

Florida Contract Law

A contract is a mutually understood promise that contains an offer to perform a service or provide a product, an acceptance of the offer, and a show of faith (called a consideration) by giving each other some kind of service in return, payment of money or deposit. A construction contract is a means to assign risks, rights, and responsibilities, and compensation between the owner and the contractor. Once a contract has been created, it must be determined if there are any issues that call into question its validity. Finally, if there has been a breach of the contract, there is a question of whether damages have occurred.

Contract Components

There are four elements that must be present for a contract to exist: a mutual understanding, an offer, an acceptance, and a consideration.

(1) Mutual Understanding. A person will gain little benefit or sympathy by stating, after the fact, that a signed contract was unclear, not well understood, or not read thoroughly. The law presumes that parties understand what they clearly put in writing. When disputes arise judicial bodies most likely will interpret strictly by what is written rather than what may have been said or supposedly mutually understood.

(2) Offer. A valid contract requires at least two parties, both must be above the age of maturity and mentally competent. Contracts do not need to be in writing to be valid and enforceable unless they involve real property, that last more than one year, or exceed \$500. Oral agreements are perfectly legal and valid but may be difficult to enforce because the parties often forget what they said or meant. Contracts are not valid if they pertain to illegal activity.

Essentially an offer must contain definite terms. If the subject matter is identified, the parties are identified, the price is set, quantities are determined, and a time is set for performance, an offer very likely has been made. There should be enough information contained in the statement that, if needed, a court would be able to enforce the contract or determine the damages.

(3) Acceptance. In order for an acceptance of an offer to be effective, it must be made while the offer is still open. In some situations, the company making the offer gives a definite time frame: "My company will sell you this computer software for \$2,000, but you must decide whether to buy it within two days." Other ways an offer may end include: the person making the offer withdraws the offer, the person who receives the offer rejects it, a reasonable amount of time passes after the offer is made, or the subject matter of the offer is destroyed before acceptance.

Unless an offer specifies otherwise, an offer can be accepted though the mail. An important rule known as the "mailbox rule" says that an acceptance is effective once it is put in the mailbox. If the offeror attempts to withdraw the offer after the acceptance is mailed but before it is received, the person accepting the offer can hold the offeror to the contract.

If a person changes the conditions of an offer in responding to the offer, the offer is rejected and the changed conditions constitute a counter-offer: "I want to buy the software, but I will pay only \$1,500 for it." In this scenario, the person who made the original offer can respond to the counter-offer by accepting or rejecting it, or proposing yet another offer.

There are two ways a person can accept an offer: by promising to do something, or by performing the desired act. In the first type, known as a *bilateral contract*, a customer accepts an offer to sell computer software by promising to pay \$2,000 for the software. In the second type, known as a *unilateral contract*, a business owner offers a contractor \$1,000 to replace ceiling tiles and the contractor replaces the tiles; the contractor accepted the offer by performing the act requested.

(4) Consideration. Consideration is a legal concept that describes something of value given in exchange for a performance or a promise of performance. The presence of consideration distinguishes contracts from gifts. Consideration can be a promise to do something there is no legal obligation to do, or a promise to not do something there is a legal right to do. Promises to exchange money, goods, or services are forms of consideration. All parties in an agreement must give consideration in order to create a contract, but courts typically do not make a determination about the adequacy of the consideration unless there is evidence of some type of wrongdoing by the party benefiting most from the contract.

1. A/an ____ is not an essential element of a contract.

- | | |
|----------------|-------------------------|
| (a) offer | (c) consideration |
| (b) acceptance | (d) architect signature |

2. In order for contracts to be valid and legal it ____.

- | | |
|----------------------------|---|
| (a) must be in writing | (c) must at least be tape recorded |
| (b) need not be in writing | (d) must be witnessed by a third person |

Guidelines Of Interpretation

A few legal guidelines of contract interpretation have evolved over the years, such as:

- * Written agreements prevail over oral agreements.
- * Later agreements prevail over earlier agreements.
- * Special clauses prevail over general clauses.
- * Handwritten agreements prevail over machine printed agreements.
- * Specifications prevail over drawings.
- * Words prevail over numbers.
- * Ambiguousness is interpreted against the party that wrote it.

3. If there is a conflict in a contract ____.

- | | |
|--|--------------------------------|
| (a) special clauses prevail over general clauses | (c) words prevail over numbers |
| (b) handwritten prevails over machine printed | (d) all of the above |

4. The ____ prevails in a conflict between drawings and specifications.

- | | |
|--------------------|---------------|
| (a) drawings | (c) architect |
| (b) specifications | (d) owner |

Standard Form

A standard form of agreement is a form that includes all the documents (bid, estimate, drawings, specs, addenda, etc.) into one formal legal agreement. The agreement establishes the general project scope, time of expected completion, project responsibilities, price, terms of payment, insurance and bonding, etc.

The agreement should include...

- * The identities of the parties.
- * The nature, general description, and scope of the contract.
- * The address and description of any properties involved.
- * The identification of accompanying documents (drawings and specifications).
- * The contract amount and payment arrangements.

Once the contract is signed any changes are normally called modifications. There are several kinds of modifications, including written change orders, bulletins, clarifications, architectural interpretations and field memoranda.

5. *The contract documents may include all but which of the following ?*

- | | |
|--|---------------------------------|
| <i>(a) Bidding Documents</i> | <i>(c) Owners Credit Report</i> |
| <i>(b) Drawings and Specifications</i> | <i>(d) Addenda</i> |

6. *Which of the following must be included in a valid contract ?*

- | | |
|-------------------------------|--------------------------------------|
| <i>(a) Bidding documents</i> | <i>(c) Identities of the parties</i> |
| <i>(b) Contractor's offer</i> | <i>(d) List of previous projects</i> |

7. *Any changes made in the Basic Owner-Contractor Agreement once it is signed are known as ____.*

- | | |
|-------------------------------|--------------------------------------|
| <i>(a) Addenda</i> | <i>(c) Modifications</i> |
| <i>(b) Special Conditions</i> | <i>(d) Illegal and not permitted</i> |

8. *Modifications may include which of the following ?*

- | | |
|---------------------------------------|-----------------------------|
| <i>(a) written change orders</i> | <i>(c) field memoranda</i> |
| <i>(b) architects interpretations</i> | <i>(d) all of the above</i> |

Agency

A business may challenge the validity of a contract by alleging that the person who signed the contract for the company was not an agent of the company and therefore had no authority to act on the company's behalf. Agency is a legal status -- one party, the agent, has authority to conduct business for another party, the principal. Unless they have very small businesses, most business owners must rely on other people to conduct business and enter into contracts on behalf of their businesses. Thus, agency is a common aspect of doing business.

An agent's authority to enter into contracts on behalf of the business can be actual, implied, or apparent. Actual authority is authority that the principal has intentionally given to an agent who has accepted it. The clearest example of creating actual authority is when a business owner hires someone to negotiate purchases for the company. Implied authority may result from the agent's relationship with the principal or the principal's business, from custom, or by acquiescence. For example, a principal might not intentionally authorize an employee to make credit purchases for the business, but if the principal repeatedly pays off debts incurred by the employee, he or she may inadvertently create implied authority in that employee. Apparent authority results when the principal acts in a way that causes third parties reasonably to assume that the agent has authority. For example, if a business owner is aware that an employee is claiming authority to act on behalf of the business, the

principal should clarify that the employee is not authorized to enter into a contract on behalf of the business, or the employee's apparent authority may bind the business.

9. *When a deal is struck by a sales representative of a company, even though the president of the company does not agree, the contract is still valid because ____.*

- (a) the agent has the actual authority*
- (b) the agent has the implied authority*

- (c) the agent has the apparent authority*
- (d) the agent has no authority*

Mistake, Duress, and Fraud

A mutual mistake - a mistake both parties make to a contract on an important issue - makes the contract unenforceable. However, a mistake by only one party does not necessarily make the contract void. A contract is not necessarily unenforceable because one party has made a miscalculation or wrong assumption.

Duress is the use of force or pressure by one party to make the other party agree to the contract. The force does not have to be physical - it may be mental pressure. The use of duress makes the contract voidable by the party under duress.

Fraud is the intentional misrepresentation of an important issue of the contract. The presence of fraud in a contractual proceeding makes the contract voidable by the party upon whom the fraud was perpetrated.

10. *Contracts are not valid if they pertain to ____.*

- (a) illegal activity*
- (b) a mutual mistake*

- (c) an agreement made at gunpoint*
- (d) all of these*

Statute of Frauds

Contracts, in many instances, do not have to be in writing to be legally binding. However, a rule known as the Statute of Frauds requires that some contracts must be written to be valid. Under Florida law, contracts involving an interest in land, contracts concerning the sale of goods worth more than \$500, contracts that cannot be performed within one year, contracts to pay off someone else's debts, leases for more than one year, marriage contracts, a personal representative's promise to pay the debts of an estate, home improvement contracts, health care agreements, and credit agreements must be in writing.

11. *Which of the following contracts would have to be in writing in order to be enforceable ?*

- (a) A contract that can be performed in less than one year.*
- (b) An agreement to purchase a specific piece of equipment for \$6,000*
- (c) A rental lease for eleven months.*
- (d) A contract for delivery of 50 cubic yards of fill at \$5.00 per cubic yard*

Contract Termination

Once there is a valid contract between parties, it can end in several ways. A contract with a stated, limited time span simply expires at the end of the stated time. If a person is hired to work for two weeks, the contract concludes at the end of two weeks. In many instances in which there is a specific time frame stated in the contract, parties to the contract may have the option to extend the contract for a longer period of time.

Contracts also may be project specific. A contract may be made for the provision of goods for a project, and upon the completion of the project the contract for these goods or services ends. Parties to a contract may mutually agree to rescind the contract. In that case, the parties may agree on the duties and responsibilities of each party after the rescission.

A contract also may end because of a breach. A breach occurs when a party does not fulfill his or her responsibilities under the contract. A breach may be minor or major. A minor breach is one that affects small, minor details of the agreement and may not affect the outcome of the contract. However, a major breach is one that does affect the subject matter of the contract and may affect the outcome of the contract. This is also known as a material breach. When there has been a breach of a contract, the question of damages is raised.

12. *If a contract is terminated because the materials were not delivered on the date specified causing major financial losses to occur. This would be called a ____.*

(a) *limited time frame termination*
(b) *project specific termination*

(c) *rescind by mutual agreement*
(d) *material breach*

Damages

The type and amount of damages due to a party when there is a contract breach depend on many factors, including which party breached the contract, what damages were incurred, what the contract states with regard to damages, whether the breach was material or not, and the subject matter of the contract. When a person is harmed by a breach, courts usually award only foreseeable damages. Foreseeable damages are those damages that the parties anticipated or should have anticipated at the time the contract was formed.

In most cases of an injury resulting from a breach of contract, the injured party receives money damages. The court awards the amount of money needed to place the person in the position he or she would have been in if the contract had not been breached. For example, suppose a

business owner contracts with a roofer to put a new roof on a warehouse but the roofer stops in the middle of the job and refuses to finish the new roof. If the business owner finds another roofer to finish the job at an additional cost of \$15,000, the damages are \$15,000.

Although a person is normally entitled to the money difference between what was promised and what it costs to complete the promise, the injured party must try to mitigate the damages. Mitigation means the injured party takes reasonable steps to limit the extent of the injury and finish the job. In the previous example, the business owner must make reasonable efforts to find another party to finish the roof and must take reasonable steps to protect inventory in the warehouse from exposure due to the lack of a roof. If the business owner refuses to look for another roofer and consequently

inventory in the warehouse is ruined, the breaching roofer will probably be able to successfully defend against paying for the cost of the ruined goods.

13. *A woman sues the owner of a building for breach of contract because the room where her daughter was to be married was not available, as was promised, on her wedding day. The law suit was for \$1,000,000 although the rental agreement specified a \$1,000 deposit which covered room rental, preparation, and clean up. Damages due for breach of contract should be ____.*

- (c) \$1,000 to recover the unused deposit only*
- (b) \$1,000 plus reasonable costs involved in rescheduling the wedding*
- (a) \$1,000,000 to cover material, emotional, and psychological damages*
- (d) "a bad omen" the wedding should be called off*

Specific Performance

There are some situations in which money damages are inadequate. Typically, awarding money damages for a breach of contract involving the sale of land does not put the injured party in the same position he or she would have been in if the contract had been fulfilled.

Because real estate is unique, one cannot simply go out and buy different property to replace the property for which one originally contracted. In a case such as this, the court may order the breaching party to perform the duties required by the contract. This remedy is called specific performance. Specific performance is ordered by courts only in rare cases in which the subject matter of the contract is unique, making it difficult to put a monetary amount on the damage incurred as a result of the breach. Specific performance is not awarded in personal service contracts.

14. *A builder agrees to sell you a nice log cabin on a piece of land located on the bank of a mountain stream for \$60,000. After the contract is signed the builder discovers that the property is worth far more and agrees to sell it to someone else for \$100,000. The best remedy would be ____.*

- (a) void all of the contracts and start all over*
- (b) require the builder sell the property to you because your contract preceded all others*
- (c) require the builder sell the property to the the other guy because he got a better deal*
- (d) drown the contractor in the nearest mountain stream*

Liquidated Damages

In an attempt to set a monetary damage amount in a case in which it may be difficult, the parties may include a provision that specifies the amount of damages in event of a breach. Such predetermined damages are called liquidated damages. For example, a company may put down "earnest money" for space in a mall and agree in the real estate contract to forfeit the earnest money to the mall owners as a damage award in the event of a breach. If the business owner decides not to open the store, the earnest money will be awarded as liquidated damages.

15. You agree to sell your old Chevy to a buddy for \$1,000 instead of trading it in on a newer model. He gives you a \$250 deposit and promises to pay you the rest on Wednesday. The dealer calls and wants you to pick up your new car on Thursday but your friend hasn't shown up to pick up the old car or pay you the balance. According to the law you can _____.

- (a) trade the old Chevy in and keep the deposit
- (b) trade the old Chevy in and return the deposit to your so-called-buddy
- (c) pick up the new car and give the Chevy to your nephew
- (d) tell them all to go to hell and fix up the old jalopy

Rescission

In most contract disputes, a court puts the non breaching party in the position he or she would have been in if the contract had not been breached. However, there are times when the court may place the party in the position he or she was in before the contract was executed. This remedy is known as rescission. This remedy may be selected in cases in which one party intentionally misrepresents a material fact, for example. If a party has delivered goods or money to another party who fails to perform his or her duties under the contract, the court may decide simply to order that the goods or money be returned. The non breaching party then is in a position to contract with someone else.

16. You agree to buy a fishing pole that you see advertised on TV. After making three easy payments of \$39.95 you receive the fishing pole but it is not to your liking. Your agreement specified a 30-day (no questions asked) money back guarantee. Your best alternative would be _____

- (a) return the fishing pole and get back your three easy payments of \$39.95
- (b) keep the fishing pole, it's better than nothing
- (c) throw the damn thing in the garbage and learn your lesson
- (d) give the fishing pole to you nephew for a birthday present

Mandatory Arbitration and Forum Selection

Parties to a contract will often agree in advance to arbitrate any disputes arising under the contract rather than going to court. Arbitration agreements usually specify that each party chooses an arbitrator and the two arbitrators choose a third. Parties may also choose to include a forum selection clause in a contract. A forum selection clause stipulates that any legal action stemming from the contract will be brought in a particular court and that a particular jurisdiction's laws will govern. By including a forum selection clause, a Florida business can ensure that any lawsuit arising under the contract will be brought in a Florida court applying Florida laws, saving the Florida business time and money in the event of a contract dispute.

17. Arbitration is useful when you want to reduce legal fee's and stay out of court.

- (a) true
- (b) false