

Down with *Provided That*



References

Peter Butt and Richard Castle, *Modern Legal Drafting* 125–26 (2001): “[Provisos] are typically introduced by formalistic phrases such as *provided that* or *provided however that*. No legal precision would be lost by replacing these phrases with simple English words, like *if* or *but* or *however*. . . . Where the purpose is to introduce new material, the words introducing the proviso . . . should be struck, and a new sentence begun.”

Robert C. Dick, *Legal Drafting in Plain Language* 96 (3d ed. 1995): “The proviso is a relic [that] usually succeeds in lengthening a clause or paragraph and creating obscurity. Many legal documents still contain an incomprehensible mishmash of provisos.”

Reed Dickerson, *The Fundamentals of Legal Drafting* 128 (2d ed. 1986): “Provisos have been used for so many purposes (to state conditions or exceptions, or simply to add material) that they tend to be ambiguous. At best they constitute archaic legalisms. Accordingly, provisos should be avoided.”

Bryan A. Garner, *A Dictionary of Modern Legal Usage* 710 (2d ed. 1995): “Writers on drafting have long cautioned drafters not to use provisos. In fact, the words *provided that* are a reliable signal that the draft is not going well. The problem—recognized five centuries ago by Coke—is that the phrase means too many different things: *provided that* may create an exception, a limitation, a condition, or a mere addition.”

Thomas R. Haggard, *Legal Drafting in a Nutshell* 279 (2d ed. 2003): “[P]rovided that . . . defies grammatical analysis. Provisos produce single sentences that are often hundreds of words long. Knowledgeable drafters have railed against them for years. Apart from being a grammatical abomination, *provided that* is ambiguous”

David Mellinkoff, *Mellinkoff’s Dictionary of American Legal Usage* 520 (1992): “[The proviso] is one of the horrors of legal writing, in a class with *notwithstanding*.”

G.C. Thornton, *Legislative Drafting* 80, 81 (4th ed. 1996): “On both historical and grammatical grounds the proviso stands condemned. . . . The case against the proviso is established beyond reasonable doubt by the ambiguity and uncertainty of the phrase.” ♦

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