

ILLINOIS ENGINEER THIS WEEK

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How to Sign a Contract? It Depends What You Are

By **Todd M. Young**, Hinshaw & Culbertson LLP

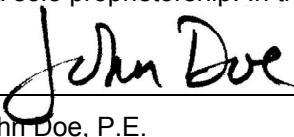
It's usually pretty easy to figure out how to sign a contract, but not if you don't have a few basic issues in mind:

Be consistent in referring to yourself.

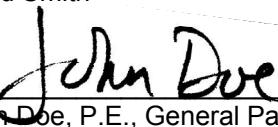
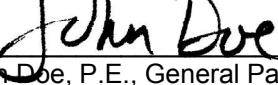
If you are practicing in one of the forms listed below, make sure that any time the contract refers to you, it does so in the name of that entity. For example, if you are practicing as ABC Engineers, Inc. then make sure the signature page lists that as your entity, and make sure that when the first paragraph of the contract refers to you, it uses that same name, and that it does not refer to you individually as a party to the contract (unless you have specifically agreed to that).

How is your practice organized?

Sole Proprietorship. If you have no corporate structure, and if you have no partners, then you are probably practicing as a sole proprietorship. In that case, you can just sign contracts in your own name.


John Doe, P.E.

General Partnership. If you have one or more other professionals practicing with you, and you are not just sharing office space (i.e., you are working on matters together, etc.), then you are probably practicing as a partnership. If your entity has a name, you should consider using that name on your signature line. But beware that if you and your partner don't have a clear understanding between you about who has authority to do various things in your joint name, you should clarify that first. How could you confirm whether you have some prior understanding? One way is to check any written partnership agreement you have signed, to see if it addresses who may sign contracts for the partnership.

Doe and Smith

By: 
John Doe, P.E., General Partner

Limited Partnership. To be one of these, you have to have filed forms with the Illinois Secretary of State and the IL Department of Financial and Professional Regulation. If you aren't sure, you will need to check. If you did file those forms, then those will tell you the name under which your firm is authorized to do business. Sign contracts in that name, and only indicate your individual name below that, with your title. This is important to make it clear to everyone that this contract is not your individual liability, but rather is an

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obligation of the partnership. And just as in the case of a general partnership, you should check to confirm that you are authorized to sign a contract on behalf of the partnership. Again, a written partnership agreement might help you sort that out.

Doe and Smith, L.P.

By: 
Susan Smith, P.E., General Partner

Corporation. Again, you could only be practicing in this kind of entity if you had filed forms with the Illinois Secretary of State and the Illinois Department of Financial and Professional Regulation. Find the exact name under which you are authorized to do business, and then sign the contract in that name. You should also make sure you are authorized to sign contracts on behalf of the corporation. Your bylaws may help you learn which officers are authorized to sign agreements. Once you find that out, get one of those officers (or else ask the Board of Directors to authorize someone else to sign).

Doe and Smith, Inc.

By: 
Susan Smith, P.E., President

LLC, LLP and other Forms. Same answer as above – get the exact name of your entity and sign the contract in that name. Your Operating Agreement (for an LLC) or Partnership Agreement (for an LLP) will provide guidance on who is authorized to sign contracts.

Doe and Smith, LLC

By: 
Susan Smith, P.E., Manager

When in doubt, check with legal counsel to confirm what kind of entity (if any) you are using. The risks of failing to sign contracts correctly can be serious. If you sign in a corporate name when you are not authorized to practice engineering as a corporation, you can face license problems. And if you are authorized to practice in the form of a corporation or other entity, failing to sign in the corporation's name can expose you unnecessarily to personal liability in some cases. While you will always have some personal liability for your professional actions and malpractice, a contract in another area (such as a lease or a bank loan) will not automatically subject you to personal, individual liability if it is signed in the name of your corporation. Again, consult counsel for more detailed analysis of your liability risks and exposure in any particular case.

Also, be aware that many pre-printed form contracts often assume that the professional will be signing in her individual capacity and do not provide space for a corporation or other entity to sign. Thus, if you are signing as a corporation or other entity, you will need to alter the signature lines accordingly.

Todd Young practices in the area of corporate transactions and finance, and has represented design professionals in a wide variety of governance and transactions matters. He has assisted individuals and design firms with ownership succession, corporate governance, contract negotiation, and mergers and acquisitions. He is the author of "Organizing and Advising a Small Business in the IICLE publication "The Illinois Lawyer's Overview: A Guide to Common Practice Areas" (2012) and "Corporate Operating and Maintenance Issues" in IICLE's publication "Illinois Business Law: Choice of Entity Issues and Corporations" (2011 edition and 2013 supplement). Mr. Young may be reached at tyoung@hinshawlaw.com or 312-704-3777.

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