

Definitions

By Thomas Haggard

The accepted conventions for creating definitions are as follows:

- **Means.** Use *means* to stipulate the complete and exclusive meaning of the term. This type of definition, sometimes called a restricting definition, is necessary when you are creating a new term without any existing referents, when a conventional term is excessively vague, and when you want to give a conventional term a particular meaning. Restricting definitions are custom tailored to the unique needs of the document in which they appear.

"Oceanside condominium property" means . . . [whatever the referents are going to be].

"Indigent" means a person whose gross annual income is less than \$5,000 [clarifying a vague term].

"Building" means the structure located at 950 Taylor Street, Columbia, SC 29201 [giving the term a particular meaning].

Since a definition using *means* is both complete and exclusive, it must be drafted with all the possibilities in mind. Nothing can be added or deleted by interpretation.

"Vehicle" means an automobile, bus, trolley, tram, or electrically driven cart.

Under this definition, a horse-drawn carriage would not be included. This might be a significant omission if one were attempting to draft an ordinance dealing with traffic congestion in Charleston.

Do not create a restricting definition if the term already has a commonly understood dictionary meaning. Consider, for example, the silly and totally unnecessary definition found in a certain federal regulation.

["Form" means] a piece of paper containing blank spaces, boxes, or lines for the entry of dates, names, descriptive details or other items¹

The reverse of defining the obvious is defining a term in a way that is totally at

odds with its commonly accepted or dictionary definition. This kind of definition is called a *Humpty Dumpty definition*, in honor of the Lewis Carroll character who claimed he was the absolute master of all the words that he used. Consider the following definition taken from a federal statute:

"September 16, 1940" means June 27, 1950.²

Many drafters use the term *shall mean* in definitions. This is erroneous. The term *shall* is a term of command. Its use in a definition creates a false imperative. You are creating a definition, not commanding that it be created.

- **Includes.** Use *includes* either to ensure that a particular referent is included within the meaning of a term with a conventional dictionary definition or to add to that definition something the term would not otherwise encompass. In both instances, this type of definition takes the core dictionary definition as its base point.

"Employee" includes persons working on a part-time or temporary basis [ensuring inclusion].

"Apartment" includes the hallway, stairways, and other common areas [adding something].

The drafter of enlarging definitions must also take care not to be guilty of Humpty

Dumptyism. Consider the definition contained in an old English statute.

"Cows" includes horses, mules, asses, sheep, and goats.³

The following South Carolina statute is not much better:

"Tangible personal property" means . . . [and] includes services and intangibles.⁴

Some drafters use the phrase *includes but is not limited to*. This is probably unnecessary, but may be wise as a precautionary measure.

- **Does Not Include.** This phrase is used in what are called confining definitions. They take the core dictionary or commonly understood meaning of a term as a base point and ensure that certain things are excluded.

"Automobile" does not include taxicabs.

By giving careful thought to the type and wording of definitions—and to which ones are really necessary—the drafter can greatly improve the substantive quality and usefulness of the document being drafted. ♦

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FOOTNOTES

1. An Atomic Energy Commission regulation of years ago, quoted in Reed Dickerson, *The Fundamentals of Legal Drafting* 149 (2d ed. 1986).
2. H.R. 353, 474, 1624, 1882, 2335, 4171, 6391, 6757, 82d Cong. (1952), quoted in Reed Dickerson, *The Fundamentals of Legal Drafting* 141 (2d ed. 1986).
3. Frank Cooper, *Writing in Law Practice* 7 (1963).
4. S.C. Code Ann. § 12-36-60 (Law. Co-op. 2000).

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