

New York and New Jersey Businesses: Do Your Contracts Have an Exit Strategy?

by Dan Brecher on June 28, 2012

When negotiating a New York or New Jersey business contract, the parties are often hesitant to talk about what happens if the deal doesn't work out as planned. However, every contract needs a clearly articulated exit strategy.

By exit strategy, we mean what happens if one party wants to terminate the contract early or one party breaches the terms of the agreement. In flushing out these issues during contract negotiations, below are some of the most important issues to address:

- Can the contract be terminated without cause?
- How and when must notice of termination be provided?
- Are there penalties for early termination?
- What types of activities constitute material breach?
- What types of damages will be available if the contract is breached?
- If a breach has occurred, must notice of the breach be provided? If so, how and when must notice of breach be provided?
- Will the breaching party be given an opportunity to cure the breach?
- Will certain breaches be excluded through waiver, disclaimer of warranties, and other provisions?
- Will certain breaches not be considered "material?"
- How will disputes be resolved, i.e. is arbitration or mediation required before filing a lawsuit?
- Will the prevailing party be awarded attorneys' fees?
- Must the lawsuit be filed in a particular state, county, or court?

Of course, this is not an exhaustive list of issues to be considered. Therefore, it is advisable to consult with an experienced New York and New Jersey business attorney before signing any contract.