

12.6: Assignment, Delegation, and Third Party Beneficiaries

Contracts are by law assignable and delegable. This means that the rights conveyed by the contract may be transferred to another party by **assignment**, unless an express restriction on assignment exists within the contract, or unless an assignment violates public policy. Likewise, the duties imposed on a party may be transferred to another party by **delegation**, unless the contract expressly restricts delegation, there is a substantial interest in personal performance by the original party to the contract, or if delegation would violate public policy.

As a general rule, a party may assign contract rights without the consent of the other party. This is common in the construction industry where a general contractor may assign rights and delegate duties to subcontractors for specific work that needs to be performed under the main contract. For example, the general contractor may delegate the duty to perform electrical work to an electrician, as well as assign the right to be paid for the work performed.

In delegation and assignment, the original contracting party is not “off the hook” if it transfers its duties or rights to another party. For instance, a subtenant assumed the rights and duties imposed on the original tenant in a lease. If the subletting tenant does not pay the rent, the original tenant is still liable.

The way to excuse oneself from legal liability under a contract is through novation. **Novation** is essentially a new contract that transfers all rights and duties to a new party to the contract and releases the previous party from any further obligation. It is the procedure in which one party is dismissed completely from the contract because a third party is substituted. In this situation, the dismissed party no longer has any liability under the original contract. To be effective, all parties must agree to the novation.

Third Party Beneficiaries

Assignment and delegation under a contract should not be confused with rights of third party beneficiaries. A **third party beneficiary** is someone who is not a party to the contract but stands to benefit from it. Life insurance policies are a classic example of contracts with third party beneficiaries. The insurance company and the insured are parties to the contract. But the person who receives payment upon the death of the insured is the third party beneficiary.

Third party beneficiaries can either be intended or incidental. An **intended beneficiary** is someone who the parties intend to receive the benefit of the contract. For example, the named beneficiary of a life insurance policy. The **beneficiary** does not need to know about the contract to have his or her rights vest.

An **incidental beneficiary** is someone who benefits from a contract but was not intended by the parties to benefit. For example, if a business pays for a professional to landscape its property, the neighbors are incidental beneficiaries to the landscaping contract. They benefit from the improved appearance and property values, but the business did not enter the contract with an intent to benefit them. Incidental beneficiaries do not have a legally enforceable interest in the contract.

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