



NOTICE OF BREACH OF CONTRACT & GUIDE

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1. Overview

It is an unfortunate business reality that parties do not always perform their contract obligations in a timely, professional, and complete manner. When one party to a contract does not perform its obligations according to its agreed-on terms, that party is said to be in breach. Not every breach should be answered with a lawsuit. Sometimes, a simple reminder that the party is not fulfilling its obligations under the contract is enough to rectify the situation.

The enclosed document should be used to provide notice of a breach to another party, and to inform that party that it has only a certain number of days to remedy the problem. The letter is constructed to be professional and concise, and as a reiteration of the party's duties. A notice of this kind should not be used to chastise or threaten the other party: this can prove counterproductive and make the other party reluctant to work with you towards a solution.

A well-drafted breach of contract notice can stop a small breach from becoming a large one, and may prevent additional issues from developing. This letter allows you to reiterate your expectations and concerns, citing the specific parts of the agreement that have been breached. With the enclosed form, you may be able to salvage your agreement and maintain and develop your amicable working relationship.

2. Dos & Don'ts Checklist

- A contract breach usually takes one of the following three forms:
 - o Failure to perform as promised
 - o Making it impossible for the other party to perform its obligations
 - o An indication that the party does not intend to perform as promised

The other party to your agreement may be in breach in all three ways and you should include reference to each if this is the case.

- Make your notice as specific as possible. This may guard against later claims that the breaching party did not receive full information or that, by ignoring a violation, you tacitly waived your enforcement rights.
- Review the underlying agreement carefully before you revise and send the enclosed notice. Many contracts include specific provisions governing breaches and remedies. If your agreement contains such provisions, read the instructions and follow the procedures detailed.
- Be courteous to the other party: aggressive or contentious language will not resolve the problem any faster. The breach was quite possibly an oversight, and you may be able to preserve and develop your working relationship if you handle the matter professionally.
- If the other party does not respond to your notice and the breach has not been cured within the designated period, contact an attorney to discuss additional legal action and remedies.

- Consider sending your notice by registered mail. Although not strictly required, it will support your case if later court action becomes necessary.
- No matter what the breach, an agreement will not end automatically. If a breach of an essential (sometimes called a “material”) term has occurred, one party may have the option to end the contract, but there are usually still notification and termination requirements that must be met.

3. Notice of Breach of Contract Instructions

- If you send your letter by certified or first class-mail, or through a courier service, make the appropriate change to the line specifying the delivery means (currently reading “By Registered Mail”).
- Provide the names of both the other party and of the agreement itself. If the original agreement did not have a title, briefly summarize its purpose.
- Enter the “Effective Date” of the agreement, if any. If there is no Effective Date listed, enter the date on which the last party signed.
- Explain clearly how the other party breached the agreement. Include references to the breached provision(s), quote the language of that/those section(s), and describe how the actions of the other party created the violation.
- Be thorough. As you read through the contract, examine all of the other party’s responsibilities and obligations, and consider if and how that party is in breach of any of them.
- Keep your language professional and direct. Emotional or accusatory language may confuse the issue and delay resolution.
- Enter a deadline by which the other party must remedy its breach. This deadline should be commensurate with the nature of the breach (e.g., larger issues can take a longer time to cure, but major problems might require immediate resolution). Review the terms of your agreement to determine if there is an established remedy period. If so, indicate the section of the Contract in which that limit is provided and follow the terms of that provision.

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Form Sample

SAMPLE NOTICE OF BREACH OF CONTRACT

BY REGISTERED MAIL

[Insert Date]

*[Recipient's Name]
[Recipient's Company, if applicable]
[Recipient's Address]
[Recipient's City, State, and Zip]*

Dear _____ [Recipient's Name]:

RE: Contract By and Between [Recipient's Name] and [Your Company Name] dated [Contract Date] (the "Contract")

You are hereby notified that you that you are in breach of Section[s] _____ [section number(s)] of the Contract.

More specifically, you have breached the following obligations under the Contract:

1. [Insert description 1]
2. [Insert description 2]
3. [Insert description 3]
4. [Insert description 4]