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As a contract will require each party to do something (called the performance required by the contract) a breach of contract occurs where at least one party fail to perform their obligations according to the terms of the contract. Performance may relate to both the actions required of each party, and the time frame required for such actions. Where a party has failed to perform their obligations according to the contract, the other party may assert that a breach of contract has occurred. Where one party is asserting a breach, this should be communicated to the other party as soon as practicable after the breach has become known. The other party may respond in a number of different ways to the alleged breach: they may acknowledge the breach and try to remedy it; they may dispute that a breach has occurred; they may argue that there is an exclusion clause or other term in the contract limiting their liability for the breach; or they may argue that there is an excuse for their breach, or that the contract is invalid. Where a breach of contract is established, the aggrieved party may have the right to terminate the contract and/or seek a remedy - see Remedies for Breach of Contract. The right to terminate the contract may not always apply for every breach that occurs. Where a breach of contract is disputed, the aggrieved party may need to take further action to resolve the dispute, such as commencing court proceedings. Page 2 Legal Help for all South Australians Where a breach of contract has occurred, the parties can seek to: resolve the matter between themselves; terminate the contract; agree for damages to be paid to the innocent party; agree for specific performance of the contract to occur. In the event the parties cannot agree on any course of action, a court application may have to be made. Not all of the above options may be appropriate depending on the circumstances of what has occurred. Depending on the breach, the court can make orders relating to the termination or performance of the contract, or regarding the entitlement to, and quantum of, damages payable to the innocent party. Resolving the matter between the parties Remedies for Breach of Contract : Last Revised: Fri Oct 12th 2018The content of the Law Handbook is made available as a public service for information purposes only and should not be relied upon as a substitute for legal advice. See Disclaimer for details. For free and confidential legal advice in South Australia call 1300 366 424. Main content Download Form (docx, 29.36 KB) Download Form (pdf, 1.01 MB) About These Forms In General. This and the other pleading forms available from the www.uscourts.gov website illustrate some types of information that are useful to have in complaints and some other pleadings. The forms do not try to cover every type of case. They are limited to types of cases often filed in federal courts by those who represent themselves or who may not have much experience in federal courts. Not Legal Advice. No form provides legal advice. No form substitutes for having or consulting a lawyer. If you are not a lawyer and are suing or have been sued, it is best to have or consult a lawyer if possible. No Guarantee. Following a form does not guarantee that any pleading is legally or factually correct or sufficient. Variations Possible. A form may call for more or less information than a particular court requires. The fact that a form asks for certain information does not mean that every court or a particular court requires it. And if the form does not ask for certain information, a particular court might still require it. Consult the rules and caselaw that govern in the court where you are filing the pleading. Examples Only. The forms do not try to address or cover all the different types of claims or defenses, or how specific facts might affect a particular claim or defense. Some of the forms, such as the form for a generic complaint, apply to different types of cases. Others apply only to specific types of cases. Be careful to use the form that fits your case and the type of pleading you want to file. Be careful to change the information the form asks for to fit the facts and circumstances of your case. No Guidance on Timing or Parties. The forms do not give any guidance on when certain kinds of pleadings or claims or defenses have to be raised, or who has to be sued. Some pleadings, claims, or defenses have to be raised at a certain point in the case or within a certain period of time. And there are limits on who can be named as a party in a case and when they have to be added. Lawyers and people representing themselves must know the Federal Rules of Civil Procedure and the caselaw setting out these and other requirements. The current Federal Rules of Civil Procedure are available, for free, at www.uscourts.gov. Privacy Requirements. Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns over public access to electronic court files. Under this rule, papers filed with the court should not contain anyone's full social-security number or full birth date; the name of a person known to be a minor; or a complete financial-account number. A filing may include only the last four digits of a social-security number and taxpayer identification number; the year of someone's birth; a minor's initials; and the last four digits of a financial-account number. Montana's specialty courts include Drug Courts, Water Court, Workers' Compensation Court, and Youth Courts. A Montana Drug Court is a court docket within a District Court or Court of Limited Jurisdiction that specialize in adult criminal, DUI offenses, juvenile, veteran or civil child abuse and neglect cases involving persons who are alcohol or other drug dependents. Montana's Drug Courts reduce recidivism and substance abuse among participants and successfully rehabilitate them through alcohol and drug abuse treatment, mandatory and frequent drug testing, use of appropriate sanctions and incentives, and continuous judicial oversight. Learn more at . The Montana Water Court, created in the 1979 Legislature, provides expedited statewide adjudication of overstating law-based water rights and Indian and Federal reserved water rights claims. The Water Court has exclusive jurisdiction over the adjudication of water rights claims. Learn more at . Montana's Workers' Compensation Court (WCC), created in 1975, provides an efficient and effective forum for the resolution of disputes arising under the Workers' Compensation Act and the Occupational Disease Act. The WCC's exclusive jurisdiction includes matters such as disputes involving independent contractor exemptions and reemployment preferences. The WCC conducts trials statewide and decides requests for judicial review from final orders of the Montana Department of Labor and Industry. WCC decisions may be appealed directly to the Supreme Court. Visit the WCC home page at . Montana's Youth Court, operating in each of Montana's 22 judicial districts, handle the majority of cases where a juvenile is a party. Youth courts operate under a restorative justice model where youths are held accountable for criminal behavior while also receiving appropriate services to assist them in developing necessary life skills. For more information, visit . FORMS - WORKERS' COMPENSATION COURT Link to Workers' Compensation Court Forms on the WCC website. FORMS & GUIDES - WATER COURT Outline of Montana Water Law Step by Step Guidebook Generic Forms and Instructions Filing a breach of contract lawsuit requires a few steps. Here is a brief summary of the process: Determine whether you have a contract See whether the other party has breached the contract See if there is any way to settle out of court Decide which county is the right place to file File the petition and summons with the court clerk If you're wondering how to file a lawsuit for a breach of contract, read about these steps in more detail. If you have any questions about this process, please reach out. Determine whether you have a contract with the other person The first step in the process includes determining if there even is a legal contract between you and the other person. To have a contract, there must be three elements: Offer Acceptance Consideration 1. Offer An offer is a promise, undertaking, or commitment to enter a contract. For an offer to be effective, the offeror must communicate the offer to the offeree. 2. Acceptance The offeree must accept the offer. 3. Consideration For there to be consideration, there must be: A bargained-for-exchange A detriment to the promisee Here's an example, from the book I used to study for the bar exam: "Jeff promises to sell his used television to Kristen for \$100 in exchange for Kristen's promise to pay \$100. Both elements of consideration are found in this example. First, Jeff's promise was bargained for. Jeff's promise induced a detriment in the promisee, Kristen. Kristen's detriment induced Jeff to make the promise. Second, both parties suffered detriments. The detriment to Jeff was the transfer of ownership of the television, and the detriment to Kristen was the payment of \$100 to Jeff." From Bar Review: Multistate, Copyright © 2007 by BarBri. So, in general, if there is an offer, acceptance, and consideration, there is a contract. Most contracts do not need to be in writing For most contracts, an oral agreement will be enough to form a contract, writing is not necessary. (However, a written contract can be important to present as evidence in court.) However, some contracts must be in writing. The Oklahoma Statute of Frauds (available here) says that the following contracts must be in writing: An agreement that, by its terms, is not to be performed within a year from the making of the contract; A promise to answer for the debt of another; An agreement made upon consideration of marriage; A contract for the sale of real property, or for the leasing of real property for a period longer than one year. Defenses to Contract Formation Even if you have a valid contract, there may be certain defenses available. Some of the commonly asserted defenses to contract formation include: Mutual mistake Fraud, misrepresentation, or nondisclosure Public Policy. For example, a contract to perform an illegal act is invalid. Lack of mental capacity (this includes intoxication) Duress One of the parties is under eighteen Unconscionability. The defense of unconscionability comes into play when there is unequal bargaining power between the parties, and terms of the contract are so one-sided as to create a result where enforcing the contract would be unjust. For example, one Oklahoma court found a contract to be unconscionable when a Laotian immigrant, who could not read English, signed a contract for the purchase of land. The contract contained a clause stating that the buyer must construct a poultry litter shed on the property, place litter from the buyer's poultry house in the shed, and the seller would have all the rights to the poultry - for free - for the next thirty years. The court explained, "[a]n unconscionable contract is one which no person in his senses, not under delusion would make, on the one hand, and which no fair and honest man would accept on the other." If you have a contract, and there are no defenses, next ask: Has the other person breached the contract? If the other party has not performed the contract as promised, then the other party has breached the contract. If the other party has breached the contract, you may file a breach of contract suit. Before you sue, though, you may want to attempt to settle the case with the other party. Going to court is costly, time-consuming, and emotionally exhausting. Most parties to a contract will be glad to negotiate if there is a way to go to court. But, if you do sue, here's how to do it: Decide where to file You must file in the proper county. Check the Oklahoma venue statute, here, to see where to file. Some of the commonly used terms of the venue statute say: If real property is the subject of the action, you must bring the suit in the county where the real property is located. A lawsuit against a corporation must be filed in the county where the corporation is situated, where the corporation has its principal office or principal place of business, or in which any of the corporation's principal officers live, or in the county where the lawsuit arose, or any county where a co-defendant of the corporation may be sued. A lawsuit against a non-resident of Oklahoma, or against a foreign corporation, may be brought in any county where there may be property or debts owed to the defendant, any county where the defendant may be found, or any county where a co-defendant of the non-resident may be sued. A lawsuit for the collection of an open account may be brought in any county where the debt was contracted. Any other breach of contract suit must be brought in the county where one of the defendants resided at the time the claim arose, or in the county in which the claim arose, or where one of the defendants may be summoned. You can see, from the above list, that, in many cases, there may be several counties where you may file your suit. If the law allows for more than one county where you may file, then you may file in any county permitted by law. File a petition and a summons Once you decide where to file your suit, you must file a petition and a summons with the court clerk in the appropriate county. If your claim is for less than \$10,000, you may file in small claims court. If you file in small claims court, you can usually do so without a lawyer. The court clerk will have the form for a petition and summons; ask the clerk to give you this form. Fill out the form and file it. If your claim is for more than \$10,000, you will have to write your own petition and summons. Most people can't do this without a lawyer; if you need help preparing a petition and summons, contact our office. If you decide to draft the petition and summons yourself, the rules for writing a petition are here, and the rules for writing a summons are here. After you file the petition and summons, serve the petition and summons on all the defendants. There are several ways you may serve the defendants: Personal Delivery. Either a sheriff or a licensed process server may deliver the documents to the defendants. By certified mail. By publication. If you can't serve the defendant any other way, ask the judge to allow you to serve by publication. You must publish notice of the lawsuit once a week for three consecutive weeks in a newspaper of general circulation in the county where you file the lawsuit. If the defendant doesn't respond within 41 days after the first publication, you may win your case by default. After you serve the defendant You now have an active lawsuit. In an earlier post, "What does a Civil Attorney Do?" I describe what a civil lawsuit is like. Because a breach of contract lawsuit is a civil lawsuit, that post will give you a good idea of what you'll be going through, if you file a breach of contract lawsuit. Work with an Attorney to File a Breach of Contract Lawsuit There are entire law school courses - as well as shelves full of books - on every aspect of contract law. A post of this length can only scratch the surface. If you would like additional advice on a breach of contract lawsuit, contact our office.







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