

The Benefits of Limitation of Liability Clauses

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Limitation of liability clauses are not favored in the eyes of the law, but they are often upheld by the courts. To be effective, it is important the clause be reasonable and specific. An enforceable limitation of liability clause may drastically limit the potential liability of the professional.

Professionals use contracts on a regular basis to secure payment and to define their scope of services. That very same contract can also be used to protect the professional from costly litigation. Limitation of liability clauses are provisions built into a contract that limit the servicing party's exposure to damages.

For example, consider a residential home inspector who charges \$500 to inspect a home for a buyer. The buyer later sues the inspector alleging negligence for failing to discover an alleged defect in the home. If the home inspector has a limitation of liability clause in the inspection contract limiting recovery for negligence to the return of the inspection fee, the claim may end there. A limitation of liability clause may effectively limit the damages the home inspector would be liable for to the amount of the inspection fee. Because the buyer only stands to gain \$500 if successful, a lawsuit may likely never be filed.

Courts in Missouri, Kansas, and Illinois will generally enforce a limitation of liability clause. However, not every clause that seeks to limit the liability of the professional will be upheld. Consider the following general principles:

First, do not be greedy. It is important the limitation of liability be reasonable. This is why such clauses often limit the potential liability to the cost of the services rendered or to certain categories of damages. Attempting to limit the liability to zero is frowned upon and is likely not reasonable.

Next, the language of the limitation of liability clause must be specific. Often times, professionals contract with parties that are less sophisticated business people. Because of this, it is important that the language of the clause be clear, specific, readily identifiable, and easily understood.

Finally, as with any written contract, make sure your client reviews and signs it before you perform any services.

The law varies not only state by state but sometimes profession to profession. For this reason, it is imperative you seek the advice of an attorney when drafting your limitation of liability clause to make sure it will be effective for your profession and in your state.