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*Real Estate; Civil Litigation; Bankruptcy & Insolvency; Corporate & Partnership; Commercial Matters; Personal Injury  
Construction; Business & Estate Planning; Divorce; Hotel & Restaurants; Patent & Intellectual Property; Criminal Defense*

## Specific Performance of Real Estate Contracts

by Anthony L. Leccese, Esq.



Tony Leccese

When there is a breach of certain types of contracts, the aggrieved party may seek the equitable remedy of specific performance, that is, a court order compelling the breaching party to undertake to perform or to complete performance of such party's obligations under the contract. Specific performance is available whenever the subject matter of the contract is unique or in other circumstances where the usual remedy for a breach of contract, money damages, is inadequate. Because real estate is generally considered to be unique, the remedy of specific performance is presumed to be available even though the alternative remedy of money damages is also available.

To establish a claim for specific performance of a real estate contract, the aggrieved party, usually the buyer, must prove (1) the existence of a written contract containing reasonably specific terms signed by or duly authorized by the other party and otherwise binding upon such party, and (2) the breach of that contract by such party. The breach of contract may be shown by (i) a clear repudiation of the contract by the breaching party, (ii) the aggrieved party's tender of performance, formally or by notice, and (iii) a demand for performance with the aggrieved party ready, willing, and able to proceed to a closing.

A repudiation of the contract may be readily apparent, as in the case where a seller fails to deliver the deed on the specified closing date without explanation, or it may be the result of actions taken prior to the closing date.

## Massachusetts Becomes Fourth State to Enact Domestic Workers Bill of Rights

by Robert P. Rudolph, Esq.

On June 26, 2014, Governor Patrick signed "An Act Establishing a Domestic Worker's Bill of Rights." Similar to comparable laws in New York, California and Hawaii, the bill extends work standards and labor protections to approximately 67,000 domestic workers in the Commonwealth. The new legislation provides domestic workers with many rights that exceed those afforded to other Massachusetts employees and can result in harsh penalties for violators.

The Massachusetts Domestic Workers' Protection Act covers individuals or employees who are paid by an employer to perform work of a domestic nature within a household, such as housekeepers, nannies, cleaners, caregivers, cooks and home companions. Excluded from the act are personal care attendants (as legally defined) someone

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Where one party sees a repudiation, the other may see a mere request for modification. For example, a buyer and a seller sign an Offer to Purchase ("OTP") that contains a mortgage financing contingency with a deadline date for a mortgage loan commitment and an earlier deadline date for signing the subsequent Purchase and Sale Agreement ("P&S"). Prior to both deadline dates, the buyer requests an extension of the mortgage loan commitment deadline date. Without more, that request would not likely be considered a repudiation of the OTP by the buyer. On the other hand, the seller's refusal to sign the P&S containing the original terms of the mortgage financing contingency by the applicable deadline date due to such request by the buyer would likely be considered a repudiation of the OTP by the seller.

A party may make a formal legal tender by appearing at the agreed upon time and place for closing with all closing documents prepared and checks and checkbook in hand with funds in the bank or financing in place. Where a buyer is seeking to enforce the contract, it may be sufficient tender to give reasonable notice to the seller that the buyer is ready and willing to perform at the purchase price and is able and prepared to pay, and demands the deed, and the seller unconditionally refuses to execute and deliver the deed and accept the purchase price.

A demand for performance should state the closing date, time, and place, what the demanding party understands to be its obligations at the closing and that it is ready, willing, and able to fulfill those obligations, and what it believes are the other party's obligations at the closing.

Specific performance is characterized as an equitable remedy and whether it is to be granted is within the sound discretion of the judge. It may not be granted to a party who has acted inequitably or in those special circumstances where it would impose an undue hardship on one party or allow the other to obtain an inequitable advantage.

## **Domestic Workers**

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whose vocation is not childcare and individuals who provide childcare on a casual, intermittent and irregular basis.

For purposes of this new legislation, an employer is considered any person who employs a domestic worker to work within a household, regardless of who owns the house, excluding staffing agencies and recipients of services from personal care attendants.

Under the new legislation, domestic workers who work 40 hours a week or more are entitled to 24 hours of consecutive rest and at least 48 hours of consecutive rest during each calendar month. If a domestic worker voluntarily chooses to work on a day of rest, such agreement must be in writing and the domestic worker must be provided overtime pay pursuant to Massachusetts minimum wage laws. The new legislation deems days or periods of rest as job-protected leave from employment. Where a domestic worker is on duty for less than 24 consecutive hours and does not reside on the property, the domestic worker is entitled to be paid for all hours as working time. Where a domestic worker is required to be on duty for a period of 24 consecutive hours or more (1) the employer and domestic worker can agree to exclude a regularly scheduled sleeping period of no more than 8 hours from working time and (2) unless a prior written agreement is made, all meal, rest and sleeping periods shall constitute compensable time.

The act gives domestic workers the right to request a written work evaluation of work performance from the employer after three months of employment, and annually thereafter, which can be inspected and disputed. If a domestic worker resides in the employer's household and is terminated without cause, the employer is required to provide written notice of termination and a minimum of thirty days of lodging (either continuing in the household or comparable elsewhere), or, alternatively, severance pay equivalent to two weeks of the domestic worker's average earnings. No severance or notice of termination is required if good faith allegations of abuse, neglect or other harmful conduct by the domestic worker against the employer, members of the employer's family or individuals residing in the home are made in writing.

## New Year – New Massachusetts Minimum Wage Rates

by Adam J. Shafran, Esq.



As of January 1, 2015, the minimum wage in Massachusetts will be increasing to \$9.00/hr. The Commonwealth has instituted an aggressive minimum wage initiative to raise the minimum wage \$1.00 each year to ultimately reach \$11.00 an hour as of January 1st 2017.

*Adam Shafran*

The minimum wage rate applies to most employees in the Commonwealth. One large exception is wait staff, service employees and service bartenders, but minimum hourly wage for these groups of employees is increasing as well at the beginning of the year. Beginning on January 1, 2015, these groups of employees may be paid a service rate equaling \$3.00 an hour if they regularly receive tips of more than \$20 a month. However their average hourly tips, when added to the service rate, must equal or exceed the basic minimum wage.

An interesting addition to the Massachusetts Minimum Wage Statute is that “in no case shall the Massachusetts minimum wage rate be less than \$0.50 higher than the effective federal minimum rate.” Federal minimum wage law triumphs state law in the sense that states are prohibited from enforcing a minimum wage that is less than the mandated federal minimum wage rate. Whichever law provides the most protection will apply. States are free to increase the minimum wage in any manner in which they like.

If you are a minimum wage worker or employer of minimum wage employees changes are coming in the New Year that you should be prepared for. If you have any questions regarding the new wage laws you should contact an attorney at Rudolph Friedmann.

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Most notably, an employer who employs a domestic worker for as few as sixteen hours or more a week will be required to provide a document to the worker with the material terms of the worker’s employment, including, but not limited to, rate of pay, working hours and breaks, provisions for days of rest, sick days, vacation and personal days, holidays, transportation, health insurance, severance, yearly raises and reimbursements, costs for food and lodging, responsibilities, grievance procedures, rights to collect workers’ compensation if injured, required notices of termination and more.

Employers must also maintain a record of wages and hours worked pursuant to existing fair wage laws. The act entitles domestic workers to maternity leave, to enjoy a right of privacy, free from restrictions or interference with private communications and personal effects, and limits what deductions employers can make from pay for food and lodging, amongst other things. These are just some of the many new protections the new legislation provides to domestic workers.

The Attorney General’s Office has been charged with enforcing the Massachusetts Domestic Worker’s Protection Act when it goes into effect on April 1, 2015. Violations of the act are punishable by fines or imprisonment. This primer is not legal advice. Contact one of our employment lawyers today if you employ a domestic worker and need advice.