



## LEGAL EXPERTS

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# AVOIDING COSTLY PITFALLS WHEN ENDING A BUSINESS RELATIONSHIP

At the heart of most business relationships is a contract, which governs the parties' rights and obligations, including their right to end their relationship. A business contract can be in writing, oral, by conduct, or a combination of the three. Whereas a written contract will ordinarily set out all of the parties' rights and obligations, an oral contract or contract by conduct will rarely contemplate all aspects of the business relationship. As a result, businesses that enter into an oral contract or contract by conduct are often unsure of the circumstances in which they can bring the contract to an end and the process for doing so. This often leads to a business that is seeking to bring a business relationship to an end being threatened with claims that it has acted unlawfully. To prevent this, business relationships should be recorded in a written contract.

**Contractual right to terminate:** A contract governing a business relationship can ordinarily be brought to an end either automatically at the expiry of the term of the contract; by one party giving the other party reasonable notice; or by a party electing to terminate the contract when the other party has breached a fundamental term of the contract.

**Automatic expiry of a contract:** Some business contracts are for a fixed period and will expire at the end of the period unless the parties agree to continue the business relationship, in which case it will be governed by the terms of the original contract unless a new contract is entered into. In these circumstances, the relationship can be ended by one of the parties giving the other reasonable notice of its decision to terminate the contract.

### **Ending contracts pursuant to their terms**

In situations where contracts are not for a fixed term, the parties' right to terminate the contract will be governed either by the conditions of the contract or the common law. If the contract contains a procedure for ending the contract, it is essential that the procedure is followed. Failure to comply with the specified termination procedure could expose the party seeking to terminate the contract to claims for damages.

**Ending contracts with reasonable notice:** If the contract is not for a fixed term and is silent on the circumstances in which a party can end the contract, either party may terminate the contract by giving the other party reasonable notice. Reasonable notice will depend upon the nature of the business relationship. For example, a motor dealership which has sold a particular brand of vehicle for 15 years could expect the supplier of that brand of vehicle to give the dealership at least six months' notice of its intention to terminate the contract, whereas a homeowner may only need to give the local newsagency that delivers the weekend newspaper 24 hours' notice of his or her decision to terminate the service.

Written contracts often contain clauses that stipulate the circumstances in which the parties can terminate the contract. In most cases, it is when a party has failed to fulfill a condition that goes to the heart of the contract. For example, the motor dealership refuses to pay the manufacturer for the cars that it has supplied to the dealership. If the contract is silent on what constitutes a terminable event, the right to terminate the contract will be governed by the common law (law developed through court cases).