



# The Nuts and Bolts of a Breach of Contract Lawsuit

**Q: I've just been sued for "breach of contract." What does that mean?**

**A:** When you enter into any type of contract (agreement), you and the other party must fulfill the promises and obligations spelled out in the contract. If you fail to do so without a legally accepted excuse, the other party can sue you for "breach of contract." Breach may occur even when you've performed your obligation, but have failed to meet the performance standard your contract requires.

A breach may be either "material" or "minor." If your breach was "material," it means the other party received something substantially different from what the contract specified. If it was a "minor" breach, it means the other party received the specified service, but you didn't properly perform your obligation. For example, if you agreed to renovate an entire home, but you did not repair anything in the kitchen, this would be a material breach. However, if you simply painted the pantry the wrong color, this would be a minor breach. A lawsuit can be filed only if the breach was material.

**Q: What is a legally accepted excuse for not fulfilling a contract?**

**A:** There are a number of defenses depending on the facts of your situation.

\* **Impossibility:** You may be excused from performing when an unforeseeable event, which is not your fault, makes it literally impossible to perform the contract. If you cannot pay money or perform the contract because of insolvency or some other type of self-imposed difficulty, the court will not accept this defense, but if a hurricane prevented you from completing a roofing job on time, then you could use the impossibility defense.

\* **Mistake:** A contract can be disregarded and cancelled if you held an incorrect belief about the meaning of a contract term. However, this defense requires a great deal of factual support, and is difficult to prove.

\* **Misrepresentation:** A contract may be cancelled if the other party falsely represented a fact, or concealed/did not disclose a fact that led you to enter into the contract.

\* **Statute of limitations:** A breach of contract claim must be filed in court within a certain period of time depending on the type of the contract in dispute.

**Q: If another party breached a contract I entered, how long do I have to file a lawsuit?**

**A:** Like most answers in the legal world – it depends! Ohio's statute of limitations provisions distinguish contracts based on the subject of the contract and how it was formed.

\* Action for a breach of any contract for the sale of goods must start within four years after the breach occurs.

\* Action for breach of a written contract must start within eight years after the breach occurs. Before 2012, this statute of limitations in Ohio used to be 15 years.

\* Action for breach of an oral contract must start within six years after the breach occurs.

**Q: How I can prove breach of contract in court?**

**A:** To succeed on a breach of contract claim, you must establish: 1) the existence and terms of a contract; 2) your performance of the contract (i.e., you must live up to the obligations you had under the contract); 3) the defendant's material breach of the contract; and 4) the damages or loss to you. Expert testimony is not required, but can be helpful. You must prove your damages with certainty and not speculation or guesswork.

**Q: What damages can I recover?**

**A:** You are entitled "to be made whole." This means the law tries to put you in the position you would have been in if the breach had never occurred. Common damages include:

\* Compensatory damages: money damages intended to compensate you for losses resulting from the breach. A common example is lost wages.

\* Consequential damages: money damages intended to reimburse you for indirect damages, such as loss of business profits due to a broken computer or machine.

\* Liquidation damages: money damages specifically stated in the contract. Commonly, a contract will contain a "financial penalty" in case of a breach.

\* Specific performance: a court may order the parties to carry out the contract. For example, if you contract to buy a baseball signed by Babe Ruth, the court may order the other party to carry out the contract as intended because the baseball is unique, and money damages will not "make you whole."

\* Contract rescission: Sometimes the court may cancel the old contract and create a new one to meet the parties' needs. This generally happens when both parties agree to cancel the contract.

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*This "Law You Can Use" column was provided by the Ohio State Bar Association. It was prepared by Andrew L. Smith, a senior associate attorney in the Cincinnati office of Smith, Rolfe & Skavdahl Company, LPA.*



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