

What contractors should do when a contract falls through

It happens too often to contractors. You land a great contract and are looking forward to working with the client. Just the paperwork left to sign...

It Goes Pear-Shaped

So you pass on a few other offers, arrange your schedule so that you can do the job, and perhaps you even make travel arrangements to get to the client's office. You even get the contract in the post, and you make a date to sign the deal with the agent. You're already spending the money and planning a long vacation.

Then, it all goes pear-shaped. The client pulls out at the last minute, and the agent cancels the deal. Now you're angry, because you've made all the plans, arranged resources, and dedicated time which you could have used on other projects.

What Can You Do?

What can you do? "Probably, not much," says Kate Cottrell, a lawyer specialising in contractor affairs with the Westoning, Bedfordshire-based legal consultancy Bauer & Cottrell.

"Until the contract is signed by both parties, it cannot be enforced," Cottrell points out.

"Contractors should also be aware that most contracts with agents specifically state that a client has the right to pull out and annul, and when the client cancels, the agent has the same right. So you have no legal recourse of any kind in this instance."

“ Until the contract is signed by both parties it cannot be enforced ”

Kate Cottrell - Bauer and Cottrell

Part of Being A Contractor

Cottrell explains that contractors have to view this kind of loss as one of the risks and perils of the contracting business. "When you become a contractor, you accept the fact that you are working flexibly, at the demand of agents and clients. You enjoy better pay and a better lifestyle than an employee would get doing the same work. But you have to accept the risks that go with it all as well."

By definition, a contract does not come into force until it is "fully executed," that is, each party signs it. That is the formal point at which a contract comes into existence. Until it does, neither party has any obligation to the other.

But Not If You Start Work!

All of this may not apply if you start work on the contract. Should the agent go so far as to put an offer on the table with you, and you begin the project with the client's blessing, you may have some recourse.

First, if you plan to start work, and the agent has sent you a contract for the project but it hasn't been signed, look closely at the contract. Does it contain a clause which covers the eventuality of the client's pulling out? If it does, it may obviate any liability on the part of the agent. Should the contract contain this clause, you won't be able to get much should you seek remuneration. You should, of course, be paid for hours put in. But you probably can't get the full value of the contract.

So if your agent tells you to start work before the contract is signed, you probably should renegotiate this clause with the agency. Point out that if you start, you'll expect a certain amount of remuneration regardless of whether or not the deal falls through. Make the agent, who will be eager to get you on the site, commit to this amount in writing, and don't start work without it.

If you are already at work on a project, and your contract is up for renewal, make certain that you [negotiate the new contract renewal](#) (or revalidate the old one) before the first contract's term is up. Don't wait, because you may not be able to get a fair fee if you start work without a signed contract. If you have a contract sent to you, but are unhappy with the terms and which to negotiate then don't start working until they are firmed up - otherwise you could be in danger of the agent insisting that by starting the work you have legally accepted the contract terms.

Agents Also Have Obligations

Agents do have some obligations to you to behave ethically, however. Agents are not permitted to propose deals unless they have solid existence in reality; that means, unless the client has genuinely asked the agency to find a contractor for the proposal.

"Agents may not contact you in the hope of setting up a deal, and then keep you on hold just in case the deal materialises," Cottrell adds.

“ Agents may not contact you in the hope of setting up ”

Don't Accept Unethical Agents

If you find an agent behaving this way with you, simply don't work with that agent or agency again.

The contractor is also not permitted to sign a few contracts, and then to pick the best one. Some contractors do try and get away with this, but there is a serious risk of liability for replacement costs if the agent or client loses money because you don't show up as you've agreed to. Talk about as many deals, with as many agents as you like, but don't sign unless you mean to go through with the project.

In this time when projects get set up very quickly and can also fall apart very quickly, it is wise to take a cautious line in all this.

Published: Wednesday, May 16, 2007

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Kate Cottrell-Bauer and Cottrell

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