, and finding their own answers so that students can hit the ground running in a law office

- Make students aware of job opportunities and the skills required for those opportunities
- Be adaptable to schools that schedule in semesters, trimesters, or quarters and to schools that integrate contract law into a course that includes other topics

The sample cases are not cases that were highly controversial or that were landmarks in the development of law. Paralegals must understand legal theory, but they are not responsible for developing strategy or arguing cases. The cases were chosen to provide short, easy-to-read vignettes of the real-life practice of law. Many involve lawyers and paralegals as parties. They are intended to give students insights that will help ease the transition from school to the law office.

## Textbook Resources

The companion Web site for *Practical Contract Law for Paralegals: An Activities-Based Approach*, Third Edition, at [http://www.aspenparalegaled.com/vietzen\\_contracts](http://www.aspenparalegaled.com/vietzen_contracts) offers additional resources for students and instructors, including:

- Study aids to help students master the key concepts for this course. Visit the site to access interactive StudyMate exercises such as flash cards, matching, fill-in-the-blank, and crosswords. These activities are also available for download to an iPod or other handheld device.
- Instructor resources to accompany the text
- Links to helpful Web sites and updates

The text comes packaged with four months of prepaid access to Loislaw's online legal research database at <http://www.loislawschool.com>.

Blackboard and eCollege course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these materials are available for download from the companion Web site.

Laurel A. Vietzen

January 2013

---

# Acknowledgments

---

The author gratefully acknowledges permission from the following sources to use excerpts from their works:

The Illinois State Bar Association, 424 South Second Street, Springfield, IL 62701-1779, 800-252-8908, [www.isba.org](http://www.isba.org). ISBA Advisory Opinions on Professional Conduct are prepared as an educational service to members of the ISBA. While the opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation, they do not have the weight of law and should not be relied upon as a substitute for individual legal advice.

The Chicago Daily Law Bulletin®, 415 North State Street, Chicago, IL 60610, 312-644-7800.

Opinion 218 of the D.C. Bar's Legal Ethics Committee (issued June 18, 1991) (Washington, D.C., The District of Columbia Bar). Copyright 2006 by the District of Columbia Bar. Reprinted by permission of the Publisher.

Ethics Committee of the Colorado Bar Association, <http://www.cobar.org>, 1900 Grant Street, Suite 900, Denver, Colorado, 80203, 301-860-1115.

The Alaska Court System, 820 W. 4th Ave., Anchorage, AK 99501.

---

# Note to Students

---

Students have historically demonstrated their mastery of course material by taking tests. Tests remain an important part of assessment. In this course, you will probably take several tests so that you and your instructor can determine how well you have achieved the knowledge-based goals outlined at the beginning of each chapter.

Employers want more. The paralegal field demands graduates who can apply that knowledge and perform assignments with little or no on-the-job training. To demonstrate your ability to do the job, you should assemble a portfolio of work. Your portfolio can be burned to a CD, uploaded to a Web site, or assembled into a folder or binder. The contents will depend on the job you are seeking. In interviewing for a job at a small general practice firm, you might submit a portfolio containing a selection of assignments from all of your classes. If you are looking for a job in contract compliance, you will want to include many of the assignments you do in this class.

The chart at the beginning of each chapter is intended to correlate the skills employers want with the assignments you will do. Knowing that employers value these skills should inspire you to do your best work and, when appropriate, follow your instructor's comments and suggestions to create an improved version for your portfolio. Of course, many of the skills, such as reading and briefing a case, require lots of practice. Assignments calling for those skills are, therefore, repeated in almost every chapter. Choose your best effort for your portfolio.

# Practical Contract Law for Paralegals



An Activities-Based Approach

---

◆ ◆ ◆

---

# Introduction to Law and Preparation for Self-Guided Learning

---

◆ ◆ ◆

---

This text requires that the student do a substantial amount of independent research to find the law applicable in the student's jurisdiction. This chapter provides an overview or refresher course on the concepts necessary to find and analyze law: sources of primary law, use of secondary sources, formulating a search query, reading and analyzing legal authority, and the consequences of bad research.

## *Skills-based learning objectives*

Analyze a legal issue and develop search terms to use to find authority addressing that issue.

Identify ethical issues and find state-specific authority addressing those issues.

Read and brief a judicial decision.

## *How you will demonstrate your ability*

Assignment: Brainstorm contract issues and prepare search queries.

Assignment: Find and discuss state ethical rules applicable to a contract situation.

Assignment: Prepare a case brief.

- 
- A. Sources of Legal Authority
  - B. Steps in Preparing to Research a Legal Issue
  - C. Formulating a Query
  - D. Primary Authority
    - 1. Statutes

- 2. Judicial Decisions
    - a. Trial Courts vs. Appellate Courts
    - b. Reading Cases
    - c. Briefing Cases
  - E. Practical and Ethical Issues
- 

## A. Sources of Legal Authority

### Criminal Law

Prosecuted by a governmental body involving a matter of concern to society as a whole

### Civil Law

Pursued by an individual or group of people, a business, or a governmental body acting in a private capacity; result may be damages or court

### Municipal Law

Local law (as opposed to federal or state law)

### Constitution

One of five sources of legal authority

### Legislation

Supreme source of legal authority; also called code or statute; enacted by an elected body (*e.g.*, Congress)

### Code

Legislation; also called statute

### Statute

Legislation; also called code

### Judicial Decisions

Source of legal authority; also called common law or precedent

### Common Law

Judicial decisions; also called precedent

### Case Law

Judicial decisions

Some students will have taken an introduction to law or a legal research class before using this book. For them, the special features of this book will provide an unusual and very valuable opportunity to practice their research and writing skills. Students who have not taken those classes can learn enough about the basics of research to do well in this class just by reading this chapter. Those students will still have much to learn when they study legal research, but they will become comfortable with simple online research.

Let's start with some basics:

1. Success in law is not about enjoying a good argument; it is about having legal authority to support your arguments.

2. There are two types of law: civil and criminal. A **criminal law** matter is prosecuted by a governmental body, such as the district attorney, and involves a matter of concern to society as a whole, such as burglary or murder. The result may be prison time, probation, even the death penalty, if the defendant is found guilty. A **civil law** matter is pursued by an individual or group of private people, a business entity, or a governmental body acting in a "private" capacity. Breach of contract is an example of a civil matter and, if the defendant is found liable (don't use the word *guilty*!) the result is an award of damages (money) or a court order requiring or prohibiting specific actions.

3. Legal authority comes from five sources. These sources exist in federal and state law, and most exist even in local (**municipal**) law:

- a. **Constitution** (even municipalities have a charter or other governing document);
- b. **Legislation** enacted by an elected body such as Congress, a state legislature, a county board, or city council (also called **code** or **statute**);
- c. **Judicial decisions**, also called **common law**, **case law**, or **precedent**;
- d. **Administrative agency regulations and rulings**, such as the "rules and regs" of the Internal Revenue Service, Federal Trade Commission, your state environmental protection department, or a local planning board. An administrative agency is established to administer a particular law or program (*e.g.*, the National Labor Relations Board was created to administer the National Labor Relations Act); and
- e. **Executive actions**, which are executive orders signed by the President or governor (or even the mayor) and treaties signed by the President and approved by the Senate.

4. Legal problems presented by clients are often unique. Lawyers and paralegals can memorize the basics of an area of law, such as contract law, but often don't know "the answer" to the problem presented. To find that answer they must research those sources of law to find authority to support their theories.

5. When you find authority, you must be able to understand, analyze, and write about it, and also **cite**<sup>1</sup> it so that those who read your work can find your sources.

## B. Steps in Preparing to Research a Legal Issue

Before you start to research a legal problem you will ask yourself several questions:

1. *Is this a matter of state law or federal law?* By the time you finish your paralegal education, you will usually be able to answer this question without help. Most law relevant to contracts comes from state case law or state statutes. This book will guide you through the law of your own state.

2. *What is the desired work product and how much time should be spent on the research?* These are important questions on the job and in other classes. Paralegals often prepare **interoffice memos** (also called **objective memos**) that cite authority to analyze the client's situation without arguing a position; paralegals also work on **adversarial** memos and briefs that argue the client's position. This book will give you clear instructions on the work product.

3. *Does this project require primary authority or secondary authority?* When you are researching a question of law, you will generally be looking for **primary authority**—one of the five sources previously listed. **Secondary authority** is not, itself, the law; it includes textbooks and scholarly articles that help you understand primary law as well as form books, procedure manuals, and “practice” handbooks that help you accomplish a specific task. Many times a legal problem involves finding the right form or procedure, rather than finding the actual law. Secondary authority also includes material to help you find primary authority when you are using books; these “finding tools,” such as digests and encyclopedias, are not necessary when you look for primary law online.

4. *Which of the five sources of law is likely to govern?* Most contract law comes from code (statutes) and case law; there is some relevant administrative law, as discussed in the next chapter. When a statute governs, it is often written in broad terms (*e.g.*, “seller shall have a reasonable time . . .”); you will need to find cases that provide insight on how courts interpret terms such as “reasonable” in specific fact situations. **Statutory interpretation (statutory construction)** is a major function of the courts and a major purpose of legal research.

5. *Where will I do this research?* At some point in your paralegal career you will learn to use books for legal research, but in this class you will probably complete your assignments using a subscription computer-assisted legal research (**CALR**) system. Your school may provide you with access to WestLaw, Lexis, **Loislaw**, or some other system. If you do not have access to a subscription CALR system, you can create an account at <http://www.lexisone.com> that will allow you to search for judicial decisions from all 50 states and the federal system, going back five years, without paying a fee. You can find statutes on a government-sponsored site, without paying a fee.

6. *How should I describe the problem?* As explained below, you must describe your problem in a few words that can be used in an index or to create a query to use in an online search engine.

### Precedent

Judicial decisions; also called common law; past decisions used to justify current decisions

### Administrative Agency

Source of legal authority; administers a particular law or program

### Regulations

Established by administrative agencies

### Executive Actions

Source of legal authority; including orders signed by the President or governor

### Cite

Verb form of citation (*i.e.*, to cite)

### Interoffice Memo

Also called objective memo, analyzes fact situation with citations to sources of law

### Objective Memo

Also called interoffice memo, analyzes fact situation with citations to legal authority

### Adversarial

Argues a position

### Primary Authority

One of the five sources of law

### Secondary Authority

Material such as textbooks and articles that help locate (finding tools) and understand primary law; form books, handbooks, encyclopedias, digests, etc.; not actual law

### Statutory Interpretation

Interpretation of statute's terms; also called statutory construction

### CALR

Computer-assisted legal research system

### Loislaw

CALR subscription bundled with this book

<sup>1</sup>To cite authority is to give its citation, the address at which it can be found in law books or online.





Many people use the traditional questions of journalism—who, what, when, where, why, and how—to arrive at their search terms. Choosing terms is difficult because they have to be broad enough that they are likely to appear in most relevant cases and narrow enough that you won’t have to read 5,000 cases. Your choice of search terms will depend on whether you are using books or CALR. CALR works well with narrow, specific terms, but if you are using a printed index, you need to think in broader terms.

---

**Example**

If you were researching whether prescribing the drug Allegra has ever resulted in a malpractice case, you would find the term “Allegra” too narrow and unlikely to appear in a print index. However, using the word “Allegra” in a computerized search would probably get you to the most relevant material quickly. On the other hand, the term “prescription” would work well in a printed index, but would probably result in a list with hundreds of cases if used in a computerized search.

---

Another challenge in brainstorming a problem is the unique language of the law. As you take classes and read cases, this will become second nature to you, but it may seem foreign at first. For example, a problem involving marital property might be classified under “husband and wife” in a legal index; a problem involving a 17-year-old might fall into the category “infants.”

Here is a sample of how you might “brainstorm” a problem and develop a list of words and phrases that describe the problem:

---

**Example**

Several years ago, Dan Developer knew that he would want to build 50 houses on his vacant property. He wanted to “lock in” the costs, so he approached the local school district and asked whether he could prepay the school impact fees. School impact fees are paid by a developer to help the school district pay the cost of educating students who will enter the local schools because their families have moved into a new development. The district agreed and the parties entered into a contract, under which Dan paid \$65,000. Three years later, when Dan applied for permits to begin construction, he was told that the district had enacted a new fee. According to the district, the fee Dan had paid was for school buildings, and the new fee is for equipment and staff. Dan thought he had protected himself against all school fees and asks your firm to research the issue.

Who	School district, developer
What	Impact fees
Where	Subdivision
When	Prepayment
Why	Vested rights*
How	Contract

---

*\* An example of a term that may be unfamiliar, “vested rights” refers to rights that have become definite entitlements at a point in time.*

Identifying synonyms and similar terms is an essential part of the process. For example, in the chart, you might insert “builder” next to “developer” and “government agency” next to “school district.”

---