

# **DRAFTING YOUR OWN CLIENT CONTRACTS: EVERYTHING YOU NEED TO KNOW**

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# TODAY'S PRESENTATION

- Why you need a contract with EVERY SINGLE CLIENT
  - Brief aside: you need a business entity
  - Specific clauses you need in your client contract
  - Questions?
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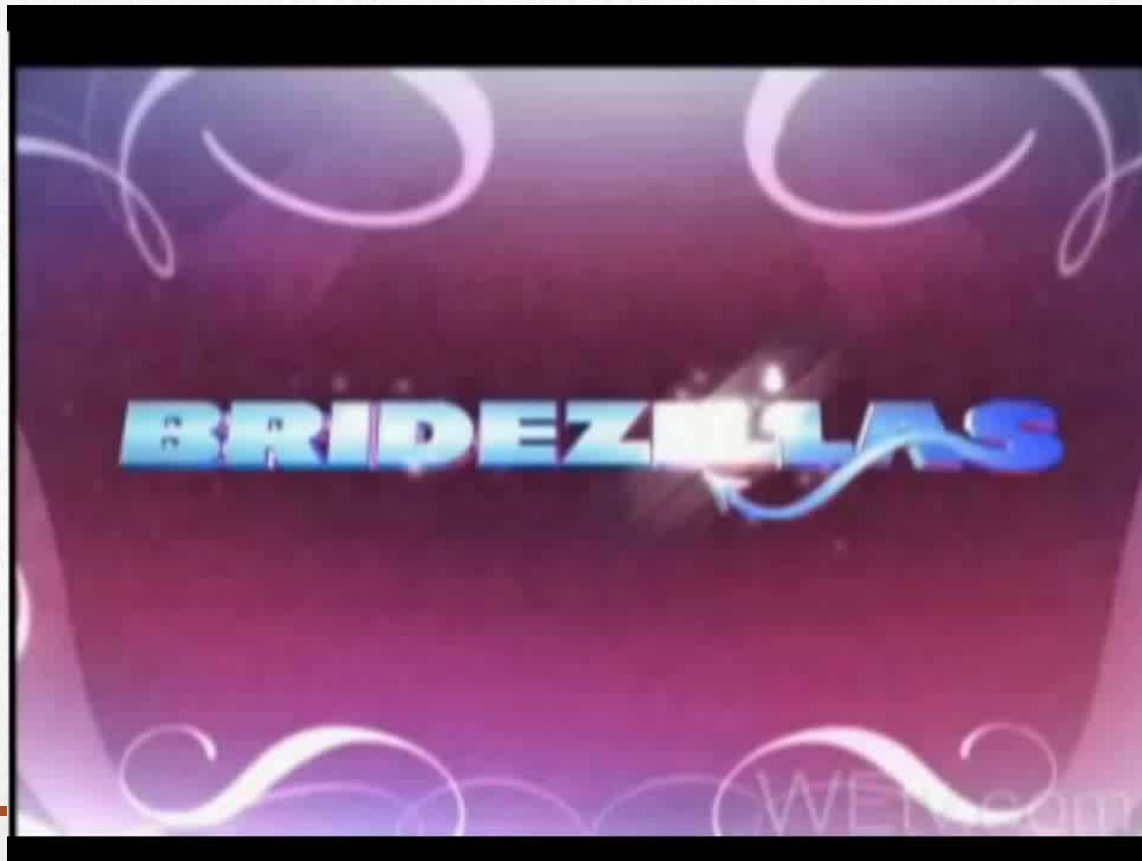
# WHY SHOULD YOU LISTEN TO ME?

- Practiced law for 10 years, in Florida, NYC, and Charlotte
  - Represented hundreds of wedding planners, event planners, videographers, photographers, DJ companies, venues, bars & restaurants, etc.
  - Drafted hundreds of client service contracts, and litigated over the contracts
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# WHY EVEN HAVE A CONTRACT?

- Without a contract, it's a "he said, she said" battle
  - Nothing outlines your obligations
  - Most importantly, nothing outlines your client's obligations!
  - Use a contract to hedge bets against horrible clients that you don't know are horrible...yet
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# THE HORRIBLE CLIENTS...



## **BRIEF ASIDE: BUSINESS ENTITIES**

- You. Need. A. Business. Entity. Now.
  - Protects personal assets from business creditors
  - Random musings:
    - A simple LLC is the best entity for most businesses
    - Open a separate business bank account—don't commingle funds!
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# GENERAL CONTRACT STUFF

- Contract should be organized as a “Master Service Agreement” with incorporated “Scope of Work”
    - Main contract with terms & conditions = master service agreement
    - Incorporated “Schedule A” with your “scope of work”
  - Don’t make your contract long
  - Don’t fill your contract with “legalese”
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# 1<sup>ST</sup> TERM: SERVICES PROVIDED

- On Scope of Work (Schedule A), describe the services you provide:
    - Describe what you do, in detail
    - Describe what you don't do, in broad terms
  - Also consider (if you're an event planner):
    - Who chooses vendors?
    - Must vendors come from an approved list, or can client substitute?
    - What's your availability—24/7 or limited hours?
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# 1<sup>ST</sup> TERM: SERVICES PROVIDED

- EXAMPLE: Planner shall provide to Clients event planning services (collectively referred to as the “Services”), as outlined in Attachment A to this Agreement. Planner shall provide only the Services as outlined in Attachment A, and shall not be obligated to provide any other services. The manner in which the Services are to be performed and the specific hours to be worked by Planner shall be determined by Planner.

## 2<sup>ND</sup> TERM: PAYMENT TO YOU

- Importantly, how and when do you get paid?
    - Staggered payment plan? All up front?
    - Check, cash, credit card?
    - Do you require a deposit?
  - Discuss cancelation of the contract in this section—what happens if the client cancels their event or wedding?
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## 2<sup>ND</sup> TERM: PAYMENT TO YOU

- **EXAMPLE:** As full compensation for the Services provided by Planner, Clients agree to pay Planner a total sum of \_\_\_\_\_ percent (\_\_\_%) of Clients' total event budget, which in any event shall not be less than a total fee of \$ \_\_\_\_\_. "Event budget" is defined as all payments made for any item or service associated with Clients' event, including but not limited to all vendor payments, payments for services, and payments for goods associated with the event, regardless of the party who pays for such items or services. All payments made to Planner are non-refundable once tendered, and Planner shall be paid as follows: a. The initial deposit of \$ \_\_\_\_\_ shall be paid to Planner by Clients upon the execution of this Agreement; b. The second and final payment shall total \$ \_\_\_\_\_ and shall be paid to Planner by Clients on or before seven (7) days before the day of the event.

## 3<sup>RD</sup> TERM: VENDOR PAYMENT

- Who's contracting with vendors—you or the client?
    - My advice: MAKE THE CLIENT DO IT, for liability reasons
    - If that's not an option, have an indemnification clause
  - TIP: if the client contracts with vendors, make the client give you a copy of all executed vendor contracts, so you're in the loop
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## 3<sup>RD</sup> TERM: VENDOR PAYMENT

- **EXAMPLE:** Clients acknowledge that they shall contract directly with all vendors for the provision of services for the event, and thus, Clients understand that they shall be responsible for paying for all vendor products and services in full. However, Clients authorize Planner to communicate directly with vendors on their behalf and initiate initial contract negotiations with vendors. Clients also acknowledge and agree that Planner is not responsible for the wrongful, intentional, or negligent acts or omissions of any vendor. Vendors shall be chosen solely at the discretion of Clients; Planner's role is that of an advisor and coordinator, and Clients shall be responsible for making the actual selections of all vendors. Clients shall promptly provide copies of all executed contracts entered into between Clients and any and all vendors to Planner.

## 4<sup>TH</sup> TERM: DATE CHANGE

- What happens if the event date changes for any reason?
  - Date changes will result in increased cost, and client is responsible for cost

## 4<sup>TH</sup> TERM: DATE CHANGE

- **EXAMPLE:** Clients may not change the date, time, or location of the event without first informing Planner of said changes. If Clients change the event date, time, or location and Planner is unable to provide services, then Planner is released from all contractual obligations, shall in no way be held responsible or liable in any manner whatsoever for non-performance, and Planner shall be entitled to retain any and all payment made by Clients to Planner. In addition, Clients acknowledge that changes in the event date by Clients may result in an increase in associated event expenses, and Clients are responsible for any such increase.

## 5<sup>TH</sup> TERM: COOPERATION

- IMPORTANT—this is your “escape hatch”
- Protect yourself against physical and/or verbal abuse by your clients or their family/guests



## 5<sup>TH</sup> TERM: COOPERATION

- EXAMPLE: Clients agree to cooperate fully and respectfully with Planner, and are responsible for ensuring Clients' guests cooperate fully and respectfully with Planner.

## **6<sup>TH</sup> TERM: LIABILITY LIMITATION**

- Probably the most important clause in your contract
  - Protects you from:
    - Over-serving of alcohol liability
    - Drunk driving accident liability
    - Breach of contract and other liability
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## 6<sup>TH</sup> TERM: LIABILITY LIMITATION

- **EXAMPLE:** Planner shall perform the Services in a professional manner and endeavor to plan and execute a successful event for Clients, but Clients understand and agree that events are fast-moving and often unpredictable, with unexpected circumstances that may arise during the course of the planning process and/or on the day(s) of the event, and Planner cannot offer refunds following the occurrence of such circumstances. Clients acknowledge and agree that Planner is not responsible for monitoring the consumption of alcohol by Clients and Clients' event guests and Clients shall indemnify Planner for any alcohol-related or other third party claims against Planner. Clients agree that, to the fullest extent permitted by law, Planner's maximum total liability for any claims, breaches or damages by reason of any act or omission, including breach of contract and negligence, shall be limited solely to the dollar amount of the fees paid by Clients to Planner. Clients agree that, to the fullest extent permitted by law, Planner shall not be liable for any claims for punitive damages, consequential damages, emotional distress, mental anguish, lost profit, loss of enjoyment, lost revenues and/or replacement costs.

## 7<sup>TH</sup> TERM: TERMINATION

- When can you terminate the contract?
  - When can your client terminate the contract?
  - If the contract is terminated, do you get to keep the cash paid?
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## 7<sup>TH</sup> TERM: TERMINATION

- **EXAMPLE:** Either party to this Agreement may terminate the Agreement, at will, with proper notice pursuant to the terms herein. Official notice of termination of the Agreement must be given to either Clients or Planner via U.S. Mail, and Planner shall be entitled to retain all payments made to Planner by Clients up to and including payments made before termination of this Agreement.

## 8<sup>TH</sup> TERM: INTEGRATION CLAUSE

- A client says, “I know the contract says you’ll give me XYZ services, but when we talked before signing the contract, you said you’d give me ABC services!”
  - How do you protect yourself from this type of “miscommunication?”
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## 8<sup>TH</sup> TERM: INTEGRATION CLAUSE

- **EXAMPLE:** This Agreement represents the entire understanding between the parties, and supersedes all previous agreements, whether oral or written between the parties. No change or modification of this Agreement shall be valid unless the same be in writing and signed by the party against whom enforcement is sought.

## 9<sup>TH</sup> TERM: GOVERNING LAW

- Events, weddings, etc. occur throughout the country, and in different counties
- You want to litigate “in your own backyard.”
- Homefield advantage



## 9<sup>TH</sup> TERM: GOVERNING LAW

- EXAMPLE: This agreement shall be governed by the laws of the State of \_\_\_\_\_, and any disputes arising under this agreement shall be adjudicated in \_\_\_\_\_ County, \_\_\_\_\_.

# 10<sup>TH</sup> TERM: MEDIA RELEASE

- Can you use event pictures, video, etc. on your website and in your promotional materials?
  - NO! Not without a media release!
- Most states have “misappropriation of likeness” causes of action.

## **10<sup>TH</sup> TERM: MEDIA RELEASE**

- **EXAMPLE:** Clients give Planner the perpetual right to use, and authorize others to use: Clients' names, images, voices, and likeness in any and all media now or hereinafter devised, and Planner may utilize said likeness for any means, included, but not limited to advertising, promotional materials, online materials, and other materials.

# 11<sup>TH</sup> TERM: ATTORNEY FEES

- Common question: if I sue my client, can I make them pay for my attorney fees?
- Common Answer: No. Negative. Negatory.
- Only 2 ways to get attorney fees paid for:
  - By contract
  - By statute

# 11<sup>TH</sup> TERM: ATTORNEY FEES

- **EXAMPLE:** In the event that it becomes necessary to institute legal action to enforce compliance with the terms of this Agreement, the parties agree that, at the conclusion of such legal proceedings, the losing party shall be solely responsible for all legal fees and costs incurred by the prevailing party, such fees and costs to be taxed by the court, including fees incurred during pre-trial, trial, and any applicable appeal or appeals.

# 12<sup>TH</sup> TERM: NON-DISPARAGEMENT

- You live and die by online reviews.
- Use a non-disparagement clause as leverage to encourage removal of negative online reviews

## 12<sup>TH</sup> TERM: NON-DISPARAGEMENT

- EXAMPLE: Clients acknowledge that they shall not post any negative online reviews on google.com, yelp.com, Facebook.com, or any other website expressing views that negatively affect the reputation of Planner. If Clients refuse to remove offending content after receiving a request from Planner to do so, Clients shall reimburse Planner for reasonable attorney fees, expenses, and court costs associated with the removal of such content as well as immediate payment of \$\_\_\_\_\_ as liquidated damages.

## 12<sup>TH</sup> TERM: NON-DISPARAGEMENT

- Using this type of clause is a business decision you'll need to make.
  - Pros:
    - Can prevent negative online reviews before they happen
    - Can be used as leverage to remove negative online reviews
    - Can provide liquidated damages in the event of a breach
  - Cons:
    - Backlash first in small circle of client's friends/family
    - Severe public backlash if "story takes off" via news/social media
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# 12<sup>TH</sup> TERM: NON-DISPARAGEMENT



# RANDOM CONTRACT MUSINGS

- Who signs the client service contract?
    - For wedding planners: the parties getting married AND the person(s) providing you with payment
    - For all other planners: authorized corporate representative (if a corporate event) or the person providing payment (if a personal event)
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# RANDOM CONTRACT MUSINGS

- General rules of law to know (every state is different):
    - Ambiguous contract language construed against the drafter
    - Statute of limitations (3-4 years, generally)
    - Cost of pursuing litigation is steep: filing fees, attorney fees, businesses must be represented by counsel, etc.
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# QUESTIONS

- Question and Answer Session

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