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## CONTRACTS 101

November 8, 2016



# Agenda

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1. Level – Set
2. Contract Types
3. What's Not a Contract
4. Term Sheets
5. Contract Specifics
6. Conclusion

# Level - Set

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1.Op Co/Prop Co Structure

2.What Lawyers think about

3.Leisure Care is Manager, Outward Facing

# Contract Types

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1. Service

2. Goods

3. License

# What's Not a Contract

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1. MOUs

2. Term Sheets/LOIs

3. Gifts

# Term Sheets

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1. Tool to build consensus
2. Necessary for complex deals
3. Flow of funds
4. Timing
5. Diligence
6. Type of deal
7. Documentation
8. Enforceable terms

# Contract Specifics

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1. Something for Something/an Exchange

2. Tells a story – recitals

# Contract Formation

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1. Upon execution of written document
2. Upon exchange of consideration
3. Authority/Risk



# Consideration

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1. Money

2. Money's worth

3. When to have attorney review

- \$
- Creation of liability
- Extended term
- Deviates from form (confy's)
- Personal obligation/Guarantee
- Remedies/Liquidated Damages

# Definitions

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1. Most important from a drafting perspective

2. Easy to make mistakes

# Money Section

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1. Lump sum or ongoing fee
2. Ties to definitions, percentage of Rev. or NOI.
3. Punted to schedule; need to focus on schedule

# Reps and Warranties

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1. Promises of a past or current state or condition → polaroid

# Covenants

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## 1. Promises as to a future undertaking

# Term/Termination

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1. Termination based on time

2. Termination based on condition

- Sale of underlying fee

3. Beware of “Evergreen”

# Insurance

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1. Fraught with danger

2. Have broker review

# Indemnification

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1. Negligence/Gross Negligence/Willful Misconduct
2. Written indemnities between commercial parties will be enforced
3. Think like a Kindergartner



# Assignability

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1. Contracts generally assignable unless prohibited

2. Direct/Indirect Assignment

# Miscellaneous

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- 1.Choice of Law
- 2.Venue
- 3.Counterparts
- 4.Electronic signatures
- 5.Successors
- 6.Litigators love this area

# Schedules and Attachments

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1. Business terms

2. Deliverables/Scope

3. Neglected

# Conclusion

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1. Read it like a 5<sup>th</sup> grader
2. Explain it to your 5<sup>th</sup> grader
3. Don't sign something you don't understand; make your advisor explain it; read to confirm
4. Resources



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Disposition	Disposition	Acquisition	Acquisition	Acquisition	Acquisition	Acquisition	Acquisition	Financing	Acquisition	Acquisition	Financing	Financing	Financing
Acquisition	Investment	Acquisition	Acquisition	Acquisitions	Financing	Financing	Acquisition	Acquisition	Disposition	Acquisition	Financing	Sale	Joint Venture
Financing	Acquisition	Acquisition	Acquisition	Financing	Acquisition	Acquisition	Acquisition	Acquisition	Acquisition	Joint Venture	Acquisition	Acquisition	Acquisition
Investment	Acquisition	Financing	Disposition	Investment	Asset Sales	Acquisition	Strategic Investments	Strategic Alliance	Asset Sale	Investment	Financing	Financing	Financing
Acquisition	Financing	Financing	Corporate Transaction	Disposition	Disposition	Financing	Strategic Alliance	Financing	Financing	Disposition	Acquisition	Financing	Financing
Acquisition	Disposition	Investment	Financing	Investment	Acquisition	Acquisition	Strategic Alliance	Strategic Alliance	Joint Venture	Financing	Acquisition	Sale	Financing
Acquisition	Acquisition	Acquisition	Acquisition	Financing	Financing	Acquisition	Financing	Financing	Acquisition	Financing	Financing	Tax Reorganization	Disposition
Disposition	Acquisition	Acquisition	Acquisition	Disposition	Acquisition	Financing	<p>We are proud to have helped these and other wonderful clients succeed in 2015.</p> <p><b>DWT.COM/MERGERSACQUISITIONS</b></p> <p>Anchorage   Bellevue   Los Angeles   New York   Portland            San Francisco   Seattle   Shanghai   Washington, D.C.</p>						



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- We are recognized for excellence in a broad number of areas, with 89 of our attorneys across 31 practice areas cited as leaders in their fields in the most recent Chambers USA guide.
- Our goal is to resolve your legal concerns effectively and efficiently. That means low leverage, lean staffing, the attention of experienced partners, and strategic decision-making that puts your definition of a "win" front and center.
- The depth and strength we offer in the core legal functions of **litigation, business transactions, intellectual property, real estate, and employment** are supplemented with nationally recognized teams serving the **communications, media, financial services, health care, energy, technology, and hospitality** industries. Our breadth of experience allows us to provide a unified, one-stop solution for the full scope of legal issues faced by our clients, as well as focused responses to unique challenges.