

# Top 10 Tips for Grower Communications, Contracts, & Collections



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**Davis Wright Tremaine LLP** is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.



10.

CHOOSE GOOD BUYERS



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# Assessing the Business Relationship

History

References

Diligence

Payment Assurances

Communication

Familiarity

Business Realities

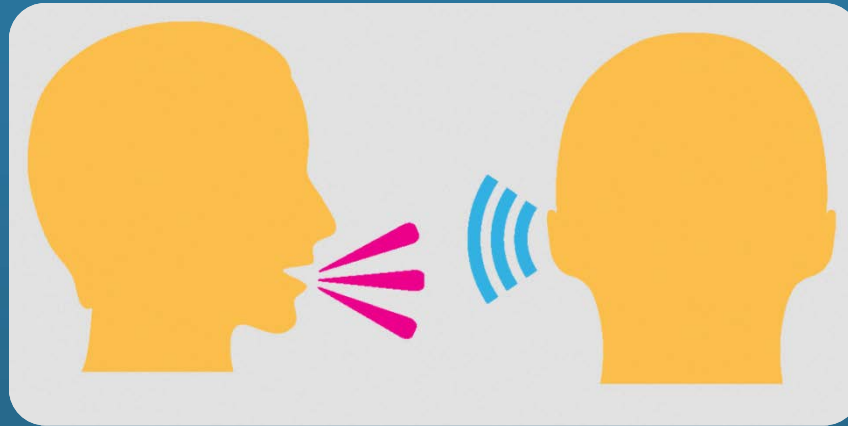


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9.

**SPEAK (AND LISTEN)  
REGULARLY**



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# Avoid Surprises

✧ Tackle potential issues early.

✧ Don't dodge bad news.

✧ Straight talk.

✧ Be empathetic, be firm.

✧ Get organized, have a plan.

Face to face is best.

Phone is better than email or texts.



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## CONTACT CLEARLY IN WRITING



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# Written Contracts (or not)...

Clarify the Business Deal

Exchange of Promises

Provide Terms the Law Won't

Allocate Risk





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## SELECT AND ARTICULATE PAYMENT TERMS LANGUAGE



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# Payment Terms Language

“Payment in full is due no more than [x] days after delivery”

“Seller will discount any invoice 2% for which it receives payment from Buyer in full within 10 days; otherwise all payments are due in full within 30 days.” (2% 10, Net 30)



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## ALLOW FOR INTEREST AND PENALTIES



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# Penalties/Interest Language

“A late fee calculated at a rate of [x]% per month will be added to any amounts past due more than 30 days.”

“Interest may be assessed on any obligation not paid when due at a rate of 1½% (18% per annum) per month from the date due until paid in full; provided, however, that any late charge will not be assessed at a rate which exceeds the maximum amount permitted by applicable law.”



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## INCLUDE ATTORNEYS' FEES PROVISION



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# ATTORNEYS FEES LANGUAGE

“Any costs for the collection of past due balances, including reasonable attorney fees, will be added to the amount owed.”

“In any proceeding involving a dispute or collection of sums due arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its expenses of litigation, including its reasonable attorneys’ fees, expert witness fees, and arbitration and court costs.”



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## INCLUDE CROSS DEFAULT LANGUAGE



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# Cross Default/Early Termination Language

“If Buyer fails to make any required payments to Seller within [X] days of the date agreed, Seller may terminate all remaining Grape sales obligations under this Agreement and any other agreements with Buyer.”



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## USE AGRICULTURAL LIEN RIGHTS FOR LEVERAGE



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# Statutory Grower Liens (WA)

Processor's Lien (RCW 60.13.020)

Inventory and A/R

File within 20 days after default (use UCC-1)

- <http://www.dol.wa.gov/business/UCC/uccforms.html>

Priority over other secured creditors

Expires after 12 months



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# Statutory Grower Liens (OR)

## Agricultural Produce Lien (ORS 87.700)

Inventory and proceeds

File APL-1 within 45 days after final due date

- <http://filinginoregon.com/forms/pdf/ucc/430.pdf>

Priority IF other secured creditors are notified within 20 days.

Expires in 225 days



# Statutory Grower Liens (CA)

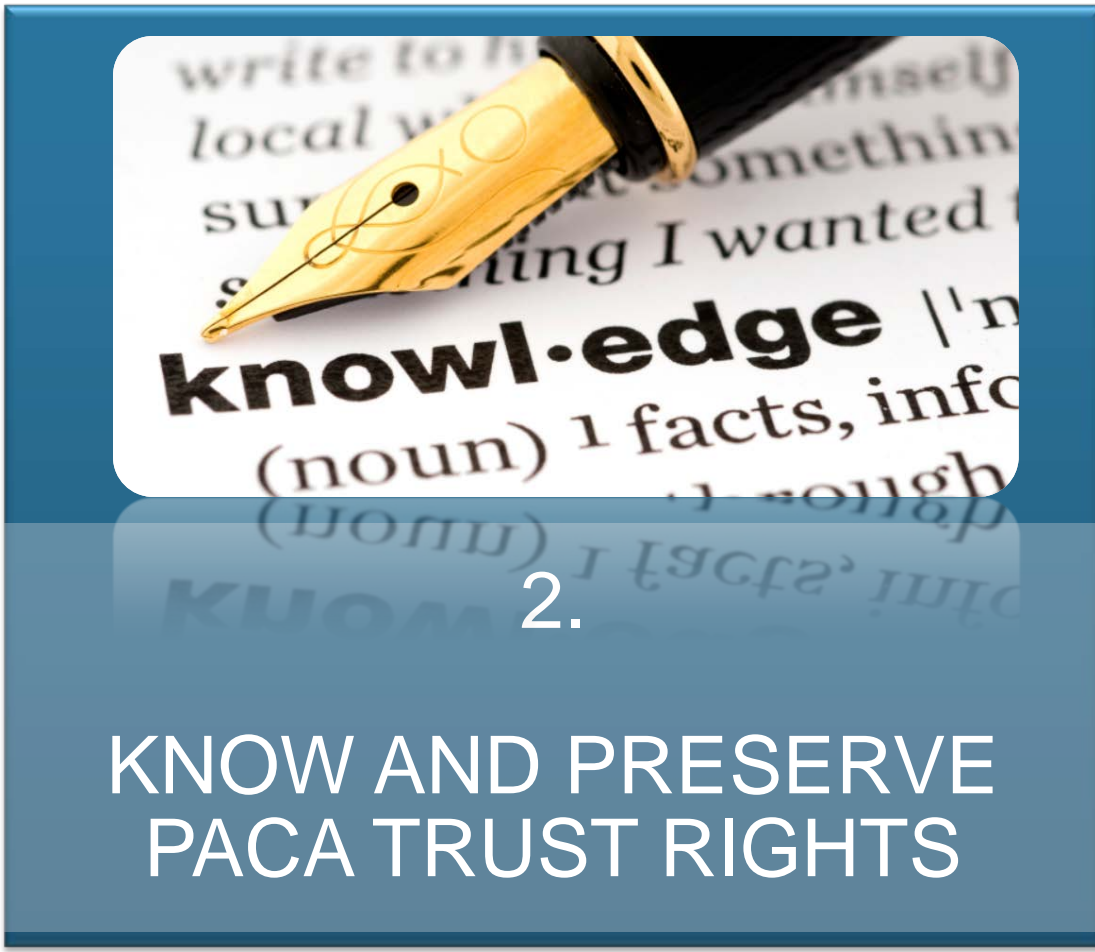
## Producer's Lien (Food & Ag Code 55631)

Inventory and A/R

No filing required for priority

Expires in 2 years if no written contract





2.

# KNOW AND PRESERVE PACA TRUST RIGHTS



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# PACA's Statutory Trust

Agreed payment terms not >30 days

Preserve rights by notice within 30 days or by invoice language (only if PACA licensed seller)

Trust beneficiaries have priority in trust assets: grapes, wine, and A/R



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# PACA Invoice Language

***“The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5c of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.”***



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# PACA Trust Notices

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## Key Provisions to Include:

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- ✧ Trust Beneficiary information
- ✧ Debtor/Merchant information
- ✧ Transaction Terms
- ✧ Amount Due
- ✧ Reservation of PACA Trust Claim





1.

“LAWYER UP” – BUT ONLY  
IF YOU HAVE TO



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# Sample Lawyer Letter

“....We hereby demand that the entire past-due balance in the amount of \$\_\_\_\_\_ be immediately paid by delivery to: [Winery address]. If [Winery] does not receive full payment by \_\_\_\_\_, 2011, we will pursue formal legal action to collect the entire amount, including interest and attorneys fees, and we will notify [state liquor authority] of your failure to honor the terms of our agreement.”

**Grrrrrrrrr. Arrrgggh.**



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# Top Ten List:

1. Lawyer up (if you have to).
2. PACA
3. Ag Liens
4. Cross Default
5. Attorneys' Fees
6. Interest
7. Payment Terms
8. Contract Clearly
9. Build Good Relationships
10. Choose Good Buyers



# About us

## Davis Wright Tremaine LLP



A full-service law firm, with approximately 500 attorneys operating across our nine offices throughout the West and East Coasts of the United States and in Shanghai, China.

DWT is proud to have one of the most comprehensive and coordinated food and beverage legal teams in the United States. We work on food and beverage, agriculture, and alcohol supplier projects every day. How do we do it? With know-how covering what is important to your business. Such as direct-from-farm sourcing relationships, ingredient supplies, co-packing, and distribution. Labeling, marketing, and direct-to-consumer strategies. Human resources. Food safety and compliance. Stewarding water and energy. Innovating and integrating technology. Developing and protecting brands and trade secrets. Finding and deploying smart capital. Resolving “bet-the-farm” disputes. And leading game-changing mergers and acquisitions.

If you are an OWA member, you may contact the OWA General Counsel, Jesse D. Lyon, of Davis Wright Tremaine LLP, for general inquiries: [jesselyon@dwt.com](mailto:jesselyon@dwt.com) or (503) 778-5268.

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## The Oregon Winegrowers Association (OWA)



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A voluntary membership-based organization that provides legislative and regulatory advocacy and lobbying for the Oregon wine grape and wine industry. The OWA provides a unified voice on key industry issues before state and federal government agencies, legislative bodies and related associations. We work to develop a positive and favorable environment for Oregon’s wineries and wine grape growers.

[oregonwine.org](http://oregonwine.org)