

LIBRARY LAW GROUP

BEWARE OF EVERGREEN CLAUSES IN YOUR CONTRACTS

Many contracts that libraries enter into, particularly service and technology contracts, include a provision that is commonly known as an “evergreen clause.” An evergreen clause, also referred to as a perpetual renewal clause, provides for the automatic renewal of the contract at the end of the contract term unless either party notifies the other party, in writing, of an intent to terminate. Often, this notice must be given within a specific time period prior to the end of the current contract term.

Typically, an evergreen clause takes the following form in a contract:

Each Term shall automatically renew for a subsequent period of the same length as the initial Term unless either party gives the other written notice of termination at least (30) days prior to expiration of the current term.

Under this clause, a library would have to notify the vendor, in writing, that they did not want to renew the contract at least 30 days prior to the expiration of the current term. If the library did not comply with the notice requirement, the contract would then automatically renew. Why would vendors incorporate such a clause into its contract? The argument is that an automatic renewal clause provides ease of continued business relations without the need to renegotiate contract terms. Vendors describe an automatic renewal as a “customer convenience.” They argue that it prevents service lapses and eliminates an administrative



For any questions or comments you might have regarding this newsletter, please feel free to contact:

Chicago Office

20 N. Wacker Drive, Ste. 1660
Chicago, IL 60606

T: (312) 984-6400

F: (312) 984-6444

Orland Park Office

15010 S. Ravinia Ave., Ste 10
Orland Park, IL 60462

T: (708) 349-3888

F: (708) 349-1506

www.ktjlaw.com

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burden for you. Vendors also want them because they almost always get an automatically extended stream of revenue. The unmentioned risk is that you might be paying for a service you no longer need. Although it is not uncommon for contracts to be automatically renewed once or even twice, for the cycle to continue in perpetuity is not likely to be in the best interests of the library.

The simplest option to avoid contracts being renewed automatically-forever, is to review every contract before signing, and pay special attention to anything that could be an evergreen clause. Beware that some companies find tricky ways to try and insert them. If you're unsure whether a particular term is an evergreen clause, you should consult with an attorney. The small cost of due diligence up front could save your library a lot of money and aggravation down the road. If there is an evergreen clause in the contract, you should negotiate with the vendor to try to get the clause removed before signing the contract.

If the company refuses to remove the evergreen clause, you have two options. First, you can "calendar" the specific date or time period in which you would need to provide notice that you will not be renewing the contract. That way, you will help ensure that you won't forget about the automatic renewal provision. Second, you can simply refuse to sign the contract and choose another vendor that doesn't require this type of provision. Automatic renewals pre-empt making choices. You should have the right to renew -- but not the unexpected obligation to do so.