

Clarity Awards for 1994 and Summary of Real Estate and Insurance Papers

By the Plain English Committee

In December 1993 we reviewed real estate papers and selected two examples for Clarity Awards. In February 1994 we reviewed insurance papers and selected another Clarity Award. These three awards, and two others, were officially announced on Law Day, May 1, 1994. (See Figure 1—Photo of presentation of Clarity Awards, with inset of photo of Bruce Laidlaw, who was not present at the presentation.)

Mortgage Foreclosure by Advertisement

Joseph Backus, an attorney in East Lansing, wrote a plain-English mortgage foreclosure by advertisement that we printed in the February 1990 Plain Language column (69 Mich B J 179). According to Mr. Backus:

We lawyers have a duty to the bar, the public, our colleagues and, most importantly, our clients to communicate in language they can understand. This duty extends to all our writings: letters, contracts, pleadings and briefs, and real estate papers. How can we expect our clients to follow our advice, to conform to the terms of the contracts we prepare for them, or to swear to the accuracy of our affidavits unless they comprehend those documents?

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

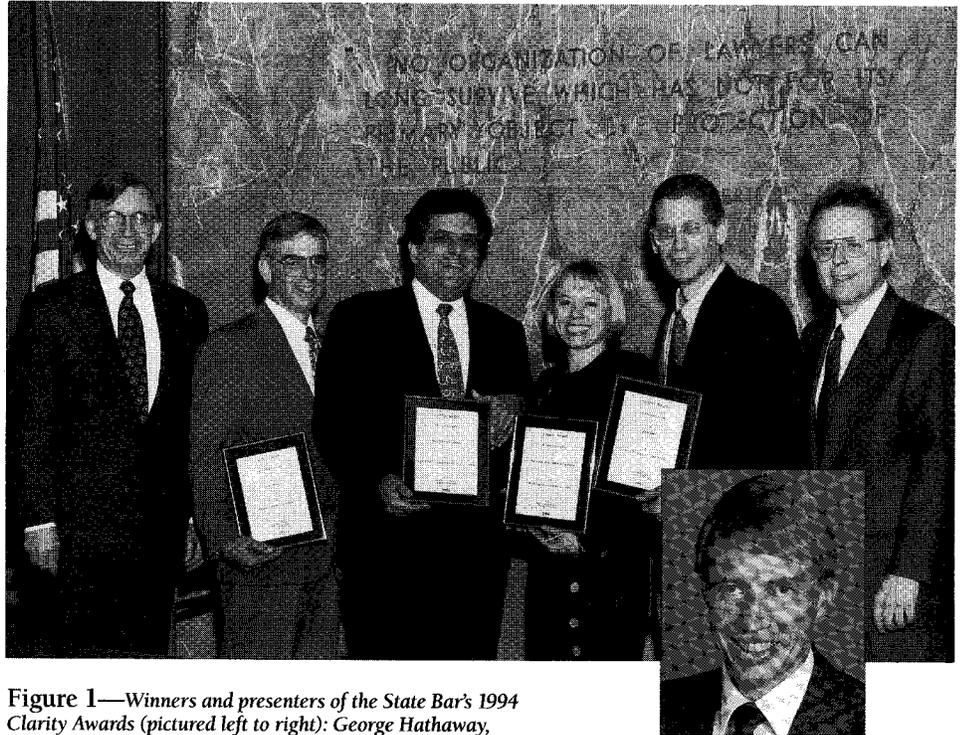


Figure 1—Winners and presenters of the State Bar's 1994 Clarity Awards (pictured left to right): George Hathaway, Joseph Backus, Representative Nick Ciaramitaro, Lisa Varnier, John Rohe, Joseph Kimble. Inset: Bruce Laidlaw.

With the nearly universal adoption of electronic word processing equipment in the last 10 years, the task of editing our documents has become simple. We can no longer blame our poor writing on the need to use forms that were obsolete long before we began to practice law.

Preprinted real estate forms are prime examples of forms needing revision. Most real estate forms in use today were developed decades ago and have survived chiefly because of their ready availability from publishers. And because demand for those forms has remained high, publishers have had no incentive to revise them. But we are no longer bound to use the language of some long-forgotten draftsman and hope that he adequately foresaw our present-day needs.

The time has come—indeed has passed—to eliminate archaic formalisms and to develop forms that say what we intend them to say in

a manner understandable to our audience. We can begin by taking a hard and thoughtful look at our everyday writing and consciously deciding to break our bad habits. Those documents we most commonly use will vary from one attorney to the next, but it is the rare document that cannot stand some improvement. If each of us strives to improve the documents we use most, we will benefit our clients as well as our own image. Good writing will become a habit rather than a challenge.

Deeds, Easements, and Liens

John Rohe, an attorney in Petoskey, has developed plain English forms for deeds, easements, and claims of lien. According to Mr. Rohe:

The State Bar has actively promoted professional civility among lawyers. Plain English

is a form of civility in the attorney-client relationship as well.

Plain English begins with identifying the audience. What level of commitment, time, and sophistication does this audience bring to the transaction? What are their vulnerabilities? How will the document be used?

Recorded real estate instruments are intended to squarely place the grantee in a chain of title. Accordingly, the audience includes not only the parties to the immediate transaction, but also personnel at the Register of Deeds, title-abstracting professionals, and the public.

The demands on abstractors include having to meticulously search for names, contrast subtle differences in complex legal descriptions, and manipulate cumbersome archival books inevitably stored on the top shelf at the Register of Deeds.

Antiquated preprinted forms leave only a finite space within which the names, addresses, and legal capacity of the parties must be wedged. These forms exacerbate the challenges confronting abstractors and increase the risk of error at the end of a long day, while property rights hang in the balance. And it's unnecessary, because conventional word processing now allows for expansion or contraction to clearly list each name and address.

Plain English involves more than improving sentence structures, abandoning obsolete formalisms, using the active voice, and avoiding nominalizations. It also involves a consideration of the audience and a friendly format.

Health Insurance Certificates and Riders

Lisa Varnier, Director of Regulatory Affairs of Blue Cross Blue Shield of Michigan, has led Blue Cross Blue Shield's extensive efforts in the last five years to voluntarily write its certificates and riders in the clearest language possible. According to Ms. Varnier:

Plain English is particularly important to corporations. It communicates vital information to customers and gives them a positive impression of the corporation.

Contracts, insurance policies, and other agreements can represent the product the corporation sells. If these documents are difficult to understand, customers will not know how to use the product. This can lessen customer satisfaction and lead to unnecessary disputes.

BCBSM writes certificates and riders in plain English so our customers understand

their health-care coverage. This information helps them decide whether to have health-care services performed, such as elective surgery. It also helps them know whether they will have to pay anything when they receive the services. By clearly telling customers their rights and responsibilities, we help them understand the product so they can use it wisely.

Plain English can lessen the number of disputes between customers and corporations. If a contract is written so the public can understand it, there are fewer opportunities for customers to claim it is confusing. It also closes the door on arguments that the contract can be interpreted differently than how it was intended.

Using plain English also gives customers a positive impression of the corporation. It encourages trust in the corporation and shows the customer respect. Consider your own experience: Do you trust a corporation that uses plain English more than one that uses complicated, ambiguous language? Is it easier to do business with a corporation that clearly explains your rights and responsibilities than one that does not? Does the corporation that

uses easy-to-read contracts show more respect for its customers?

If you are like most people, you will answer all of these questions "Yes." Corporations should take note of this and use plain English to better serve their customers.

Many who begin projects to convert contracts into plain English face resistance and skepticism. In a corporation, this can be overcome only if upper management strongly supports the project and there is staff who can carry it out. At BCBSM, Robert W. Kasperek, vice president of Regulatory and Governmental Affairs, has provided unflinching support for the plain English project. Staff members Della Hall, LaDonna Epperson, Mark Zabicki, Maria Larkin, John Wiig, and Diane Brookins have provided the talent, dedication, insight, and stamina to completely change how BCBSM writes and formats its customer contracts. Many thanks to them all.

Plain English in Insurance Contracts Statute

Representative Nick Ciaramitaro of Roseville sponsored the Michigan statute that

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requires plain English in insurance contracts, 1990 PA 305, MCL 500.2236, MSA 24.12236, effective January 1, 1992. This statute requires that all new insurance policies submitted to the Insurance Bureau meet certain readability requirements stated in the Act. Mr. Ciaramitaro discussed the statute in his article for the January 1994 *Bar Journal*, which was devoted to plain English. (See 73 Mich B J 34.)

Proof of Service

Bruce Laidlaw, an attorney in Ann Arbor, has developed a plain English proof-of-service stamp (see Figure 2) to replace a one- or two-page affidavit. (Unfortunately, MCR 2.107(D) and 2.114(A)(2) still require the redundant phrase “knowledge, information and belief.”)

Figure 2—Proof-of-Service Stamp

<p>PROOF OF SERVICE</p> <p>I served this document by mailing it to the attorneys of record in this case (shown on the caption) on</p> <p>_____</p> <p>I declare that the statements above are true to the best of my knowledge, information and belief.</p> <p>_____</p>

According to Mr. Laidlaw:

Translating legal jargon into plain English can be a difficult task, but it is always worth the effort. The difficulty arises because jargon is often used in place of thought. Lawyers do not use complicated language because it does a good job of conveying meaning. They may not even understand words, but they know the words were successfully used before. Legalese survives because of fear of failure. If we translate legalese into English, we are forced to understand the ideas expressed. When the translation succeeds, both the writer and the reader grasp the meaning.

I have waded through a lengthy insurance policy only to discover that the exclusions eliminated all of the coverage. When I brought that minor problem to the attention of the insurance company attorneys, they of course denied it. When persuaded to read the policies, they could only say that they would never assert that there was no coverage. In

Figure 3—Summary of Real Estate and Insurance

Categories	Specific Document	Quality of Specific Document	
Real Estate	<i>Possessory Interests:</i> Listing Agreement Sales Agreement Title Insurance	Metro Multi List RE Max American Land Title Assoc. Residential Title Insurance Policy sample 10 at Wayne County Register of Deeds sample 10	D D A D D
	Deed		
	Lease		
	<i>Non-Possessory Interests:</i> Easement (Right of Way) License (Permit)	sample 10 Detroit Tiger tickets	C B
	<i>Financial Interests:</i> Land Contract	First American Title and Lawyers Title forms	D
	Note and Mortgage Construction Lien	Federal National Mortgage Association forms Construction Lien Act forms	B A-
Insurance	<i>Life Insurance:</i>	Metropolitan Life Insurance Policy	A
	<i>Health Insurance:</i>	Blue Cross Blue Shield of Michigan Certificates and Riders	A Clarity Award
	<i>Property/Liability:</i> Car Insurance Home Insurance	Michigan AAA Car Insurance Policy State Farm Home Insurance Policy	A- A-

fact, unreadable policies open the door for courts to simply ignore the exclusions. It pays to plainly say what you mean.

A proof of service simply tells the court you served the other attorneys. It is such an easy concept, that anything more than two short sentences is a waste. Such a short statement is perfectly adaptable to a stamp that can be applied by hand or by computer. A proof of service in a separate document should be reserved for those rare situations when unusual procedures are required to serve a document.

Summary of Real Estate and Insurance.

In 1993 we began our analysis of legal writing by dividing all legal writing into eight substantive groups. We gradually modified and combined these groups into four groups: 1) laws and lawsuits, 2) real estate and insurance, 3) consumer finance and other contracts, and (4) wills and trusts. In September and October 1993 we summarized the quality of legal writing in laws and lawsuit papers in Michigan. We now summarize the quality of legal writing in real estate and insurance papers in Michigan by assigning grades based mainly on the absence of legalese. Absence of legal-

ese is not the only indication of clarity, but it is a good indication of clarity. And clarity is not the only indication of quality, but it is the best indication of quality.

Conclusion

Insurance policies contain some of the best legal writing in Michigan, because the leadership of the insurance industry has persistently promoted the voluntary use of plain English in insurance policies for the last ten years. Therefore, most insurance policies in Michigan are now written in plain English. Furthermore, 1990 PA 305, effective January 1, 1992, requires that all newly offered insurance policy forms be written in plain English.

In stark contrast, real estate papers contain the worst legal writing in Michigan. The bill to require plain English in consumer contracts, which has been pending in the state Legislature for the last ten years, would improve the clarity of writing in real estate papers in Michigan. However, even though the State Bar of Michigan has always supported the bill, the Michigan Association of Realtors has always opposed the bill. And this from an organization that is supposed to serve the public. ■