

BUSINESS

Tue. 01.20.09



Hospice forges ahead with fund raising, despite today's rough economy. **2**



Merchants taking stock new ways to woo shop

U.S. financial markets were closed Monday because of Martin Luther King Jr. Day.

TUESDAY, JANUARY 20, 2009

ASK A LAWYER

Many unwritten agreements are still enforceable

Q. Is a handshake deal enforceable?

In many cases, yes.

For example, you offer to sell your customer office equipment for a favorable price. Your customer agrees to buy the equipment for the price you have offered. You and your customer shake hands. After you deliver the equipment, your customer refuses to pay the agreed-upon price. Even without a written agreement, you may be successful in taking legal action to enforce the contract and/or for damages occasioned by his non-payment.

Although there are some types of contracts that must be in writing to be enforceable, many agreements are enforceable even in the absence of a written contract.

Without a written agreement, the court must find that (1) there was a meeting of the minds – that is, both parties knew they had an agreement; and (2) the necessary and material terms of the agreement were actually decided.

For instance, if the sale date was undetermined and the purchase price was to be based on then-existing market conditions, a court may rule no contract existed. Similarly, if there was no clear acceptance, for example, if your customer enthusiastically thanked you for your offer and then you parted ways, it is likely a court would fail to find a “meeting of the minds” actually occurred.

If, however, you and your customer agreed that he would pay the price you offered for the

equipment, when the purchase would occur and what the terms of his payment would be, it is likely a court would find that an enforceable contract existed.

If you then take action based on the contract, such as forgoing meetings with other potential buyers, a court is likely to find that you have been damaged by the purchaser's breach.

Usually, the best practice is to have a written agreement that is signed by both parties. If you then must enforce the agreement, the existence of the contract is not a hurdle.

In complicated transactions, legal counsel can best advise the parties how to memorialize the terms of their agreement.

Parties, together with their counsel, should invest the time necessary to prepare a contract that is clear and unambiguous and protective of the parties' expectations.

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Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com.