# NOVEMBER 2011 BUSINESS COUNSELOR UPDATE

**By Alan S. Gutterman**[1]

## Modifications and Other Changes Relating to Existing Contracts

While parties to a contract generally assume that the contract will extend for the entire term originally contemplated with no need for modifications, the reality is that change is commonplace and it is often necessary to prepare one or more additional documents that memorialize the evolution of the relationship described in the original contract. For example, a modification agreement may be needed when the parties decide to modify the terms of a contract after it has been executed. See Specialty Form at § 47:119, which is also reproduced below. If the parties wish to supplement the terms of the original contract they should draft and execute a supplementation agreement that preserves the original terms and incorporates new provisions and information that the parties believe to be useful in further defining their obligations and rights under the contract. See Specialty Form at § 47:122. On the other hand, if the parties decide that it does not make sense to perform under a contract after is has been signed a revocation or rescission agreement is an appropriate solution. See Specialty Form at § 47:121. Performance on a contract may also be suspended if one of the parties notifies that other of an election to terminate the contract, perhaps because the notifying party believes that the other party has breached the contract. See Specialty Form at § 47:120. Finally, a separate document should be used to document the willingness of a third party to become jointly liable for the obligations of one of the parties under the contract. See Specialty Form at § 47:123. For a full discussion of contract formation and management, see Contract Formation and Management (§47.1 et seq.).

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**§ 47:119 Modification of contract *[New]***

*[EITHER:]*

Agreement made *[date of agreement]*, between *[name of party 1]* of *[address of party 1]*, referred to as *[description of party 1]* and *[name of party 2]* of *[address of party 2]*, referred to as *[description of party 2]*.

On *[date of contract]*, the parties entered into a written contract, a copy is attached and incorporated by reference, and the parties have agreed to modify certain terms of the contract.

Now, it is agreed, that *[name of party 1]* is released and discharged from performance of the clause of the contract where *[he/she]* agreed to *[description of provision]*; and in consideration of the release and discharge, *[name of party]*, in lieu of performance of the clause, agrees to *[description of new provision]*; and *[name of party 2]* agrees to accept the agreement of *[name of party 1]* in place of the agreement in the original contract.*[OR:]*

*[Name of party 1]* executed and delivered to *[name of party 2]* a certain contract for *[description of agreement]*, dated *[date of agreement]*, and recorded in the county clerk's office for *[name of county]*, *[name of state]*, on *[date of recording]*, in *[book of records]*, on Page *[number of page]* and the parties to the contract desire to change the contract.

Now, in consideration of *[description of consideration]*, it is agreed that the contract is modified and changed so as to provide that *[description of new provision]*, with the express agreement that all other terms, conditions, and stipulations contained in the contract shall remain in full force and effect, and without any change or modification whatsoever, except only as to *[description of changes]*.

**Notes**

This form can be used to memorialize the decision of the parties to a contract to modify the terms of such contract after the initial contract has been executed. A modification agreement should clearly identify the initial contract, perhaps by attaching a copy of that contract to the modification agreement, and include the specific provisions of the initial contract that are being modified. A modification is a form of amendment and must be approved and completed in the manner specified in the initial contract.