

A BROKEN PROMISE...

WRITTEN VERSUS ORAL CONTRACTS

By: Sharice B. Marootian
Abdulaziz, Grossbart & Rudman

Let's focus on a legal issue that comes up for us attorneys many times – contracts, and particularly whether or not you have a binding contract with someone else. More and more, I get asked by friends, clients, family members about what they can do to collect money that is owed to them. My first question often times is, “well, do you have a contract with the person?” More often than not, the response is, “No, we didn't sign a contract.” The misconception among the non-legal community is that a contract is only one that is in writing and that is signed. That's not the case. Although, ideally we want contracts to be by way of a signed document, a gentlemen's handshake can do just fine.

There are two general types of contracts that I would like to focus on in this article – written versus oral contracts. An important difference between these two types of contracts is the statute of limitations, or in other words, the amount of time you have to file a lawsuit on the contract. In California, one must file a lawsuit within two years of breach of an oral contract; whereas, a written contract carries a four-year statute of limitations. From the outset, you are in a better position if your contract is in writing because you have a longer period of time to try to settle the dispute or explore other avenues, short of litigation.

The question that often follows is: how will I prove I have an oral contract? The response is that in order to form a contract, we must be able to show two elements –mutual consent and consideration. Mutual consent is easiest defined as a meeting of the minds. One must be able to show that there was an offer by one party, and an acceptance by the other party. If the acceptance changes the terms of the offer in any material respect, it becomes a counteroffer, which now must be accepted by the first party.

For example, your neighbor's son may offer to wash your car and mow your lawn on a weekly basis in exchange for payment of \$40.00 each week. You may consider his offer, and ask that he also water your rose bushes for that price. This is now a counteroffer. The ball is now in the neighbor boy's court to accept, reject, or counter your offer. If he accepts, you have mutual consent.

Consideration, the second element, is either a benefit conferred upon the promisor (the neighbor boy) or a detriment suffered by the promisee (you). In this example above, the consideration is the \$40.00 per week you are agreeing to pay in exchange for the services. This forms a binding agreement between the parties, one that can be relied upon, enforced, and sued upon in a timely manner. The parties' actions following the agreement can be used to show a contract exists.

Do not forego your legal remedies because you feel you do not have a binding contract when all you have done is verbally agreed or sealed the deal with a handshake. Of course, putting the agreement in writing not only reduces any ambiguity regarding each party's responsibilities, but also buys you more time to file a lawsuit should a breach occur. Further, a written contract is required for certain types of agreements. Next time you are wondering if you have a case against someone who owes you, consult an experienced attorney and do so quickly.



Sharice Marootian is an attorney and licensed real estate broker, practicing in the areas of construction and real estate law. Sharice assists contractors, subcontractors, and material suppliers in various construction disciplines prevent and resolve construction related disputes. She also counsels and represents owners involved in private construction projects and real estate disputes. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Sharice Marootian can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by

E-Mail at sbm@agrlaw.com, or at www.agrlaw.com

Jun / Jul '16