

**Warren's
FORMS
of
AGREEMENTS**

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**BUSINESS
FORMS**

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FORMS OF AGREEMENTS

BUSINESS FORMS

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PREFACE

To make the use of these forms easier, at the commencement of each section an introductory comment appears describing the forms contained in the section. This comment gives suggestions for the preparation of various agreements, use, pitfalls to avoid, and precautions to be taken in drafting the required instruments. The introductory remarks are to a large extent based on the experience of the editor, the statutes of the various states and the reported decisions. These latter, for lack of space, are only occasionally cited or discussed.

In most of the sections, there are check lists setting forth the general requirements of agreements of the character covered. They list the provisions that are usually inserted in such contracts. These check lists can be used not only to suggest the clauses that should be inserted but to check an agreement prepared for the other party to see if there are any provisions not contained in it that should be inserted.

Many of the forms have notes appended to them that in most instances give cross-references to court decisions and legal reference books. In some cases, these notes contain cautions with regard to the use of particular forms.

The forms themselves have been obtained from reported decisions, from forms in actual use by business enterprises, from forms to which the editor has had access, and from other similar sources. No claim is made that they are the last word. They should prove of practical value and will at least suggest the manner in which agreements of the character covered should be drafted.

THE PUBLISHER

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SECTION 1

Purpose and Plan of Work

The general purpose of this work is to supply forms of contracts that are used in ordinary business transactions. Such subjects are considered as organization of the firm, obtaining business property, employment of employees, establishing agencies, advertising goods, sales of goods, relationship of the business to others as debtor or creditor, credit and financing, hire and storage of property and similar bailments, protection of the parties by guaranty, warranty and indemnity, and obtaining and using patents, copyrights, trade-marks and trade names.

Not even many volumes could furnish forms for all the various combinations of activities in which a business may engage. Almost every contract has special features. However, very largely the requirements of such contracts fit into more or less well-recognized patterns and clauses, in varying form but expressing substantially the same things. It is, therefore, the purpose of this work to supply those forms that are generally used. With them, the attorney can readily prepare any contract making such changes and variations in the forms supplied as may be required by the particular matter.

Today the tendency is toward "streamlined forms." The rather involved and complicated language that was formerly in use has been simplified. An effort made to express the same thoughts in fewer, and more precise words. Archaic language and obsolete

word usage have been avoided. So far as possible the forms are expressed in short, terse language that will convey the meaning which the parties to the agreement intended. That language so far as possible is the language which the person engaged in that particular business will be accustomed to use.

On the other hand, where a more involved form of expression is required in order to set forth the exact meaning of the parties, it is used. Where this is done, so far as possible language that has been interpreted by the courts is employed.

In order to save space and to insert in the volume as many variations of the different form of contract as possible, the general practice in this work is first to give in each section a general, or long, form. In some instances it may be necessary to supply more than one of such forms where different methods of drafting the contract have been employed in the past. That general form sets forth very largely the minimum requirements for a contract of that character. It ordinarily is simple and may not always satisfy the requirements of the parties. In addition to the general form additional clauses are provided to cover other needs of the parties. These can be added to the general form or substituted for provisions of it. By combining the general form with the specific clauses, almost any situation can be covered.

At the commencement of each section is an introductory comment, generally discussing the requirements of a contract of the character at issue. It contains practical suggestions for the attorney and indicates what he or she should look out for in the preparation of the contract.

In addition to this, in all sections where the contract would be at all involved is a checklist or a detailed list of contents. These guides set forth the provisions that are frequently inserted in contracts of that character. By going through that checklist, it will be easy for the parties to the agreement to determine what they want their contract to contain.

In connection with the checklist it should be noted that after the various items of each are given form numbers. These indicate what forms cover the provisions listed in the check list. Where the

(Rel.18-9/83 Pub.770)

reference is to a general form, the provision will be found somewhere in it.

Finally in notes to the forms are given suggestions for their use, cautions to be observed, and cross-references to special texts where the law on the particular subject covered by the form is discussed are provided. Consult both the Index and the Supplemental Forms Index in Volume 3 to locate specific forms and clauses.

SECTION 2

Commencement of Agreement

SYNOPSIS

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INTRODUCTION

It is customary to commence an agreement in a more or less formal manner. The first paragraph will ordinarily indicate in some manner that the instrument is a contract. Further it will set forth the names of the parties, designating them in some manner so that they can be distinguished one from the other in subsequent provisions of the agreement. It is also customary to give their addresses. In some forms of contract, under the statutes of some states, the address is essential. For that reason, it is usually wise to insert it. Giving the address has the further advantage that in case persons not parties to the agreement are affected by it, they may be able to locate those who entered into the agreement. It also serves to distinguish the party from another of a similar name.

It was customary in the early days to characterize the parties as the "party of the first part," "party of the second

part” and where necessary, parties of other parts. The tendency today is to avoid this wherever possible. The preferred usage is to designate the parties as “seller” and “purchaser” or “employer” and “employee” or by other titles of that character. Where such words can be used to designate the parties, they are preferable to the old form. On the other hand, if there are no single word that correctly describes the parties, then the earlier designation can and, in most cases, should be used. The only alternative is to repeat the names of the parties wherever this is essential.

Many business men prefer to have agreements written in letter form. The most usual form is a letter from one firm to another setting forth all terms and conditions and providing that the addressee signify acceptance by signing two copies of the letter. The informal appearance of such letters is often an invitation to careless draftsmanship. It is important that these letters set forth the obligations of the parties as clearly as the more formal looking contract. There is also a tendency in such agreements to use first and second person pronouns in referring to the parties, the addressor being referred to in the first person and the addressee in the second. Needless to say, it is important that these pronouns be used correctly.

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6. Commencement Sometimes Used in Special Cases (Form No. 2.06)
7. Commencement of Letter of Agreement (Form No. 2.07)

SPECIFIC CLAUSES

Form No. 2.01**COMMENCEMENT OF AGREEMENT¹**

MEMORANDUM OF AGREEMENT (*or “Agreement” or “Articles of agreement” or “This agreement” or some similar expression*) made (and entered into—*or some similar expression, adding where essential* “in duplicate” or “in triplicate” or *whatever the facts require*) this day of, 19.., (by and) between (*name of one party*) residing at No. Street (*the street address is required by statute in case of certain contracts in some of the states; it is always wise to use it*) in the City (*or other subdivision*) of, State of (*or just the name of the city and state*), hereinafter called the (*such word as will describe the party; where this is impossible, say* “party of the first part”), and residing at No. Street in the City of, State of (*or as previously suggested for the other party*), hereinafter called (*such word as will describe him or, where necessary, “party of the second part”—if there are more than two parties, continue in the same manner; where there are three or more, it is usually safer to use “party of the first part, second part”, etc., to designate them unless there are apt terms that will describe them accurately*), WITNESSETH:

¹ Each general form of contract hereafter given in this volume has that form of commencement that seems most appropriate to an agreement of that character.

Form No. 2.02**COMMENCEMENT WHERE ONE PARTY IS
A CORPORATION**

(*This will be the same as in Form No. 2.01, supra, except that there will be added after the corporate name, which should be*

correctly and fully stated, the following:) a corporation organized and existing (*or created*) under the laws of the State of, having a principal place of business at (*state*).

Form No. 2.03**COMMENCEMENT WHERE ONE OF THE PARTIES IS
A PARTNERSHIP**

(This will be the same as in Form No. 2.01, supra, except that the names and addresses of each partner will be stated and then the following will be added:) co-partners doing business under the firm name and style of (*Give partnership name*).

Form No. 2.04**COMMENCEMENT WHERE ONE PARTY IS ACTING
IN A REPRESENTATIVE CAPACITY AND NOT
INDIVIDUALLY**

(This will be the same as in Form No. 2.01, supra, except that after the name of the party there will be added words indicating that he is acting in a representative capacity as, for example:) as executor of the last will and testament of, deceased (*or other accurate statement of the capacity in which the party is executing the agreement.*)

Form No. 2.05**COMMENCEMENT OF CONTRACT MADE BY AGENT**

(This will be the same as in Form No. 2.01, supra. As a matter of fact, it is not essential in most cases that the name of the agent be inserted in the commencement at all. The execution by him in that capacity is sufficient. However, it is customary to add words such as those hereafter indicated:) by and between (*name of agent*) of (*residence of agent*) as the lawful attorney in fact (*or agent*) of, residing at (*state residence of party*).

(Rel.18-9/83 Pub.770)