

LAW'S OLDEST LESSON

by Michael Krawchuk

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“You can trust me”. Those are strong words, often with deep significance. They evoke feelings of security and confidence. Placing one’s trust in another is not an easy thing to do, however, for it creates vulnerability.

Despite the potential exposure in a relationship based on trust, trust is at the root of many of society’s fundamental institutions. We place our trust in our spouses to be faithful and trust our government to protect our interests. So it is in business. For example, when a vendor sells a product on credit, the vendor trusts that the bill will be paid.

While trust may be at the root of many human interactions, it is not a guarantee. People, even those with good intentions at the time, do not always keep their word. When this happens, the person who placed trust in another may find him or herself in a difficult situation.

Because people do not always keep their word, trust is not enough in the business world. While trust may help to create business and may lead to superior performance in providing a product or service, it does not assist the business person when things go wrong. What happens, for example, if a buyer comes to a vendor’s place of business, orders product on credit, and, when it’s time to pay the bill, refuses to do so? To make matters worse, the buyer might deny ordering any product. The buyer said at the outset that she was interested in the vendor’s product, the vendor trusted her and performed the service, but now the vendor is left with an unpaid bill. The vendor’s trust seems to have been misplaced.

There is a solution to this problem. While it is quite simple, it is often overlooked or forgotten. Make sure the business transaction is set down in writing and signed by the parties.

This may not always be an easy or convenient thing to do. For example, it may be embarrassing to request a long time customer or friend to sign a contract, or you may be busy and feel there is no time to write the transaction down. Long time relationships sometimes break down, however, and working around the clock is futile if at the end of the day you do not get paid.

Putting the business transaction in writing can serve several purposes. It creates certainty. The parties to the transaction are able to refer to the document to establish their obligations, rather than relying on memory alone. A written document also provides remedies in case one of the parties fails in their obligations.

There is a common misperception that verbal agreements are not really contracts. As far as the law is concerned, a verbal contract is just as enforceable as one in writing. The problem is proof. If one has to take legal action to enforce a contract, the written contract itself can provide evidence of what the parties intended. With a verbal contract relying solely on trust, it is all too easy for one of the parties, when difficulties arise, to deny agreeing to a matter that is now in dispute. It can often degenerate into a “he said, she said” situation that calls for a judge to determine who is telling the truth.

While trust is an element in building a successful business, it should not prevent owners from protecting their own interests. This protection can come from simply committing the business transaction to writing.

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