

The Legal Strategist

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TEXAS ESOTERIC FACTS

The continental U.S. is served by three separate power grids: The Eastern Interconnection, the Western Interconnection, and Texas. It all has to do with the state's commitment to avoiding federal regulations. In 1935, President Roosevelt signed the Federal Power Act, which charged the Federal Power Commission with overseeing interstate electricity sales. By not crossing state lines, Texas utilities avoided being subjected to federal rules.

Understanding a contract is often a matter of being completely clear on all terms and conditions and making sure contract details are not subject to various meanings. The legal agreement between parties should be clearly laid out with no ambiguity. So once you have a contract, what does it mean? This quarter's Feature Topic covers the basics of what makes up a contract. Understanding these elements will go a long way to ensure you are actually getting what you are bargaining for.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on *The Legal Strategist* tab of my web site, please contact my office at 713.526.1883.

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FEATURE TOPIC: UNDERSTANDING THE ELEMENTS OF A CONTRACT

A contract contains numerous sections and provisions, but not all of them are promises. So what are these provisions and what do they mean?

Preamble of a contract is the introductory paragraph that identifies the parties, their legal structure, address and the effective date of the agreement.

Recitals are usually one of the first sections of a contract. They are not required, but they are very helpful. Recitals provide general information about the parties and the agreement, such as the contracting parties' intentions or understanding of the purpose for the contract. They are a good way to ensure that the contract is interpreted correctly by all parties.

Covenants are the center piece of a contract. They are what you think of when someone says there were "promises" made under a contract. Covenants are the promises that each party makes to the other regarding the contract. When one party fails to keep one of these promises, that party is said to have "breached" the contract.

Representations are statements made by one of the contracting parties about a fact concerning the contract. Representations and covenants can look very similar, but they are technically very different. The difference is in the details even though both look like promises.

The difference between a covenant and a representation is that a covenant is a promise that one party *will do something in the future* while a representation is a promise that *a present fact or circumstance is true*.

For example, in a real estate contract a representation would be a statement by the seller that there are no defects in the sewer system (i.e. a present fact or circumstance). While a covenant in a real estate contract would be a statement by the buyer that the buyer will pay the purchase price on a certain date (i.e. a promise to do something in the future).

Warranties are one step deeper. A warranty is a statement that the representations are true. The function of a warranty is that if a representation is untrue, then the contracting party who made the representation is on the hook for breach of warranty—a separate and distinct cause of action with its own set of remedies (money awards).

Miscellaneous / Boilerplate are the terms at the end of the agreement that serves as a catch all for things such as venue, governing law, attorney's fees, assignments, merger clause, severability, force majeure, etc. This list is not exhaustive, but these boilerplate terms are those most likely to impact your rights under a contract.

If you would like more information on this or any other topic covered in *The Legal Strategist*, please contact [Scott Barrett](mailto:Scott.Barrett@sbarrttl.com) to set up a consultation.