

*The Equine Esquire*

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## Problems with a Handshake: Enforcing the Oral Contract

Many deals have been made simply on a smile and a handshake, especially in the farming, ranching, and horse communities. A person's word had integrity and was equally as good as a signature. This method of transacting can work fine, but unfortunately when a deal goes south it can be extremely difficult to prove the existence and terms of the oral contract.

**Proving the existence and terms of the oral contract**

To be legally enforceable, a contract must have the following elements: 1) an offer, 2) an acceptance; 3) mutual assent to be bound, and 4) consideration supporting the contract. The one that often hammers the death blow to an oral contract is the "mutual assent to be bound" element. Before the contract will be considered enforceable, the party seeking enforcement must prove not only that the other person agreed to be bound, but that the parties agreed on the essential terms related to that contract. Such terms might include price, interest rate, the payment amount, the item to be built or numerous other terms dictated by the agreement in dispute.

Courts typically will require you to present "clear and convincing evidence" of the contract's terms, meaning that you must present dependable, concrete evidence from credible sources to prove that the truth of your claim is highly probable. It might include:

- Proof that the parties have acted in a certain way that supports the assertion of a contract (for example, services were provided by one party to the other in exchange for payment);
- Parties' statements made and actions taken during and following the formation of the oral contract, as well as prior dealings of the parties;
- Documentation - Even if there is no signed contract between the parties, there is very often other documentation to support the existence of the contract, such as correspondence (letters, emails), notes, or even draft contracts which were never signed.
- Testimony from witnesses - If there were any other persons who were present at the time the contract was struck (such as employees or family members), those persons can act as witnesses to verify the existence of the relationship. The evidence might be conflicting, so it is important to have disinterested, credible witnesses who were present during negotiations or who saw, heard or otherwise know the terms of the agreement.

The central issue of an oral contract will almost always be whether

the parties actually agreed on the material points of the contract. If they did, they can begin to battle over what it all means. If they did not, then no contract was ever formed and there is nothing to enforce.

**Contracts that must be in writing to be enforceable**

Even if you can prove the existence and terms of your oral contract, there are some contracts that must be in writing in order to be legally enforceable. California Civil Code § 1624, the Statute of Frauds, specifically describes these transactions. Generally, they are:

- Contracts that necessarily take longer than one year to complete
- Agreements to pay another's debt
- A lease lasting longer than one year, or a contract for the sale of real property.
- An agreement authorizing an agent to purchase or sell real estate, or to lease real estate for a longer period than one year.
- Contracts that last longer than a party's life
- An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage.
- Contracts for over a certain amount of money

As with many legal rules, there are exceptions to the requirements of a written contract under the Statute of Frauds. If you do not have a written agreement for one of the transactions described above, there may be an exception that applies to your particular facts.

**Statute of limitations—Timeline for filing a lawsuit**

If you are satisfied that you have valid oral contract and one which will survive a Statute of Frauds defense, you may need to file a lawsuit to enforce your agreement. California law provides specific time limits for filing lawsuits, called statutes of limitations. The statute of limitations for breach of an oral contract is two years (CCP § 339), and four years for breach of a written contract (CCP § 337). Determining when the statute of limitations runs out is based on the date the contract was breached, which can be difficult to ascertain. Additionally, there can be minor breaches (not legally fatal) and material breaches. If you have any doubts about how to calculate the time you have to file, it's important to seek legal advice, rather than risk forfeiting your right to bring legal action.

**Summary**

People enter into handshake contracts, or oral contracts, instead of getting it in writing, for all sorts of reasons, none of which are usually good enough to forego a written agreement. Time and expense can often be saved by putting your agreements in writing, specifying the parties' respective obligations and detailing the remedies for breach. If you need assistance enforcing an oral contract, or in drafting an agreement, Patrice Doyle can offer the necessary legal guidance.



Patrice Doyle is an associate attorney at Kornblum Cochran Erickson Harbison, L.L.P., and has been an avid horsewoman since childhood. She can be of assistance in guiding you through equine-related legal issues. Contact her at (707) 544-9006 or [www.kcehlaw.com](http://www.kcehlaw.com).

Readers should seek legal counsel to determine how the law applies to their particular circumstances.

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