LexAlia
Property + Commercial Law

INITIAL DOCUMENTATION

WHAT BUSINESS OWNERS MISS

Prepared by

Jackie Atchison, Principal Lawyer. Founder

What Business Owners Miss About Contract Documentation

Five Overlooked Considerations That Create Problems Later

Questions while reviewing? Email hello@lexalia.au or book a 15- min consultation

Business deals move quickly. You've agreed on the commercial terms, everyone wants to start work, and formal documentation feels like it will slow things down.

So you rely on email exchanges, reference "standard terms," or assume everyone understands what's been agreed. Work begins, and for a while, everything runs smoothly.

Then circumstances change. Questions arise about what was actually agreed. Two reasonable people discover they understood different things from the same vague terms. What seemed straightforward at the start becomes a frustrating dispute about what each party thought they'd agreed to.

This guide identifies the provisions and considerations that business owners consistently overlook in commercial documentation—the gaps that create problems months or years later when they actually matter.

Five Critical Oversights

OVERLOOKED CONSIDERATION 1

Assuming Email Chains Create Enforceable Agreements

Email exchanges feel like documentation. You've discussed terms back and forth, referenced a proposal, agreed on pricing. Both parties start performing based on these conversations.

The problem is that email chains often reference different versions of proposals, include conditional acceptance, or leave key terms "to be determined later." When I review these exchanges during disputes, they typically show that parties were still negotiating rather than agreeing to final terms.

Courts won't enforce an "agreement to agree." If essential terms are still being worked out, or if acceptance is conditional on further discussion, you don't have a binding contract—even though both parties might have thought they'd reached agreement.

> The consequence: *When disputes arise, you're arguing about what you thought was agreed rather than what was actually documented. Without clear written terms that both parties accepted unconditionally, you may have no enforceable agreement at all.*

> The reality: *Email exchanges can supplement formal documentation, but they shouldn't be your only record. One clear document setting out all essential terms, signed by both parties, prevents these problems.*

OVERLOOKED CONSIDERATION 2

Leaving Intellectual Property Ownership Undocumented

When work creates intellectual property—software, content, designs, processes, methodologies—business owners often assume ownership automatically transfers to whoever paid for the work. That's not necessarily how IP law works.

Consider a business that engages a contractor to develop custom software. The contractor builds the solution using their existing code frameworks and tools. Four months later, when the business wants to modify the software, they discover the contractor believes they only licensed the finished product—not the underlying components they developed.

Both parties are being reasonable. Neither acted in bad faith. They just never documented who owns what IP, what can be reused elsewhere, and what rights each party has to modify or license the work.

> The consequence: *IP disputes are expensive to resolve and can prevent you from using work you've paid for. Without clear documentation, you might not own what you thought you purchased.*

> The reality: *IP ownership provisions need to be documented clearly from the start, particularly in consulting, design, technology, and creative arrangements. Who owns what, what can be reused, and what rights transfer should be explicit.*

OVERLOOKED CONSIDERATION 3

Relying on Vague Terms Like "Standard Scope" or "Reasonable Notice"

Terms like "standard scope," "reasonable notice," "good condition," or "as discussed" are often used to paper over gaps when parties want to move forward quickly. Everyone assumes these phrases have obvious meanings.

But "standard scope" for marketing services might mean social media management to one party and strategic consulting to another. "Reasonable notice" for termination could mean two weeks or three months depending on who's interpreting it. "Good condition" might mean pristine or might mean normal wear and tear.

These vague terms don't actually define anything—they just create problems later when interpretations differ. From handling business disputes over the years, I've learned that most conflicts stem from these unclear provisions rather than genuine disagreement about substantive issues.

> The consequence: *When circumstances change or questions arise, each party fills in the blanks differently. What seemed clear becomes a dispute about competing interpretations of vague language.*

> The reality: *If both parties can't point to specific documented terms that clearly set out what was agreed, you're asking each side to interpret vague language in their own favor later. Clear documentation prevents these problems.*

OVERLOOKED CONSIDERATION 4

Skipping Liability Limitations Because "Everyone's Getting Along"

When commercial relationships start well, liability provisions feel unnecessary. Both parties trust each other, everyone's being reasonable, and detailed risk clauses seem like overkill.

But liability clauses aren't about trust—they're about clarity when things go wrong despite good intentions. Who's responsible if deliverables are delayed? What happens if there's an error in advice or services? Are there caps on liability? What about consequential losses?

Without documented liability provisions, you might be exposed to losses you never anticipated. More commonly, reasonable people end up disputing who should bear costs when things don't go to plan, because nobody ever agreed on risk allocation.

> The consequence: *When problems arise—and they often do even in good relationships—unclear liability provisions turn manageable issues into expensive disputes about who should bear costs.*

> The reality: *Clear liability limitations protect both parties by documenting risk allocation upfront. These provisions don't signal distrust—they prevent disputes about responsibility when circumstances change.*

OVERLOOKED CONSIDERATION 5

Forgetting About Termination and Exit Provisions

When deals start, nobody's thinking about how they'll end. Everyone's focused on getting work underway, not planning for exit scenarios.

But most commercial arrangements do end—whether that's natural completion, early termination by one party, or circumstances that make continuation impractical. Without clear termination provisions, reasonable questions become disputes: How much notice is required? What happens to work in progress? Who pays for partial completion? What obligations continue after termination?

I've handled too many disputes where the commercial arrangement had broken down but neither party could exit cleanly because termination procedures were never documented. Both parties wanted to move on but couldn't agree on how to conclude the arrangement properly.

> The consequence: *When relationships break down or circumstances change, unclear exit provisions trap both parties in arrangements that no longer work. Good commercial relationships can turn acrimonious over termination disputes that proper documentation would have prevented.*

> The reality: *Clear termination provisions help relationships end smoothly when they need to. These clauses protect both parties by documenting how exit works—notice periods, payment for work in progress, return of property, and ongoing obligations.*

IMPORTANT NOTE

These five considerations highlight common gaps in business documentation, but every commercial arrangement has unique risks and requirements. Professional guidance ensures you're protected appropriately for your specific situation.

READY TO DOCUMENT YOUR BUSINESS DEALS PROPERLY?

Understanding what gets missed in business documentation is valuable. Ensuring your specific arrangements are properly protected requires working through the details of your situation.

I work with business owners across Australia to document commercial deals in a way that's clear, enforceable, and aligned with how business actually works. The documentation process doesn't have to slow things down—but it does need to address the considerations that matter when circumstances change.

Ready to discuss how to document your business arrangements properly? Contact Jackie Atchison at LexAlia Property & Commercial Law to explore how your specific deals can be protected effectively.

LexAlia Property & Commercial Law | Northern Beaches, Sydney
Email: hello@lexalia.au | Web: lexalia.au
Serving NSW for property matters | Australia-wide for business law