

## **Eight Tips to Avoid a Lawsuit**

by Scott Alan Miller, Esq.

As a business and real estate litigator, clients tend to seek my advice only *after* a problem arises. Sometimes I can still resolve the problem to avoid costly litigation, either by negotiating directly with the other side or getting the dispute before an experienced mediator. However, far too often the problem has festered and the parties' relationship has deteriorated to the point where neither side wants to compromise. A problem has now become a lawsuit.

Clients engaged in litigation feel very justified in their position (and most have every reason to feel that way). They feel they have bent over backwards to resolve the dispute and the other side is being intractable. However, litigating a dispute can be extremely costly and emotionally draining. Clients often overlook the time element too. A typical lawsuit takes one to two years to get to trial. For every hour spent in a deposition or at trial, an hour is taken away from their business pursuits or family.

The following are eight tips for individuals and businesses to help avoid litigation:

1. Put it in writing. I cannot begin to tell you how many clients regret failing to put an agreement, or even a conversation, in writing. Far too many lawsuits involve allegations of oral agreements that are difficult to verify. Simple suggestion: if it's important, it should be in writing. Don't rely on historical memories to record what was agreed to. A simple e-mail to the other side documenting what occurred can prevent a major lawsuit. At a minimum, make a note to yourself and save it somewhere. It can serve as evidence at trial.
2. Avoid e-mail rage. How many times have you clicked "send," only to regret days later the content of an e-mail? E-mails do not communicate facial expressions, body language and context. Because you often won't receive an immediate response, it's easier to say things you normally wouldn't. Pick up the phone; schedule a meeting. When you do write an angry e-mail or an e-mail regarding an important matter, save it before you send it. Go have lunch, grab a coffee or sleep on it. If you still feel the same way when you come back to your computer, then go ahead and send it. But the likelihood is that you'll either tone it down, or not send the e-mail at all. These angry e-mails are often trial exhibit #1 and are displayed before the jury and judge to the embarrassment of the sender.
3. Ask a lawyer to look over your contract before you sign it. Most business disputes can be traced back to a badly written contract, or a contract that is signed with the parties having a different understanding of the material terms. Later, when a dispute arises as to the performance of the contract, the parties both can make good faith arguments as to how the contract should be interpreted. This leads to litigation. Typically, in a few hours, a lawyer can review your contract before it's

signed and suggest some revisions to remove any ambiguity. This will be a fraction of the cost of litigation. Think of it as contract insurance.

4. Don't be afraid to ask questions. A contract is usually the start of a successful business relationship. It's a time to celebrate. But also it must be a time to confirm you are on the same page with the other party signing the contract. Too many lawsuits occur because one party was reluctant to ask the other party "what if" questions. It is not insulting to brainstorm about future events that may impact the relationship. Remember, it's only business.
5. Conduct due diligence. Let's face it, not everyone in the world is looking for a win-win situation. There are a lot of unethical people seeking to profit at your expense. Before signing a contract or hiring a new employee, ask for and talk to references. It's also smart not to rely on hand-picked referrals, but to perform background searches. Lawyers typically have access to databases that can be searched easily. Lawsuits filed not only in California, but other states are cataloged. Criminal history can be accessed. Ask a CPA to look over a financial statement. I have seen many individuals defrauded over the most benign investment.
6. Business with family and friends. Combining financial pursuits with family and friends is very common, but unfortunately, it's also a large source of conflict. Too many people take short cuts because they trust their family member or friend. Too many people are reluctant to get a lawyer involved for risk of offending the family member or friend. Many people believe that by simply asking a lawyer to get involved, they will send the signal that they don't trust someone they are supposed to trust without question. To the contrary, too many relationships are destroyed when the business dealings go sour, not necessarily because the investment failed, but simply because a lawyer wasn't involved to clarify the terms. These situations are tough and often unavoidable, but if you are going to do business with a family member or a friend, make sure a frank discussion has taken place about everyone's expectations and suggest that a lawyer be consulted.
7. Talk to your neighbors. In my experience, the most overlooked source of litigation are neighbor disputes. There is something about property ownership that makes people dig in. Little things that usually don't get to people seem to fester over time with neighbors. My suggestion: get to know your neighbors and establish a line of communication. There are bound to be issues that come up (boundary line disputes, view issues, trees, homeowner association rules) that often blow up into animosity which spill over into the court system. But it is much harder to sue your neighbor if you are cordial and you are not seen as hostile.
8. It's smart to compromise. 95% of lawsuits settle before trial or arbitration. Two of the primary reasons are (a) the prohibitive cost of litigation, and (b) the risk of the jury system. Two entrenched individuals, who never could have believed they would settle, usually do. And they do so often with a heavy emotional toll, personal time lost and litigation-related costs, they would have saved if only they would have compromised before the lawsuit was filed. A good litigator should be a trusted legal advisor to help you reach the best result for you.

These tips are not complex legal concepts. They are commonsense ideas that in my experience are often ignored by individuals and businesses. I cannot stress enough that even the most righteous, successful lawsuit can be only a pyrrhic victory.

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