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The Scrivener: Modern Legal Writing



Plain English Part VI: Negatives or the Power Of Positives



by K.K. DuVivier

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This column is the last in a series¹ describing six “clear writing techniques” set out by the SEC in proposed rules to require that disclosures be written in Plain English.² This last writing tip is to avoid “negative sentences and multiple negatives.”³

What is a Negative?

To start the analysis, it is helpful to describe what is included in the term “negatives.” “No” and “not” transform a positive construction into a negative one. Similarly, prefixes such as “un-” and “non-” turn a positive word into a negative. In addition, be aware that other words can operate negatively; some examples are “terminate,” “void,” “denial,” “except,” “unless,” and “other than.”⁴

Example: *Provided however, that this license shall not become void unless licensee's failure to provide such notice is unreasonable in the circumstances.*⁵

Notice how the above example collapses under the weight of all those negative terms. Negatives hinder comprehension because readers are required to invert their logic and to determine what something is not.

Negative constructions also force readers to work harder because, generally, they require more words. Notice how the translation below streamlines the example.

Revision: *This license shall remain valid as long as licensee's failure to provide notice is reasonable.*

If you must use a negative, one way to simplify the sentence is to replace a negative phrase with a single word that means the same thing. Here is a list of some examples:⁶

Negative Compound

not able
not accept
does not have
does not include
not many
not the same
not . . . unless

Single Word

unable
reject
lacks
omits, excludes
few
different
only if

Multiple Negatives: Two Negatives Make a Positive

The problem with negatives is aggravated when more than one is used. In English, two negatives make a positive. Therefore, your readers must approach a sentence with multiple negatives like an algebraic equation: to decipher its meaning, they must cross out the opposing negatives.

Simplify your sentences by doing the work for your readers. Identify each negative term in your sentence to determine whether you have used multiple negatives. Next, pair up as many negatives as you can. Finally, rewrite the sentence with fewer negatives by converting negative pairs into positives.

Example: *No rate agreement shall qualify under Section 2(a) unless not fewer than thirty days' notice is given to all customers; and unless said rate agreement has been published, as provided above, provided however, that the publication requirement shall not apply to emergency rates; and until said rate agreement has been approved by the Commission.*

Revision: *To qualify under Section 2(a), a rate agreement must meet these three conditions:*

- All customers must receive at least thirty days' notice of it;
- It must be published, as provided above (but emergency rates do not have to be published); and
- It must be approved by the Commission.⁷

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.

K.K. DuVivier is a senior instructor of Legal Writing and Appellate Court Advocacy at the University of Colorado School of Law, Boulder.

Two Positives Make a Negative?

This column illustrates two key points about negative constructions. First, use positive constructions whenever possible because readers will understand a positive sentence more easily than its negative counterpart. Second, because two negatives make a positive, converting multiple negatives to positives will make your sentences shorter and simpler.

As a final note, I'd like to share a short story about negatives and positives.

A linguistics professor was lecturing to his class one day. "In English," he said, "a double negative forms a positive.

In some languages though, such as Russian, a double negative is still a negative."

"However," he pointed out, "there is no language wherein a double positive can form a negative."

A voice from the back of the room piped up, "Yeah. Right."⁸

NOTES

1. See DuVivier, "Plain English Part I: Secrets from the SEC," 27 *The Colorado Lawyer* 35 (Jan. 1998); DuVivier, "Plain English Part II:

Shorter Sentences and Lighter Luggage," 27 *The Colorado Lawyer* 27 (March 1998); DuVivier, "Plain English Part III: Choosing the Right Word," 27 *The Colorado Lawyer* 31 (May 1998); DuVivier, "Plain English Part IV: Keep It Straight, Tabulate," 27 *The Colorado Lawyer* 67 (July 1998); DuVivier, "Plain English Part V: Go Aggro over Argot," 27 *The Colorado Lawyer* 61 (Sept. 1998).

2. 62 Fed.Reg. 3152 (Jan. 21, 1997). The proposed rules went into effect on October 1, 1998. The text of the final rule can be found in SEC Release No. 33-7497.

3. *Id.* at 3158.

4. Wydick, *Plain English for Lawyers* 67-68, 3d ed. (Durham, N.C.: Carolina Academic Press, 1994).

5. *Id.* at 68.

6. Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, *A Plain English Handbook* 31 (draft, Jan. 13, 1997).

7. Wydick, *supra*, note 4 at 68.

8. I received this story over the Internet from Professor Sue Liemer, Director of Legal Writing at the University of Mississippi.



Joint Transactional Responsibility Group to Meet November 4

The Joint Transactional Responsibility Group, encompassing the CBA Trust and Estate, Business Law, Real Estate Law, and Taxation Sections, will hold its monthly brown bag luncheon on November 4. All meetings are held on the first Wednesday of each month at noon at the CBA office, 1900 Grant St., Ninth Floor, in Denver. For more information, call Jim Walker in Denver at (303) 623-9000.



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