

LEGAL CONSULTANTS TO THE MEETINGS AND EXHIBITION INDUSTRY

WHAT DOES THAT MEAN?

Definitions of Legal Terms Typically Found in Meetings and Exhibition Industry Contracts.

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This is a glossary of legal terms and phrases commonly found in hotel, convention center and vendor/supplier agreements.

These terms and definitions are only being offered as a reference guide to help you better understand the 'legal' terms and boilerplate language often found in meeting and exhibition related agreements. This glossary is not intended to be an exhaustive list of all the legal terminology used industry related agreements, nor should they be construed as being the only or definitive definitions for these terms, since each term may have multiple meanings or definitions, depending on the context in which it is used.

Additional insured

The "named insured" is usually the purchaser or the owner of the insurance policy, while the "additional insured" or an "insured" is one who is not specifically identified by name in the policy, but has the status of an insured under the named insured's policy. An additional insured's coverage may be limited by the terms of the insurance policy.

Americans with Disabilities Act

The Americans with Disabilities Act ("ADA") is a federal law that primarily states that no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

Arbitration

Arbitration is a process that is selected as an alternative to judicial litigation. Voluntary arbitration is by mutual and free consent of the parties to take and abide by the judgment of selected person in some disputed matter, instead of carrying it to established courts of justice. It is intended to avoid the formalities, delay, and expenses of ordinary litigation. The arbitrator has the power to render a binding decision. Agreements to arbitrate have been declared to be valid and fully enforceable by statute.

Assignment

The transfer by a party of all of its rights to some type of property, such as rights in a lease, or intellectual property. Assignment of a lease occurs where lessee transfers entire unexpired remainder of term created by lease as distinguished from a sublease which transfers only part of remainder.

Authority

Right to exercise powers.

Apparent authority: Such authority as the principal knowingly or negligently permits the agent to assume, or which he holds the agent out as having such authority.

Express authority: Authority delegated to agent by words which expressly authorize him to do a delegable act.

Acceptance

The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act.

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Breach

Exists where one party to a contract/lease fails to carry out a term, promise, or condition of the contract/lease.

Cancellation

Occurs when either party puts an end to the contract/lease for breach by the other. Its effect is the same as that of a "termination" except that the canceling party also retains any remedy for breach of the whole contract/lease or any unperformed balance.

Choice of Law

A contractual provision where the parties designate which state's law will govern disputes arising out of their agreement.

Competent

Possessing the requisite physical, mental, natural or legal qualifications.

Condition

A future and uncertain event upon the happening of which is made to depend on the existence of an obligation, or that which subordinates the existence of liability under a contract/lease to a certain future event.

Consideration

The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract/lease.

Contract

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

Its essential elements are: competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

Covenant

In its broadest usage, a covenant means any agreement or contract.

Cure

To use a contractual or judicial procedure to address and eliminate, correct or make acceptable a defective performance or delivery or default and restore the aggrieved or non-defaulting party to its position before the default.

Damages

Money compensation sought or awarded as a remedy for a breach of contract/lease or for tortious acts.

Types of damages:

Compensatory damages. Compensatory damages compensate the injured party for the injury sustained, and nothing more; simply making good or replacing the loss caused by the wrong or injury. The rationale behind compensatory damages is to restore the injured party to the position he or she was in prior to the injury.

Actual damages. Consist of both general and special damages. General damages are the natural, necessary, and usual result of a wrongful act or occurrence. Special damages are those "which are the natural, but not the necessary and inevitable result of the wrongful act."

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Consequential damages. Damage, loss or injury that does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act.

Foreseeable damages. Loss that the party in breach had reason to know of when the contract/lease was made.

Incidental damages. Damages, resulting from a seller's breach of contract/lease, including any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

Liquidated damages. Damages for breach by either party may be defined in a contract/lease or an agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach. Usually the parties define liquidated damages because of the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

Default

The omission or failure to perform a legal or contractual duty or to discharge an obligation.

Force Majeure - Excused Non-performance

Commonly referred to as an "Act of God". This type of clause protects the parties in the event that a part of the contract/lease cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.

Hold harmless agreement

A clause usually found in leases in which one party agrees to hold the other without responsibility for damage or other liability arising out of the lease.

Implied Covenant Of Good Faith And Fair Dealing

A common theory of the law of contracts, based on the promise that the parties to a contract will act in good faith and deal fairly with each other without breaking their promise, through the use of questions or suspicious means to keep from undertaking their duties and obligations, or denying what the other party obviously understood as the terms of the agreement.

Indemnify

To compensate or give security for the reimbursement of a person in case of an anticipated loss falling upon or a loss already incurred by him.

Jurisdiction

It is within the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.

Lease

Agreement under which owner gives up possession and use of his property for valuable consideration and for a definite term. At the end of that term, the owner has absolute right to retake, control and use the property. The person who conveys is the "lessor," and the person to whom the property is conveyed is the "lessee".

Liability

Normally, the term is broadly interpreted. It is the condition of being responsible for a possible or actual loss, penalty, evil, expense, or burden; every kind of legal obligation, responsibility, or duty.

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Types of liability:

Joint and several liability: The person who has been harmed can sue and recover from both wrongdoers or from either one of them individually. However, if he collects from both of them, he can not receive double compensation.

Joint liability: Liability for which more than one person is responsible.

Primary liability: A liability for which a person is directly responsible in contrast to one which is contingent or secondary.

Lien

A qualified legal hold or claim of one person on the specific property of another as security for a debt or charge or for performance of some act.

First Lien. The debt recorded first which has priority over all other debts. A perfected lien which takes priority or precedence over all other liens or encumbrances for the same piece of property, and which must be satisfied before such other charges are entitled to participate in the proceeds of its sale.

Litigation

A law suit. A legal action brought in a court of law for the purpose of enforcing a right or seeking a remedy.

Mitigation

To make less severe; to alleviate or minimize the extent of the damage caused.

Mitigation of damages. Although the law of damages contemplates full and just compensation for negligently inflicted injuries, the law likewise prescribes, as a reciprocal principle, that the party at fault (tortfeasor) should not sustain liability for those damages not attributable to the injury producing event. Consequently, a plaintiff may not recover damages for the effects of an injury which reasonably could have been avoided or substantially ameliorated. The need to mitigate damages arises only after the injury producing event has occurred.

Mutuality

The principle that neither party is bound unless both are bound. "Mutuality of contract" means that obligation rests on each party to do or permit the doing of something in consideration of the other party's act or promise.

Notice

Notice is information conveyed to another party concerning a fact, communicated by an authorized person, or derived by him from a proper source. Actual notice occurs when the person sought to be affected by it knows of the existence of the particular fact in question.

Obligation

Duty of performance under the terms of the contract/lease, and the remedy and legal means to carry it into effect.

Offer

An offer is something that is presented for acceptance or rejection via a contractual obligation by a party to another party.

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Penalties

The purpose of a penalty is to secure performance, while the purpose of stipulating liquidated damages is to fix the amount to be paid instead of performance. Courts ordinarily find that penalty provisions in contracts are unenforceable.

Reasonable

Not immoderate or excessive under the circumstances, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.

Severability Clause

A clause commonly found in contracts/leases which provides that in the event that one or more provisions are declared void, the remainder of the contract/lease remains valid and in force.

Subrogation

One's payment or assumption of an obligation for which another is primarily liable. Usually used in the context of insurance in that an insurance company will pay a claim and then sue (or subrogate) to obtain repayment from the person or entity that caused the damage.

Termination

With respect to a lease or contract, it refers to an ending, usually before the end of the pre-determined period of the lease or contract. Termination may be by mutual agreement or may be by exercise of a remedy by one party due to the default of the other party.

Term

In a contract/lease or instrument, it is the conditions, obligations, rights, price, etc., or the amount of time the contract/lease is to be carried out.

Waiver

The intentional or voluntary relinquishment of a known right.

The Law Office of Mark Roysner specializes in all matter related to the meetings and exhibition industry. Questions can be e-mailed to Mark Roysner at roysner@roysnerlaw.com.

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