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Is My Legal Form Valid and Enforceable?

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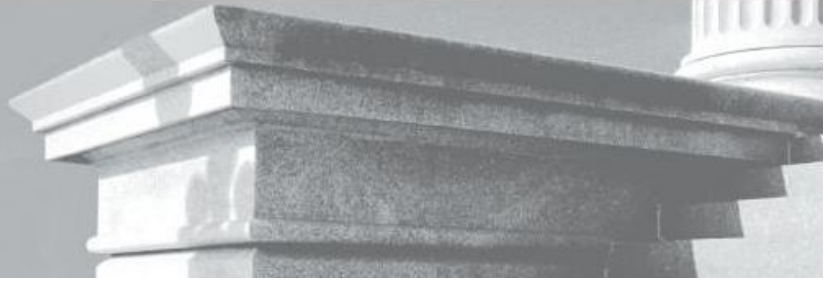


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Introduction

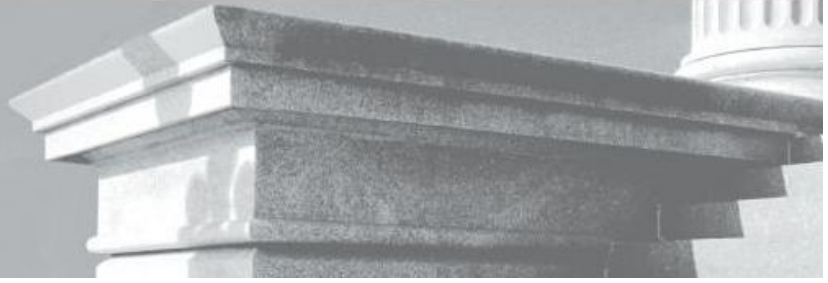
You download a template. It is incomplete. You read it over and finish it. Perhaps you even add a few provisions of your own to take into account your particular circumstances. Then you and all the other parties sign it and deliver it to each other. So, is it a valid and enforceable contract? The answer is: “**IT DEPENDS**”. The truth is that parties may never know if their legal form is valid and enforceable unless it has been reviewed by a court at the conclusion of a lawsuit. But if you want to try to avoid having a judge make that determination for you, there are a few things you should be aware of.

Under contract law, for a contract to be valid and enforceable, there are a number of basic requirements concerning the **SUBSTANCE** of the contract (i.e. the terms and conditions of the actual contract) and the **PROCESS** of how the contract was entered into (e.g. was it entered into fairly and freely?). If there are issues with either the **SUBSTANCE** and/or the **PROCESS** of how it was entered into, then the contract can be challenged in whole or in part. Having a lawyer on hand may help to mitigate these and other issues from the get go. In what is to follow, **SOME** of the more common ways in which contracts can be challenged will be discussed. Bear in mind, however, that there **ARE MANY OTHER WAYS** a contract can be challenged! For example, a statute may have minimal requirements that need to be met in order for a legal form to be valid. For example, provincial estate laws (e.g. the Ontario *Substitute Decisions Act, 1992*) may state that witnesses are required for the signing of a Continuing Power of Attorney for Property and also specify who cannot be a witness. That’s just one tiny example. At the end of the day, you should always speak to a lawyer about your particular situation to mitigate potential challenges. So here we go...

Clear, Complete, and Certain Terms

First, the terms that are in the contract itself must be clear, complete, and certain enough to be enforceable. Long-winded, incomplete, and vague terms can be challenged and perhaps rendered invalid and unenforceable by a court. So if you’re adding provisions of your own to a legal form, always ask yourself: “Is this term or condition clear enough for a reasonable person to understand?” and “Are important terms – such as price, timeline, consequences, etc. – missing”? Worth noting is that an agreement to agree about some critical part of the contract at a future time could also be challenged and struck down by a court. If significant terms are left out of a contract and the parties simply agree to come up with an agreement about them later, then the entire contract may be challenged! An agreement to agree is generally not enforceable.

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