

Short and Simple

Much legal writing is needlessly complex. Here are seven ways to simplify without losing precision.

By Joshua Stein

IF YOU WRITE SIMPLY AND SUCCINCTLY, you will almost always make your writing clearer, more effective, and easier to follow. You will prevent ambiguity, vagueness, confusion, and mistakes; save space and time; help your clients understand what you do for them; and communicate better. These are the goals of almost all written work, including almost all legal writing.

If you use seven simple tools, you will go a long way toward achieving these goals. Those seven tools will help you translate long and complicated legal writing into legal writing that is simple and short, but just as precise and effective. Here are the seven tools:

1. **SHORT SENTENCES** Break long sentences into shorter ones.
2. **CUT** Get rid of words, sentences, and paragraphs you don't need.
3. **VERBS** Prefer verbs to nouns.
4. **"HERE"** Question any use of a word that includes "here." Try to substitute something less legalistic.
5. **SIMPLE WORDS** Use them if you can.
6. **ACTIVE VOICE** Use it.
7. **NUMBERS** Write larger numbers as numerals.

By using these tools, you can improve any legal writing—contracts, briefs, statutes, memos, letters, or anything else—whether you want to persuade, require, present, memorialize, or communicate in some other way.

To demonstrate the use of these seven tools, this article shows how you might apply them to a recently enacted New York statute, the Property Condition Disclosure Act, now part of the state's real property law. The PCDA reads very much like most other statutes, and most other written work that most lawyers produce. It is no better and no worse. Because it is not very long, and its issues are neither technical nor specialized, the PCDA offers a perfect opportunity to show how to apply the seven tools suggested above.

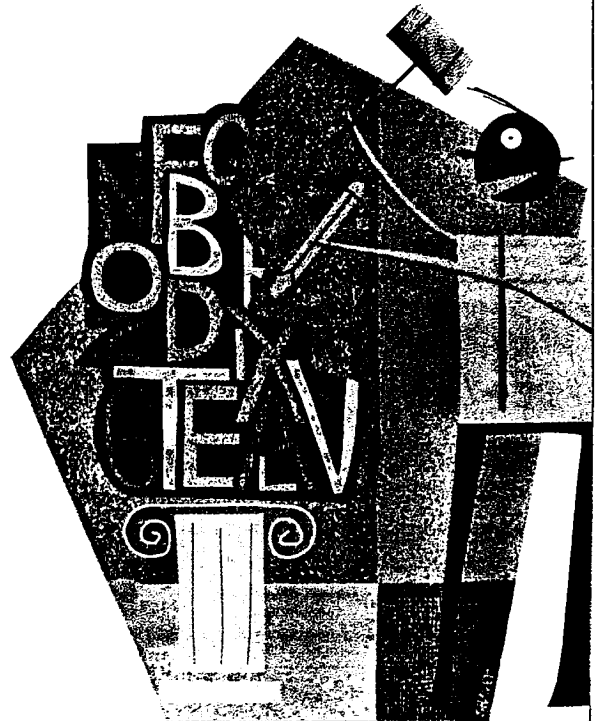
The PCDA starts by imposing requirements that apply to any transfer of "residential real property." That's a bad beginning. The statute uses three words for something that practically everyone in the real world calls a "house." The PCDA then repeats those three words many times. By itself, that increases complexity and makes the reader work harder. Even in a statute, contract, brief, or any other legal writing, you can use perfectly good, simple words like "house." (Tool Five.)

The PCDA's definition of "residential real property" reads as follows:

"Residential real property" means real property improved by a [one- to four-family] dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to (a) unimproved real property upon which such dwellings are to be constructed, or (b) condominium units or cooperative apartments, or (c) property in a homeowners' association that is not owned in fee simple by the seller.

To start to simplify and improve that definition, you can apply Tool Two: "Cut." Ask how much of this verbiage you really need, whether you can break it into easier, bite-size chunks, and whether you can simplify any individual pieces of it, to make them more accessible.

This 78-word definition starts by casting a broad net to include not only certain dwellings, but also anything intended as such a dwelling. What does that extra breadth add? How often will it matter? What does it capture that a simple reference to a dwelling does not? Do you need all those extra words? Do they add more value than the effort they create for the reader? Probably not.



The definition of “residential real property” carves out some exceptions. But it strings them into the same long sentence that defines “residential real property.” Long sentences are always easy targets for simplification. You can, for example, almost always state the rule first, then cover all its exceptions in another sentence. (Tool One.)

Exception “a” excludes certain “unimproved real property.” That exception adds nothing but words, because the definition already says the real property must be “improved.” You lose nothing by deleting this exception entirely. (Tool Two again.)

In exception “c,” for homeowners’ associations, you can replace a technical legal term—“fee simple”—with a more commonplace reference to ownership. (Tool Five.) You can also change the passive voice (“owned . . . by the seller”) to the active voice. (Tool Six.)

Using these suggestions, you could redefine “residential real property” as follows:

“House” means a one- to four-family dwelling and any land to be transferred with it. “House” excludes any condominium unit, cooperative apartment, or real property in a homeowners’ association where the seller does not directly own the land and building.

The revised definition uses about half as many words, losing no useful substance. Readers can understand it more easily than they might its predecessor.

The PCDA requires almost every seller of “residential real property” to give the buyer a “property condition disclosure statement.” To express this requirement, the PCDA throws together several related thoughts as follows:

§ 462. Property condition disclosure statement. 1. Except as is provided in section four hundred sixty-three of this article, every seller of residential real

property pursuant to a real estate purchase contract shall complete and sign a property condition disclosure statement as prescribed by subdivision two of this section and cause it, or a copy thereof, to be delivered to a buyer or buyer’s agent prior to the signing by the buyer of a binding contract of sale. A copy of the property condition disclosure statement containing the signatures of both seller and buyer shall be attached to the real estate purchase contract.

To simplify this awkward and verbose language, you can state the rule and its exceptions separately. Instead of mentioning the exceptions before the rule (see the first 13 words after the heading), you could add a separate sentence to say the general rule has some exceptions. (Tool One again.)

The PCDA defines its exceptions by referring to “section four hundred sixty-three of this article.” By translating those eight words to “section 463,” you could spare the reader effort and save space. (Tool Seven.)

To make the reader’s life even easier, you might rewrite the cross-reference so that on its own it reminds the reader about what it covers—so you don’t burden the reader with any numbers at all. To do that, you could define “exempt transactions” at the beginning of the statute, then use that term instead of any numerical cross-reference.

When the PCDA applies, it requires the seller to fill out a disclosure form and “cause it, or a copy thereof, to be delivered . . . prior to the signing by the buyer of a binding contract of sale.” Those 22 words give you a handful of easy opportunities to simplify and shorten.

First, whenever you see the word “thereof” (and any other word that contains the four letters “here”), you will often find a pompous and complex structure that you can easily simplify. (Tool Four.) In this case, for example, you could say: “it, or a copy of it.”

Second, the statute refers to “prior to the

signing by the buyer of” a contract. You can replace the words “prior to” with one simpler word: “before.” (Tool Five again.)

Third, the language just quoted turns a verb into a noun and adds unnecessary complexity by using the passive voice (“the signing by the buyer”). You could make the words just a bit easier to understand by changing them to: “before the buyer signs.” (Tools Three and Six.)

The next sentence says the disclosure statement “shall be attached” to the contract. By using the passive voice, the PCDA fails to make anyone specifically responsible for doing anything. You can translate to the active voice. (Tool Six.)

Using these suggestions, you might rewrite the main operative paragraph of the PCDA to read as follows:

Delivery of Disclosure Statement. Every seller shall fill out and sign a disclosure statement, and give an original or a copy of it to the buyer or the buyer’s agent, before the buyer’s signing date. The buyer shall sign the disclosure statement. The parties shall attach a copy of it, fully signed, to their contract. This paragraph does not apply to any exempt transaction.

Your rewrite reduces 101 words to 64, partly by using words that a “plain English” version of the PCDA would define once at the beginning of the statute, eliminating the need for further explanation.

Some of the techniques described here may seem basic, specific, and narrow, but you will find opportunities to use them again and again in legal writing. If you apply these and similar techniques consistently, at least where they otherwise make sense, you can produce clearer and simpler legal writing every time.

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