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LEGAL BRIEFS

Who Should Pay My Attorneys' Fee?

Ingrained in the fabric of American Law is the notion that each party should be responsible for her own attorneys' fees, regardless of the outcome. Although this may be true in most cases, there are some exceptions, and contract law is one of them. Courts have long held that parties have the right to make contracts in the form that they please, provided that the terms of the contract are consistent with the law of the land. It is the duty of these courts to maintain the contract terms in their integrity and entirety. More specifically, a contract of indemnity to reimburse the Plaintiff for the expense of enforcing her contract incurred by the defendant's default has been upheld by Maryland courts.

Although these contracts are upheld, where there is a gray area, is in the terms of the contract itself. If the contract provides that the defaulting party is responsible for "reasonable attorneys' fees" incurred by the Plaintiff in enforcing the breach, then the precedent is that the court has the discretion to determine exactly what is reasonable. Historically, courts have held that 15% of the principal amount, regardless of the amount of the principal, is reasonable. Most attorneys would agree, however, that collecting a \$5,000.00 debt does not take much more work than collecting a \$500.00 debt. But, using the historical 15% awarded by courts, the difference in recovered attorney's fees is \$1,350.00---quite a disparity! If, however, the contract contains specific terms, then the court loses its discretion and must award the amount provided for in the contract. To this end, be sure to specify in your contract that a defaulting party shall be responsible for "attorney's fees in the amount of X% of the principal amount," or, even better, "actual attorney's fees incurred."

Unfortunately, many businesses do not include these provisions in their frequently used contracts, either because they were never included by the original drafter

of the contract or because no one ever suggested that their inclusion was legally permissible. Knowing how to save money in legal fees and what you need to do to avoid paying such fees yourself is smart business and makes you look good! Call us for a specific assessment of your contract!