

### **C. The Engagement Contract**

These are the simplest and in many ways, the most important of all the contracts into which the artist enters. These contracts govern the purest form of artistic expression, the direct contact between the artist and the audience in live performance. Not only is this the primary goal of the jazz artist's long-term commitment and perseverance, but live performance is probably the single most important element in building a successful career. It's where lasting fans are won, where records are sold and where authentic reputations are made.

I've seen far too many opportunities for a fine artist to reach a large and receptive audience get sabotaged by problematic conditions that could have been nullified by a little forethought and simple communications during the contracting phase.

Inadequate equipment or sound check time, scheduling problems, local transportation issues, money disputes, hospitality and attitude issues – all of these things take their toll on the music. So much emphasis is placed on the money issues, and that's understandable due to the economics of the jazz business putting a tremendous strain on most musicians. But overlooking the tremendously important requirements of the presentation of the music is not only counter-productive, but also more costly in both the short and long term. Last-minute rentals, unexpected cab fares, flight changes, hotel switches, unexpected food issues – all come at premium costs, and straight off the top. Just one or two snafus can take a hearty portion of an artist's expected earnings on a tour.

While road risks are always lurking, many problems can be avoided, and the music can be presented in the best manner that circumstances will allow, if a simple and well-thought-out contract rider is developed.

The standard union or agency contract is fine for the basic information: fee, promoter's travel and hotel obligations (if any), method of payment, percentage (if applicable), number and length of sets, size of group, etc. And they should also cover the legalities of any violations, failures, cancellations, etc.

The rider contains all of the specific requirements connected with the artist's performance and personal well-being. These items should be handled with the same concern and clarity as the money issues by both artist and representative. If there's a cost factor, it should be stated to the potential presenter along with fee, hotels, etc. But it should not be left at that. It's important that the presenter understands the specifics and is able to provide them, because many of the most important provisions are not an issue of cost, but of planning and execution.

As for the key element of finances, a few points that are important to understand:

Many engagements are worked under nothing more official than a telephone "handshake." Even in this day of instant communication and immediate replication, performance agreements are often not represented on paper, wire, tape, disk or any other device. And just as often, the deal (on paper or not) changes with the actual course of events on the day of the gig.

Sometimes artists won't push for a contract because they're afraid of losing the gig. Sometimes the promoter won't deal with a contract because they don't want to be bound to pay the money to which they agreed. Even if there is a contract, enforcing it is difficult, often requiring a psychological baseball bat (and occasionally a real one). Often it's an impasse that can only be settled legally. Small Claims Court is an option, the Musicians Union is another. But whichever method you decide upon, anything other than coming to a mutually agreeable solution will probably result in the termination of any relationship between artist and promoter.

If a mutual agreement is the goal, an issued contract, even if unsigned by the promoter, gives the artist a solid footing for reasonable negotiation. As I've repeatedly emphasized, from a legal standpoint an unsigned contract plus evidence of the gig's scheduling (such as a newspaper ad) and its performance will have significant legal clout in the absence of a signed contract. Without any evidence of a different arrangement provided by the promoter prior to the engagement, there's nothing to conflict with the artist's claim. It's unlikely that even the slimiest promoter will risk criminal charges of forgery, perjury, etc. by producing false documents in court – Small Claims or otherwise. While it's highly unlikely that things will escalate to this level, being aware of this can provide the artist or rep a certain leverage in negotiating a fair solution. It's also important to understand this protective device on the higher level of performance venues, especially in terms of cancellations. We'll view this in more detail in *Part IV* (pp 369-70).

But it all comes down to the issuing of the contract, which should be automatic with the securing of each and every engagement. There is a sample performance contract and rider in *Part IV* (pp 411-4).