

PUT IT IN WRITING

Some people are blessed with photographic memories. These folks are very rare, about as common as honest men or billionaires. The rest of us have to muddle along with our imperfect recollections.

Memory is a delicate thing. It is influenced not only by what actually happened but also by prior and subsequent events, our subconscious and a million other things. It fades over time and our minds tend to fill in the gaps so things make sense, even when they don't. In short, while memories are generally accurate they are, by no means, completely reliable.

For this reason alone, handshake deals are not a very businesslike way to do business. Oh, the handshake deal works fine if the deal is simple. However, if the contract is at all complicated or if it is performed over any significant time period there is always the probability that a dispute will later arise as to just what was agreed. And if there's a lot of money involved, as they say in New Jersey, "faggetaboutit".

This is a phenomenon well known to lawyers. Problems seldom crop up at the beginning of a relationship when enthusiasm and optimism are at their highest. It is only when reality and time have had an opportunity to do their work that the disagreements start. In fact, it is precisely this sort of thing that is the source of a good deal of legal work.

The odd thing about it, though, is that you really don't need a lawyer for every little deal. If you write up the terms of the deal in your own words (with as many copies as there are parties to the deal) and have all parties sign it and keep a copy, that will usually be more than enough.

Putting things in writing not only clarifies the terms of the arrangement at the time the agreement is struck (when everyone is getting along), it is also useful in settling arguments later on when they arise. Many times, putting it in writing will avoid the argument. It's pretty hard to argue that you didn't agree to it when faced with your own signature on the memorandum.

Putting it in writing also tends to separate the empty promises from the ones that are intended to be fulfilled. It is a great way to identify problem areas in advance. It also sets the tone for both the discussions and the relationship.

The long and the short of it, then, is that doing business in writing is still the best way. Of course, the characters, integrity and personalities of the people in the deal will still determine whether there will be trust or skulduggery in the relationship. Doing things in writing is no guarantee that everything will work out for the best but it is a significant step in the right direction.