



Briefings

TN TOP 5

Essentials For a Sound Employment Contract

Whether hiring or promoting an employee, it is critical that the person's employment contract defines all aspects of their employment with you. Here are five items every employment contract should cover:

Job Description — The job description should be more than just a list of duties. It should include the new hire's title, department, who they report to and their key areas of responsibility. It should outline the attributes, skills and education needed to complete the tasks of the position. State when and why the job description could change and who has the power to make those changes. You also need to convey to the new hire how their success will be measured.

Compensation — The contract should clearly define how the new hire is getting paid; whether it is a base salary, commission structure or a combination with bonuses and possible stock options. Insurance benefits should be outlined. Also outline if you will pay for training or further education and what stipulations are involved. Don't forget to clarify vacation time, overtime pay and how expenses are reimbursed.

Length of Employment — "Employment at Will" means you can fire

someone for any reason (except illegal) without cause and they may in turn leave your place of employment at any time, without reason. If the contract stipulates the employee will not be fired without cause, define what determines cause and who makes that decision. Also clarify if the employee becomes disabled or called to duty, how that will impact their employment. If you require a written notice upon departure, inform the employee how soon in advance they should notify you.

Resolution of Disputes — If there are disputes that arise, the contract should spell out how they will be resolved – arbitration, mediation or litigation.

State of Governance — If your company headquarters in a different state and those are the employment laws you follow, it is prudent to inform the new hire that they are not covered by Minnesota State employment laws.

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Mark Ohnstad contributed to this article. Mark heads the litigation area and practices in General Civil Litigation, Insurance Litigation, International Litigation, Personal Injury and Family Law.
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Pitfalls and Precautions for Home Sellers and Buyers

During this volatile housing market, it is necessary to be vigilant in your real estate transactions. It is not a time for sellers to take any offer presented and not a time for buyers to let their guard down because of low prices. Having your attorney help you through the process and paying special attention to the suggestions below can eliminate obstacles and pitfalls that may otherwise occur.

Waivers, Inspection Reports and Disclosures

Minnesota law (MN state statute 513.55) requires that a seller disclose to a buyer, in writing, any material facts that may affect a buyer's use or enjoyment of the property. Sellers typically complete a Seller's Property Disclosure Form, which can accomplish this legal requirement. Facts must be disclosed in good faith to the best of the seller's knowledge, i.e., water damage in the basement after a heavy rain, a leaking roof, or a train whistle that blows in the middle of the night 20 yards from the home. The key phrase is "to the best of seller's knowledge" and if a seller was renting or inherited the house, they may not have "knowledge" of critical information. In this case, the seller has two alternative options. The first is for the buyer and seller to enter a written waiver of disclosure that can reduce a seller's liability in this situation, but this can adversely affect the marketability of the house. The second alternative is a qualified third-party inspection provided by the seller, supplemented with any contradictory information known by the seller. Before listing or buying a house, it is best to discuss the options with your attorney as it relates to waivers, inspection reports and disclosures. Knowing what you're buying and knowing your responsibilities as a seller can take a lot of risk out of the transaction.

Negotiating and Signing

Have your attorney read any agreement or contract before you sign it. There is rarely any negotiating opportunity once the contract is signed. Standard contracts prepared by your agent might not cover everything you want and if things are added to the contract quickly and without careful consideration, they may not accomplish what you want, or may have unintended

consequences. If you are a seller, talk to your attorney early in the listing process to discuss issues you want to negotiate in the outline of the agreement; if you are a buyer, have your attorney review the contract before you are bound to the purchase. You can also ask your attorney how to write in a provision that will allow the purchase agreement to be signed, but without being binding until it has been reviewed.

Well Thought Out Contingencies

Sellers need to fully understand the contingencies in the agreement and the impact they could have on the purchase of a house. If the purchase agreement is contingent on financing, when will the buyers know if they are truly approved? If you are a seller who has already bought a new house, having a buyer back out at the last minute could be devastating. If the purchase agreement is not structured correctly, there is little you can do. Check with your attorney so you know exactly what the contingencies mean and the impact they have on the purchase. Only sign an agreement with contingencies that are clearly defined and you can live with.

Earnest Money

Earnest money is used to show commitment from the buyer. Typically, 1 percent of the purchase price of the house is a fair amount for earnest money. If you set it too low and you've taken your house off the market, scheduled a moving truck and packed your house, a \$500 check is not going to come close to covering your expenses if the purchase falls through. Earnest money is used to protect you. Your attorney can help you secure an amount that is enough to cover your expenses should the deal fall through.

Give the real estate attorneys at Thomsen & Nybeck a call today to discuss how we can prepare you for a seamless, efficient and cost effective real estate transaction.

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ARBITRATE OR LITIGATE?

What to Consider When Dealing With a Real Estate Dispute

When it comes to buying or selling your home, you have the option of signing an Arbitration Agreement. By signing an Arbitration Agreement, you give up your right to take a dispute to court and agree to settle all matters through binding arbitration. Many people are uncertain what they should do. There isn't a right or wrong answer. It simply comes down to your personal preferences and your comfort level with each option. The following are some of the things you may want to consider when faced with this decision.

Arbitration is a voluntary process. All parties — buyer, seller and realtors representing the parties — must have signed the Arbitration Agreement in order for arbitration to be the required means of resolution. If anyone involved in the transaction did not sign the Arbitration Agreement, the agreement is not enforceable and a party can instead bring the case in district court.

The arbitration process is coordinated through a private dispute resolution system and the matters are generally not of public record. The proceeding typically takes place in the home of the person who filed the dispute and is normally finished in one day. Since the process is more streamlined than litigation, it is not uncommon for a party that is being sued to have limited information about the claims being brought against him prior to the arbitration hearing. As a result, a party may hear testimony or learn about a piece of evidence for the first time at the hearing.

In contrast, a case that is litigated in court is public record and the facts of the case are accessible in the public domain. Despite the litigation process being less

streamlined, the litigants have the ability to serve written discovery and conduct depositions. In addition, the parties are able to bring motions, which allow the court to rule on various aspects of the case prior to trial. These procedures allow parties to learn about the anticipated testimony and evidence for a case in advance rather than on the day of trial.

In litigation, a judge is assigned and you may have the right to a jury. For arbitration, an arbitrator is selected by the parties from a list of proposed arbitrators. Although the parties have some choice in the arbitrator, there is no guarantee the arbitrator will have any legal education or experience. Consequently, the process and the outcome can vary greatly depending on the arbitrator. Since an arbitration award is binding, a party has a very limited right to appeal an arbitrator's decision whereas litigation provides a broader range of reasons for which an appeal can be filed. With very few exceptions, an arbitration decision will not be changed on appeal.

Regardless of whether you choose arbitration or litigation, there are statutes of limitations for bringing claims related to real estate, as well as possible limitations within the arbitration agreement. If a claim is not brought within the specified period of time, there is a risk the claim will be lost. Therefore, it is critical to act on your claim as soon as possible.

It is important to take the time to think through your choices and know what the choice could mean long term. Everybody hopes they will never have a need for arbitration or litigation, but if you do, you want to feel as though you have picked the best way to resolve your dispute. For further questions about real estate arbitration or litigation-related matters, contact us at (952) 835-7000.

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There's always a lot going on with our attorneys at Thomsen & Nybeck. Here's what they've been up to lately.

Nathan Knoernschild was hired as an associate attorney. Nathan is a 2007 graduate of the University of Iowa College of Law. He will be working primarily in the area of litigation.



Chris Renz (1) was named a Rising Star by Minnesota Law & Politics. Chris was also nominated for the Wall Street Journal's LawBlog Lawyer of the Year contest and received honorable mention.



Natalie Walz (2) authored the article "The ABC's of Governing Documents," about condo and townhome associations. The article appeared in the CIC Midwest News, the official newsletter of CIC Midwest, a division of the Minnesota Multi Housing Association.



Gretchen Schellhas (3) and **Deb Newel (4)** attended the certified civil arbitration training, allowing them to become qualified neutral arbitrators. Gretchen is also a qualified neutral mediator.



Deb Newel (4) is currently an adjunct business practicum professor at William Mitchell College of Law.



Ryan Wood (5) authored materials for and presented at the recent "DWI Deskbook" seminar, a continuing education class attended by many DWI practitioners.

Jack Bouquet was elected as chairman of the Community Association Institute's Legislative Action Committee and co-chair of the Legislative Committee of CIC-Midwest. Jack also attended the recent Law Seminar conducted by the College of Community Association Lawyers covering recent developments and trends including the proposed amendment to the Uniform Common Interest Ownership Act.

ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen & Nybeck, P.A.

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PRACTICE AREAS

Thomsen & Nybeck has in-depth experience and knowledge in the following practice areas. Call us today at (952) 835-7000 if you have a matter we can help with.

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Litigation
Personal Injury
Real Estate
Taxation
Townhome &
Condominium Law

“Large enough to be effective.
Small enough to care.”