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HOW TO ENFORCE CONTRACTS AND SEEK REMEDIES

While parties enter a contract hoping for a mutually satisfactory outcome, sometimes the parties are not able to complete the terms of the agreement. This guide discusses the options and processes available to you when a problem arises.

What happens when a party fails to perform their end of the contract?

A party's failure to perform their obligation(s) under a contract is called "breach of contract". A breach can occur in various forms, such as failing to deliver goods on time, not providing services as agreed, or delivering defective products. A breach entitles the other party to legal remedies established in the contract, such as damages, specific performance, cancellation/termination, and injunctive relief.

Before receiving these remedies, the breaching party may have the opportunity to "cure", or fix, their mistake after being notified by the non-breaching party. The opportunity to cure can be subject to conditions, such as a specific timeframe and requirements regarding how and when the cure must be performed. If the breaching party successfully cures the breach within the stipulated time, they may avoid further consequences and the parties can continue to honor the contract. However, if they fail to cure or do not do so adequately, the non-breaching party can proceed with seeking remedies such as damages or specific performance.

What should I do if I suspect the other party is not performing?

Some points on steps to take to protect the business before and after a breach of contract:

- Before entering into the agreement, understand the specific remedies that are available to you in the contract in the event that the other party does not perform.
- Ensure that the available remedies are enough to cover any potential harm that could be caused by the other party's failure to perform. You don't want to be left worse off because you entered into the agreement.
- When you think the other party is not performing, start documenting the potential breach to have clear records of the issue. Keep a timeline of the relevant events and track any financial losses accrued from their lack of performance.
- Remember to notify the other party of the issue. They can't be expected to fix an issue that they don't know exists.

How do I enforce a contract and seek contractual remedies?

For small businesses, contracts are rarely enforced through litigation, which can be costly and time-consuming. Instead, the parties generally work through direct communication to resolve the dispute. If a business identifies a potential breach of the contract, the business should notify the other party to make them aware and begin discussing remedies.

The first step in determining the proper contractual remedies is to understand the terms of the contract. The terms set the rights and obligations of each party and lay out the framework for resolving the issue. Depending on the contract, the breaching party may have the opportunity to fix the mistake before other remedies can be sought. The available remedies could also be limited in the actions that can be taken and the amounts that can be received.

Here are some points for enforcing a contract and seeking remedies:

- The best tool for enforcing a contract is managing each party's expectations and maintaining a good business relationship.
- Keep a good line of communication to anticipate problems.
- Resolving potential conflicts may require finding common ground and modifying the terms of the contract.
- Remember your goals for entering the contract. Business relationships tend to be on-going, so thinking about the big picture and long-term can help overcome short-term problems.
- If simple communication between parties does not resolve the issue, review the agreement to understand your available options for resolving the dispute. For instance, does the contract require you to seek mediation or arbitration?
- If the disputes requires advanced dispute resolution, seek legal advice from a qualified lawyer early because the process is complex and can be hard to navigate without lawyers.
- Understand which advanced dispute resolution options (mediation, arbitration, or litigation) are available to you and choose the option that works best for your needs (corrective action, timing, and costs).

What are my remedies in case of a breach of contract?

Upon discovering a breach, the non-breaching party typically has several options including:

1. **Damages:** Monetary compensation intended to put the non-breaching party in the position they would have been in if the breach had not occurred or to punish the breaching party. There are three general types: compensatory damages, which cover financial losses caused by the breach; consequential damages, also known as special damages, which cover indirect losses that were reasonably foreseeable; and punitive damages, which are rare and only intended to punish egregious conduct.
2. **Specific Performance:** A remedy where the court orders the breaching party to fulfill their contractual obligations as specified. Specific performance is generally applied in situations

where monetary damages are inadequate because a unique item is at issue, such as the sale of real estate.

3. **Cancellation, Termination, and Restitution:** A reversing step that allows the non-breaching party to cancel the contract and seek restitution, which involves returning any benefits or payments received.
4. **Injunction:** A protection that allows the non-breaching party to ask the court to prevent the breaching party from committing future breaches.

Conclusion

Issues can arise with parties fulfilling their contractual promises. If you feel the other party's actions are leaving you at a disadvantage, you have options available to you to either restore the relationship or legally enforce the terms of the contract. If the current contract is part of an ongoing or long-term relationship, be mindful about rushing to use adversarial conflict resolutions. The best tool for resolving potential conflict is to set the right expectations when you enter the contract.

Looking for legal help? Contact the following legal organizations to see if you qualify for free legal assistance!

Legal Food Hub
legalfoodhub.org
legalfoodhub@clf.org
1-844-LAW-GROW (1-844-529-4769)

Northeastern University Community Business Clinic
<https://law.northeastern.edu/experience/clinics/community-business/>
617-373-6435

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