

PARTNERSHIP FOR REVISING FLORIDA'S CONSTITUTION

DRAFTING GUIDELINES

One of the key objectives for a drafter of a proposed amendment to Florida's constitution is to make it as clear as possible. It is crucial that both those who vote on it and those whom it affects can easily understand it. To this end experts on the use of language in laws, rules, and other legal documents have developed rules and principles, usually referred to as clear language or plain English, for drafters to follow rather than the traditional legalese. To aid those who plan to submit proposed amendments to the Florida Constitution Revision Commission, the Partnership recommends the following guidelines incorporating these rules and principles.

I

CHOOSING THE RIGHT WORD

1. USE COMMON AND KNOWN WORDS

Use words that are in common use by the general public. A simple test is to write to the same audience as a quality newspaper or a person with a high school education.

2. ELIMINATE UNNECESSARY WORDS

A. Be brief. Clarity almost always goes hand in hand with brevity. The shorter the sentence, the easier it is to understand. Use a word only if the substance of the amendment requires it. Focus on nouns, verbs, adjectives, and adverbs. Minimize the use of articles and prepositions.

B. Use simple rather than compound expressions ("a person may not" rather than "a person is prohibited from", "during" rather than "during the course of", "when" rather than "in the event of").

C. Eliminate legalese. It is a fiction that it is safer to use tried and true old legal expressions rather than common and known words. Only the lazy drafter uses them.

3. BE CONSISTENT

Be consistent in the use of words. While using different words to express the same thought may be desirable in prose and poetry, "elegant variation" has no place in the constitution. Variation only confuses the reader and the courts.

4. UNDERSTAND THE DIFFERENCE BETWEEN AMBIGUOUS, VAGUE, AND GENERAL WORDS

A. Ambiguous usually means the use of a word, usually a pronoun, to refer back to a prior noun and it is not clear which of several nouns is meant. If there is a doubt, repeat the intended noun. Ambiguous is often misused to mean a general or vague word.

B. A general word means one that applies to multiple persons or things (vehicle, tree, government). A vague word can be a concept (justice, old), adjective (near high), or action (advise, spend). General and vague are not mutually exclusive, but require careful selection.

5. SPECIAL RULES

A. Noun Modifier

Use:

1. “a” or “an” rather than “any” or “each” to identify a noun as the subject or object.
2. “the” or repeat the noun rather than “said” or “such” to refer back to a prior noun.

B. Stating a Limitation

Put a qualifier as close as possible to the word qualified, usually before the noun and after the verb. Thus, use “a married couple” rather than “a couple who are married” or the verb (“a person may file only when” rather than “a person may only file when”).

C. Proviso

Do not use the proviso “provided that” to create an exception or qualifier. State the exception as an introductory clause or a separate sentence.

D. Tabulation

Tabulate a listing of three or more of anything--nouns, verbs, objects, exceptions, qualifiers, or limitations.

II

STRUCTURING A SENTENCE

1. SENTENCE STRUCTURE

A. Use the simple declarative sentence. This is classic advice for all types of writing but is especially important for a constitution. A sentence with multiple subjects and predicates can only confuse the reader.

B. Use short sentences. The shorter the sentence, the easier to understand.

2. SUBJECT

Use a singular noun, not the plural, as the subject of the sentence. This particularizes the intended object of the sentence. Repeat the noun rather than using a pronoun later in the sentence if the pronoun creates an ambiguity or gender problem.

3. PREDICATE

A. Use a verb as the first part of the predicate of the sentence in:

1. the active voice, not the passive (“the court shall render judgment” rather than “a judgment shall be rendered by the court”);
2. the present tense, not the future tense, to avoid confusing whether “shall” imposes a duty or refers only to the future (laws almost always speak in the present, not the future);
3. a finite verb (“to pay”) rather than making the verb a noun (to make a payment); and
4. the positive (“a building that has passed final inspection” rather than “a building that has not passed final inspection”).

B. Follow the verb with an object or complement.

C.. Place the negative with the verb rather than the noun (“a person may not” rather than “no person shall”).

D. Verbs “May” and “Shall”

Use:

1. “may” to create a right or to grant authority or discretion (“a person may vote” rather than “a person has the right to vote”);
2. “may not” to deny the power or authority (“a person may not” rather than “a person shall not”);
3. “shall” only to impose an obligation (“the governor shall submit”) not in the future tense (“if the Legislature shall fail to appropriate”).

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