

Suite 606**CONTRACTS AND LETTER OF INTENT**

What is a contract?
Why should I use a contract?
Can I write my own contract?
Enforcing a contract
Contesting a contract
Letter of Intent

606.01 WHAT IS A CONTRACT?

A contract is an agreement between two or more parties that creates an obligation to do or not do particular things. Contracts almost always contain the following essential elements:

- Parties who are competent to enter into a contract. For example, a mentally disabled person could not enter into a contract. Minors can enter into contracts, but can void them in most cases before they reach majority age.
- Mutual assent by all the parties; i.e., all parties have a meeting of the minds on a specific subject. Each party either promises to perform an act that the party is not legally required to perform, or promises to forebear from performing an act that it is legally entitled to perform.

Depending on the circumstances, a contract may or may not have to be put in writing and may or may not have to be signed.

606.02 WHY SHOULD I USE A CONTRACT?

To be enforceable, some agreements must be in writing. The situations in which an agreement must be in writing can differ from state to state, but usually include transfers of real estate, sales of goods valued at over \$500, and contracts that require more than a year to perform.

Your written agreement becomes your proof of what was agreed upon and prevents someone from forgetting or changing the story later. Writing makes the parties focus on the essential points and come to a definite agreement.

606.03 CAN AND SHOULD I WRITE MY OWN CONTRACTS?

Yes, you can write your own contracts. It is always best to use a lawyer especially if there is a considerable amount at stake. Your best money may be spent up front in preventing any problems. If the amount is moderate or the terms simple, you may use a legal form that both sides understand.

606.04 HOW DO I ENFORCE A CONTRACT?

The parties can agree to have a mediator review a contract dispute. The parties are not bound by a mediator's decision, but may be convinced to avoid a costly court battle by how the mediator rules.

The parties can agree to binding arbitration of a contract dispute. A neutral party listens to the arguments from both sides and issues a decision that is binding on the parties. This is cheaper and less time-consuming than a court battle. The parties can take their contract dispute to court to obtain a decision from a judge or a jury.

When attempting to enforce a contract, a party should consider the effect it will have on any long-term relationship such party has with the opposing party.

A contract may be unenforceable because it fails to contain an essential element outlined above, there was fraud or mistake in the making of the contract, or the contract contains an illegal subject matter or is against public policy.

606.05 CONTESTING A CONTRACT

By Sherrie Bennett

Sometimes a contract is made, and then one or more parties to the contract decide that the contract was unfair in some way or that they should not be required to perform it. A party may have a defence to a contract, meaning that they can refuse to honor it. If they are sued, they can argue to a court that they should not be held liable for breach of contract. Some of the defences to contracts are merely restatements of the requirements for making a contract. For example, the defence of duress (see below) is a consequence of the requirement that a contract be an agreement between the parties.

Duress is an overcoming of the will by force or other means. A contract made under duress can be voided. Since the victim of the duress did not consent to entering into the contract, one of the key elements in the making of a legal contract is missing. For example, if a person holds a gun to your head to get you to sign a contract, the contract is not enforceable.

Fraud and misrepresentation are defences to a contract. Misrepresentation is a false statement about a present or past material fact relied on by the other party to the contract. A misrepresentation is interpreted as an innocent misstatement of a fact whereas a fraud is a deliberate misstatement of a fact. In the case of a misrepresentation, the injured party may rescind the contract. In the case of a fraud, the injured party may rescind the contract and sue the wrongdoer for damages. For example, if another person sells you a table, telling you that it is a valuable antique made in the year 1800 and the person knows that it is an ordinary table made in 1950, they have committed a fraud and you may rescind the contract. That is, you can return the table and get your money back. You may also be able to sue for other damages resulting from the transaction. You may also have other remedies under the law of consumer fraud.

Mistake occurs where one or both parties to the contract believe a fact to be true when it is not true. If one party makes a mistake, the error is called a unilateral mistake. Generally, this type of mistake does not invalidate the contract, because the law does not excuse negligence or inadvertence. For example, if you sell somebody a table that you think is an ordinary table made in 1950 for a few dollars, and it turns out to be a valuable antique made in the year 1800, the law will not ordinarily invalidate that contract. However, if the other party to the contract induced the mistake, then the injured party may rescind the contract.

If both parties to a contract make a mistake, the error is called a bilateral mistake. This type of mistake generally voids the contract because there was no meeting of the minds or consent.

Lack of consideration is a defence in a contract action because consideration is ordinarily required for an enforceable contract. For this reason, a promise to make a gift is ordinarily not enforceable. However, if another person acts in reliance on your promise to make a gift, the promise may become liable under principles of promissory estoppels or detrimental reliance. For example, if you promise to donate a million dollars to your college to build a library, and the college builds the library, you may be required to make the gift. The law assumes that the building of the library in reliance on your promise serves as the consideration for the promise to make the gift. Additionally, in some states, a promise to make a gift to a charitable organization is an enforceable promise even if there is no consideration.

The Statute of Frauds may be a defence to some kinds of contracts. The Statue of Frauds requires certain kinds of contracts to be in writing, and provides that a contract of that type that is not in writing is not enforceable. However, the Statue of Frauds may not be a defence to an unwritten contract if one of the parties has relied on the contract to his detriment.

Impossibility of performance can terminate a contract if something unforeseen prevents the performance of the contract. For example, you contract with a famous painter to do your portrait and the famous painter dies. The obligation to paint your portrait cannot be completed. The contract to paint your portrait is terminated by impossibility of performance.

Rescission sometimes occurs when one or both parties have the right to cancel a contract under the terms of a contract. For example, an underage person can cancel a contract because he or she lacks competence to make a contract in the first place. Or the parties can together agree to terminate the contract.

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LETTER OF INTENT

*What is a letter of intent?
Is it a legally enforceable contract?
It shows a genuine interest.*

606.06 WHAT IS A LETTER OF INTENT?

A letter of intent is also sometimes called a letter of intention or memorandum of understanding, and acknowledges a willingness and ability of the parties to do business together. Letters of intent are intended to ensure that all parties have the same understanding and agree upon the terms and conditions of a proposed contractual relationship, prior to signing a legally binding agreement.

606.07 IS IT A LEGALLY ENFORCEABLE CONTRACT?

A letter of intent is, in and of itself, not a contract and generally cannot be enforced as such, rather it is a document which constitutes an understanding between the parties and states the serious intent of the parties to carry out certain business activities.

606.08 IT SHOWS A GENUINE INTEREST

Contracts, corporate buy-outs, mergers and other business matters can become very complicated and time-consuming for both sides. It may take months or even years to hammer out all of the details surrounding a proposal. Meanwhile, creditors and stockholders may start to wonder if the 'other side' is genuinely interested in completing the process. This is the reason many company representatives draw up a 'letter of intent' early in the negotiating stage.

A letter of intent is a document which spells out the general plans of an individual or company involved in a business deal. If a large company plans to buy out a small manufacturing plant, for example, a letter of intent might contain a specific date for the proposed sale to take place. A letter of intent might also include plans for expansion or downsizing staff levels or rehiring employees. It is not the same as a legal contract, but an official letter of intent can be treated as a demonstration of good faith.

One of the major reasons for seeking a letter of intent from the other party is to provide investors with tangible proof of the deal or potential takeover. It is not unusual in the business world to make or receive numerous offers for lucrative deals or contracts. Most of these informal manoeuvres never materialize into real agreements. Having a letter of intent allows a company to arrange for additional financing or report the new development to employees and stockholders.

The term 'letter of intent' can also apply to other areas besides business and industry. Recruiters for collegiate sports teams will often visit prospective players at home in order to promote their school's athletic program. Typically, a very talented athlete receives a number of these visits from rival schools. At some point before the beginning of the school year, the player must sign a letter of intent which indicates his or her future plans. Having a star prospect sign this letter of intent for a specific school is often seen as a great success for the recruiter.

Note: Excellent Legal Forms (for most countries) can be secured through:

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