

HOW TO PROTECT YOURSELF AND YOUR BUSINESS

If you are owed money on a contract

DO YOUR DUE DILIGENCE BEFORE YOU SIGN A CONTRACT

Making sure you are entering into contracts with reputable businesses with positive track records can save you and your wallet a lot of pain later.

WHEN THINGS GO WRONG

In the event of an unanticipated event, like COVID-19, you may find yourself in an agreement with someone who will not be able to perform their part of the deal, despite due diligence. What then?



TWO WAYS TO PROTECT YOUR INTERESTS

1. ANTICIPATORY REPUDIATION OR ANTICIPATORY BREACH

If someone you've contracted with lets you know that they will not be able to hold up their end of the deal, or if they unilaterally do something that would make it impossible for them to perform, you can hold their actions as a breach of contract, even though the actual, tangible breach (i.e. their failure to pay) may not have actually occurred yet.

This gives you some lead time to address a breach before it actually occurs and causes your business harm.



2. MAKE A DEMAND FOR ADEQUATE ASSURANCE OF PERFORMANCE

Upon making a demand for assurances, a party with reasonable grounds for insecurity may suspend his own performance so long as it is commercially reasonable to do so.

The failure to respond with reasonable assurances constitutes a repudiation by the non-responding party. Cal. Com. Code § 2609.

This means that where you reasonably, under the circumstances, ask for assurances, the other party must give you some sort of reassurance, or their failure to do so in and of itself constitutes an anticipatory breach.

UPON AN ANTICIPATORY BREACH, YOUR BUSINESS HAS THREE OPTIONS:



Cancel the contract and terminate all rights and obligations under it,



Bring an action for damages or specific performance, or



Ignore the repudiation and continue under the contract

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