



Read the Fine Print

By: Jim Astrachan

My passage from lawyer of thirty years to boat owner began innocently enough with a visit to a yacht dealer on Maryland's Eastern Shore, where I assessed my desires and his demo inventory and quickly concluded this venture might cost more than the value of my house. With big bucks at stake, the lawyer in me took over. I simply could not help myself.

Although I have never owned a boat, I have represented some of the most prestigious yacht builders in the world and I knew what to look for.

Requesting a copy of the dealer's agreement of sale, I was handed an official-looking one-page printed document comprising an order form on the front and "Standard Terms and Conditions" on the back. Standard? Maybe for the dealer, but not for me. Like the price, I knew terms are also negotiable. The smiling dealer radiated self-confidence.

We agreed to a price for this boat to be built; the form required that the price be paid with a 10 percent deposit and two payments of 45 percent each, the first when the builder

starts hull molding and the second when the deck is joined to the hull. Translation: The dealer would have 100% of my money long before the boat was completed and most of that money would reside offshore. And although the dealer had an arrangement with the builder as to when it would remit money, I knew this payment schedule was negotiable. I adjusted it by insisting on holding back 20 percent of the purchase price until the boat was satisfactorily delivered and all punch list items had been performed. The smile wavered.

Would I get what I ordered? Not necessarily. I was buying the builder's standard specs in existence at the time of the order, but the contract allowed the builder to make "minor substitutions", whatever that meant, without my consent. Being a bit compulsive I refused to allow this without agreement. "After all", I said, "if these are only minor substitutions, how difficult will it be to get my permission." An arched eyebrow was my response.

I was next drawn to the fine print marked "Price and Terms of Payment". The dealer demanded a \$75,000 deposit with my order, so I needed to know what would happen to my deposit if I walked away from the deal. Not surprisingly, this was written to favor the dealer. If I cancelled even one day after placing my order, I forfeited my entire deposit. That was patently unfair because the dealer had suffered no damage; he could sell this boat to someone else. The dealer countered by saying he will lose the profits on the sale if I cancel. Although my boat was to be a standard configuration, and could easily be sold by the dealer, we agreed that if I defaulted before the hull molding commenced, I would get three-quarters of my deposit back, and if the dealer was able to sign a contract for the boat within two months of my "default", he'd repay to me the rest of my deposit. I would have been more comfortable with my deposit in an escrow account, controlled by both of us, but I knew this would not happen

because part was going to the manufacturer and the rest was the dealer's working capital. I also asked for an amendment that would require the dealer to use his best efforts to sell my boat if I defaulted after any progress payments were made, and if sold, to return to me any money paid to the extent the new contract price was equal to or better than the one I signed.

When would my boat arrive? Was there a date certain on which I could rely? Again, the standard terms protected the dealer and not me. The contract only required the dealer to use reasonable efforts to deliver the boat when promised, and emphasized that there is no such thing as a firm delivery date. I noted also the requirement that I pay all money owed before I can take delivery. I said out loud, "This will not do." "Huh", replied the dealer. "This is really one sided," I explained. "You want 90% of my money before I even see the boat, but if something is not right I have to pay the balance before taking possession?" His smile began to fade, but we soon worked out a mechanism so that if a legitimate dispute arose over quality of, or specs for, this to-be-built boat, the final payment would be escrowed so that the dealer would have an incentive to cure and I a meaningful remedy.

I asked the dealer to rewrite the date uncertain for delivery clause so if the dealer could not deliver the boat within ninety days of the promised date, at my option I could walk and receive return of all but \$10,000 of my money. What if the yard had a fire, or my boat fell off the crane while being loaded? What if the factory put another dealer's order ahead of mine?

This would be a very expensive purchase so I wanted to read the warranty, a copy of which the dealer is required by law to show me before I contract. I needed to know specifically

what was covered, and for how long. A boat is comprised of many components, each of which may come with its own warranty. Some warranties are good; others bad.

The expensive items interested me; things like hull, structure and diesel engines. Was osmotic blistering covered, and what maintenance would I be responsible for to keep the warranty in place? How would I obtain authorized repairs, both routine and emergency? What was this builder's reputation for honoring its warranty without a lot of fuss? Does this dealer run interference for its customers?

Is the warranty transferable, or does it only cover the original purchaser? If I hated the boat and tried to sell it after one season, I would be at a disadvantage if I couldn't transfer the warranty to the buyer. The builder's warranty is a contract so I knew it too was negotiable. I wanted to read more than the builder's warranty because many of the components were covered not by the dealer but by the OEM suppliers whose warranties were assigned to the buyer.

The dealer's contract prohibited me from assigning the contract without permission. Strike that clause for two reasons as long as I agreed to remain financially responsible. First I may want to have a corporation or LLC own the boat, and second I may change my mind in which case I might find someone to buy my contract.

Finally, I wanted the opportunity to survey and sea-trial my boat before I took delivery to assure that it had been build to builder's specification and was indeed seaworthy. If there were defects, as often there are in a new boat, I wanted to be sure that the dealer would repair

these to my reasonable satisfaction before I was obligated to make my last payment and accept delivery. "I'll sleep on the deal", I told the salesman. "Smart move", he responded.

On my ride home, I pondered the unsigned contract in my pocket, and reminded myself that a yacht of this magnitude is a very complex manufacturing endeavor, bringing together a multitude of components that can create a symphony or a cacophony. In the end, I knew that most important to my satisfaction was not the contract, but the reputation of the dealer and the product he represents. The contract is only paper. Reputation is past dealings.

James B. Astrachan is a principal of Astrachan Gunst & Thomas, P.C., a Baltimore/Washington law firm.