




Help Your Attorney... Help **YOU!**

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 **BELLNUNNALLY**
ATTORNEYS & COUNSELORS

 **NACM** | SOUTHWEST
National Association of Credit Management *Driving results*

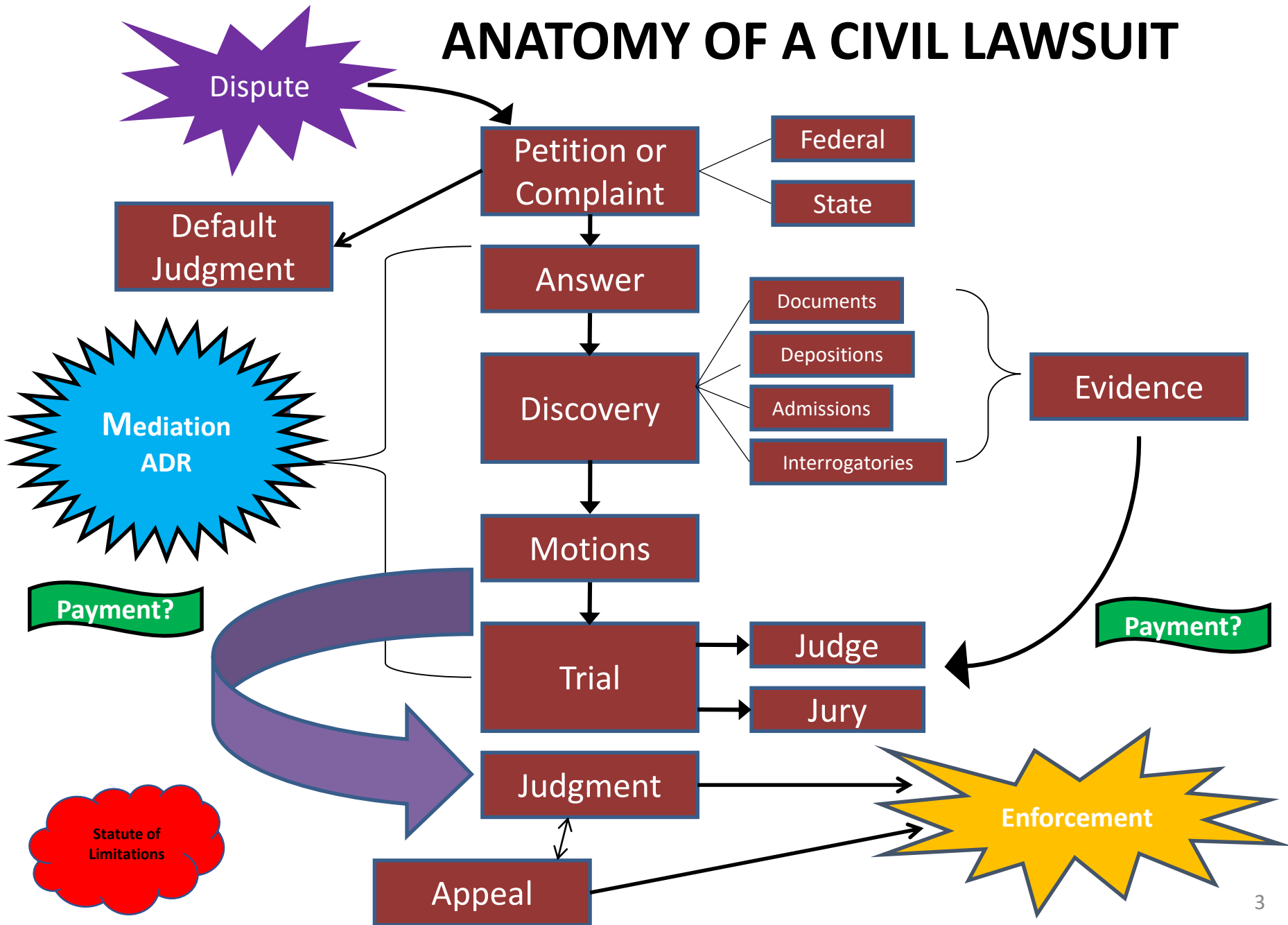


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Details,
Details,
Details. . .

Why
Important?

ANATOMY OF A CIVIL LAWSUIT





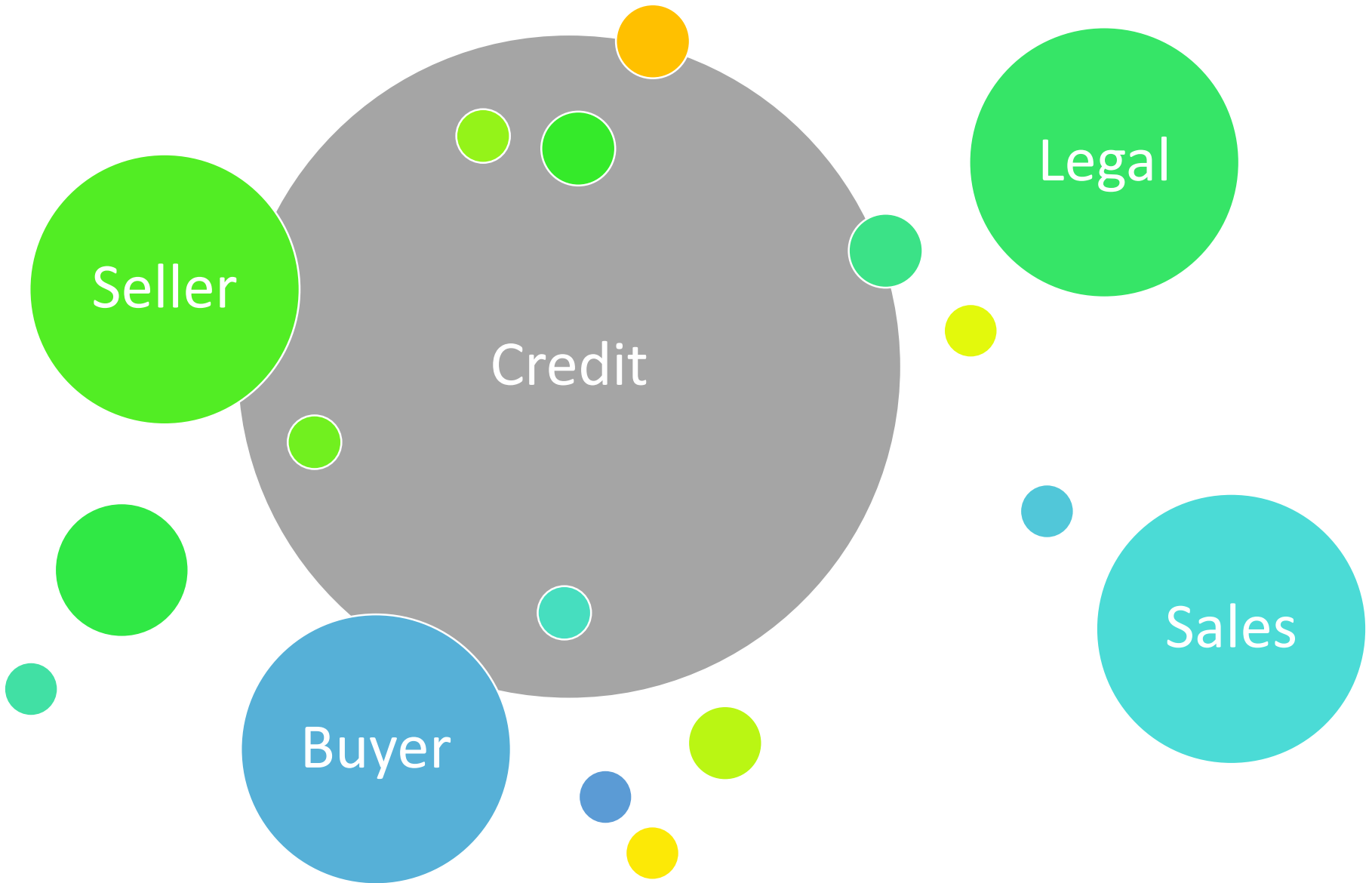
Legal


Credit





ELBOW BUMP





Contracts – Purpose

- Document the “deal”
- Document agreed upon terms
- Manage expectations
- Provide consistency
- Mitigate risk
- Add leverage
- Create evidence



Contract Legal Elements

- Offer;
- Acceptance;
- Meeting of the minds;
- Consent to the agreement's (material) terms;
- Execution and delivery of the contract; and
- Consideration



LOOPHOLE

Contracts - Common Defenses

- Indefinite
- Ambiguous
- Statute of Frauds
- Lack of consideration
- Statute of limitations
- Waiver/estoppel
- Prior breach
- Fraud/Inducement

Process - Important



What Can YOU Do?

- Ensure credit process established & followed
- Create consistency
- Confirm documents executed
- Confirm documents complete, accurate
- Be familiar with your Co's contracts and standard terms
- Read your Co's contracts/standard terms
- Know your Co's contracting & negotiating process



Credit Applications – Tips/Traps

- Binding agreement
- An information tool
- Know your customer
- Get it right – at the start
- Investigate, research, verify
- Where are the assets?
- Who is signing?
- Update





- Payment terms – net shipment date? Invoice date?
- Harmonized with related contracts / controlling
- Interest rate
- Inspection/Rejection/In Writing /Deadline (10 days)
- Attorneys' fees and expenses
- Authorization to sign on behalf of the company
- Forum Selection Clause
- Venue Selection Clause
- Jury Waiver Clause

**Terms & Conditions-
What to look for**



- Payment location
- Arbitration/Mediation?
- Choice of Law to Govern the Agreement
- Change of entity/form/structure/ownership/status
- Warranties- disclaimers
- Limitation of Liability/Liquidated damages
- Right of offset
- Notices

**Terms & Conditions-
What to look for**



Guaranty Agreements

- A contract
- Person or entity
- Agrees to Pay
- The debts of another
- Must be in writing
- Must be signed by guarantor

Key Guaranty Terms

- Personal/individual liability
- Continuing
- Unlimited
- Irrevocable
- Corporate Guarantors?

Guaranty- Tips/Considerations

- Guaranties strictly construed in guarantor's favor
- Clearly identify
 - guarantor
 - debt
 - primary obligor
- Confirm personal, individual liability of guarantor
- Send notice/demand letters cc'd to guarantor
- Update as business evolves, is sold, merged etc.
- Ask for execution and get them signed.
- Watch signature blocks
- Legible signature? Printed name included?



Invoicing

- Consistent
- Regular basis
- Keep it simple, streamlined
- Avoid confusing, fuzzy “accounting”
- Customer info
- Project info
- Delivery info
- Product details
- Service details
- Accurate



Tracking delivery

- Process, consistency, business practice
- Documentation
- GPS
- Signed tickets/receipts @ project site
- Photos
- Think about how you could prove it

“Paper” the file

- Document the transaction
- Document disputes.
- Be aware of business/legal enviro.
- Creates written record. Avoids, “He said, she said.”
- Memories fade over time
- Document important calls and customer admissions
- I’m not paying
 - Ask reasons in writing
 - Ask for proof
 - And address
- Be careful of admissions in notes or correspondence
 - “Widgets were wrong size.”
 - Better: “Customer claims widgets were wrong size.”



Watch potential waivers

- Be careful not to waive contractual requirements

Dear Bad Customer:

Thank you for taking my call. As discussed, you are late in paying Invoice Nos. 1001, 1002 and 1003, which total \$300,325, including interest to date. As you admitted in our call, you should have paid these invoices no later than October 30, 2020. You apologized for being late and indicated that you would make full payment on these invoices (including all interest charges) no later than this Friday. We look forward to receiving your payment. We are not waiving any rights or remedies under the Master Services Agreement or otherwise in relation to these invoices or the Project.

**Thank you,
Perfect Credit Manager**



Do's & Don'ts

- Pause, think before you hit send
 - Avoid emotional knee jerk responses
 - Consider whether necessary/helpful or best said over phone/in person
 - Watch your language; informality; ambiguity; name calling
 - Avoid admissions, statements that can be misconstrued
 - Be brief. Be factual. Be accurate. Be professional.
 - Use emojis? Hmm...
 - Consider whether you would be comfortable with your email/text being read during a deposition, posted before the jury at trial, or printed in newspaper... if not ... then don't send it!
-



Demand Letters

- Collect facts and documentation
- Ensure accurate
- Confirm contract compliance & requirements
- Keep simple but provide enough context & detail
- Provide a deadline, ultimatum
- Don't over sell or make inflammatory
- Leave yourself wiggle room
- Run by legal
- Proceed with caution on consumer debt
- Is it time to put on attorney letter head?
- Is it going to someone who will take action? Attention.



Workouts

- Payouts
- Personal guarantees
- Promissory notes
- Agreed Judgments



Workouts

- Be proactive
- Communication is key
- Documenting is essential
- Work with legal now to avoid headaches later
- Preserve rights, avoid waivers

Preparing for Battle

- Prepare the file
- Streamline it
- Contracts/amendments
- Invoices
- Statements of Account
- Communications to/from Debtor
 - All correspondence
 - Account notes
- All documentation Re: Defenses / Excuses



Working With Your Attorney

- Communication is key
- Careful account documentation
- Organized documents
- Eliminates confusion
- Ensures accuracy
- Aides in realizing payment & defeating defenses
- Cuts to the chase with debtor
- Saves you and your lawyer time
- Saves you money
- Timeline
- Expectations





**Questions?
Thank you!**

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About Karen ...

Karen L. Hart is a business attorney with over 18 years of experience litigating commercial and real estate disputes.

Karen counsels clients on creditor's rights issues, real estate and landlord-tenant matters as well as various other contract and business disputes. She is a tireless advocate for her clients, providing guidance on business legal matters, such as lease, purchase and sale, brokerage and property management disputes, specific performance claims, commercial evictions, lis pendens, lien and bond claims, lien priority disputes, promissory note claims, commercial foreclosures, bankruptcy claims, professional ethics and liability matters, bills of review, confidentiality, non-competition and non-solicitation agreements and related disputes and injunctive proceedings, and business tort claims, including tortious interference with contracts and business relationships, civil theft, fraud, and misappropriation of trade secret claims.

Prior to joining Bell Nunnally, Karen served as a law clerk to the Honorable Hayden Head, Jr., United States District Court, Southern District of Texas, Corpus Christi Division. Karen is an honors graduate of the University of Texas at Austin School of Law.

Karen's recent accolades include: Best Lawyers in America (2017-2021); Litigation Star, Benchmark Litigation (2020); Best Lawyers®' *Texas' Best Lawyers* (2020); Dallas Top 50 Women Lawyers Award, Texas Diversity Council (2017); Winning Women Award, Texas Lawyer (2014); Women in Business Award, Dallas Business Journal (2012). Karen also serves as Bell Nunnally's General Counsel.

Karen is a long-time NACM member, supporter and educator.

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