

Brian Chandler
Kathleen Kelley



Contract Boilerplate

Transactional vs. Litigator
Perspective

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Transaction
Success!

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Choice of Law

Purpose -
To select the state's laws that will govern the contract.
Concerns -
What state's law will be applied?
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Survival Clauses

Purpose -
• Extends or contracts the statute of limitations for certain rights and obligations.
Concerns -
• What provisions?
• How long?
• Watch out if you want to extend the indemnity period past the statute of limitations period.

Survival Clauses

Purpose -

- Extends or contracts the statute of limitations for certain rights and obligations.

Concerns -

- What provisions?
- How long?
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Choice of Laws

Purpose -

- To set the laws that would govern any disputes regarding the contract.

Concerns -

- What laws would be best?
- What laws can govern?
 - Is there a statute allowing you to choose that state's laws?
 - Do you have enough contacts?
 - Internal Affairs Doctrine

Dispute Resolution

Purpose -

- To decide where or how disputes following the closing would be handled.

Issues -

- Forum Selection Clause
 - Mandatory or Permissive?
 - What Forum - State or Federal?
- Arbitration?
- Mediation?
- Consent to Service of Process?

Waiver Clauses

Purpose -

- Generally in contracts, a waiver clause is an acknowledgment that in order to waive a contract provision, such waiver must be in writing.

Issues -

- Conduct in practice is not always consistent with contract language.

Severability

Purpose -

- In the event that one clause of a contract is found unenforceable, a court will sever the unenforceable clause and find the rest of the contract enforceable.

Issues:

- Blue penciling
- Virginia laws

Assignment

Purpose -

- Under common law, parties can freely assign rights and obligations to a contract. Typically, parties wish to block that free assignment.

Issues -

- Not always needed.
- Should one party have the right to freely assign?
- Special instances where one can assign.

Integration/Merger Clauses

Purpose -

- To have the entire agreement in the written contract.

Issues -

- Parol evidence rule.
- Consider the language with multiple agreements or if there has been diligence.
- Under UCC Art. 2, evidence of past practice can be admissible.



Success!

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Choice of Law

Why?
- To determine the state's public policy
- To determine the state's public policy
- To determine the state's public policy

Survival Clauses

- Purpose** -
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- Concerns** -
- What provisions?
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