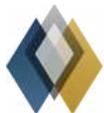




**What Are
Your Options When
Another Business
Breaches a
Commercial
Contract?**



SCHOTT, BUBLITZ
& ENGEL s.c.



What Are Your Options When Another Business Breaches a Commercial Contract?

Regardless of what industry you are in or what products or services your business provides, odds are good that you rely on legal contracts and agreements. These documents govern your everyday business transactions and relationships with the vendors, third-party service providers, landlords and others whose services you depend on to keep your company operating smoothly.

Unfortunately, business relationships do not always go as planned. When another company doesn't hold up its end of your agreement, it can be more than just a frustrating experience; the repercussions can cost your business money.

The good news is that you do have options if your business is harmed because another business didn't follow through with its obligations. In this eBook, we will explore what constitutes a breach of contract and discuss some possible ways to handle the breach.

What Is a Breach of Contract?

At its most basic level, a breach of contract simply means that a party to the agreement didn't do one or more of the things the party said it would do in the contract you both signed.

Material vs. Immaterial Breaches

A breach can either be immaterial or minor, or it can be material. Generally speaking, a material breach involves one party not following through on a major part of the contract, to the extent that the breach makes the rest of the contract meaningless or defeats the purpose of having a contract in the first place.

While a business that has been harmed by another business' breach of contract may be able to recover damages whether the breach was material or not, there are additional potential remedies available for material breaches.

What Constitutes a Material Breach?

Courts may evaluate several factors when determining whether a breach was severe enough to be considered material:

1. Contracts are intended to benefit both parties. As a result of the breach, was the non-breaching business still able to benefit from the contract as intended and expected?
2. If some of the expected benefit has been lost because of the breach, is it possible to adequately compensate the non-breaching business?
3. As a result of the breach, to what extent is the breaching party going to forfeit its own benefits under the contract?
4. How likely is it that the breaching business will actually be able to cure the breach? When evaluating this factor, courts consider all of the facts and circumstances, including the breaching party's reasonable assurances that it can right the wrong.
5. Finally, courts evaluate the actions and behavior of the breaching company. Does it appear that it was acting in good faith, or is there reason to believe that it was not dealing fairly with the other company?

Addressing Contract Breaches

If a business supplier or other partner doesn't do what it told you it would do, it may be possible to resolve the matter directly – business to business. In many cases, there may be a simple explanation for the breach and the company may be willing to offer concessions or other compensation to try to make up for its breach. When companies are able to resolve breach of contract disputes outside the courtroom, they can save significant amounts of time and money.

Another option is what is referred to as "Alternative Dispute Resolution," or "ADR." ADR involves out-of-court methods such as mediation and arbitration that are designed to help parties resolve their disputes using faster, less costly alternatives to litigation. Businesses may agree in the contract to use ADR to settle conflicts.

Of course, it is not always possible to resolve disputes directly or through ADR. In those cases, it may be necessary to file a lawsuit.

Possible Remedies for Breach of Contract Disputes

If your business initiates litigation because another business breached a commercial contract, there are several possible remedies the courts could order.

Right to Cure

The law may give the breaching party a chance to “cure” a breach by fulfilling its obligations. The contract may determine the extent of the cure and what the injured party needs to do to exercise its rights.

Damages

Another possible remedy is for the court to order the breaching company to make some form of payment to the injured business. Damages, in some form or another, are very common remedies in commercial contract disputes. There are several different types of damage awards, including:

- **Compensatory Damages** – As the name implies, compensatory damages are intended to compensate the injured party by making it “whole” – putting it in the same position it would have been in if the other party hadn’t breached the contract.
- **Punitive Damages** – When courts determine that it is appropriate to punish the breaching party for wrongful acts, they may award punitive damages. This type of damages is not common in commercial contract breach matters.
- **Special/Consequential Damages** – If a court awards special (sometimes called “consequential”) damages, it is ordering the breaching party to pay the injured party for losses caused by the breach that were not predictable.
- **Liquidated Damages** – Courts may also award liquidated damages as specified in the contract itself.
- **Nominal Damages** – Finally, courts may award a nominal amount of damages as compensation when the injured party didn’t or cannot prove, to the court’s satisfaction, that it sustained actual monetary losses as the result of the breach.

Specific Performance

Courts may also order specific performance of the contract. This means that the breaching party could be ordered to follow through with whatever it didn’t do that led to the contract dispute.

While specific performance is sometimes an available remedy in other types of commercial contract breaches, it is most commonly seen in contract disputes involving real estate.

Cancellation and Restitution

Finally, for some commercial contract breaches, courts will give the non-breaching party permission to cancel the contract and will award restitution designed to put the party in the same position it would have enjoyed but for the other party's breach.

Every Commercial Breach of Contract Case is Different

So, what is the likely outcome of your breach of contract case?

Because the terms and conditions of business contracts can – and do – differ widely, and because the circumstances surrounding contract breaches can present unique challenges, there is no “one size fits all” answer to that question.

Possible available remedies will depend on a variety of factors, including the terms of the contract, the nature of your relationship with the other business, what happened (what type of breach occurred), what was the scope of the breach, and the impact of the breach on your company.

An experienced business law and contracts attorney can provide valuable guidance, insight and, if needed, legal representation for litigation. At Schott, Bublitz & Engel, S.C., we advise and represent all types of businesses in contract breach disputes. To schedule a free case evaluation, call us today at 262.827.1700.



About the Author

Attorney April Rockstead Barker has more than 20 years of experience in representing clients involved in commercial and general litigation in state and federal trial and appellate courts. She has assisted numerous business owners and individuals and employs efficient and common-sense approaches to resolving legal disputes.



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