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Getting Out of an Evergreen Clause

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A number of clients have recently asked me to review an old contract they had signed that contains an “evergreen clause”. Generally, the question comes in along the lines of “How is it that I signed this contract years ago, but it is still in force and I can’t get out of it?!?” An evergreen clause is a statement within a contract that says something like “*this agreement shall automatically renew for another one (1) year term, unless either party provides notice to the other of its intent to terminate this agreement not less than thirty (30) days before the end of the then current term.*” When triggered, evergreen clauses act to extend the contract for another term (hence the name, since it keeps the contract “ever green”).

So why would you want to enter into a contract that contains an evergreen clause? Generally speaking, evergreen clauses work very well if you are providing a service, but can work against you if you are receiving the service. They help lock in a customer . . . or keep you tied to a service provider. One reason I’ve heard is that “it helps lock in a price”. Moreover, an evergreen clause can foster complacency in the relationship, and you may miss out on an opportunity to renegotiate.

How do you get out of an evergreen clause? The first way is to retain an attorney *before* you sign a contract, who can help you steer clear of an undesirable evergreen clause. Or you can simply refuse to sign a contract that contains an evergreen clause unless it is removed. If the opposite party will not remove the evergreen clause, yet you still want to do business with them, then simply line out the evergreen clause before you sign the contract and initial where you made the change. If you have entered into such a contract, send your notice to the other party of your intent to not renew the contract before the deadline is triggered where it automatically renews. But make sure that your notice is sent pursuant to the terms of the agreement (it may require mail, certified mail, fax, etc), that it is documented, and, if possible, try to get the other party to acknowledge the notice.