

SLIDE 1 – Termination of Contracts (Cover Page)

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Forms of contract termination

Termination of a contract, also called cancellation and discharge, may occur for any of the following causes.

Performance. A contract terminates when fully performed by the parties. It may also terminate for:

- partial performance, if the parties agree
- sufficient performance, if a court determines a party has sufficiently performed the contract, even though not to the full extent of every provision

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Forms of contract termination

Infeasibility – An otherwise valid contract can be canceled if it is not possible to perform. Certain personal services contracts, for example, depend on the unique capabilities of one person which cannot be substituted by someone else. If such a person dies or is sufficiently disabled, the contract is cancelable.

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Forms of contract termination

Agreement – Parties to a contract can agree to terminate, or renounce, the contract. If the parties wish to create a new contract to replace the cancelled contract, they must comply with the validity requirements for the new contract. Such substitution is called novation.

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Forms of contract termination

Cooling-period rescission – Rescission is the act of nullifying a contract. In many states, parties to certain contracts are allowed a statutory amount of time after entering into a contract, or "cooling period", to rescind the contract without cause. No reason need be stated for the cancellation, and the cancelling party incurs no liability for performance.

For example, consider the unsuspecting buyer of a lot in a new resort development. Such buyers are often the targets of hard-sell tactics which lead to a completed sales contract and a deposit. The statutory cooling period gives the buyer an opportunity to reconsider the investment in the absence of the persistent salesperson.

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Forms of contract termination

Revocation. Revocation is cancellation of the contract by one party without the consent of the other. For example, a seller may revoke a listing to take the property off the market. While all parties have the *power* to revoke, they may not have a defensible *right*. In the absence of justifiable grounds, a revocation may not relieve the revoking party of contract obligations.

For example, a seller who revokes a listing without grounds may be required to pay a commission if the broker found a buyer, or reimburse the broker's marketing expenses if no buyer was found.

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Forms of contract termination

Abandonment – Abandonment occurs when parties fail to perform contract obligations. This situation may allow the parties to cancel the contract.

Lapse of time – If a contract contains an expiration provision and date, the contract automatically expires on the deadline.

Invalidity of contract – If a contract is void, it terminates without the need for disaffirmation. A voidable contract can be cancelled by operation of law or by rescission.

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Breach of contract

A breach of contract is a failure to perform according to the terms of the agreement. Also called default, a breach of contract gives the damaged party the right to take legal action. The damaged party may elect the following legal remedies:

- rescission
- forfeiture
- suit for damages
- suit for specific performance

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Breach of contract

Rescission – A damaged party may rescind the contract. This cancels the contract and returns the parties to their pre-contract condition, including the refunding of any monies already transferred.

Forfeiture – A forfeiture requires the breaching party to give up something, according to the terms of the contract. For example, a buyer who defaults on a sales contract may have to forfeit the earnest money deposit.

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Breach of contract

Suit for damages – A damaged party may sue for money damages in civil court. The suit must be initiated within the time period allowed by the statute of limitations. When a contract states the total amount due to a damaged party in the event of a breach, the compensation is known as liquidated damages. If the contract does not specify the amount, the damaged party may sue in court for unliquidated damages.

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Breach of contract

Suit for specific performance – A suit for specific performance is an attempt to force the defaulting party to comply with the terms of the contract. Specific performance suits occur when it is difficult to identify damages because of the unique circumstances of the real property in question. The most common instance is a defaulted sale or lease contract where the buyer or seller wants the court to compel the defaulting party to go through with the transaction, even when the defaulter would prefer to pay a damage award.

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Breach of Contract

A cause of action where a contractual binding agreement is not honored by one or more parties to the contract.

Say for example you contracted with Paul the plumber to renovate the plumbing in your bathroom and he fails to complete the project he is in breach of the contract.

A contract breach is a civil wrong. A court may have to get involved to determine the remedy to the breach.

Breach of Contracts could be:

- Material
- Minor
- Fundamental

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Breach of Contract - Material

A substantial breach of contract usually excuses the harmed party from further performance and giving him the right to sue for damages.

Type of breach is determined case-by-case with a court using six guidelines.

1. The extent to which the breaching party has already performed.
2. Whether the breach was intentional, negligent or the result of an innocent mistake.
3. How certain it is that the breaching party will perform the rest of the contract.
4. How much benefit of the contract the non-breaching party has gotten despite the breach.
5. The extent to which the innocent party can be compensated.
6. Difficulty on the breaching party if the court determined that the breach was material and the innocent party was under no obligation to perform his side of the bargain.

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Say for example the plumber was contracted to replace the pipes in the homeowner's bathrooms.

The contract stipulated the use of copper pipes but instead he installed iron pipes. The court could determine that there was a material breach and rule that the homeowner can recover the cost of actually correcting the breach - taking out the iron pipes and replacing them with copper pipes.

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Breach of Contract - Minor

Sometimes referred to as partial breach, it is less severe than a material breach and only gives the harmed party the right to sue for damages and usually does not excuse him from further performance.

In the case of our copper vs. iron pipe plumbing breach, a court, using the six guidelines, may determine that a minor rather than material breach occurred. In that case they may determine the homeowner can sue for the difference in the value of the home occurs based on having iron pipes versus copper pipes.

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Fundamental Breach of Contract

A fundamental breach (or repudiatory breach) is a breach so fundamental that it permits the aggrieved party to terminate performance of the contract.

Suppose Plumber Bob used garden hose instead of copper pipe. That would be such a distinct violation with unacceptable materials any court would likely find a fundamental breach has occurred.

The breach is so "fundamental", that the homeowner is deprived of the benefit of the contract and is entitled to stop performing and ...

The party is entitled to sue for damages.

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Legal Remedy

Also known as judicial relief or judicial remedy.

This is where a court of law, exercising civil law jurisdiction, can enforce a right, impose a penalty, or makes a court order imposing the will of civil law.

This is where a court orders some kind of damages allowed in relief of a breach of contract or injury to another. The discussion of the different types of damages allowed by civil action are beyond the scope of this lesson. Just know that damages can be compensatory, incidental, punitive, liquidated or other legal remedies as determined by court order, normally by judicial decree but these could be set by a jury of peers.

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Assignment of a Contract

A real estate contract that is not a personal contract for services can be assigned to another party unless the terms of the agreement specifically prohibit assignment.

Listing agreements, for example, are not assignable, since they are personal service agreements between agent and principal. Sales contracts, however, are assignable, because they involve the purchase of real property rather than a personal service.

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A contract benefit might be transferred to a third-party by **assignment**. This doesn't transfer the contract obligations.

For example, Dan the Painter is obligated to paint the walls but may sub-contract to have Bob the painter to physically do the painting. He has effectively assigned the obligation of his contract with the homeowner to paint the walls to Bob but the burden of performance remains on Dan the painter.

In a **novation**, the third party picks up both the assignment and the burden of the contract obligations.

Effectively the original contract is extinguished and Bob the Painter gets a new contract obligating him to the performance obligations.