

Managing Contracting Risk: How Do Your Practices Stack Up?



By Melanie Lockwood Herman

Executive Director

Resource Type: Risk eNews

Topic: General

The expression "<u>nothing is certain except death and taxes</u>," is attributed to Benjamin Franklin. This week, in between reading a terrific book on <u>The Swedish Art of Aging Exuberantly</u>, I'm pondering a third inevitability for nonprofit organizations: contracting snafus.

If your organization is like every other we've advised and supported over the years, you have been challenged by a contract with unfavorable terms. Or walked away from a contract with terms you couldn't live with. Or discovered, at the last possible minute, that your understanding of a key contract term differed from the understanding of the other party to the contract.

Using the term "risk" to refer to a future, uncertain event or outcome, my list of top contracting risks includes:

- Executing a contract with requirements or expectations you don't understand OR can't possibly satisfy
- Cloaking staff in your nonprofit with "apparent" contracting authority
- Changed circumstances that make contract fulfillment impossible or impractical (e.g., venue contracts during COVID-19)
- Executing a contract before you have completed due diligence with a new vendor

All of these risks can be avoided with sound contracting practices. The above risks infer some of the tips we share year-round with clients and Affiliate Members:

- 1. Never sign a contract with terms you don't understand; ask the other party to explain anything that is unclear and try to reach a compromise on asks that are impractical.
- 2. Make it absolutely clear to staff in your nonprofit who has the authority to sign contracts binding your nonprofit, and who does not.
- 3. Include an 'escape hatch' in every contract; wherever possible, build in flexibility to cancel the contract if circumstances make it extremely difficult, impractical, or unwise to proceed
- 4. Complete all due diligence (including reference-checking!) on new vendors before contract signing.