


DIRECT EXAMINATION V. CROSS EXAMINATION

These things I know are true~

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Direct Examination

Goal: Establish the elements of your case
~tell your story~

- To bolster witness credibility
 - ▣ Focus on the witness
 - ▣ Position yourself behind the jury

Form of the Question

- ▣ Short, open ended questions
- ▣ Who, What, When,
- ▣ Where, Why, How,
- ▣ Describe, Explain,
- ▣ Tell us about



Organizing

Three phases of direct examination

Accreditation
Setting the scene
Describe the action

Author a play on Direct~

Where does this witness fit in your play?

Relate the 'facts' of this witness' testimony
to your theme as much as possible.

Script v. Improv

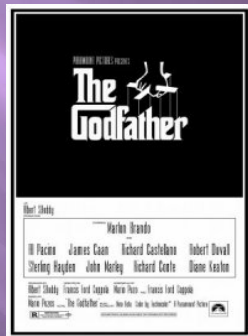
Setting the Scene

- Remember: the jury doesn't know the case like you do!
- Verbal picture of scene before action
- Detail heightens jurors' understanding, belief and recall

Action

- ▣ Step by step...
- ▣ ...putting it together

Movie Poster
Movie Trailer
Movie
Director's cut





Action: Story



Maintain Control Without Leading

Spend time planning the direct exam

Primacy and Recency

Avoid Narratives~

Incremental questions

Use Headings to Transition

Breaks up testimony

Guides witness and fact finder

refreshes primacy/recency rule

Keep it Interesting

Vary the length and style of questions

Simple, clear, colorful and memorable language

Listen to the Answer!

Listen with an editing eye.

Use Loop Backs

Vary your tone and pace

Use Silence to your advantage



Helpful Teaching Tools

~USE VISUALS

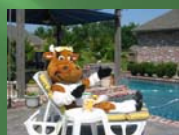
- ~Physical evidence
- ~Demonstrative blow-ups
- ~Enlarging Key Evidence of Exhibits
- ~Photographs
- ~Jury instructions
- ~Verdict Form



Create Full Picture for Jury

- Take your time
- Give the jury a chance to get to know your witness
- Flush out details that support your theme
- Use witness demonstrations
- Use visual aids
 - ~diagrams, charts, photos...

Photos tell their own stories ~ ~



Other Goals on Direct

Keep it simple
 Volunteer weaknesses
 Listen to the answer
 Ask the witness to explain
 Prepare the witness
 Recreate the action
 pace & sensory language

Intermission



Cross Examination: surgery without the scars

[illegible]

Cross Examination

Keep it short

- ❑ **Cross examination is a commando raid**
~Not the invasion of Normandy
- ❑ **Cross examination is more often suicidal than homicidal**



Goals

- ▣ Repair damage done on direct
- ▣ Establish facts needed to argue on close
- ▣ Weaken their facts
- ▣ Advance your theme and theory
- ▣ Solidify your credibility with jury

Finish. Strong.

4 Rules for Cross Exam

- ❑ Organization – Cross in Chapters
- ❑ Organization – Source your questions
- ❑ Form – Only leading questions
- ❑ Content – 1 fact/1 new fact per question

One New Fact Per Statement

Lead, lead, lead
 One new fact per statement
 Short declarative statements [not questions]
 No tag lines (“correct?” “isn’t that true?”)
 No quibble words
 Save the ultimate statement for closing

Ten Commandments

Be brief
 Short questions, plain words
 Ask only leading questions
 Never ask a question unless you know the answer
 Listen to the answer
 Do not quarrel with the witness
 Do not repeat the direct examination
 Do not allow the witness to explain
 Do not ask the one-question –too-many
 Stop when you’ve accomplished your goals.

Strong Beginning and End

Primacy and Recency

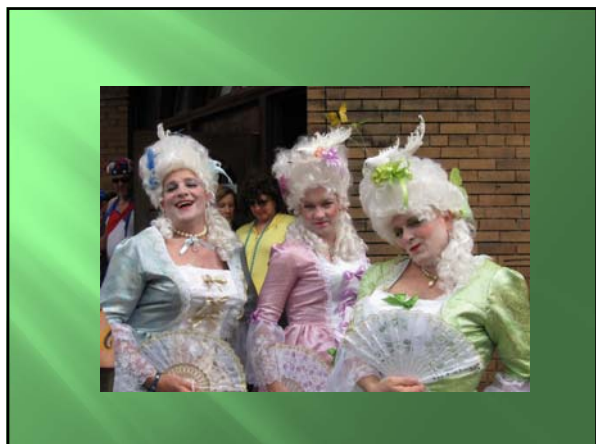
Start with concessions (common grounds)

Next: bias

Have a plan. Then stop.







Witness Control on Cross

Cross Exam does not need to be 'cross'
 Do not interrupt the witness
 Do not go to the judge for 'help'
 Methods to control evasive witness:
 -repeat your question
 -write your questions down
 -repeat and reverse direction

to be continued

WHAT INFORMATION IS DISCOVERABLE?

FRCP 26(b)(1) provides that the parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense – including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

FRCP 26(b)(2) permits the court to alter or limit the permissible number of depositions, interrogatories, or requests for production in a proceeding. It may also limit the length or scope of depositions.

A party is not required to produce electronically stored information (ESI) from sources that the party identifies as not reasonably accessible because of undue burden or cost, although the ESI must be identified. And upon a showing of good cause by the requesting party, a party may nonetheless be required to produce inaccessible ESI under certain limitations. [See FRCP 26(b)(2)(C).] If required to produce inaccessible ESI, the court *may* shift the cost of production to the requesting party.

FRCP 26(b)(3) provides that a party may discover documents and tangible things otherwise discoverable and prepared in anticipation of litigation or for trial by another party by or for that party's representative, only upon a showing that the party seeking discovery has substantial need of the materials and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Even upon that showing, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

FRCP 26(b)(4)

WHAT IS NONPRIVILEGED MATTER?

In very general terms, nonprivileged matter is everything that is not protected by a privilege or the work product protection.

The Attorney-Client Privilege

The client has the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between himself or his representative and his lawyer or his lawyer's representative, or (2) between his lawyer and the lawyer's representative, or (3) by him or his lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client. *Rules of Evidence for United States Courts and Magistrates*, 56 F.R.D. 183 (1972) (Proposed Rule 503(b), which was never enacted, but frequently cited).

The client, not the lawyer, holds the privilege. The client has the ultimate authority to raise or to waive the privilege. Nevertheless, as a practical matter, the lawyer is the guardian of the privilege, and as the client's representative, the lawyer's action or inaction often results in inadvertent waiver of the client's privilege.

Many seasoned lawyers are surprised to discover that not everything told by a client to a lawyer is privileged. Typically, four conditions must be met: (1) The communication must originate in an *expectation* that it will not be disclosed. (2) The element of *confidentiality* must be essential to the full and satisfactory maintenance of the relationship between the parties. (3) The *relationship* must be one that, in the opinion of the community, ought to be carefully *fostered*. (4) The *injury* that would inure to the relationship by the disclosure of the communications must be *greater* than the *benefit* that would be gained for the correct disposal of litigation by virtue of the disclosure. 8 J. Wigmore, Evidence § 2285, at 527 (McNaughton rev. 1961).

The attorney-client privilege is generally regarded as a narrow one. It “is based in policy, rather than in the constitution, and therefore cannot stand in the face of countervailing law or strong public policy and should be strictly confined within the narrowest possible limits underlying its purpose.” *United States v. Goldberger & Dubin, P.C.*, 935 F.2d 501, 504 (2d Cir. 1991). The strict-construction jurisdictions protect the lawyer's communications only to the extent necessary to protect from disclosure the client's underlying request for counsel. The broad-construction jurisdictions, while recognizing that the privilege is narrow, include within the privilege all or virtually all of the lawyer's communications with her client. The Fifth Circuit and its district courts tend toward the broader rule. *See, e.g., In re LTV Sec. Litig.*, 89 F.R.D. 595, 602 (N.D. Tex. 1981).

Lawyers are often unaware of the many kinds of communications and other information that may be nonprivileged and, therefore, discoverable. The attorney-client privilege does not, for example, “prevent the disclosure that a person retained the attorney for a particular purpose.” *Evans v. Atwood*, 177 F.R.D. 1, 3 (D.D.C. 1997). Neither does the privilege typically protect fee arrangements, although in certain cases where disclosure would permit insight into a lawyer's assessment of strengths and weaknesses of asserted claims, fee arrangements are not discoverable. Epstein, *The Attorney-Client Privilege and the Work Product Doctrine*, vol. 1, pp. 95-120 (5th Ed. 2007). The Epstein book is a valuable resource.

State supreme courts generally construe the attorney-client privilege narrowly as well. *See, e.g., Waste Management, Inc. v. Int'l Surplus Lines Ins. Co.*, 579 N.E.2d 322, 327 (Ill. 1991). The Work-Product Doctrine

Hickman v. Taylor, 329 U.S. 495 (1947) is the seminal decision regarding work-product protection. Although some of the rules established by *Hickman* have been codified, courts frequently resort to the case when deciding issues relating to the doctrine. *Hickman* established three important points: (1) Material collected by counsel in the course of preparation for possible litigation is protected from disclosure in discovery; (2) that protection is qualified, in that the adversary may obtain discovery on showing sufficient need for the material; and (3) the attorney's thinking – theories, analysis, mental impressions, beliefs, etc. – is at the heart of the adversary system and privacy is essential for the attorney's thinking; thus, the protection is

greatest, if not absolute, for materials that would reveal that part of the work product. Epstein, *The Attorney-Client Privilege and the Work Product Doctrine*, vol. 2, p. 795 (5th Ed. 2007).

Hickman implies and FRCP 26(b)(3) prescribes that there are two kinds of work product: ordinary and opinion. Under the federal rule, ordinary work product is discoverable only upon a showing of need and hardship, but the court “shall protect against disclosure the mental impressions, conclusions, or legal theories of an attorney or other representative of a party concerning the litigation.”

FRCP 26(b)(3) applies only to “matter otherwise discoverable.” Therefore, if the matter is privileged – either under the attorney-client or some other privilege – then it is not discoverable, and the inquiry ends there.

If the matter is not privileged, then one must ask whether a document was prepared in anticipation of litigation or for trial. The federal rules do not define “in anticipation” or “litigation.” The federal case law is not uniform, but generally, an adversarial proceeding, whether before a court or other tribunal, is considered litigation. Caveat: Documents prepared in anticipation of a federal agency’s investigation are not protected by the work-product doctrine. *Guzino v. Felterman*, 174 F.R.D. 59, 63 (W.D. La. 1997). But once a government investigation has begun, many courts concede that litigation is imminent and, therefore, documents prepared once an investigation is already underway, will be protected. *In re LTV Sec. Litig.*, 89 F.R.D. 595, 612 (N.D. Tex. 1981). Also, beware that administrative proceedings and government investigations are sometimes distinguished from one another, although not very clearly.

“In anticipation of litigation” is also an elusive term. Clearly, a document may be prepared “in anticipation of litigation” even though no lawsuit has been filed. While federal courts do not agree on what triggers “anticipation of litigation,” the Fifth Circuit has concluded that “litigation need not necessarily be imminent, as some courts have suggested . . . as long as the primary motivating factor behind the creation of the document was to aid in possible future litigation.” *United States v. Davis*, 636 F.2d 1028, 1040 (5th Cir.), *cert. denied*, 454 U.S. 862 (1981).

Not every document prepared by a lawyer is work product. For example, documents prepared in the ordinary course of business, such as an insurance company’s investigatory files, are not work product. *Guidry v. Marine, LLC*, 203 U.S. Dist. LEXIS 15272 (E.D. La. Aug. 25, 2003), *aff’d*, 2003 U.S. Dist. LEXIS 18930 (E.D. La. Oct. 22, 2003). Documents prepared for independent business purposes are not work product. *Auto Owners Ins. Co. v. Totaltape, Inc.*, 135 F.R.D. 199, 203-03 (M.D. Fla. 1990) (claims manual and guidelines for handling business interruption claims not work product because they were created and used in ordinary course of insurer’s business).

To increase the likelihood that documents created by attorneys before a lawsuit has been filed will be accorded work-product protection, enter into an engagement letter that clearly identifies the nature of the litigation that is anticipated. *Pacamor bearings, Inc. v. Minebea Co., Ltd.*, 918 F.Supp. 491, 513 (D.N.H. 1996).

Also, be aware that persons other than lawyers may prepare documents that will be accorded protection under the work-product doctrine. But unless a lawyer has directed the effort, there exists a greater likelihood that a court will find the document to be discoverable.

Work-product protection may be waived in a variety of ways, but one of the most common waivers occurs when a lawyer provides his or her opinion work product to a testifying expert. Under the 1993 amendments to FRCP 26(a)(2)(B), everything shown to an expert is potentially discoverable. *See, Southern Scrap Material Co. v. Fleming*, 2003 U.S. Dist. LEXIS 10815, at *72-73 (E.D. La. June 18, 2003), *recons. Denied*, 2003 U.S. Dist. LEXIS 13558 (E.D. La. July 29, 2003) (if and when experts are designated as testifying witnesses – whether claimed as expert or fact witnesses - all material furnished to them by counsel shall be produced to opposing counsel and privileges are waived).

ELECTRONIC DISCOVERY

FRCP 16(b)(5) and 16(b)(6) provides that the court’s scheduling order may include provisions for the disclosure or discovery of ESI and any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after production.

Under **FRCP 26(a)(1)(B)**, a party must, without awaiting a discovery request, provide a description, by category and location, of ESI that is in the party’s possession, custody, or control.

FRCP 26(b)(2)(B) states that a party need not provide discovery of ESI from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. . .

Comments to Amended Rule 26(b)(2):

The responding party must also identify, by category or type, the sources containing potentially responsive information that it is neither searching nor producing. The identification should, to the extent possible, provide enough detail to enable the requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information on the identified sources.

FRCP 26(f)(3) and 26(f)(4) require the parties to confer early in the litigation to discuss issues relating to preserving discoverable information and to develop a proposed discovery plan that indicates the parties’ views and proposals concerning any issues relating to disclosure or discovery of ESI, including the form or forms in which it should be produced, and any issues relating to claims of privilege, including any proposed “clawback” provisions.

FRCP 33 directs that, where the answer to an interrogatory may be derived or ascertained from the business records, including ESI, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived.

FRCP 34(a)(1) and 34(b) provides that any party may serve on any other party a request to produce and permit the party making the request to inspect, copy, test, or sample any designated documents or ESI. The request shall specify the form or forms in which ESI is to be produced.

The response shall state that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing ESI, stating the reasons for the objection.

If objection is made to the requested form or forms for producing ESI - or if no form was specified in the request - the responding party must state the form or forms it intends to use.

FRCP 37(f) provides a “safe harbor” for litigants in federal court. Absent exceptional circumstances, a court may not impose sanctions on a party for failing to provide ESI lost as a result of the routine, good-faith operation of an electronic information system.

The Advisory Committee fashioned this “safe harbor,” but its applicability is triggered by the party’s having acted in good faith. To be in good faith, a party must have implemented an effective litigation hold process and an effective (i.e., routinely followed by all) document retention policy. Don’t rely on the safe harbor rule since courts have much discretion, and their interpretations of “what is good faith” are likely to lead to inconsistent rulings.

Louisiana declined to enact this “safe harbor” rule.

If You Can’t Beat ‘Em, Join ‘Em

It is simply impossible to rely on older methods of document gathering and review when dealing with ESI. Consider the sheer volume of information associated with electronic discovery:

Floppy disk (1.44 megabytes) = 720 typewritten pages of plain text;
CD Rom (650 megabytes) = 325,000 typewritten pages of plain text;
One gigabyte = 1000 megabytes = 500,000 typewritten pages of plain text;
DVD (4300 MB; 4.2 gigabytes) = 2,150,000 typewritten pages of plain text; and
1 terabyte = 1,000,000 megabytes = 500 million typewritten pages.

Not only must today’s lawyers understand how to make appropriate discovery requests, but they must know how to advise their clients with respect to electronically stored information (ESI). A duty to preserve evidence, whether electronic or otherwise, arises upon notice that the evidence is (1) relevant to current litigation or (2) may be relevant to future litigation. *Zubulake v. UBS Warburg*, 220 F.R.D. 212 (S.D.N.Y. 2003) (“*Zubulake IV*”).

Whether advising your client with respect to the preservation of its ESI or considering what ESI to request from your opponent, consider these sources of information:

Hard Drives (Servers, Desktop Computers, Laptops, External Hard Drives)
Diskettes and ZIP Disks
CDs and DVDs
USB Memory Key

Compact Memory (Cameras, MP3 Audio Devices)
Personal Data Assistants (Blackberry)
Back-up Tapes (Point-in-time Data)
Instrumentation
SPAM Filters
Cell Phones (Text and Voice Messages)
Pagers
Voicemail Systems
Hosted System Environment (third party handling data through a data center)
Home Computers
Instant Messaging
Web-based E-Mail Systems (Yahoo, Hotmail, Gmail)
Old 386 Computers or Other Legacy Systems.

GOOD SOURCES OF INFORMATION:

www.sedonaconference.com

The Sedona Conference® is a nonprofit, 501(c)(3) research and educational institute dedicated to the advanced study of law and policy in the areas of antitrust law, complex litigation, and intellectual property rights. It is probably the single most source for e-Discovery information, and its downloads are free!

www.krollontrack.com

www.fiosinc.com

Electronic Discovery and Evidence, Michael R. Arkfeld (overarching treatment)

The Discovery Revolution: A Guide to the E-Discovery Amendments to the Federal Rules of Civil Procedure, George L. Paul and Bruce H. Nearon

The Electronic Evidence and Discovery Handbook: Forms, Checklists and Guidelines, Sharon D. Nelson, Bruce A. Olson and John W. Simek

The Search: How Google and Its Rivals Rewrote the Rules of Business and Transformed Our Culture, John Batelle (effective searching methods)

The Attorney-Client Privilege and the Work-Product Doctrine, Fifth Edition, Edna Selan Epstein

How to Reduce e-Discovery Costs in a Down Economy, <http://www.fiosinc.com/e-discovery-knowledge-center/electronic-discovery-article.aspx?id=540>



Excel 2010: Essentials

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Excel 2010: Essentials

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Starting Excel

This course assumes that your work or training environment uses a computer system running Microsoft Windows. There are many versions of Windows but they all look similar. It is the most common computer desktop interface. However, many work-related workstations and systems operate with a combination of windows (for general applications, such as Excel) and bespoke or specific company systems and applications. Consequently, you may need to switch from a bespoke environment to Windows. Your instructor or IT / IS Manager will advise you on this.

To work with Excel effectively, you need to know several basic skills and concepts; how to start Excel from the Windows desktop, how to make the most of the Excel interface, how worksheets are used, and how to select cells and ranges.

Starting Excel

Once you are in Windows, starting Excel is a matter of a few clicks.

METHOD

To load Excel:

1. On the taskbar, click the Start button.
2. From the Start Menu, point to Programs.
3. From the Programs menu, choose Microsoft Excel.

What is a Worksheet?

A *worksheet* is the electronic equivalent of a paper ledger. It is a powerful platform used to enter, analyze, calculate, and manipulate *data*. A worksheet can be used for basic calculations such as addition and subtraction, as well as more complicated applications like statistics, audits, or mortgage tables. Moreover, worksheets allow you to quickly format your data into effective business reports.

A worksheet is a grid of 1,048,576 rows and 16,384 columns. The rows are labeled with numbers (1, 2, 3, ...) and the columns are labeled with letters (A, B, C, ..., AA, AB, AC, ...), as illustrated in Figure 1-1. The intersection of a row and column is a *cell*, the basic unit for storing data. The highlighted *column* and *row headings* indicate the *active cell*. You'll find the active cell's *cell reference* in the *Name box*. The cell reference consists of the highlighted column letter and row number, in this case D9. A *range* is a rectangular group of cells; the *range reference* is derived from the cell references of top left cell and the bottom right cell separated by a colon.

Please note that the illustration below is not how the section of the worksheet would be seen in Microsoft Excel version 2010. An image of the actual view of the same section is shown below. The greyscale version is shown for clarity of purpose only.

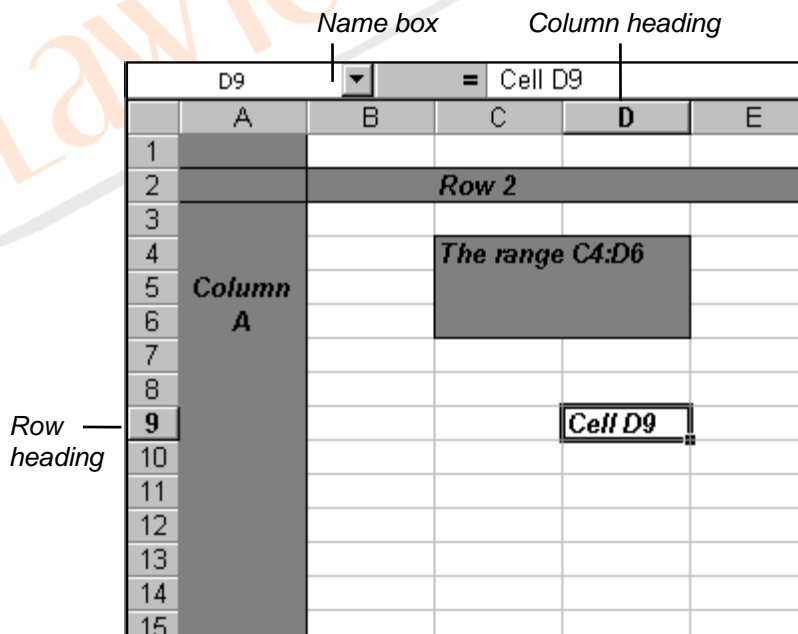


Figure 1-1: Rows, Columns, Cells, and Ranges.

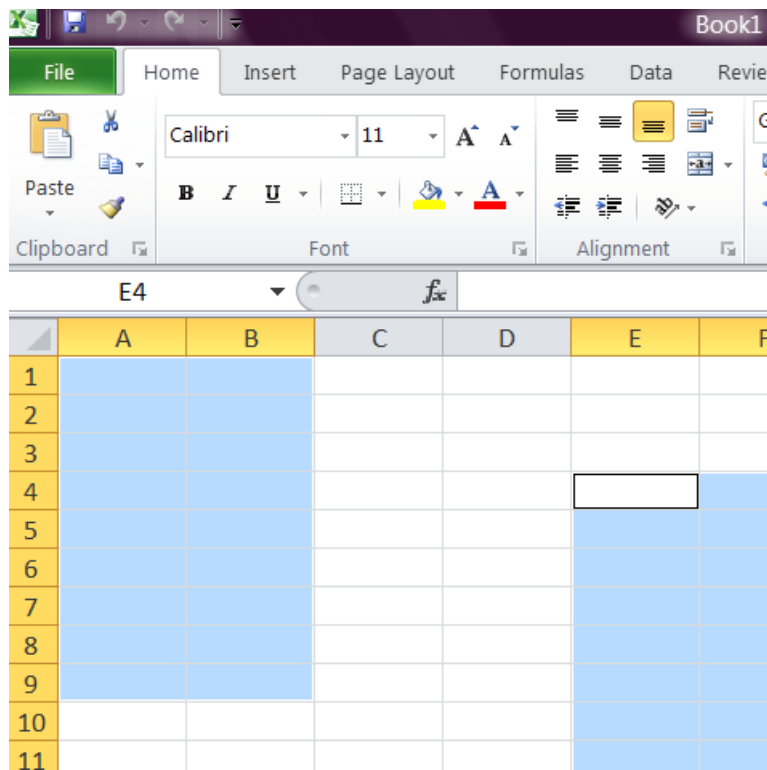


Figure 1-2: Selected cells and ranges are shaded soft blue.

Above – the section of worksheet as actually seen in Microsoft Excel version 2010. Note that the selected areas are shaded a soft blue. This is so that the user can clearly see the contents of selected cells and ranges and even formatting. See example below for an enhanced view of selected – formatted - cells.

	A	B	C	D
1				
2				
3		STOCK	PRICE	
4				
5		Pens	£1.20	
6		Pencils	£0.40	
7				
8				

Figure 1-3: The shading of selected cells and ranges allows formatting to show through.

What is a Workbook?

A *workbook* is a collection of worksheets stored in the same file. These worksheets may contain different types of information, but they are usually related in some fashion. For example, each worksheet of a sales workbook may contain sales data for a specific division.

Workbooks can contain an unlimited number of worksheets, depending on worksheet size and the amount of memory your computer has. Besides worksheets, a workbook can include chart sheets, Visual Basic modules, dialog box sheets, macro modules, and scenario report sheets.



Identifying Parts of the Screen

The Excel window is illustrated in Figure 1-4. The bulk of the screen is occupied by the worksheet window. This grid provides a convenient workspace where you can enter and manage your data. Surrounding the worksheet window are several command interfaces, each of which allows you to receive information about, or apply functions to, the data on the worksheet. Table 1-1 describes the various parts of the Excel window.

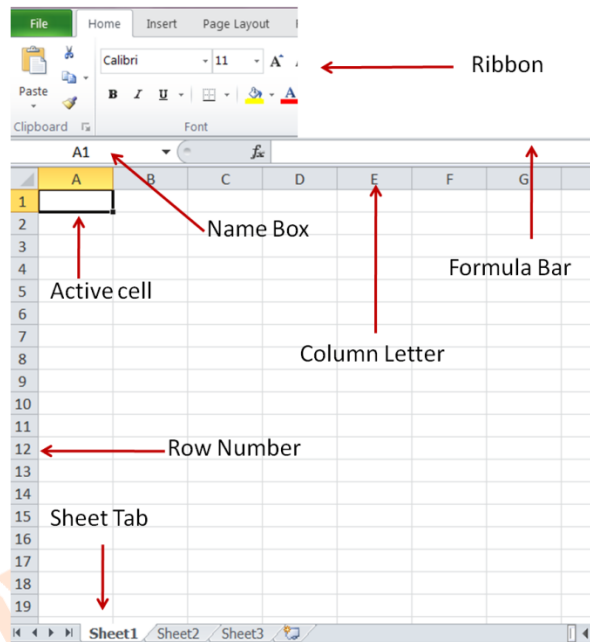


Figure 1-4: *The Excel Window*



Figure 1-5: *The Quick Access Toolbar*

Screen Part	Function
Worksheet control buttons	The worksheet control buttons allow you to minimize, maximize/restore, or close the worksheet.
Formula bar	The <i>formula bar</i> allows you to enter and edit data in the worksheet.
Worksheet window	The <i>worksheet window</i> contains the open, <i>active worksheet</i> . Worksheet windows can be moved and sized. You can have more than one worksheet window open at the same time.
Scroll bars	The vertical and horizontal <i>scroll bars</i> enable you to move quickly through the worksheet, vertically and horizontally.
Ribbon	The Ribbon is designed to help you quickly find the commands that you need to complete a task. Commands are organized in logical groups, which are collected together under tabs. Each tab relates to a type of activity, such as writing or laying out a page. To reduce clutter, some tabs are shown only when needed.
Title bar (extreme top right of the Excel window)	The <i>title bar</i> contains the name of the application and the active file.
File Button	Clicking on the File Button displays a drop down menu containing a number of options, such as open, save, and print. The options in the File Button menu are very similar to options found under the Office Button and File menu in previous versions of Excel.
Sheet tabs (Worksheet tabs)	The <i>sheet tabs</i> let you switch between worksheets in a workbook by clicking the appropriate tab.
Quick Access Toolbar	The Quick Access Toolbar (see Figure 1-5) is a customizable toolbar that contains a set of commands that are independent of the tab that is currently displayed. You can move the Quick Access Toolbar from one of the two possible locations, and you can add buttons that represent commands to the Quick Access Toolbar.

Table 1-1: The Parts of the Excel Window

The Ribbon

The Ribbon is the strip of buttons and icons, organised into TABS, located above the work area in Excel 2010.

The Ribbon (with its various tabs) replaces the menus and toolbars found in earlier versions of Excel.

At the top of the actual Ribbon are a number of tabs, such as Home, Insert, and Page Layout. Clicking on a tab displays the options located in this section of the ribbon.

For example, when Excel 2010 opens, the options under the Home tab are displayed (Figure 1-4). These options are grouped according to their function - such as Clipboard (includes cut, copy, and paste options), and Font (includes current font, font size, bold, italic, and underline options).

Clicking on an option on the ribbon may lead to further options contained in a Contextual Menu that relate specifically to the option chosen.

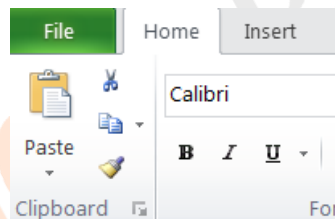


Figure 1-6: *The Clipboard and Font Sections of the Excel 2010 'Home Ribbon'*

Although, as written in the label for Figure 1-4, tab sections can be referred to as [tab name] ribbon, like Home Ribbon, Insert Ribbon, etc, tab sections can also be referred to as only their tab names. Eg. the Home tab, the Insert tab, the Page Layout tab, etc.

Using Selection Techniques

Before you can enter data, you have to select a cell. Before you can change the data, you have to select it. In this section, you'll learn effective, easy techniques that enable you to select cells, ranges, and *nonadjacent cells*. With one click, you can even select your entire worksheet, which is definitely a timesaver when it comes to making global changes.

Selecting a Cell

Selecting a cell is the first step in entering data or executing most commands in a worksheet. The single cell that receives the data or formula you enter is the active cell. When a cell is selected, its border becomes bold and the column and row indicators are highlighted.

METHOD

To select a cell:

1. Click the desired cell.
- or
1. Use the arrow keys to move to the desired cell.



Selecting a Range of Cells

A rectangular selection of multiple cells is referred to as a range. You may wish to select a range when entering a group of data or when you wish to perform the same action on several cells. The range appears as a shaded block of cells, and the active cell in a range is defined by a bold border and white background. When a range is selected, its column and row headings are highlighted. In Figure 1-7, the selected range is referred to as B6:C9 ("B6 to C9").

Active cell

Selected range

	A	B	C	D	E
1	Sunny's Orchard				
2	March Sales Figures				
3	2002				
4					
5	Item	Units	Price Ea.	Price	Taxes
6	Apple Butter	12	£0.59	£7.08	
7	Peach Jam	7	£1.12	£7.84	
8	Free Samples	9	-£0.25	-£2.25	
9	Pear Butter	4	£0.59	£2.36	
10	Roger's Peanuts	114	£8.99	£1,024.86	
11	Grape Jammin'	125	£3.14	£392.50	
12					

Figure 1-7: A Range of Cells

METHOD

To select a range of cells:

Mouse method

1. Select the first cell of the desired range.
 2. Drag the mouse pointer through the range of cells you wish to include.
- or
2. Press and hold **SHIFT**, and then click the final cell of the range.
 3. Release **SHIFT**.

Keyboard method

1. Use the arrow keys to move the cell pointer to the first cell of the desired range.
2. Press and hold **SHIFT**, and then use the arrow keys to highlight the desired range.
3. Release **SHIFT**.

Selecting Nonadjacent Cells and Ranges

As a rule, to select multiple, nonadjacent objects in Windows, you employ the **CTRL** key. For example, you may use **CTRL** and the mouse to select multiple files or folders in Explorer or My Computer. This method also works in Excel to select nonadjacent cells and ranges.

METHOD

To select nonadjacent cells or ranges:

1. Select the first cell or range.
2. Press and hold **CTRL**
3. Select the next cell or range.
4. Release **CTRL**

Selecting an Entire Worksheet

Selecting an entire worksheet is useful when you want to make changes on a global scale. For instance, you might want to change the size of the font in every cell in the worksheet. Once you select the entire worksheet using the Select All button, illustrated in Figure 1-8, you can do this in a single step.

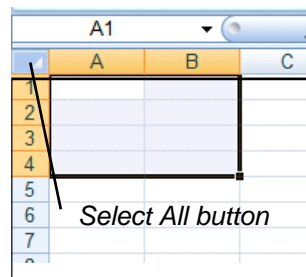


Figure 1-8: *The Select All Button*

METHOD

To select an entire worksheet:

1. Click the Select All button.

Entering Data

The first step in creating a useful worksheet is entering data. By entering data, you are inputting the information that you want Excel to display, calculate, and store. Data can be entered into a cell or a range of cells. You can even set up a sequence of data and let Excel fill in the remainder of the sequence based on your first few entries.

Identifying Types of Data

Excel worksheets contain four types of data: *text*, *values*, *dates*, and *formulas*. Examples of each are found in Table 1-2.

Text	Value	Date	Formula
Supplies	852.34	12/3/02	=C3+D3+E3
12 Dozen	42980.00254	Jan 3, 2001	=245*C3

Table 1-2: *Examples of Data Types*

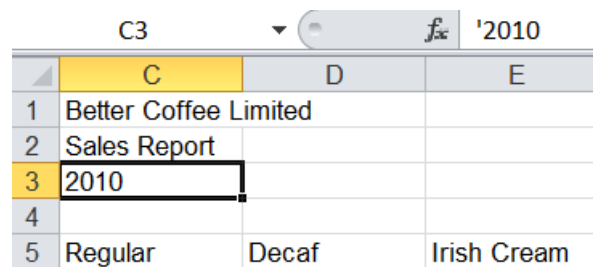
Text data is alphanumeric and cannot be used in most formulas. Values are numerals only. Although a date may seem to be text, as soon as you enter what Excel recognizes as a date, it is formatted and stored using a decimal date format. As a result, dates can be used in complex functions.

Formulas are made up of values and *operators*. Because formulas contain references to worksheet cells and ranges, they depend on other elements of the worksheet. For instance, if a formula includes a reference to cell C3 and you change the value that is located in C3, the result of the formula will change accordingly.

Entering Text Data into a Cell

A single cell can hold up to 32,000 alphanumeric characters. If the cell is not wide enough and if the cell to the right contains data, some characters may not be visible. Excel hasn't lost this data; it just doesn't show it.

On occasion, you may need to enter a number as text. For example, you may want to exclude a number from a summed column. If you type an apostrophe (') before the number, for example '2010, Excel accepts it as text and *aligns* it on the left, as illustrated in Figure 1-9. All other numbers are right-aligned by default. The apostrophe does not show up in the worksheet cell, but you can see it in the Formula bar. You don't need to type the apostrophe when a phrase begins with a number as long as it includes text characters—for example, *1st Quarter Summary*.

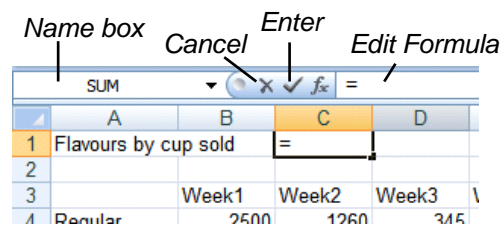


	C	D	E
1	Better Coffee Limited		
2	Sales Report		
3	2010		
4			
5	Regular	Decaf	Irish Cream

Figure 1-9: Value Entered as Text

Note: you may see a formatting error here (Green triangle in the top left corner of the cell), this is a consistency error. It means that this cell is not formatted consistently with the cells above. You then have access to a drop down menu (appears as a yellow diamond with ! in the middle) that will allow you to reformat if required.

When you enter functional data into your worksheet (that is a calculation or part thereof; e.g. the equals sign), three buttons appear in the Formula bar to the right of the Name box, shown in Figure 1-10. Use the Cancel button if you decide not to continue to enter the data into the cell and the Enter button to accept the entry. The Edit Formula button is only operable when the cell contains a formula.



	A	B	C	D
1	Flavours by cup sold			
2				
3		Week1	Week2	Week3
4	Regular	2500	1200	345

Figure 1-10: The Formula Bar

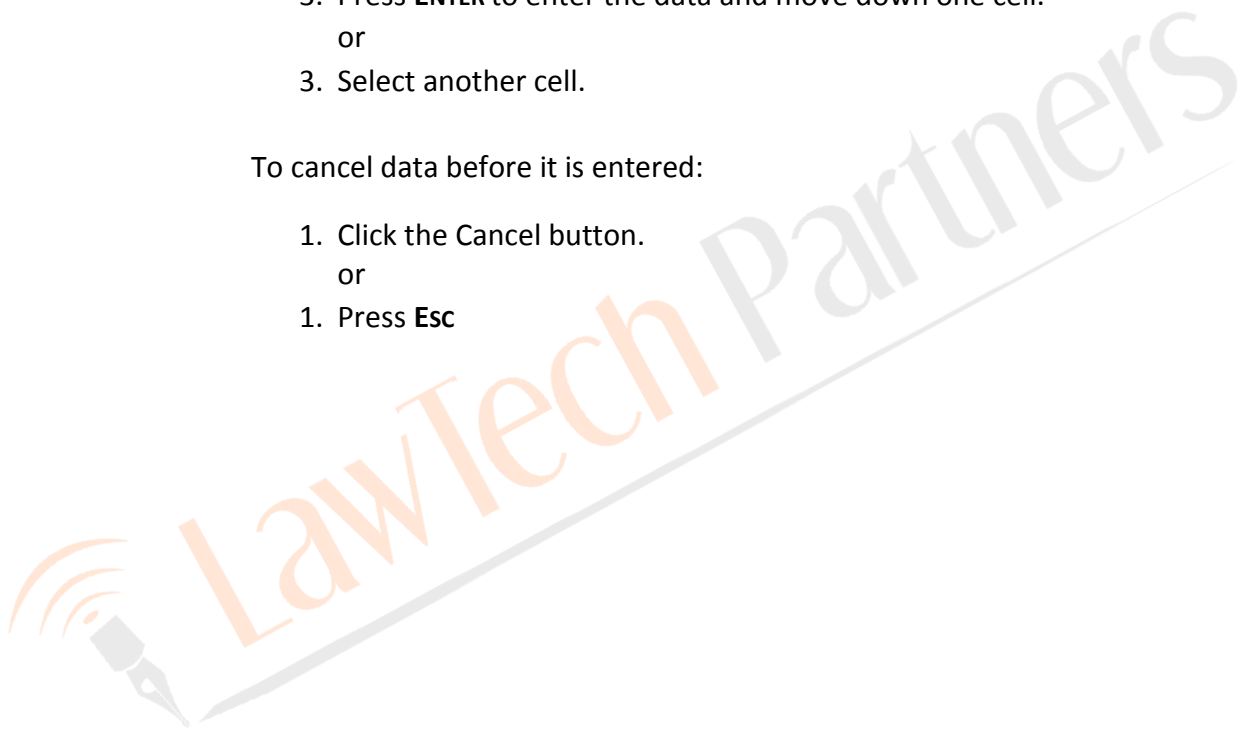
METHOD

To enter text data into a cell:

1. Select the cell.
2. Type the information in the cell.
3. Click the Enter button.
or
3. Press **ENTER** to enter the data and move down one cell.
or
3. Select another cell.

To cancel data before it is entered:

1. Click the Cancel button.
or
1. Press **Esc**



Entering Values

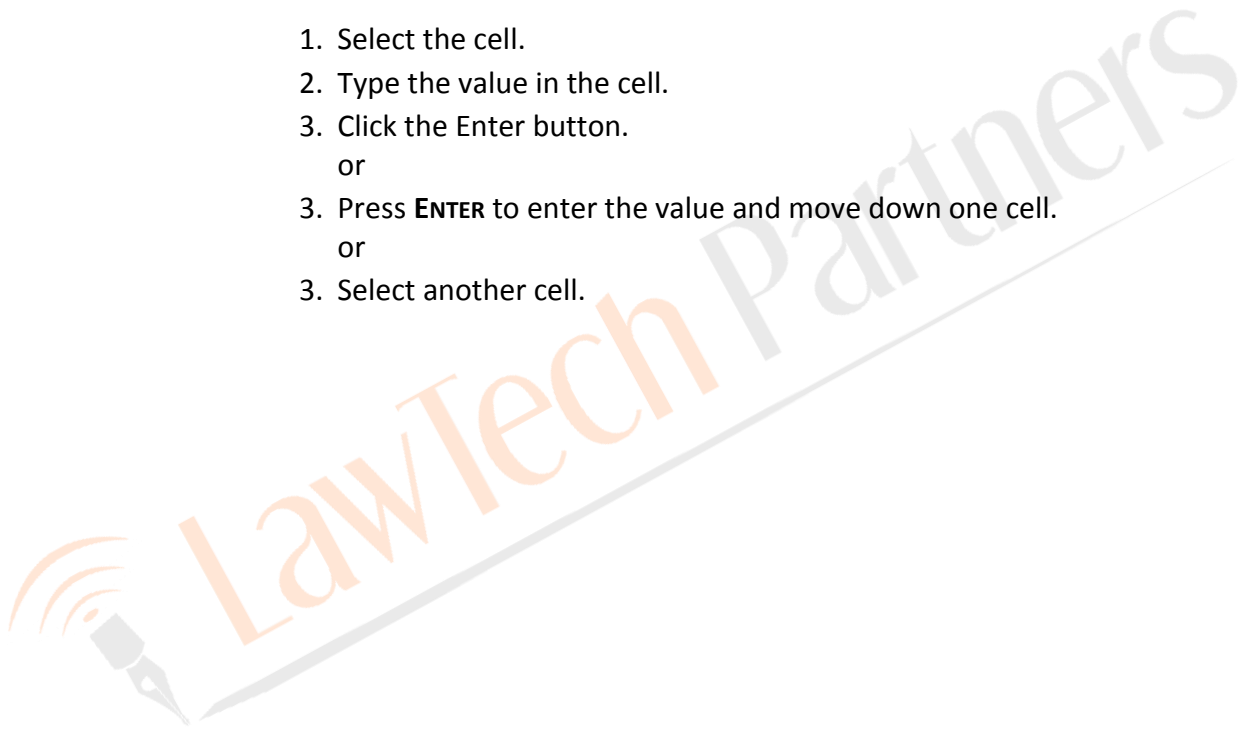
You enter values into the worksheet the same way you enter text. However, it's important to note that values can contain only the following characters:

1 2 3 4 5 6 7 8 9 0 + - () , / \$ % . E e

METHOD

To enter values in a cell:

1. Select the cell.
2. Type the value in the cell.
3. Click the Enter button.
or
3. Press **ENTER** to enter the value and move down one cell.
or
3. Select another cell.



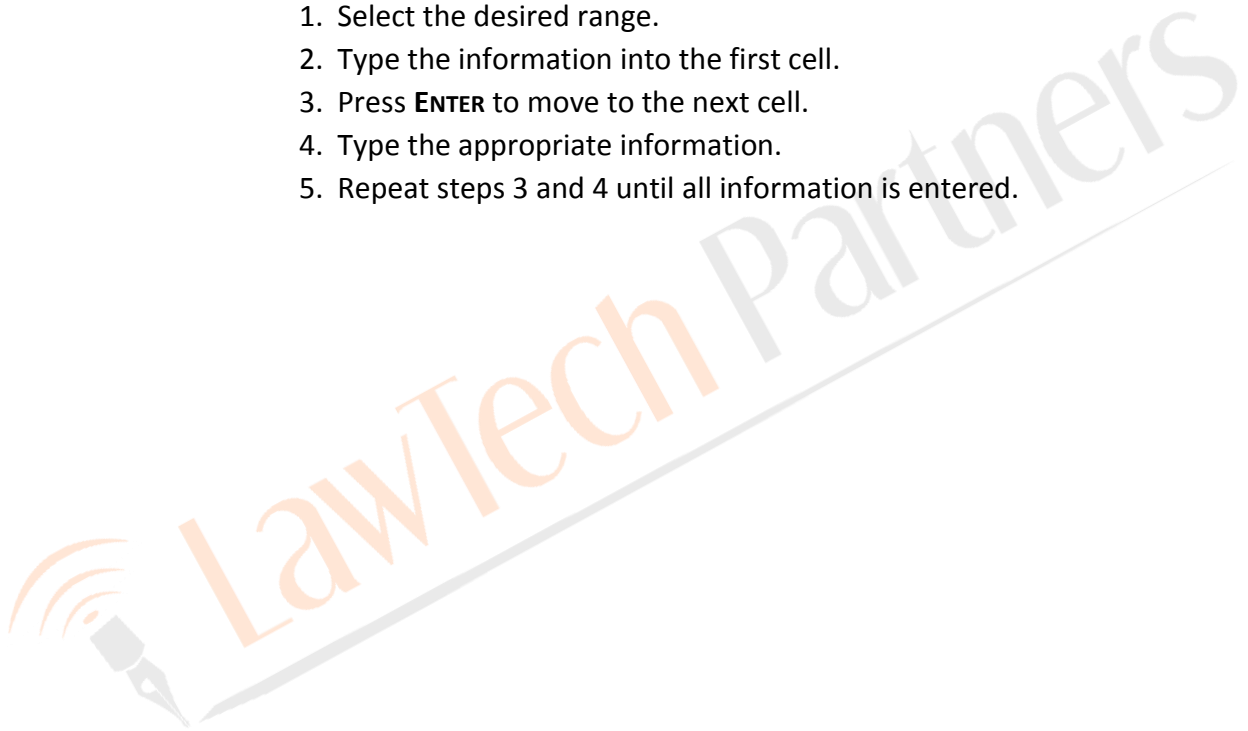
Entering Data into a Range

When you enter data into several adjacent cells, you can save time and reduce keystrokes by first selecting the range of cells you want to work with. Pressing the **ENTER** key after typing the data places the data into the cell and automatically selects the next cell in the range.

METHOD

To enter data into a range:

1. Select the desired range.
2. Type the information into the first cell.
3. Press **ENTER** to move to the next cell.
4. Type the appropriate information.
5. Repeat steps 3 and 4 until all information is entered.



Quickly Adjusting a Column Width

On occasion, you will discover that the text or values you have entered into a cell are not completely visible. This will occur when the number of characters entered exceeds the width of the column and when data appears in the cell to its right, as shown in column B of Figure 1-11.

In the example, the entries in cells A1 and A2 appear just fine, because there are no entries to the right in cells B1 and B2. If the text or value appears cut off or overflows into a totally different column which will have its own data, you can quickly adjust the column width so you can view the entire cell entry.

Column heading

	A	B	C	D	E
1	Brian's Orchard				
2	1st Quarter Summary				
3	2010				
4					
5	Date	Item	Units	Price Ea.	Price
6	Apple	Butter	65	0.59	
7	Peach	Jam	35	1.12	
8	Free	sample	20	-0.25	
9	Pear	Butter	44	0.69	
10	Roger's	Peanuts	114	8.99	

Figure 1-11: *Text Too Wide for the Column*

METHOD

To quickly adjust a column width:

1. Double-click the right border of the column heading.

Finishing a Workbook

At the end of the day, or when you have completed your work on a particular workbook, you need to ensure that your work is safely stored. You can save your workbook in a number of ways, even as an Internet-compatible *HTML* document. In addition, you may want to make a printout of your worksheet to view the latest additions on paper or to share your worksheet with others.

Saving a New Workbook

When you save a workbook file, you tell Excel to accept every change you've made since the last time the workbook was saved. It's a good idea to save frequently, especially when you enter a lot of data or make major changes. That way, if there's a power outage or surge, you will lose only a few minutes of work.

If you invoke the Save command in an unnamed workbook, Excel prompts you to name the workbook before it will save it to disk. From then on, Excel saves your workbook under that name unless you specify otherwise.

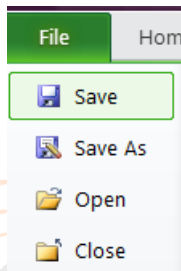


Figure 1-12: *The Save button is lit up as you Mouse-over it*

METHOD

To save a new workbook:

1. Click the FILE button, choose Save.
or
1. Click the Save button. On the Quick Access Toolbar (looks like a floppy disk).
2. In the Save As dialog box, in the Save in drop-down list box, select the desired drive.
3. In the list of folders, double-click the desired folder.

4. In the File name drop-down list box, type the document name.
5. Choose Save.



Saving a Named Workbook

Once you have named your workbook, you can save subsequent changes by simply using the Save command. Excel automatically saves it under its current file name.

To give you more flexibility, you can also save a named workbook under a different name using the Save As command. One benefit of doing this is that it gives you two copies of the same workbook; you can modify the copy all you want without affecting the “original,” allowing you greater freedom for experimentation with *formatting* and other features.

METHOD

To save a named workbook with its current name:

1. Click the FILE button and choose Save.
- or
1. On the Quick Access Toolbar, click the Save button.

To save an already named workbook with a different name:

1. Click the FILE button and choose Save As.
2. In the Save in drop-down list box, select the drive on which to save the workbook.
3. In the list of folders, double-click the folder in which to save the workbook.
4. In the File name drop-down list box, type the new name.
5. Choose Save.

Printing a Worksheet

You may want to print your worksheet when you've finished working with it. This will give you a hard copy of your data to look over and to share with others. Best of all, you can get a quick printout of the active worksheet very easily.

METHOD

To print a worksheet:

1. Click the FILE button and choose the Print button.

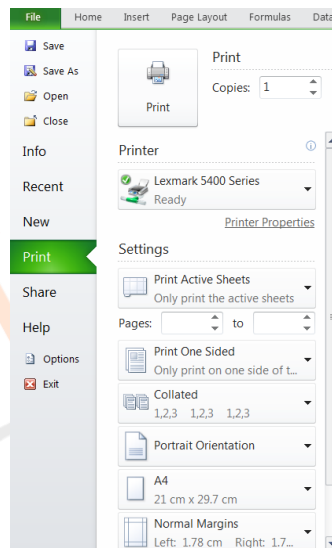


Figure 1-13: *The Print dialog box*

Closing a Workbook and Exiting from Excel

Closing a workbook removes it from your screen but leaves you in Excel so that you can keep working. Before you close a workbook, you should make sure that you've saved your work. If you've forgotten, however, Excel reminds you that you need to save the document and gives you a chance to do so. You can exit from Excel after you have saved and closed any open workbooks.

METHOD

To close a workbook:

1. Click the workbook Window Close button.
or
1. Click the FILE button and choose Close.
2. Save the file if prompted.

To exit from Excel:

1. Click the application Close button.
or
1. Click the FILE button and click the Exit Excel button (bottom right).
2. Save the file if prompted.

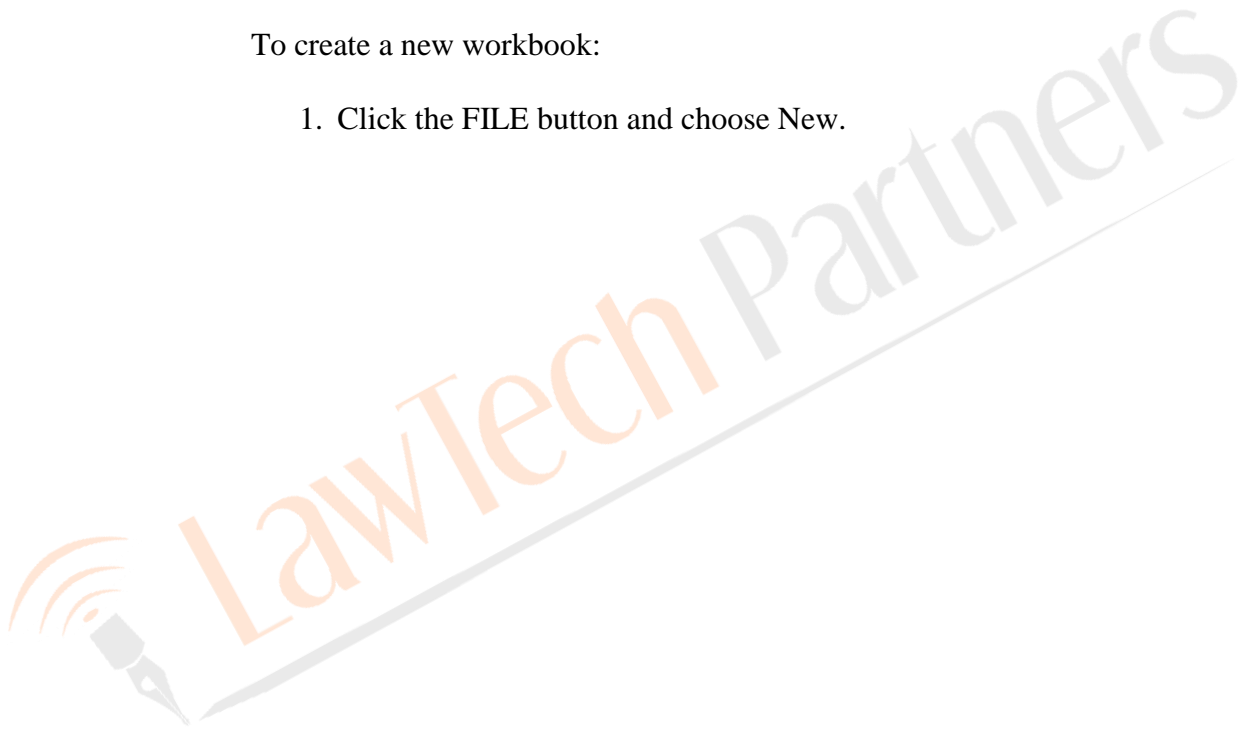
Creating a New Workbook

When you create a new workbook, you have the option of choosing one of Excel's built-in workbook templates. Depending on how Excel was installed, these could include templates for purchase orders, expense reports, invoices, and more. The template you'll use the most, however, will probably be the blank workbook. Although you can access the blank workbook template via the NEW command from the FILE BUTTON menu, there is an easier way.

METHOD

To create a new workbook:

1. Click the FILE button and choose New.



Opening a Recently Used Workbook

Excel stores the names and locations of the last 17 files you used (by default). This number can be increased or decreased using advanced settings options. You can open any of these files simply by choosing the appropriate pathname in the list of Recent Workbooks listed in the display generated when you click the FILE button and select RECENT. An example is shown in Figure 2-14. Using this feature saves time because you don't need to access the Open dialog box.

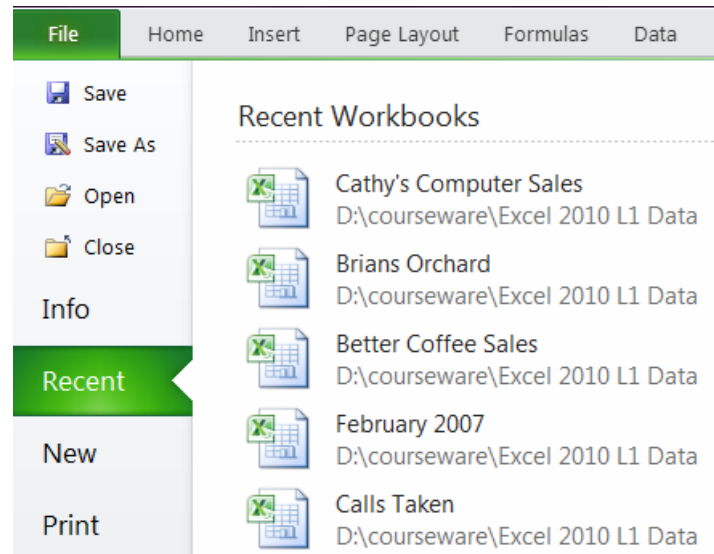


Figure 2-14: *The Recent Documents list.*

METHOD

To open a recently used workbook:

1. From the File menu, choose the file you want to open.

Note: However many recent documents you have set as your default option, the more recently opened files will push out the ones less recently opened and these will disappear off the bottom of the list. You can override this by clicking the push-pin symbol next to a file you wish to keep in the list. In Figure 2-15 the file *Better Coffee Sales* has been permanently saved in the list. Click the symbol again to release the file from permanent residence on the list.

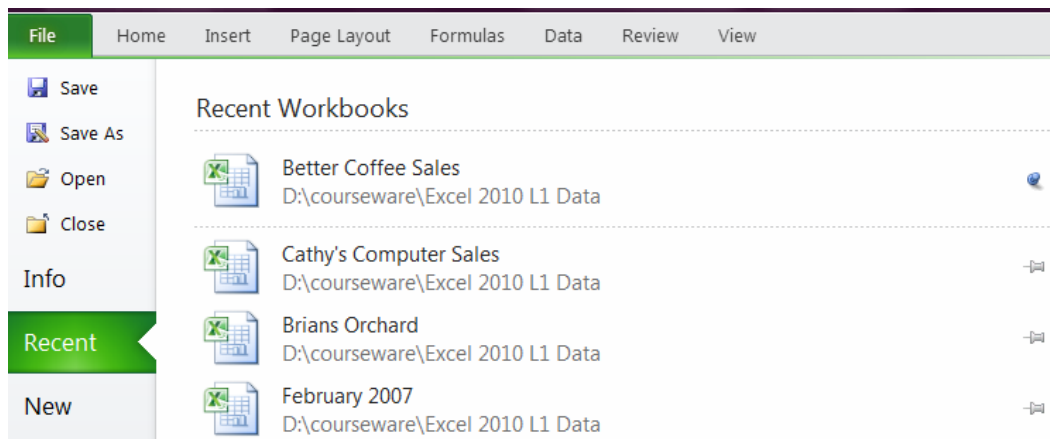


Figure 2-15: *Using the push-pin option in the Recent Documents list..*

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Creating Simple Formulas

Now that you've learned to enter data into a worksheet, you are ready to manipulate that data. Formulas can be used to perform simple calculations such as addition and subtraction, or more complicated applications such as complex financial functions and statistics.

Formulas consist of operators, cell references, and constants. Most operators are mathematical symbols: (+) addition, (-) subtraction, (*) multiplication, and (/) division. Many other operators are available, but only these four operators are covered in this course.

All formulas begin with an equal (=) sign. The equal sign tells Excel that the cell data should be interpreted as a formula. Otherwise, Excel interprets the data as a constant value or text and simply inserts exactly what you enter into the cell. For example, to create a formula to add the contents of cells C5 through C7, you enter **=C5+C6+C7**

Creating a Formula by Typing

One way to create a formula is by typing it into the cell or formula bar. This is a relatively slow method of formula creation, useful mainly for short, simple formulas requiring few keystrokes.



METHOD

To create a formula by typing:

1. Select the cell where you want the formula results to appear.
2. Type =
3. Type the appropriate cell and range references, mathematical operators, and constants.
4. Click the Enter button.
or
4. Press **ENTER**

Creating a Formula by Pointing

Typing formulas can be very time-consuming if the formula includes a large number of cell references. Excel provides for this situation by allowing you to use the mouse to insert references in the formula. For example, instead of typing **B10**, you can click cell B10 and Excel enters the reference for you.

METHOD

To create a formula by pointing:

1. Select the cell where you want the formula result to appear.
 2. Type =
 3. Type the formula with operators, using the mouse to select each cell or range to place in the formula.
 4. Click the Enter button.
- or
4. Press **ENTER**

	A	B	C	D
1	Brian's Orchard			
2	Jan-10			
3				
4	Prepared Products			
5	Item	Units	Price Ea.	Price
6	Apple Butter	65	0.59	38.35
7	Peach Jam	35	1.12	39.2
8	Free Samples	20	-0.25	-5
9	Pear Butter	44	0.69	30.36
10	Roger's Peanuts	114	8.99	1024.86
11	Grape Jammin'	125	3.14	392.5
12	Total			

Figure 2-16: *The Worksheet with Formula Results*

Using Functions

Another way to perform calculations on your data is by using *functions*. Functions are built-in formulas that you can use to make your worksheet computations easier. For example, the SUM function adds all cells within a given range. For instance, if you wanted to add cells B8, B9, B10, B11, B12, B13, and B14, you wouldn't need to enter cell references and operators by typing or pointing; you would just insert the name of the function and the range of cells you want to add. In other words, instead of entering a long string, such as **=B8+B9+B10+B11+B12+B13+B14**, you would enter **=SUM(B8:B14)** where **B8:B14** is the reference for the range of cells to include in the sum.

Using the SUM Function

The SUM function is one of the most frequently used functions. It totals the numeric value of all cells in the ranges it references. Cells in the referenced range that contain text or error values are ignored. You can enter the range references by typing or pointing.

METHOD

To use the SUM function:

1. Select the cell where you want the SUM function result to appear.
2. Type =
3. Type **SUM**(
4. Type or select the appropriate range reference.
5. Type)
6. Click the Enter button.
or
6. Press **ENTER**

Using the AutoSum Button

The most efficient way to sum a contiguous range of cells is by clicking the *AutoSum* button on the Standard toolbar. See Figure 2 -17. AutoSum automatically enters the SUM function and inserts the cell references that Excel assumes you want to add, which is usually the column above or the row to the left of the selected cell. If the selected cells are not correct, you can edit them by typing or pointing, or you can start again.

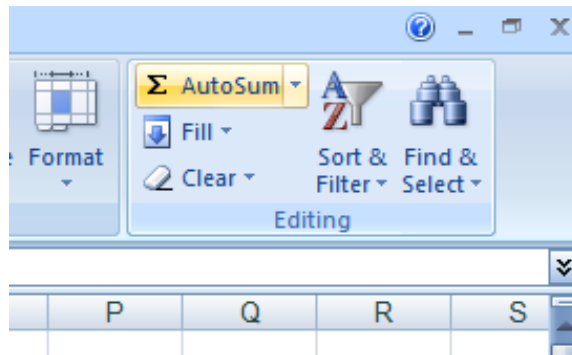


Figure 2 -17: *The AutoSum button - as it appears on the Home ribbon- is shown highlighted.*

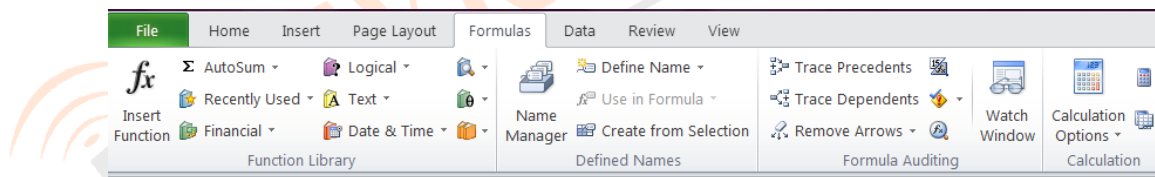


Figure 2 -18: *The AutoSum button also appears, in higher profile, on the Formulas tab.*

Using AutoSum

The AutoSum button is placed on the EDIT section of the HOME ribbon.

METHOD

To use the AutoSum button:

1. Select the cell in which you want the sum to appear. The chosen cell will need to have numeric data cells adjacent and above it (it will also work with other ranges that it can guess you want to SUM, as stated above).
2. Click the AutoSum button on the Home ribbon or Formulas tab.
3. Verify or select the cells to be totaled. Press **ENTER** or
3. Click the Enter button.

Using the Formula Palette

In Excel 2010 you can enter functions using the formula palette, shown in Figure 2-19. The formula palette is activated by typing the equals (=) sign in a cell. Depending on the function you select from the drop-down list, the expanded formula palette will contain different features. The one shown in Figure 2 -20 is specific to the SUM function. In addition to allowing you to view the cell and range references pertaining to the function, the expanded formula palette also lets you preview the result and explains what the entry boxes mean.

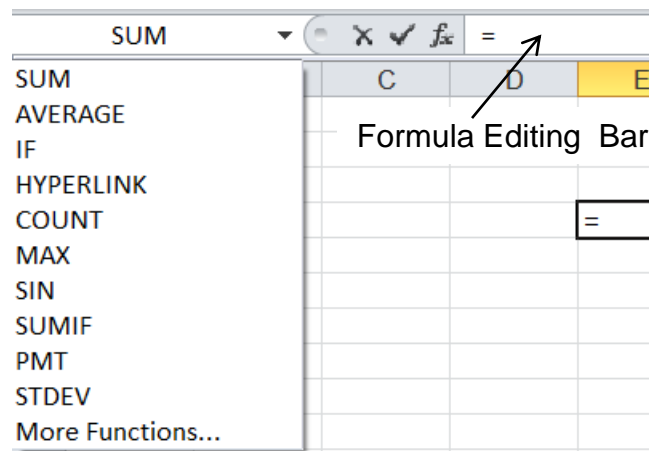


Figure 2-19: *The Formula Palette and Function Box Drop-Down List*

All built-in functions in Excel consist of a function name, such as SUM, and a set of arguments. Arguments appear in parentheses after the function name and consist of cell or range references, text, values, names, labels, and other functions.

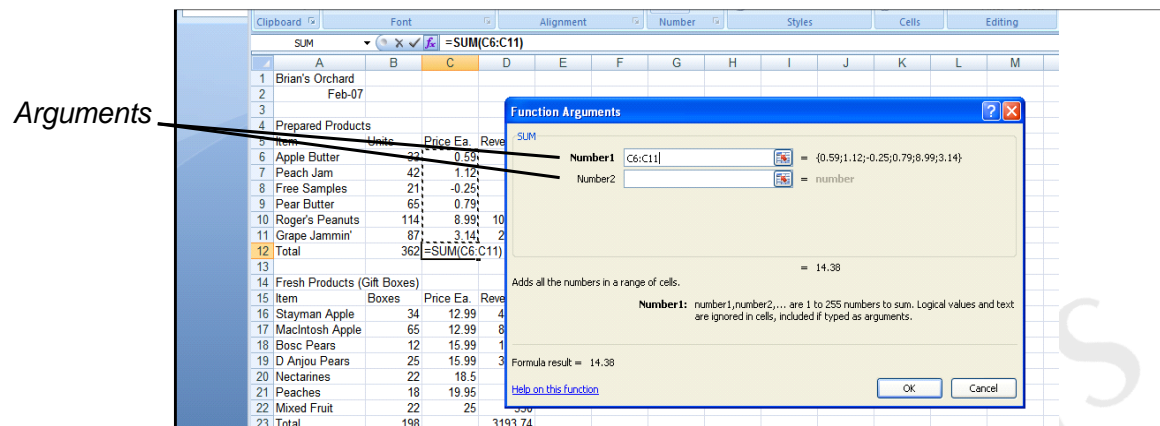


Figure 2 -20: The Expanded Formula Palette for the SUM Function

METHOD

To use the formula palette:

1. Select the cell in which you want the formula to appear.
2. On the Formula bar, click the Insert Function (f_x) button.
3. In the Function Box, click the drop-down arrow, and then select a function.
4. In the expanded formula palette, examine the argument boxes.
5. If necessary, type or select different arguments.
6. Choose OK.

Note: In Excel 2010, the maximum number of arguments a function can take increases from 30 to 255.

Editing Data on the Worksheet

Excel allows you to access a cell's contents so that you can replace, edit, and delete information. The Undo feature is especially handy for removing mistakes. If that's not enough, you can even clear a cell completely.

Replacing the Data in a Cell

When you replace a cell's contents, the original contents of the cell are completely replaced with the new information. In addition, any cells dependent on the changed cell are also updated.



METHOD

To replace the data in a cell:

1. Select the desired cell.
2. Type the new data.
3. Press **ENTER**
or
3. Click the Enter button.

Editing the Data in a Cell

As an alternative to completely replacing a cell's data, you can also edit data in the cell.



METHOD

To edit the data in a cell:

1. Double-click the cell.
2. Edit the data.
3. Press **ENTER** or click the Enter button to accept the changed data.
or
3. Press **ESC** or click the Cancel button to leave the contents unchanged.

Note: If you prefer, you can edit the data directly in the Formula bar after single-clicking the cell. Also, when you double-click a cell, the insertion point will appear in the location of the I-beam mouse pointer.

Editing a Formula

In addition to editing text and data, you can also edit cells that contain formulas. Be careful when you do so, however, because any cell references in the formula must be valid in order to correctly calculate the result.

METHOD

To edit a formula:

1. Select the cell containing the formula to be edited.
2. Click the white area of the Formula bar to activate it.
3. Edit the formula as needed.
4. Click the Enter button.

Clearing the Contents from a Cell or Range

You can clear the contents from a cell, a range of cells, or an entire worksheet. When you clear a cell's contents, you do not remove the cell from the worksheet, nor does your action affect the position of any surrounding cells.

METHOD

To clear the contents from a cell or range:

1. Select the desired cell or range.
2. Press **DELETE** on your keyboard.
or
2. Click the **CLEAR** button in the editing sector of the Home Ribbon (far right of the screen). See Figure 2 -21.
3. From the Clear options menu, choose Clear Contents. See Figure 2 -22.
or
2. Click the right mouse button.
3. From the shortcut menu, choose Clear Contents. See Figure 2 -23.

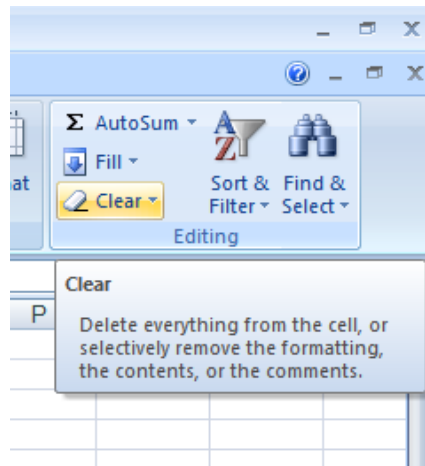


Figure 2 -21: The *CLEAR* button on the *Editing* section of the *HOME* Ribbon

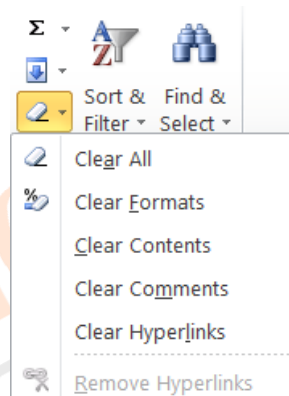


Figure 2 -22: The *CLEAR* options menu

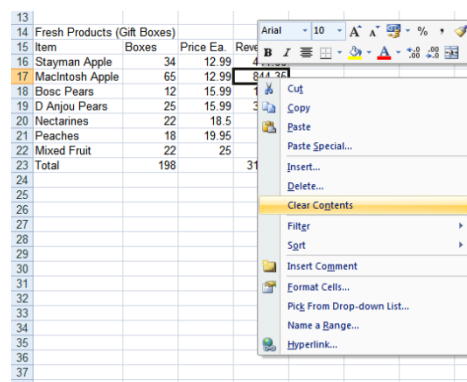


Figure 2 -23: The *Clear Contents* option on the right-mouse-click

Using Undo and Redo

The *Undo* and *Redo* commands on the Quick Access Toolbar enable you to reverse the last action you performed.

For the Undo command to work most effectively, be sure to choose it immediately after the action you want to cancel. Undoing actions from several steps before is trickier. If you select an earlier action to undo, Excel will undo all actions after that as well. If a command or action cannot be undone, Undo is indicated on the Quick Access Toolbar in dimmed effect. Redo only appears on the Quick Access Toolbar after Undo has been used.

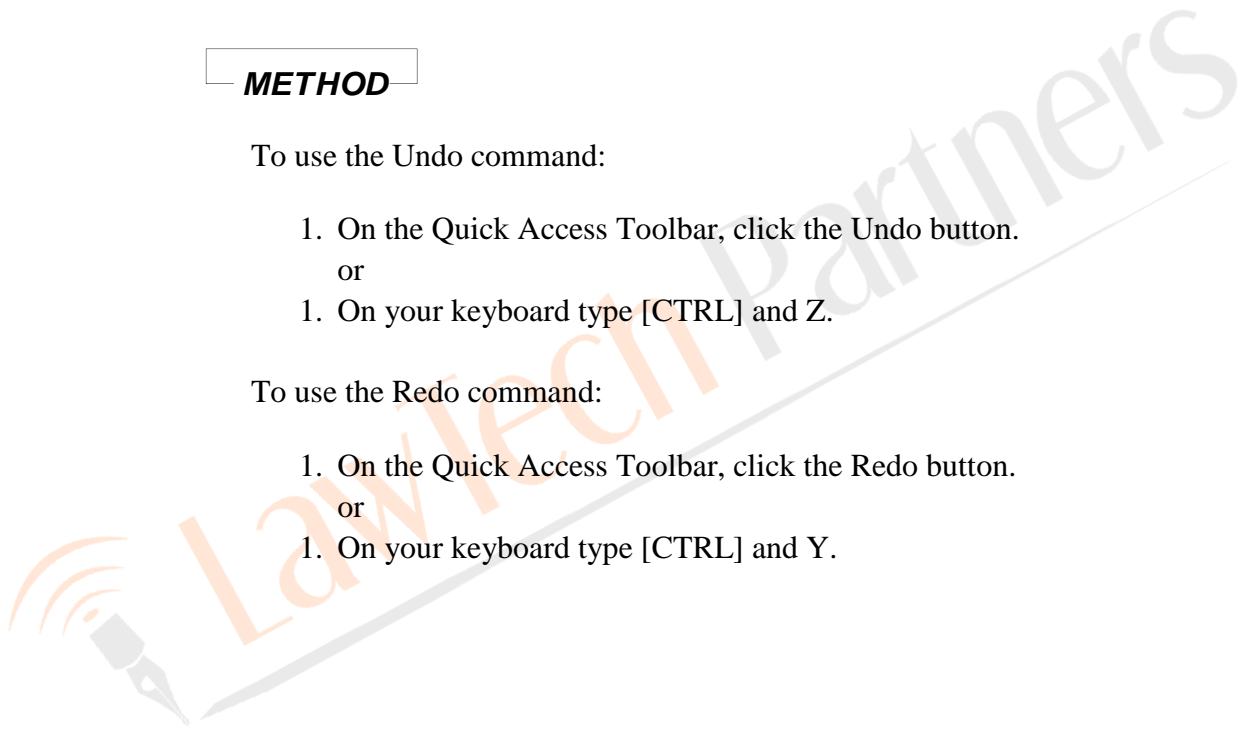
METHOD

To use the Undo command:

1. On the Quick Access Toolbar, click the Undo button.
- or
1. On your keyboard type [CTRL] and Z.

To use the Redo command:

1. On the Quick Access Toolbar, click the Redo button.
- or
1. On your keyboard type [CTRL] and Y.





Keyboard Shortcuts: Excel (Page 1 of 2)

CTRL + PAGE UP

Switches between worksheet tabs from left-to-right

CTRL + PAGE

DOWN Switches between worksheet tabs from right-to-left

CTRL + SHIFT + (Unhides hidden rows within the selection

CTRL + SHIFT + & Applies the outline border to the selected cell

CTRL + SHIFT + _ Removes the outline border from the selected cell

CTRL + SHIFT + ~ Applies the general number format

CTRL + SHIFT + \$ Applies the currency format with two decimal places (negative numbers in parentheses)

CTRL + SHIFT + % Applies the percentage format with no decimal places

CTRL + SHIFT + ^ Applies the scientific number format with two decimal places

CTRL + SHIFT + # Applies the date format with the day, month, and year

CTRL + SHIFT + @ Applies the time format with hour and minute and AM or PM

CTRL + SHIFT + ! Applies the number format with two decimal places, thousands separator, and minus sign for negative values

CTRL + SHIFT + * Selects the current region around the active cell (the data area enclosed by blank rows and blank columns) In a pivot table, it selects the entire pivot table report

CTRL + SHIFT + : Enters the current time

CTRL + SHIFT + “ Copies the value from the cell above the active cell into the cell or the formula bar

CTRL + SHIFT + PLUS (+) Insert blank cells



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CTRL + MINUS (-)

Delete the selected cells

CTRL + ; Enters the current date

CTRL + ` Alternates between displaying cell values and formulas

CTRL + ' Copies a formula from the cell

above the active cell into the cell or the formula bar

CTRL + 1 Format cells

CTRL + 2 Bold

CTRL + 3 Italic

CTRL + 4 Underline

CTRL + 5 Strikethrough

CTRL + 6 Displays/hides objects

CTRL + 8 Displays/hides the outline symbols

SHIFT + 9 Hides the selected rows

CTRL + A Selects the entire worksheet

(if the worksheet contains data, CTRL + A selects the current region. Pressing CTRL + A again selects the entire worksheet)

CTRL + SHIFT + A Inserts the argument names and parentheses when the insertion point is to the right of a function name in a formula

CTRL + B Bold

CTRL + C Copy

CTRL + D Uses the fill down command to copy the contents and format of the topmost cell of a selected range into the cells below

CTRL + F Displays the find and replace dialog box, with the find tab selected

SHIFT + F5 Also displays this tab, while **SHIFT + F4** repeats the last find action

CTRL + SHIFT + F Opens the format cells dialog box with the font tab selected

CTRL + G Go To

F5 Go To

CTRL + H Displays the find and replace dialog box, with the find tab selected

CTRL + I Italic

CTRL + K Displays the insert hyperlink dialog box for new hyperlinks or the edit hyperlink box for selected existing hyperlinks

CTRL + L Create table

CTRL + N Creates a new, blank workbook

CTRL + O Open

CTRL + SHIFT + O Selects all cells that contain comments

CTRL + P Displays the print tab in Microsoft Office backstage view

CTRL + SHIFT + P Opens the format cells dialog box with the font tab

CTRL + R Uses the fill right command to copy the contents and format of the leftmost cell of a selected range into the cells to the right

CTRL + S Saves the active file with its current file name, location, and file format

CTRL + T Create table

CTRL + U underline

CTRL + SHIFT + U Switches between expanding and collapsing the formula bar

CTRL + V Paste

CTRL + W Closes the selected workbook window

CTRL + X Cut

CTRL + Y Repeats the last command or action, if possible

CTRL + Z Undo



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EMANCIPATION

So You Think You Are All Grown Up?



Types of Emancipation

- Emancipation by Marriage
- Limited Emancipation By Authentic Act
- Judicial Emancipation

Effects of Emancipation Generally

- Capacity to Sue and be Sued
- Unless Otherwise Provided In Law
- Does Not Effect Status As A Minor For Criminal Matters
- Child Support
 - Does Not Relieve Parents Of Support Obligation
 - State Does Not Have Standing to Sue on Behalf of An Emancipated Minor
 - Emancipated Minor May Sue For Support

Emancipation By Marriage

- Children's Code Title XV, Chapter 6
- Marriage Under 18 Years Old
 - Consent Of Both Parents Or
 - Tutor Of The Person Or
 - Person Awarded Custody Of The Minor Or
 - Juvenile Court
- Marriage Under 16 Years Old
 - Must Also Have Written Permission From The Juvenile Court Judge

Effects of Emancipation by Marriage

- Full Emancipation
 - La. Civ. C. Art. 367
 - Relieves Parents Of Liability
- Effective Upon Marriage
 - La. Civ. C. Art. 369
- Termination Of The Marriage Does Not Effect The Emancipation
 - La. Civ. C. Art. 367
- Cannot Be Modified Or Terminated
 - La. Civ. C. Art. 367

Limited Emancipation By Authentic Act

- La. Civ. C. Art. 368
- Formerly Notarial Emancipation
- Must be 16 years old
- Authentic Act Executed By:
 - Minor and
 - Their Parent, or
 - Tutor

Effects of Emancipation By Authentic Act

- Only The Juridical Acts Specified
 - All Other Effects Of Minority Continue
 - La. Civ. C. Art. 368
 - May Expressively Relieve Parents Of Liability
 - La. Civ. C. Art. 2318
- Effective When Executed
 - La. Civ. C. Art. 369

Termination or Modification of Emancipation by Authentic Act

- La. Civ. C. Art. 371
- How:
 - By Authentic Act Executed By The Parties
 - By A Court For Good Cause

Effects of Termination or Modification

- When Effective:
 - Immovables
 - When Recorded In The Conveyance Records In The Parish Where The Property Is Located
 - Movables
 - When Recorded In The Conveyance Records In The Parish Where The Minor Is Domiciled At The Time Of The Modification Or Termination
- Does Not Effect Juridical Acts Prior To The Effective Date Of Modification Or Termination

Judicial Emancipation

- La. Civ. C. Art. 366
- 16 Years Or Older
- Order By A Court For Good Cause

Effects of Judicial Emancipation

- Full
 - Confers All The Effects Of Majority
- Limited
 - Confers Only What Is Specified In The Judgment
- Effective From Time Judgment Is Signed
 - La. Civ. C. Art. 369
- Relieves Parents Of Liability If Full Or If Specified In Limited
 - La. Civ. C. Art. 2318

Termination or Modification of Judicial Emancipation

- La. Civ. C. Art. 370
- How
 - By The Court For Good Cause
- When Effective
 - Immovables
 - When Recorded In The Conveyance Records In The Parish Where The Property Is Located
 - Movables
 - When Recorded In The Conveyance Records In The Parish Where The Minor Is Domiciled At The Time Of The Modification Or Termination

- Does Not Effect Acts Prior To The Effective Date Of Modification Or Termination
- Places Minor Under Same Authority As Before The Emancipation Unless Court Orders Otherwise For Good Cause



Ethics of Limited Scope Representation in Louisiana

Presented by: Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association

I. APPLICABLE LOUISIANA RULES OF COURT

RULES FOR LOUISIANA DISTRICT COURTS AND JUVENILE COURTS AND NUMBERING SYSTEM FOR LOUISIANA FAMILY COURT PROCEEDINGS, Adopted April 1, 2002, Includes Amendments through May 15, 2013 (Amendments effective June 1, 2013)

TITLE II RULES FOR CIVIL PROCEEDINGS IN DISTRICT COURTS (EXCEPT FOR FAMILY COURTS AND JUVENILE COURTS)

CHAPTER 9 PROCEDURE

Rule 9.12 Enrollment as Counsel of Record

All licensed Louisiana attorneys in good standing may enroll as counsel of record: (1) by oral notice made in open court when all parties or their counsel are present; or (2) by filing a written Notice of Enrollment or a written Notice of Limited Appearance in accordance with La. Code Civ. Proc. art. 853 with the clerk of court, with copies to all other enrolled counsel or self-represented parties and to the court.

A Notice of Limited Appearance shall specifically state the limitation of legal services by subject matter, proceeding, date, or time period in accordance with Rule 1.2(c) of the Rules of Professional Conduct. *See* forms in Appendix 9.12A (family law) and Appendix 9.12B (non-family law).

The applicable Appendix Form 9.12 form shall be filed if an attorney is making a limited appearance, with or prior to the initial pleading or prior to the initial hearing. The Notice shall bear the signatures of both the appearing attorney and the client, unless the client is unavailable to sign at filing. If the Notice does not bear the client's signature, a certificate attesting to the scope of limited enrollment, signed by the client, shall be filed into the record within ten (10) days of the filing of the initial Notice of Limited Appearance.

Any pleading filed by an attorney making a limited appearance shall state in bold type on the signature page of that pleading: "Attorney for limited purpose of [matter or proceeding]."

Adopted April 1, 2002, effective April 1, 2002; amended October 29, 2003, effective January 4, 2004; amended November 3, 2004, effective January 1, 2005; amended November 20, 2009, effective January 1, 2010; amended November 21, 2011, effective January 1, 2012; amended November 27, 2012, effective January 1, 2013; amended May 15, 2013, effective June 1, 2013.

Comments

Attorneys enrolling pro hac vice shall comply with Rule XVII, Section 13 of the Rules of the Louisiana Supreme Court.

Ethics of Limited Scope Representation in Louisiana

Richard P. Lemmler, Jr., Ethics Counsel

Louisiana State Bar Association

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Filing the initial petition or first responsive pleading constitutes enrollment, and no further notice of enrollment is needed unless the attorney is making a limited appearance as authorized by Rule 1.2(c) of the Rules of Professional Conduct.

Rule 1.2(c) of the Rules of Professional Conduct allows an attorney to limit the scope of the representation if the limitation is reasonable and the client gives informed consent. *See also* Rule 1.0(e) of the Rules of Professional Conduct.

The use of standard forms for limited appearances makes the notices easily recognizable to judge, court staff, opposing parties and the client. The form notices require the attorney to identify the scope of a limited representation with specificity.

Rule 9.13 Withdrawal as Counsel of Record

Enrolled attorneys have, apart from their own interests, continuing legal and ethical duties to their clients, all adverse parties, and the court. Accordingly, the following requirements govern any motion to withdraw as counsel of record:

- (a) The withdrawing attorney who does not have written consent from the client shall make a good-faith attempt to notify the client in writing of the withdrawal and of the status of the case on the court's docket. The attorney shall deliver or mail this notice to the client before filing any motion to withdraw.
- (b) If the action or proceeding has been assigned to a particular section or division of the court, then the motion to withdraw shall be submitted to the judge presiding over that section or division.
- (c) Any motion to withdraw shall include the following information:
 - (1) The motion shall state current or last-known street address and mailing address of the withdrawing attorney's client. The withdrawing attorney shall also furnish this information to the clerk of court.
 - (2) If a scheduling order is in effect, a copy of it shall be attached to the motion.
 - (3) The motion shall state whether any conference, hearing, or trial is scheduled and, if so, its date.
 - (4) The motion shall include a certificate that the withdrawing attorney has complied with paragraph (a) and with Rule 1.16 of the Rules of Professional Conduct, Louisiana State Bar Association, Articles of Incorporation, Art. 16. A copy of the written communication required by paragraph (a) shall be attached to the motion.
 - (5) If the motion is to withdraw upon completion of a limited appearance, the motion shall include a certification by the withdrawing attorney that the agreed upon limited services have been completed and that the withdrawing attorney has submitted all judgments or orders resulting from the limited appearance as ordered by the court. A copy of the relevant Notice of Limited Appearance shall be attached to the motion.

(d) The court may allow an attorney to withdraw by ex parte motion if:

(1) The attorney has been terminated by the client; or

(2) The attorney has secured the written consent of the client and of all parties or their respective counsel; or

(3) A limited appearance, as authorized by Rule 1.2(c) of the Rules of Professional Conduct and consented to by the client, has been completed; or

(4) The case has been concluded.

(e) The court may also allow an attorney to withdraw by ex parte motion if no hearing or trial is scheduled.

(f) If paragraph (d) does not apply, then an attorney may withdraw as counsel of record only after a contradictory hearing and for good cause. All parties and the withdrawing attorney=s client shall be served with a copy of the motion and rule to show cause why it should not be granted.

(g) If counsel=s withdrawal would delay a scheduled hearing or trial, the court will not allow the withdrawal unless exceptional circumstances exist or limited representation was undertaken pursuant to a Notice of Limited Appearance and completed.

(h) Paragraphs (a) through (f) do not apply to an ex parte motion to substitute counsel signed by both the withdrawing attorney and the enrolling attorney. The following rules govern such a motion:

(1) The court may grant the motion without a hearing. Movers shall furnish the court with a proposed order.

(2) Substitution of counsel will not, by itself, be good cause to alter or delay any scheduled matters or deadlines.

Adopted April 1, 2002, effective April 1, 2002; amended October 29, 2003, effective January 4, 2004; amended November 20, 2009, effective January 1, 2010; amended November 27, 2012, effective January 1, 2013.

Comments

Rule 9.13 is not intended to supersede the Rules of Professional Conduct regarding the presentation of false testimony to the court.

Rule 9.13(d)(3) provides for ex parte withdrawal by an attorney upon completion of a limited scope representation. It is intended to facilitate limited representation services as contemplated by Rule 1.2(c) of the Rules of Professional Conduct.

APPENDIX FORM 9.12A

_____ Petitioner	No. _____ Div. _____
Versus	_____, Louisiana
_____ Defendant	_____ Court

NOTICE OF LIMITED APPEARANCE – FAMILY LAW CASES

1. Attorney, _____ and Client, _____, have agreed that attorney will provide limited scope representation, pursuant to La. Dist. Ct. Rule 9.12, as follows:
2. Attorney will represent the client:
 ___ at the hearing on: _____, ___ and for any continuance of that hearing;
 ___ until submission of the order after hearing;
 ___ until resolution of the issues checked below by trial or settlement; and/or
 ___ other: _____
3. Attorney will serve as “attorney of record” for the party only for the following issues in this case:
 - a. ___ Divorce: (1)___102; (2)___103; (3)___Covenant Marriage
 - b. ___ Child Support: (1)___Establish; (2)___Enforce; (3)___Modify
(describe)_____
 - c. ___ Spousal Support: (1)___Establish; (2)___Enforce; (3)___Modify
(describe)_____
 - d. ___ Protective Orders/Injunctions: (1)___ Order of Injunction;
(2) ___ Injunction Against Harassment or Abuse; (3) ___ Injunction
Against Alienation and Encumbrance of Community Property
(describe)_____
 - e. ___ Child Custody/Visitation: (1)___Establish; (2)___Enforce;
(3)___Modify
(describe)_____
 - f. ___ Paternity: (1)___Establish; (2)___Disavow
(describe)_____

- g. ____ **Partition/Division of Property:**
(describe) _____

- h. ____ **Pension Issues:**
(describe) _____

- i. ____ **Contempt:**
(describe) _____

- j. ____ **Other:**
(describe in detail) _____

4. By signing this form, or a subsequent Certificate of Acknowledgement of Limited Appearance, client agrees that attorney may withdraw at the completion of the stated representation.
5. The attorney named above is “attorney of record” and available for service of documents only for those issues specifically checked above, and for all other matters, client/party must be served directly at the following address:

Client Name: _____
Street Address: _____, Apt. or Suite: _____
City, State, Zip: _____, _____

6. Attorney contact information:

Attorney Name: _____
Street Address: _____, Suite: _____
City, State, Zip: _____, _____
Phone: _____
Fax: _____
E-mail: _____

THE UNDERSIGNED HEREBY CERTIFY that this form sets forth the limited scope of representation agreed to between the undersigned attorney and client. If the client is not available to sign this agreement at time of filing, a copy bearing his/her signature shall be filed within ten (10) days of the initial filing of this Notice.

Attorney

Client/Party

Date

Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this pleading has been duly served on all counsel of record and/or self-represented parties via facsimile, e-mail, hand delivery, and/or by placing a copy of same in the United States Mail, postage prepaid, this _____ day of _____, _____.

Attorney

APPENDIX FORM 9.12B

_____ Petitioner	No. _____ Div. _____
Versus	_____, Louisiana
_____ Defendant	_____ Court

NOTICE OF LIMITED APPEARANCE – NON-FAMILY LAW CASES

1. Attorney, _____ and Client, _____, have agreed that attorney will provide limited scope representation, pursuant to La. Dist. Ct. Rule 9.12, as follows:

2. Attorney will represent the client:

Limited to the following matters: _____

And further includes:

___ at the hearing on: _____, ___ and for any continuance of that hearing;
___ until submission of the order after hearing; and/or
___ other: _____

3. By signing this form, or a subsequent Certificate of Acknowledgement of Limited Appearance, client agrees that attorney may withdraw at the completion of the stated representation.

4. The attorney named above is “attorney of record” and available for service of documents only for those issues specifically checked above, and for all other matters, client/party must be served directly at the following address:

Client Name: _____
Street Address: _____, Apt. or Suite: _____
City, State, Zip: _____, _____

5. Attorney contact information:

Attorney Name: _____

Street Address: _____, Suite: _____
City, State, Zip: _____, _____
Phone: _____
Fax: _____
E-mail: _____

THE UNDERSIGNED HEREBY CERTIFY that this form sets forth the limited scope of representation agreed to between the undersigned attorney and client. If the client is not available to sign this agreement at time of filing, a copy bearing his/her signature shall be filed within ten (10) days of the initial filing of this Notice.

Attorney

Client/Party

Date

Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this pleading has been duly served on all counsel of record and/or self-represented parties via facsimile, e-mail, hand delivery, and/or by placing a copy of same in the United States Mail, postage prepaid, this _____ day of _____, _____.

Attorney

II. APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE

RULE 11. SIGNING PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO THE COURT; SANCTIONS

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that [Rule 11\(b\)](#) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates [Rule 11\(b\)](#). The motion must be served under [Rule 5](#), but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated [Rule 11\(b\)](#).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating [Rule 11\(b\)\(2\)](#); or

(B) on its own, unless it issued the show-cause order under [Rule 11\(c\)\(3\)](#) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) INAPPLICABILITY TO DISCOVERY. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules [26](#) through [37](#).

III. APPLICABLE LOUISIANA RULES OF PROFESSIONAL CONDUCT

Rule 1.0, in pertinent part:

...(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances...

...(h) “Reasonable” or “reasonably believes” when used in reference to a lawyer denotes the conduct of a reasonably prudent and competent lawyer...

Rule 1.1, in pertinent part:

...(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation...

Rule 1.2:

...(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client’s decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, religious, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law...

Rule 1.3:

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4, in pertinent part:

...(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued...

Rule 1.6:

...(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or court order.

Rule 1.7:

....(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Rule 1.9:

...(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 1.14:

...(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary

protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests...

Rule 1.16:

...(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding...

Rule 2.1:

...In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation...

Rule 3.1:

...A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established...

Rule 3.2:

...A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client...

Rule 3.3:

... (a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse...

Rule 3.4, in pertinent part:

...A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;...

Rule 3.9:

...A lawyer representing a client before a legislative body or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rule 3.3(a) through (c), 3.4(a) through (c), and 3.5...

Rule 4.1:

...In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6...

Rule 4.3:

...In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in a matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client...

Rule 5.3:

...With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 6.5:

...(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule...

Rule 8.4, in pertinent part:

...It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do, or do so through the acts of another;...

...(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct prejudicial to the administration of justice;...


Recent Developments in Housing Law

2013 VAWA Housing Protections
Extension of the Protecting Tenants in Foreclosure Act
Recent Appeals Court Decision on PFTA
New State Law on Notice in Foreclosures
Road Home 2013 Action Plan Amendments

Violence Against Women Reauthorization Act of 2013: Housing Protections

VAWA Reauthorized in 2013

- VAWA 2013 continues protections under VAWA 2005 and provides new protections
- VAWA was enacted in 1994; reauthorized in 2000, 2005 and in March of 2013
- VAWA 2013 maintains VAWA 2005's housing safeguards, expands the housing programs to which the law applies, and adds new protections
- VAWA 2013's housing protections are effective now, although some of the amendments require changes to the regulations or actions by federal agencies for purposes of implementation



Overview of VAWA

- Prohibits denying a survivor admission to, assistance for, or evicting them from the housing because the applicant or tenant is a victim of domestic violence, dating violence or stalking
- Incidents of abuse can neither be construed as a serious or repeated lease violation nor considered good cause for terminating the assistance or tenancy
- Survivors cannot be denied or evicted from the housing on the basis of criminal activity related to the abuse committed against them or a household member
- A PHA, owner, or manager may evict or terminate assistance to other household members if the tenant is not evicted or terminated from assistance

Summary of VAWA 2013 Protections

- VAWA 2013 continues the following:
 - Protections for survivors applying for HUD subsidized housing
 - Protections against evictions and subsidy terminations
 - Facilitates safety moves for survivors with Section 8 vouchers or public housing units
 - Permits lease bifurcation to remove the perpetrator from the unit
 - Rules for proving domestic violence, dating violence or stalking
 - Obligates PHAs to have plans & goals and describe PHA programs to assist survivors
- VAWA 2013's new provisions provide for:
 - Coverage of more federal housing programs
 - Protections to survivors of sexual assault and LGBT survivors
 - Rights for survivors remaining in housing after lease bifurcation
 - Expansion of documentation rights to show abuse
 - What landlords may do when there are conflicting certifications
 - Development of model plans for use for emergency transfers
 - Notification concerning VAWA housing rights at three critical junctures in multiple languages

Key Changes in VAWA 2013

- Housing Covered
- Parties whom VAWA Protects
- Certification
- Conflicting Certification
- Bifurcation
- Emergency Transfers
- Notification and Language Access

VAWA 2005 & 2013: Expanded Coverage

Programs that were covered by VAWA 2005	Programs added by VAWA 2013
Public Housing	Other HUD programs
Section 8 Vouchers	- § 236 Multifamily rental housing
Project-based Section 8	- § 221d3 BMIR (Below Market Interest Rate)
Section 202 Supportive Housing for the Elderly	- HOME
Section 811 Supportive Housing for People with Disabilities	- HOPWA (Hous. Opp. For Ppl w/ AIDS)
	- McKinney-Vento (Homelessness Programs)
	Department of Agriculture
	- Rural Development (RD) Multifamily
	Department of Treasury/IRS
	- Low-Income Housing Tax Credit (LIHTC)

Federal Housing Programs

- Public Housing: owned and managed by PHA
- Voucher Program: housing subsidy moves with the family
- Project-based Section 8: privately owned and subsidy does not move with family
- Section 202: supportive housing for families whose head is elderly
- Section 811: supportive housing for families whose head is disabled
- Section 236 & 221d3 BMIR: privately owned; rent controlled
- HOME: housing for low-income families living with HIV/AIDS
- McKinney Vento: housing for homeless and disabled
- Department of Agriculture RD multifamily: located in towns with ≤ 20,000 in population or if within a SMA, ≤ 10,000 in population & rural character
- IRS Low Income Housing Tax Credit: restricted rents set at 30% of 50% or 60% of AMI

VAWA covers people who are subject to:

- **Domestic violence**: any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim
- **Dating violence**: violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors
- **Sexual assault**: any nonconsensual sexual act prohibited by law
- **Stalking**: any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress
- **"Affiliated individual" of the victim**: immediate family or any individual living in the household

Certification: Procedural Requirements

- PHA or landlord has the discretion to take tenant at her word, or can ask tenant to prove domestic violence
- Any request by PHA or owner for proof must be in writing
- Tenant has 14 business days from PHA or landlord's request to provide proof
 - If individual does not provide documentation within the 14 days, a PHA, owner or manager may deny admission or assistance, terminate the assistance or bring eviction proceedings for good cause
- PHA or landlord is free to grant extension if tenant needs more time

Proving Domestic Violence: Options for Documentation

- **Self-Certification Form**
 - New law revised certification process outlined under VAWA 2005 and implemented through HUD Form 50066 (public housing or Section 8 vouchers) and HUD Form 91066 (project-based Section 8)
 - Permits PHAs and owners to request certification via form *approved* by appropriate federal agency
 - This form must (1) state that the applicant or tenant is a victim; (2) state that the incident is ground for protection meeting requirements under VAWA and (3) include perpetrator's name, *if known and safe to provide*
- **Police, Court or Administrative Record**
 - Can be from a federal, state, tribal, territorial, or local entity or administrative record
- **Statement from Third Party**
 - Can be from a victim service provider, medical professional, mental health professional or attorney
 - Must be signed by both the third party and the survivor under penalty of perjury

Conflicting Certification

- HUD has stated that "an individual requesting protection cannot be required to provide third-party documentation." 75 Fed. Reg. 66,251
- However, in cases where 2 household members claim to be the victim and name the other household member as the perpetrator, the housing provider can require third-party documentation
 - Included in VAWA statute for the first time in 2013
 - Currently in HUD's implementing regulations for VAWA 2005

Evictions & Terminations

- PHAs, landlords, and owners may not deny assistance to, terminate assistance for or evict a tenant on the basis that she is or has been a survivor
- Crimes against a survivor "directly relating to" the abuse are not grounds for evicting the survivor or terminating her rental subsidy
- An incident of actual or threatened domestic violence does not constitute a "serious or repeated lease violation" or "good cause" for evicting the survivor or terminating her rental subsidy

Limitations

- PHAs and owners can still evict if they can demonstrate an "actual and imminent threat" to other tenants or employees at the property if the survivor is not evicted
- "Actual and imminent threat" not defined in VAWA
- Current HUD regulations are important:
 - "Threat" consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm
 - Factors to be considered include the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will occur, and the length of time before the harm would occur. 24 C.F.R. § 5.2005
 - Eviction should occur only if there is no other action to be taken that would reduce or eliminate threat

Bifurcation: Removing the Abuse from the Unit

- PHA or Section 8 landlord may "bifurcate" a lease to evict a tenant who commits domestic violence while preserving the survivor's tenancy rights
- New protection for tenants remaining in housing as a result of lease bifurcation
 - If the individual who is evicted is the sole tenant eligible to receive the housing assistance, the PHA or landlord must provide the remaining tenant an opportunity to establish eligibility or a reasonable time to move or establish eligibility for another covered housing program.
- Additionally, PHA may terminate Section 8 assistance to the abuser while preserving assistance to survivor
 - If a family breakup results from DV, "the PHA **must** ensure that the victim retains assistance." 24 C.F.R. § 982.315

Voucher Portability

- If a Section 8 voucher family moves out in violation of a lease, PHA has grounds to terminate their subsidy. VAWA provides an exception for survivors who must move for safety
- Many PHAs prohibit Section 8 voucher tenants from moving during the 1st year of their lease, or from moving more than once during a 12-month period. However, these policies do NOT apply when move is needed for safety. See 24 C.F.R. § 982.314

Emergency Transfers


- VAWA 2013 mandates each federal agency to adopt a model emergency transfer plan to be used by PHAs and owners
- Transfer plan must allow survivor tenants to transfer to another available and safe unit assisted under covered housing program if
 - Tenant expressly requests the transfer and
 - Either tenant reasonably believes that she is threatened with imminent harm from further violence if she remains or tenant is a victim of sexual assault that occurred on premises within 90 days of request
- Transfer plan must ensure confidentiality so that PHA or owner does not disclose location of new unit to abuser
- HUD must establish policies and procedures under which a survivor requesting emergency transfers may receive a tenant protection voucher

Notification and Language Access


- HUD must develop a notice of VAWA housing rights (HUD notice) for applicants and tenants
- PHAs, owners and managers must provide HUD notice along with the agency-approved, self-certification form to applicants and tenants
 - At the time an applicant is denied residency
 - At the time the individual is admitted
 - With any notification of eviction or termination of assistance
- HUD guidance prohibiting discrimination against Limited English Proficiency persons is applicable, including specifically for the HUD notice

Other Requirements

- Confidentiality
- Survivors held to same standard as other tenants
- PHA plans
 - Annual plans: PHAs must include a statement of any PHA DV programs
 - Five-year plans: PHAs must describe goals, objectives, policies, or programs they use to serve survivors' housing needs
- No preemption for laws that provide greater protections for survivors



Areas where VAWA's Application is Unclear



- Cases where the link between domestic violence and the program violation is indirect, such as the abuser refusing to pay the rent
- Cases where survivor signed an agreement to keep the abuser off the premises or to repay damages caused by the abuser
- Where to file complaints if a PHA refuses to comply

Extension of the Protecting Tenants in Foreclosure Act

Overview of PTFA

- PTFA went into effect in 2009 to provide protections to tenants in foreclosed properties
- The Act was originally set to expire on December 31, 2012, but the Dodd-Frank Wall Street Reform and Consumer Protection Act extended the expiration date to December 31, 2014



Overview of the PTFA

- The immediate successor of interest (generally the purchaser) of a foreclosed property must provide all tenants with at least 90 days notice prior to eviction because of foreclosure. May be longer than 90 days if there is an unexpired bona fide lease
- Additionally, tenants must be permitted to stay in the residence until the end of the lease with two exceptions:
 1. The property is sold after foreclosure to a purchaser who will occupy the property as a primary residence, or
 2. There is no lease or the lease is terminable at will under state law
- However, even if these exceptions apply, the tenant must be given at least 90 days notice prior to eviction
- The rights of Section 8 tenants are also protected under the Act

Section 703 of PTFA



- Amends the statute governing the Section 8 program to require that the immediate successor in interest to the foreclosed property becomes subject to the HAP contract and there must be "good cause" other than vacating the property prior to sale in order to terminate the existing tenancy
- Must comply with Section 702 of the PTFA: if the immediate successor-in-interest will use the unit as a primary residence, the lease can be terminated effective on the date of the sale and tenant is still entitled to a minimum of 90 days notice to vacate

Tenant Protections Under the Neighborhood Stabilization Program

- If the housing is assisted with NSP funds after February 17, 2009 and the PHA is unable to make HAP payments to the successor in interest after foreclosure due to rejection of payments, other action or inaction by the successor, or inability to identify the successor, the PHA may use the funds that would have been used to pay the rental amount to pay the utilities that are the owner's responsibility or to pay for the family's reasonable moving costs
- Any recipient of a NSP grant or loan may not refuse to lease a dwelling unit assisted with such grant or loan to a participant in the Section 8 program or a HCV holder because of the status of the prospective tenant



PHA Responsibilities

- Notifications
 - Landlord or party executing the contract
 - Head of Household that is receiving HCV assistance
 - HCV applicants
- Foreclosure Actions
 - Make all reasonable efforts to determine status of foreclosure and ownership of the property
 - Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract
 - Attempt to obtain a written acknowledgment of the assignment of the HAP contract from the successor in interest
 - Inform the tenant that they must continue to pay rent

Recent Appeals Court Decision on PFTA

Logan v. U.S. Bank Nat. Ass'n 2013 WL 3614465 (9th Cir. 2013)

- Tenant filed action seeking injunctive relief and damages after lender filed unlawful detainer action against her in state court without giving 90 days notice to vacate the foreclosed property as required by the PTFA
- US Bank took title to the property at foreclosure in 2009 and served the tenant with a three-day notice of termination and then immediately initiated an unlawful detainer action



Holding in *Logan*

- No private right of action under the PTFA
 - *"Nothing in the language and structure of § 702(a) reflects a clear and unambiguous intent to create a private right of action."*
 - *"PTFA's nationwide federal policy and requirements are not rendered unenforceable by the absence of a federal private right of action."*
- The PTFA only provides tenants with federal defenses to eviction
- Amici argued that defense of a state eviction action would be inadequate to enforce the PTFA in states that allow the purchaser at a foreclosure sale to remove a tenant without judicial process

New State Law on Notice in Foreclosures

LA ACT No. 354: Lessee's Right to Notification of Foreclosure Action

- Lessor shall disclose in writing to the lessee and any prospective lessee any pending foreclosure action to which the residential dwelling is subject and the right of the lessee to receive a notification of a foreclosure action
- Within 7 calendar days after being served with a notice of foreclosure action, a lessor shall provide written notice of the seizure to all lessees of the premises

"This is not a notice to vacate the premises. This notice does not mean ownership of the building has changed. All lessees are still responsible for payment of rent and other obligations under the rental agreement. The lessor is still responsible for his obligations under the rental agreement. You will receive additional notice if there is a change in owner."

- If a lessee establishes that a violation of this Section occurred, the lessee is entitled to recover at least two hundred dollars in damages
- Applies to all lessors in residential leases

Road Home 2013 Amendments



The Road Home

BUILDING A SAFER, SMARTER, STRONGER LOUISIANA

- The State of Louisiana has developed new policies, including construction financing assistance, for Road Home grantees who have attempted but, for reasons beyond their control, have been unable to fulfill the requirements of their Road Home agreement of returning and reoccupying their home
- Road Home grantees have three years from the time of their closing to comply with their covenant or grant agreement. If homeowners have fulfilled their obligation at the end of the period, they are considered in compliance and their grant is closed; if they have not, they are required to repay their grant amount to the state. The State recently sent about 56,000 letters to grantees on 8/26/2013.
 - Option 1 recipients within the Road Home program chose to take a grant to rebuild or repair their storm-damaged home and agreed to reoccupy that home.
 - Option 2 recipients chose to sell their damaged home back to the state then purchase and occupy another home within Louisiana.

Re-evaluation of Benefits

- Action Plan Amendment 58 addresses the amount of money subject to recapture from Road Home grantees
- Applies to either homeowners who owe money back to the program or Option 1 or Option 2 Road Home recipients who closed on their grant but have not fulfilled the terms of the grant agreement due to unforeseen circumstances, including:
 - Contractor or builder fraud
 - Involuntary forced mortgage payoff
 - Theft or vandalism
 - Damage from a subsequent event prior to completion of repairs
 - Installation of contaminated drywall
- If a homeowner can show required documentation that such a circumstance has occurred, then the sum of money lost from that incident will be subtracted from the total amount of benefits the homeowner received at the time of his or her Road Home grant closing

Construction Financing Assistance

- Action Plan Amendment 59 provides additional assistance to qualified Option 1 grantees in the form of a Loan Principal Repayment Grant, which will be applied to the principal of a construction or rehabilitation loan
- Action Plan Amendment 58 Loan will be used to complete home repairs so the homeowner can reoccupy the home, fulfill Road Home covenant and become compliant with the program
- LPRG recipients must be able to assume the debt to repair their home and qualify for a construction loan according to the underwriting standards of the lender; LPRG will substantially reduce the risk to the lenders, enabling them to make larger loans to homeowners and approve those that may not otherwise qualify under normal market criteria

Clarification on the Use of Elevation Funds

- Action Plan Amendment 60 provides reclassification of Road Home Elevation award amounts that have been used for home repair and reconstruction to be considered part of the applicant's compensation award
- The cost to elevate homes has increased substantially since the Road Home program began disbursing Elevation Incentive awards, and many homeowners did not have enough funds to complete the basic repairs needed to reoccupy their homes
- The amount of elevation funds used for home repairs will be subtracted from the amount the homeowner owes back to the state.
- Only Road Home participants who received Elevation Incentive funds and are not yet compliant with their elevation agreement will be eligible to have the costs considered for reclassification

Compliance Deadline

- **November 25, 2013**
- Options available to assist bringing files to a completed state
 - Covenant Extension (period of one year)
 - Post Closing Option Change
 - Covenant Release
 - Loan Principal Repayment Grant
 - Elevation used for repairs (reclassify funds)
 - Grant repayment through unmet needs policy

Resources and Contact Info

- Resources and Contact Information
 - www.road2la.org
 - Pro Se Resources at www.lawhelp.org/La
 - Overpayment/Collection Letters <http://louisianalawhelp.org/resource/did-you-get-a-collection-letter-from-the-boa?ref=Lhyub>
 - Noncompliance Letters <http://louisianalawhelp.org/resource/did-you-receive-a-non-compliance-letter-from?ref=Lhyub>
 - Road Home Call Center (1-888-762-3252)
 - Advisor meetings in N.O. office, 2010 Lakeshore Dr.
 - Community Meetings posted at www.road2la.org

Contact Information

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Looking Ahead: Innovative Delivery Systems

Emily Chambers
Baton Rouge Bar Association

Self Help Resource Center
at EBR Family Court

Baton Rouge Bar Foundation Pro Bono Project

- Providing pro bono legal services to the Baton Rouge community since 1986
- Overseen by BRBA/BRBF Board of Director and Pro Bono Committee
- Panel of 1450+ volunteer attorneys
- Coordinating Self Help Resource Center since 2012

Delivering services to the underserved in Baton Rouge



Since opening our Self Help
Resource Center in 2012, we have
assisted over 2,300 visitors

Who are the partners?

- ❖ Baton Rouge Bar Foundation
- ❖ East Baton Rouge Family Court
- ❖ Southeast Louisiana Legal Services
- ❖ Paul M. Hebert Law Center at LSU
- ❖ Southern University Law Center
- ❖ Louis A. Martinet Legal Society
- ❖ Louisiana State Bar Association

Innovative Delivery Systems: Coordinating resources

- ❖ Baton Rouge Bar Foundation
- ❖ East Baton Rouge Family Court
- ❖ Southeast Louisiana Legal Services
- ❖ Paul M. Hebert Law Center at LSU
- ❖ Southern University Law Center
- ❖ Louis A. Martinet Legal Society
- ❖ Louisiana State Bar Association

Innovative Delivery Systems: Daily operations

