



BUSINESS OFFICE



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VERBAL PROMISES AND WRITTEN AGREEMENTS

Are verbal agreements and representations that take place during negotiations enforceable when the agreement of the parties is later reduced to writing and these verbal agreements and/or representations are not contained in the written agreement? The general answer is “No”, according to the Parol Evidence Rule, applicable in many states.

The Ohio Supreme Court set forth the application of this rule:”The Parol Evidence Rule was developed centuries ago to protect the integrity of written contracts. Stated simply, the Parol Evidence Rule provides that an oral agreement cannot be enforced in preference to a signed writing which pertains to exactly the same subject matter, yet has different terms. The Parol Evidence Rule is a rule of substantive law that prohibits a party who has entered into a written contract from contradicting the terms of the contract with evidence of alleged or actual agreements. When two parties have made a contract and have expressed it in a writing to which they have both agreed as the complete and accurate integration of that contract, evidence, whether verbal or otherwise, of prior understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing. Where there is no ambiguity regarding the contract, the written agreement is conclusively presumed to represent the entire agreement of the parties.”

There are exceptions to the rule that prior verbal agreements or representations will not be enforced in lieu of a signed written contract. One such exception exists where the entire

agreement of the parties has not been reduced to writing. In such event, testimony concerning other terms that were agreed upon may be heard by the Court, only if not contradictory to any of the written terms.

Another exception exists when fraud is alleged and the party has relied upon certain verbal representations in deciding to sign the written contract. However, there is even an exception to the exception. Where the terms of the writing itself directly contradict the prior verbal agreement, then the party alleging the verbal agreement cannot be heard to say that he relied on the verbal agreement.

The age-old legal adage to “get it in writing” applies. Make sure your written contracts fully encompass all the terms discussed and agreed upon. Lastly, testimony concerning prior verbal agreements and representations is admissible to prove the existence of a mutual mistake the parties made when drafting the written contract.

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It is not the oath that makes us believe the man, but the man the oath.

Aeschylus (525-456 B.C.) Greek dramatist

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