How Do I Get Out of a Contract?

After last week’s column on the topic of using contracts was published, I got a pointed Email that asked “So what if I want to get out of a contract, what can be done?” My first comment is that you should certainly seek help from a legal professional about specific cases. But, rather than stop at that point, I did some research on this topic and will share some valid reasons for the potential of not fulfilling a contract. This column is not meant to provide legal advice but rather present some ideas about the topic that may have broad application to small businesses. One lawyer friend said these are sometimes called "defenses". I will try to list several examples that I found.

One of the reasons for getting out of contract is if the contract was completed under duress. That would be a case where a contract was made by force or other means of overpowering the will of the party. A contract made under duress isn't enforceable. An extreme example would be a person holding a gun to your head to get you to sign a contract. But there may be other less obvious circumstances that could create duress.

Fraud and misrepresentation involve false statements about a present or past important fact that is relied on by a party to the contract. A fraud is a deliberate misstatement of a fact. In the case of a misrepresentation, the injured party can cancel the contract. An example would be if someone sold you a table they said was an antique, but it turned out to be a reproduction. A defrauded party can cancel the contract and sue the wrongdoer for damages. A victim of fraud may also have other remedies under the law of consumer fraud.

What if the contract contains a mistake? This would be where one or both parties to the contract believe a fact to be true when it isn't true. My sources indicate that if one party makes a mistake, the error is called a unilateral mistake. For example, if you sell somebody a table that you think is an ordinary table made in 1950 for a few dollars, and it turns out to be a valuable antique made in the year 1800, the law will not ordinarily invalidate that contract. Generally, this type of mistake doesn't invalidate a contract, because the law doesn't excuse negligence or inadvertence. However, if the other party to the contract induced the mistake by leading you to believe it was a modern table instead of an antique, then you may cancel the contract. If both parties to a contract make a mistake, the error is called a bilateral mistake. This type of mistake generally voids the contract because there was no "meeting of the minds" or consent.

Lack of what is called consideration, which can be money or property, or a promise of money or a promise to do or not to do something, can invalidate a contract. For this reason, a promise to make a gift is ordinarily not enforceable. However, if another person acts in reliance on your promise to make a
gift, the promise may become liable. For example, if you promise to donate a million dollars to your college to build a library, and the college builds the library, you may be required to make the gift.

Another legal condition called “impossibility of performance” can terminate a contract if something unforeseen prevents the performance of the contract. For example, you contract with a famous painter to do your portrait and the famous painter dies. The obligation to paint your portrait cannot be completed. The contract to paint your portrait is terminated by impossibility of performance.

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