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Lawyer and Notary Public

Since 1975

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CONTRACTS

Introduction: I have written this report based on questions often asked of me while in private law practice in British Columbia and Alberta, Canada, since 1975. Although my first hand experience is limited to those jurisdictions, wherever possible I have written in non-legal terms and with general principles in mind.

Discussion to agreement to oral contract to written contract - a progression. Here is an example: *You get together with a friend who owns a ski area and you talk about skiing. That's a discussion. You then decide that the two of you will meet next weekend for a day on the slopes. That's an agreement. You then give a deposit to your friend for a new pair of skis he promises to get you. That's an oral contract. You then sign a document with your friend in which you and your friend agree that you will buy the ski area. That's a written contract.*

So when does the law get involved? If your discussion gets a little heated - don't call your lawyer. If your friend breaks his agreement and doesn't meet you, you are not going to court (you are going skiing by yourself). But if your friend doesn't get those new skis for you, or doesn't sell you the ski area, the law is interested. The law is interested in contracts (oral or written) not discussions and agreements.

By the way, I know that "agreement" is often used to mean something the law would enforce, but that usage is a little loose. Not very impressive around the court house.

So what does it take to make the transition from discussion and agreement to oral and written contracts? That takes us into lots of boring topics, like consideration, offer, acceptance, and one of my favourites, "invitations to treat". Sounds like a party or something. Stay away from all of this. All you need to know is where you're at. Do you have a contract or not? Ask us, and we will tell you if you have a contract, or we will show you how to create one.

If contracts can be oral or written, why would you want to make the transition to a written contract? There are three reasons.

First, the law requires some contracts to be in writing. For example, in some jurisdictions, contracts with respect to an interest in land are in this category.

Second, the law needs to know what to enforce. Having a contract in writing solves that problem. It's called evidence, and written is better than oral.

And third - the biggy - in the process of putting a contract into writing, misunderstandings are identified and worked out before they become a problem. This is why oral contracts get into so much trouble - they never go through this step. Certainly some situations in court are a good guy vs bad guy, honest vs dishonest, but there are as many situations (and maybe more) that involve two honest people who thought they had it all figured out, but in truth misunderstood each other. They simply passed in the night and didn't know it. One person thought they said \$10 and the other person thought they heard \$11, and they don't know of their near miss until it comes time for payment. It happens all the time, not because of trickery or dishonesty, but only because of the perils of oral communication. Although the risk of disagreement and misunderstanding will never be eliminated, risk is reduced dramatically by putting contracts into writing.

You wouldn't expect to read anything "legal" without some kind of caution - so here it is: This report is general information only and not to be relied upon without legal advice. For legal advice, call us.

I hope this helped answer your questions.

For more answers to common legal questions, please visit our website: www.salmonarmlaw.com

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