Lawyers Alliance FOR NEW YORK

Connecting Lawyers, Nonprofits, and Communities

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## How to Prevent Common Issues with Office Equipment Contracts

Does your nonprofit lease equipment, such as a commercial copier or telephone system? These leases can contain provisions that could be an expensive surprise. Ideally, you will run every contract by an attorney. Lawyers Alliance is available to review vendor contracts for eligible nonprofits. However, if a nonprofit operations manager has to obtain equipment before consulting counsel, it is imperative to read every provision of the lease and pay particular attention to terms discussed below.

### The Mechanics of Common Equipment Contracts

There are several ways a nonprofit can access equipment like copiers. For example, it can purchase equipment outright or can pay for use of a copier through a services agreement. However, nonprofits commonly lease financed equipment, like copiers, and pay a monthly invoice. Here's what that arrangement can look like:

> A nonprofit enters into discussions with a copier supplier. The nonprofit and the supplier agree on a monthly fee. The supplier brings a form contract (known as a lease agreement) when it delivers the equipment and requires the nonprofit's representative to sign. The nonprofit's representative signs the contract without reading it carefully. Upon inspection, the contract is not between the nonprofit and the supplier. Instead, it is from a third-party financial institution.

*What is happening here?* Copier leases are often equipment finance agreements. Essentially, a bank or financing company purchases the equipment outright from the supplier, and the bank leases the equipment to the nonprofit. By signing the lease, the nonprofit agrees to borrow money from the financial institution and repay it in monthly installments. **Nonprofits should be on alert that this arrangement can function like a long-term loan**. In this scenario, the bank or financing company is considered a secured creditor, which means it has a right to repossess the equipment or sue for money damages if the nonprofit tries to terminate the agreement.

### How to Prepare for a New Equipment Contract

- Research the supplier and, if known, the financial institution(s) they work with. Search the companies on the Better Business Bureau website and read customer reviews before accepting the equipment.
- Establish a contract management system: whenever your nonprofit contemplates signing a new agreement, designate a staff member or team to manage the contract through its lifecycle.[1]
- Make sure your employees know who has authority to sign on behalf of the organization.
- Whenever possible, reach out to an attorney in advance to let them know you are contemplating a new agreement. Lawyers Alliance is available to support eligible nonprofits in New York City.

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[1] For tips on setting up a contract management system, watch our on-demand webinar, "Contract Management: Keeping Track of Documents, Obligations, and Compliance." Information and a registration button are available at https://lawyersalliance.org/recorded-webinars

- The companies that provide these services often use form contracts with small print that can be confusing and intimidating. Take your time! Do a quick initial read of the contract to get a basic understanding of its structure, followed by a close read to understand each clause.
- As a mental exercise, picture worst case scenarios as you read the contract. Imagine how the other party could use each clause to their advantage.
- Pay particular attention to the term (meaning the length of the contract), total cost and fees, how to cancel or change the agreement, and be sure to ask the questions listed below.
- *Even if you have an existing contract, use these tips to re-read the contract and understand what you've agreed to!*

## Questions to Ask the Supplier

The following questions represent the minimum information a nonprofit should request when contemplating an agreement. In addition, nonprofits should not rely solely on what the supplier says, if the contract provides otherwise. The contract, not the supplier's verbal assurances or informal statements, is what will usually be binding.

**Can we review the contract in advance?**

Find a vendor that will allow you to negotiate the terms of the agreement. Ask to review the contract in advance. It is not standard or advisable for a supplier to refuse to share the contract in advance. If the supplier refuses, avoid entering into a contract with them.

**How do we cancel or change the agreement?**

Ask what happens if the nonprofit decides to cancel the lease before the term is up. Be wary if the contract states that you cannot terminate the lease or that the contract is non-cancellable. Pay attention to automatic renewal clauses and make sure you provide written notice if you do not intend to renew the lease.

**How much does it cost to cancel the lease?**

The contract might allow the vendor to charge your organization for the balance of the outstanding payments, or to impose fees or interest, even if you return the copier. This could cause difficulty if your organization is no longer able to afford the copier or no longer needs it.

**What happens if we decide not to use the supplier's services for maintenance?**
Be wary of any contract that requires you to use the contractor to maintain particular equipment.

**If there is a dispute, where will the counterparty bring a case?**

The venue clause will dictate where the parties can bring a case. Look for language that mentions "jurisdiction" and names a state. It can be incredibly inconvenient if your nonprofit has to defend a lawsuit in another state.

**Can monthly invoices increase under the agreement?**

Escalation clauses buried in the lease may give the financial institution the ability to increase monthly fees over time by a set percentage defined in the contract. Make sure you understand everything you could be billed for and are comfortable paying the highest rates that the contract allows.

## Beware of Deceptive Practices Around Copier Leases

If a salesperson told your nonprofit that you would be able to cancel or change your agreement but it turned out to be non-cancellable, consider filing a complaint with the New York Attorney General here and/or with the Better Business Bureau here.

For more information, check out our recorded “Conquering Contracts” webinar series on contracts and contract management available here. We also have a legal alert on specific contract provisions to be aware of and another legal alert on practical risk management with respect to contracts.

***Lawyers Alliance thanks Equal Justice Works Fellow/Attorney Frances Tyler for drafting this legal alert.***

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert, please contact info@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.***

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