

Trapped in a Contract

Don't Get Burned by Evergreen and Automatic Renewal Clauses

Organizations should be wary of draconian renewal clauses that are sometimes embedded in seemingly innocuous contracts. If an organization enters into a contract containing such a clause, the organization should have a management system in place to ensure that crucial dates for action are not missed.



Stuck with a Service 1
Manage Evergreen Contracts 1
Watch for Traps 1
Negotiating Provisions 2
Enforceability and Escape 2
Rules Vary by State 2

Stuck with a Service

Lurking in any number of service agreements and other forms of contract is a clause that reads something like this:

This agreement will renew at the end of its term for a further term unless either party gives the other written notice of termination within 30 days prior to the end of the relevant term.

This “evergreen clause” perpetually renews the contract unless a party to the contract follows the correct process to cancel it within a typically narrow window of time (that is set forth in the contract). The contract will continue on and on without proactive and timely cancellation.

An automatic renewal clause also renews a contract in the absence of action by a party to the contract but renews only a finite number of times.

Renewal provisions can be convenient and constructive if the renewal term is brief, e.g., a month; the problems arise with long renewal terms—one year, three years, etc. In the context of a service agreement, an evergreen or auto-renewal provision may be acceptable to the service recipient as long as the service is satisfactory and meets the recipient’s potentially changing needs. But if a time arises when this is not the case, the organization may find itself stuck in the contract and with service payments for months or years beyond the usefulness of the service.

Manage Evergreen Contracts

Evergreen and auto-renewal clauses are commonly found in:

- Service agreements (cable, voice over internet phone, etc.)
- Leases
- Purchasing contracts
- Revolving loans
- Insurance coverage policies
- Magazine subscriptions

To maintain flexibility and minimize risk of financial loss, it is preferable to avoid contracts containing draconian evergreen and auto-renewal clauses. However, there are instances in which they are unavoidable. Unfortunately, such contracts—or at least their renewal provisions—are easily forgotten, even more so if there is staff turnover.

The solution is for an organization to put a system in place for managing its contracts. This could involve using contract or project management software, or establishing and maintaining a schedule of contracts with key information about each contract, including renewal/cancellation windows. In either case, it is helpful to set recurring electronic alerts to remind key personnel that cancellation/renewal windows are opening and closing.

Watch for Traps

Some providers will be very forward in alerting their potential customer that a pending contract will automatically renew and that the customer should be alert to this. Others will not and may bury the automatic renewal clause deep within the legalese of a contract, for example in the interminable sea of text that often appears

in association with an “I’ve read and agree with the terms” button on the web.

Negotiating Provisions

In some circumstances, it may be possible to negotiate changes to a proposed contract to make automatic renewal acceptable by:

- Allowing either party to cancel the agreement at any time following the initial renewal; or
- Making the renewal term brief—e.g., one or three months—to minimize the time the customer might pay for an unwanted service before cancellation is possible.

Providing the customer with a broader window of time in which to give notice of cancellation is another possible contract improvement, but this approach still leaves the customer highly vulnerable to missing the cancellation window and getting stuck with paying for unwanted services.

Enforceability and Escape

If an individual person gets trapped in an auto-renewing contract and challenges it, the service provider may be quite agreeable to compromise (perhaps to avoid the difficulty of collecting on a contract default or because a court may feel that the individual was at an unfair disadvantage). However, in business-to-business (including nonprofit organization) transactions, the courts generally can be expected to take a hardline on enforcing renewal clauses, assuming the contract language is clear and unambiguous. Nevertheless, the provider may be willing to consider a compromise with the customer, although likely on less generous terms than with an individual person. For example, the provider and customer may agree that the contract will terminate immediately upon the customer paying half the amount that otherwise would have been due in the coming months or years of the contract.

Rules Vary by State

Rules regarding automatic renewal vary by state, both as provided in court rulings and as enacted by state legislators. A New York statute, for example, provides that automatic renewal is not enforceable unless the customer

receives a written alert that the window for cancelling the contract is opening.

To better understand risks and options and to achieve improved outcomes when dealing with automatic renewal issues, legal counsel is advisable.

The latest version of this guide and related resources can be found at WeConservePA.org.

WeConservePA produced this guide with support from the Colcom Foundation, the William Penn Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

Andy Loza wrote this guide with assistance from Hilary Hirtle.

Nothing contained in this document is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

© 2020 WeConservePA

Text may be excerpted and reproduced with acknowledgement of WeConservePA.

9/1/2020