



Are Oral Contracts as Enforceable as Written Contracts?

There is a common misconception that only agreements that are in writing are enforceable if someone decides not to perform their obligations under a contract. With a couple of exceptions, this is not the case. Oral agreements, if validly formed, are just as enforceable as written contracts.

As general rule, in order to be a valid, enforceable contract, there are generally three elements that must be present: offer, acceptance and consideration. As a simple example, usually, one party to an agreement proposes to perform some act or service in exchange for something else. This is usually the “offer” portion of the agreement. If the person to whom the offer is made agrees to the proposed terms, this is usually considered acceptance of the offer. If the parties agree on what is to be exchanged as payment or other compensation for the agreed-upon performance of the agreement, that is construed to be the “consideration” for the performance of the agreement by both parties. When the offeror has completed the task to be performed, usually the offeree’s obligation to pay for or compensate the offeror arises. Upon the payment of the consideration, the terms of the contract are fulfilled and the transaction between the parties is complete.

In this case, the fact that the parties may have entered into an oral agreement does not make the contract any less enforceable. If the offeror performs as agreed and the offeree does not pay in accordance with the terms of their agreement, the offeree is in breach of the agreement and the offeror can bring an action to recover whatever is owed under the agreement.

In California, certain contracts are required to be in writing to be enforceable. Examples of such contracts include contracts for the lease of real property for more than one year, contracts for the sale of real property, agreements relating to the sale of goods in excess of \$500, agreements to pay the debt of another (surety) and contracts for marriage.

While oral contracts are just as enforceable as written agreements, in the event of a dispute it is usually much easier to prove the existence and terms of an agreement where it is written. Therefore, it’s good practice to reduce an agreement to writing whenever possible to keep the terms of the agreement as clear as possible and to avoid proof and memory problems in the future should a dispute or question about the contract arise.

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