

Plain Language

To speak effectively, plainly, and shortly, it becometh the gravity of the profession.

—Sir Edward Coke, 1600

Corporate Plain English

By Connie R. Gale

Michigan is seriously considering requiring "plain English" in commercial contracts affecting consumers. The Michigan House of Representatives has recently passed two bills on this subject (House Bills 4064 and 4065). The phrase "plain English" refers to writing which an ordinary person can easily understand. A number of states already have similar statutes. Like the Michigan proposals, each is directed at contracts for personal or household goods and services (including insurance policies).

Although certain corporations which do not manufacture household goods or provide personal services will not be affected by "plain English" legislation, the matter deserves attention. Many corporate transactions are committed to writing, and it is important that the business people who must implement the transactions understand the written agreements of the parties.

Corporate attorneys often find that one of the best ways to obtain feedback on the readability of their contracts is to invite business people to read the initial drafts and suggest changes.

But corporate attorneys can write their initial drafts in a manner which will minimize criticism. The following four-point guideline may be useful in organizing a contract in a way that clearly tells the story of a contemplated transaction:

1. Identify the parties and indicate the activities to be undertaken by each party.
2. State the compensation to be received for completion of the activities.
3. Set forth any conditions to the continuing obligations of the parties.

4. Indicate how disputes arising under the agreement are to be resolved.

Use of paragraphs and simple headings will enable readers to see the organization of the story and feel confident that an issue is fully discussed within a paragraph or subject-matter heading.

A contract should be an interesting and understandable story. The contract should use (a) words, sentences and paragraphs of reasonable length, (b) everyday language, and (c) active verbs, not passive.

The contract should avoid repetition, overkill and legalese.

This is the fifth in a series of articles coordinated by the Plain English Committee of the State Bar of Michigan. The articles are written by sections, committees, groups and individuals interested in promoting plain language in the law.

Examples of Achieving Corporate Plain English

1. Identify the parties to the agreement in the opening paragraph. Then refer to the parties by a readily recognizable and simple symbol. Such phrases as "party of the first part," "party of the second part," "the undersigned," "Seller" and "Purchaser" are archaic, impersonal and confusing.

Business people can readily identify GM, Ford, Chrysler and IBM. They will know exactly which party is doing any given activity called for by an agreement

which uses short forms of the names of each party.

2. Eliminate "Whereas" clauses and "Now Therefore." If a "Whereas" clause simply states that one party desires to purchase and the other party desires to sell, it is an unnecessary repetition of the obvious. Instead of the archaic phrase, "Now Therefore" just state, "In consideration of the terms of this agreement, Party X and Party Y agree as follows." This can be incorporated in the first identification paragraph.

3. Eliminate formal repetition of definitions of words which can be defined easily through a parenthetical identifier. For example, if the goods are described, insert a parenthetical word "goods" immediately after the description. Thereafter this one word identifies the goods. The definition section does not need to define "goods."

4. Minimize cross-references. Each section should relate the complete story of its particular subject matter. However, refer to exhibits if they promote brevity and clarity in the agreement. For example, voluminous part numbers and price lists are better set forth in an exhibit. If the buyer shall purchase goods pursuant to standard purchase orders, the matters covered by the terms and conditions on the reverse side of such orders need not be rewritten in the agreement. The terms and conditions appearing on the purchase orders may be incorporated as an exhibit by reference to a sample purchase order form.

5. Evaluate the risks of eliminating coverage of every possible circum-

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stance. For instance, if the contract will not involve confidential information, it is not necessary to cover the eventuality of leaks of confidential information. Instead of describing in minute detail insurance policies to be obtained by a party, simply state that the party will provide insurance satisfactory to the other party's risk management department.

6. Simplify complex procedures through examples. If the payment conditions require several paragraphs to describe, then an example is needed. The contract should refer to a hypothetical situation and then show how the complex payment conditions would be applied.

7. Balance sensitivity to social issues with common sense. Corporate agreements can be cumbersome if "his/her" phrases are used, or a paragraph is devoted to explaining that the pronoun "his" can also refer to "her." It would be better to use neutral words to begin with: "Party X," "it," "they," "workers," "purchasing agent" and "employees."

8. Use expressions understood by business people. The term "FOB" is commonly known and in most circumstances does not need further explanation. Payment terms such as "10th and 25th proximo" may be used by both parties on their respective purchase order forms. Again, no further explanation is needed in an agreement repeating this phrase.

An agreement should be the vehicle through which both parties understand how the business deal will be implemented. If the agreement is not understandable to the business people in the initial negotiation process, it has failed this essential purpose.

Corporate attorneys can benefit from the attention being given to "plain English" by becoming aware of how important "plain English" can be to corporate transactions. ■

Connie R. Gale is a 1971 graduate of the University of Michigan Law School and received a MBA in 1981 from Michigan State University. She is Senior Corporate Counsel at Federal-Mogul Corporation, serves as a board member of the Federal-Mogul Employees Federal Credit Union and is Vice-Chairperson of the In-House Counsel Subcommittee of the Corporation, Finance and Business Law Section of the State Bar of Michigan.