

University of Tennessee College of Law

**Legal Scholarship Repository: A Service of the Joel A. Katz Law
Library**

Transactional Matter Files

K Drafting- Substantive Number

Follow this and additional works at: https://ir.law.utk.edu/transactionalmatter_files

M. Substantive Numbers.

It is common practice that numbers used in legal agreements are both spelled and represented in numerals to avoid confusion, ease proofreading, and make later alteration more difficult. For example, "the sum of five-thousand, five hundred dollars (\$5,500) will be paid at closing." The only justification professed for this practice that makes any sense today is that it makes later alteration or forgery more difficult. Using the written-out and numerical format makes it harder to slip in an extra zero, or delete one.

Recognizing that large numbers are difficult to read when expressed in words, drafters long ago began placing numbers in parentheticals to aid the reader—like a pronunciation annotation accompanying a new or unfamiliar word in an article or magazine. This makes reading easier, and the form has stuck. Because drafters continued also to express the number in words, however, eventually discrepancies between the two occurred. This made it necessary to develop rules governing how to resolve the ambiguity.⁹

For over 50 years, leading commentators on modern formal use of English disfavor writing out numbers in words.¹⁰ Unless concerns about alteration of the document are strong, drop the double form of expression and use numerals exclusively. Alternatively, write out the numbers one through ten in words and use numerals for 11 and up. Either system makes documents easier to proofread and prevents the opportunity for words to conflict with numerals, eliminating another source of ambiguity.¹¹ Where concerns regarding alteration of the document are strong, use the double format, as in the case of checks and other negotiable instruments. Read and proofread substantive numbers carefully—mistakes can be costly to fix.¹²

⁹See, e.g., U.C.C. § 3-114 (contradictory terms; typewritten terms prevail over printed terms, handwritten terms prevail over typewritten or printed terms, and words prevail over numbers).

¹⁰See WILLIAM STRUNK, JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 35 (3d ed. 1979) ("do not spell out dates or other serial numbers. Write them in figures").

¹¹As with other matters of style, be sensitive to your audience. If that audience is willing to embrace modern plain English drafting styles, use them. If, however, your client expects numerals and words to be used to express numbers, by all means take that into account. Whatever you do, be consistent.

¹²See, e.g., *Prudential Ins. Co. v. S.S. Am. Aquarius*, 870 F.2d 867 (2d Cir.1989) (circuit court of appeals saves Prudential from the adverse effects of a multi-million dollar typographical error that stated an amount due of \$92,855.00 rather than \$92,885,000.00 as the parties originally intended). As the *Prudential* case demonstrates, courts may save a client from the inequitable results of sloppy drafting. The journey to the circuit courts of appeal, however, is likely to be both expensive and unsettling for the clients and counsel involved.