

Breach of Contract Defenses: Kentucky

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A Q&A guide to common defenses to contract claims under Kentucky common law. This Q&A covers defenses to contract formation, performance, and damages. It also covers procedural and equitable defenses specific to breach of contract. Answers to questions can be compared across many jurisdictions (see [Breach of Contract Defenses: State Q&A Tool](#)).

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Defenses to Contract Formation

1. Does your jurisdiction recognize ambiguity as a defense to contract formation? If so, when should a defendant assert this defense?

Ambiguity is a defense to contract formation under Kentucky law. A contract is ambiguous where a reasonable person would find it susceptible to different or inconsistent interpretations (*Ky. State Univ. v. Darwin Nat'l Assurance Co.*, 677 S.W.3d 294, 300 (Ky. 2023)).

An enforceable contract must contain definite and certain terms setting forth the promises of each party, and the terms must be sufficiently complete and definite to enable the court to determine the measure of damages in the event of a breach (*Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997)).

A defendant also may assert ambiguity as a defense to a breach of contract claim (*Ky. Shakespeare Festival, Inc. v. Dunaway*, 490 S.W.3d 691, 694-95 (Ky. 2016); see [Question 17](#)).

2. Does your jurisdiction recognize duress as a defense to contract formation? If so, when should a defendant assert this defense?

Duress is a defense to contract formation under Kentucky law. A defendant should assert this defense when:

- The plaintiff or their agent used or threatened violence to compel the defendant to enter into the contract.
- The violence or threats were calculated to produce on a person of ordinary intelligence a just fear of great injury to person.

(*Keeney v. Billy Trent Constr., LLC*, 602 S.W.3d 162, 166 (Ky. Ct. App. 2019); *Mays v. Mays*, 541 S.W.3d 516, 524 (Ky. Ct. App. 2018).)

Duress cannot be based on a threat to do what one has a legal right to do, or a threat to take any measure authorized by law and the circumstances of the case (*Est. of Adams v. Trover*, 547 S.W.3d 545, 552 (Ky. Ct. App. 2018)).

3. Does your jurisdiction recognize economic duress as a defense to contract formation? If so, when should a defendant assert this defense?

Although not clearly decided by Kentucky state courts, economic duress may be a defense to contract formation as a specific form of duress (*Atmos Energy Corp. v. Honeycutt*, 2013 WL 285397, at *6 (Ky. Ct. App. Jan. 25, 2013)).

To establish duress, a defendant must show that they were induced by the unlawful conduct of another to make a contract under circumstances that deprived the defendant of the exercise of free will (*Halifax Ctr., LLC v. PBI Bank, Inc.*, 2014 WL 626753, at *6 (W.D. Ky. Feb. 18, 2014) (applying principles of duress under Kentucky law to permit claim for economic duress to proceed)). A defendant must show something more than a difficult bargaining position or the pressure of financial circumstance, as the question is not whether one party drove a hard bargain, but rather whether there was overreaching (*PNC Bank, Nat'l Ass'n v. Seminary Woods, LLC*, 2015 WL 4068380, at *19-20 (W.D. Ky. July 2, 2015) (applying Kentucky law)).

The court looks at the totality of the circumstances, including the defendant's experience, background, and education, and the amount of time the defendant had to consider whether to sign the contract (*Williams v. Osborne*, 2003 WL 22927708, at *5 (Ky. Ct. App. Dec. 12, 2003)).

4. Does your jurisdiction recognize failure of a condition precedent as a defense to contract formation? If so, when should a defendant assert this defense?

Failure of a condition precedent is a defense to contract formation under Kentucky law. A defendant should assert this defense when the contract is dependent on a future event or performance, such as an agreement requiring the consent or approval of a third person, and that future event or performance has not occurred. (*Hopkins v. Performance Tire & Auto Serv. Ctr., Inc.*, 866 S.W.2d 438, 441 (Ky. Ct. App. 1993).)

5. Does your jurisdiction recognize fraud as a defense to contract formation? If so, when should a defendant assert this defense?

Fraud is a defense to contract formation under Kentucky law. A defendant should assert this defense when:

- The plaintiff made a material representation to the defendant.
- The material representation was false.
- The plaintiff knew the misrepresentation was false or made it recklessly.
- The plaintiff induced the defendant to act on the misrepresentation.
- The defendant acted in reasonable reliance on the material representation.
- The defendant's reliance on the material representation caused injury.

(*Yung v. Grant Thornton, LLP*, 563 S.W.3d 22, 45 (Ky. 2018); *Flegles, Inc. v. TruServ Corp.*, 289 S.W.3d 544, 549 (Ky. 2009).)

However, if the defendant gains knowledge of the fraudulent representation after the contract was executed, and the defendant affirms or continues to perform under the contract:

- The defendant waives the right to rescind the contract.
- The defendant may still have the right to sue for damages based on the fraud depending on the facts.

(*Hopkins*, 866 S.W.2d at 440-41.)

6. Does your jurisdiction recognize illegal purpose as a defense to contract formation? If so, when should a defendant assert this defense?

Illegal purpose is a defense to contract formation under Kentucky law. A defendant should assert this defense if the contract has a direct objective or purpose that violates the federal or Kentucky Constitution, a statute, an ordinance, or the common law (*Yeager v. McLellan*, 177 S.W.3d 807, 809 (Ky. 2005)).

7. Does your jurisdiction recognize infancy as a defense to contract formation? If so, when should a defendant assert this defense?

Infancy is a defense to contract formation under Kentucky law, as a contract executed by a minor is voidable by the minor (*Mitchell v. Mitchell*, 963 S.W.2d 222, 223 (Ky. Ct. App. 1998)). In Kentucky, a minor is defined as anyone under the age of 18 (KRS 387.010(1)). Although a minor has the legal capacity to contract in Kentucky, the minor has the privilege of avoiding the contract. The minor defendant can assert this defense at any time unless:

- The minor ratified the contract after reaching adulthood.
- The contract provides for necessities for life.

(*Mitchell*, 963 S.W.2d at 223, 223 n.1.)

8. Does your jurisdiction recognize mental deficiency or illness as a defense to contract formation? If so, when should a defendant assert this defense?

Mental deficiency or incompetency is a defense to contract formation under Kentucky law. A defendant should assert this defense if they can prove that they suffered from unsoundness of mind at the time of contract formation (*Abell v. Bardstown Med. Invs., Ltd.*, 2011 WL 2471210, at *3 (W.D. Ky. June 20, 2011) (applying Kentucky law)).

The defendant must provide direct proof that, at the time of the transaction, the defendant did not and could not understand their acts (*Revlett v. Revlett*, 118 S.W.2d 150, 154 (Ky. Ct. App. 1938)). Under Kentucky law, a defendant had the requisite

mental capacity to contract if they could understand and appreciate the consequences of the transaction at the time the contract was entered into (*Connors v. Elbe*, 269 S.W.2d 716, 718 (Ky. 1954); *Abell*, 2011 WL 2471210, at *3).

9. Does your jurisdiction recognize mutual mistake as a defense to contract formation? If so, when should a defendant assert this defense?

Mutual mistake is a defense to contract formation under Kentucky law. This defense should be asserted if the defendant can show:

- The mistake was mutual, not unilateral.
- There is clear and convincing evidence of the mistake.
- The parties actually agreed to terms different from those expressed in the written instrument.

(*Harms v. Chase Home Fin., LLC*, 552 S.W.3d 516, 520 (Ky. Ct. App. 2018).) The mistake must be regarding a material fact affecting the agreement, and not a mistake of law (*Nichols v. Zurich Am. Ins. Co.*, 423 S.W.3d 698, 703 (Ky. 2014)).

However, if the defendant acted negligently in failing to ascertain the facts or obtain information that could have corrected the mistake, the defendant may be precluded from reformation of the contract based on mistake (*Journey Acquisition-II, L.P. v. EQT Prod. Co.*, 39 F. Supp. 3d 877, 904 (E.D. Ky. 2014) (applying Kentucky law)).

10. Does your jurisdiction have a statute of frauds that requires certain contracts to be in writing and signed by the defendant? If so:

- What types of contracts must be in writing?
- May the defendant assert the statute of frauds as a defense if the plaintiff fully performed its obligations under an oral contract?

Kentucky's [statute of frauds](#) requires that the following agreements be in writing and signed by the defendant:

- Any representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, made so that the other may obtain credit, money, or goods.

- Any promise to pay a debt contracted during infancy, or any ratification of a contract or promise made during infancy.
- Any promise by a personal representative to answer any liability of their decedent out of their own estate.
- Any promise to answer for the debt, default, or misdoing of another.
- Any agreement made in consideration of marriage, except mutual promises to marry.
- Any contract for the sale or lease of real estate for longer than one year.
- Any agreement that is not to be performed within one year from the making of the agreement.
- Any promise, agreement, or contract for any commission or compensation for the sale or lease of any real estate or for assisting another in the sale or lease of any real estate.
- Any promise, contract, agreement, undertaking, or commitment to loan money, to grant, extend, or renew credit, or make any financial accommodation to establish or assist a business enterprise or an existing business enterprise including, but not limited to, the purchase of realty or real property, except:
 - agreements that extend credit by means of a credit card or similar device; or
 - consumer credit transactions.

(KRS 371.010.)

Under Kentucky's [Uniform Commercial Code](#), a contract for the sale of goods for \$500 or more must be in writing and signed by the party against whom enforcement is sought or by their authorized agent or broker (KRS 355.2-201(1)).

Under common law, where parties enter into an oral contract that would be covered under the statute of frauds, completed performance by one party removes the agreement from the statute of frauds (*Sawyer v. Mills*, 295 S.W.3d 79, 86 (Ky. 2009)). Partial performance of a contract for the sale of real estate does not defeat the statute of frauds (*Rains v. Patrick*, 2008 WL 5836529, at *7 (Ky. Ct. App. Oct. 3, 2008)).

11. Does your jurisdiction recognize unclean hands as a defense to contract formation? If so, when should a defendant assert this defense?

Kentucky courts have not applied the doctrine of unclean hands to invalidate the formation of a contract. The doctrine applies as a general matter to bar an equitable recovery if the plaintiff engaged in fraudulent, illegal, or unconscionable conduct in

connection with the matter in litigation (*Boling v. Prospect Funding Holdings, LLC*, 324 F. Supp. 3d 887, 895-96 (W.D. Ky. 2018) (applying Kentucky law)).

12. Does your jurisdiction recognize unconscionability as a defense to contract formation? If so, when should a defendant assert this defense?

Unconscionability is a defense to contract formation under Kentucky law. A defendant should assert this defense if the contract is either procedurally or substantively unconscionable. (*Energy Home, Div. of S. Energy Homes, Inc. v. Peay*, 406 S.W.3d 828, 835 (Ky. 2013).)

Procedural unconscionability relates to the process by which an agreement is reached and the form of an agreement, including the use of fine print and convoluted or unclear language that may conceal or obscure a contract term (*Schnuerle v. Insight Commc'ns Co., L.P.*, 376 S.W.3d 561, 576 (Ky. 2012)). To determine whether a contract is procedurally unconscionable, courts examine:

- The bargaining power of the parties.
- The conspicuousness and comprehensibility of the language.
- The oppressiveness of the terms.
- The presence or absence of a meaningful choice.

(*Schnuerle*, 376 S.W.3d at 576.)

Substantive unconscionability refers to contractual terms that are unreasonably or grossly favorable to one side and to which the disfavored party does not assent (*Schnuerle*, 376 S.W.3d at 577). To determine whether a contract is substantively unconscionable, courts examine:

- The commercial reasonableness of the contract terms.
- The purpose and effect of the terms.
- The allocation of the risks between the parties.
- Similar public policy concerns.

(*Schnuerle*, 376 S.W.3d at 577.)

13. Does your jurisdiction recognize undue influence as a defense to contract formation? If so, when should a defendant assert this defense?

Undue influence is a defense to contract formation under Kentucky law. A defendant should assert this defense if the undue influence is strong enough to effectively:

- Destroy the free agency of the defendant.
- Constrain the defendant to do, against their will, something they would otherwise have refused to do.

(*Mays v. Porter*, 398 S.W.3d 454, 458-59 (Ky. Ct. App. 2013).)

14. Does your jurisdiction recognize unilateral mistake as a defense to contract formation? If so, when should a defendant assert this defense?

A unilateral mistake is a defense to contract formation under Kentucky law and permits a party to seek rescission of the contract. The defendant should assert this defense when seeking rescission of the contract, and they must show the following:

- The mistake is so grave that enforcement of the contract would be unconscionable.
- The mistake relates to a material element of the contract.
- The mistake was made even though the defendant acted with ordinary diligence.
- Rescinding the contract would not seriously prejudice the plaintiff.

(*Fields v. Cornett*, 70 S.W.2d 954, 957 (Ky. 1934); *Clayville v. Huff*, 2007 WL 3406911, at *3 (Ky. Ct. App. Nov. 16, 2007).)

A unilateral mistake is not grounds for reformation of a contract (*Nichols*, 423 S.W.3d at 705).

15. Does your jurisdiction recognize any additional defenses to contract formation? If so, when should a defendant assert the defense?

Kentucky does not recognize any additional defenses to contract formation.

Defenses to Contract Performance

16. Does your jurisdiction recognize accord and satisfaction as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Accord and satisfaction is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if they can prove:

- The defendant in good faith tendered an instrument to the plaintiff as full satisfaction of the claim.
- The amount of the claim was unliquidated or subject to a bona fide dispute.
- The plaintiff obtained payment of the instrument.

(*Estes v. McKinney*, 354 S.W.3d 144, 147 (Ky. Ct. App. 2011) (applying KRS 355.3-311(1), which codifies the common law doctrine under the Uniform Commercial Code); *Est. of Adams*, 547 S.W.3d at 552-53 (applying common law doctrine).)

For accord and satisfaction to apply, one of the following must be true:

- An offer in satisfaction of a claim is accompanied by an express condition that the acceptance is in full satisfaction of the claim and that the offeree takes the money subject to such condition.
- The circumstances must clearly indicate to the creditor that the above condition is present.

(*Liggons v. House & Assocs. Ins.*, 3 S.W.3d 363, 365 (Ky. Ct. App. 1999).)

17. Does your jurisdiction recognize ambiguity as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Ambiguity is a defense to a breach of contract claim under Kentucky law. A defendant may argue for a different interpretation of the contract than urged by the plaintiff if the contract is ambiguous. A defendant should assert ambiguity as a defense if there are multiple, reasonable interpretations of the contract language (*Ky. State Univ.*, 677 S.W.3d at 300).

Where a contract is ambiguous, a court may determine the parties' intent by considering extrinsic evidence involving:

- The circumstances surrounding execution of the contract.
- The subject matter of the contract.
- The objects to be accomplished.
- The conduct of the parties.

(*Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99, 105-06 (Ky. 2003); *Wagner v. Wagner*, 563 S.W.3d 99, 103 (Ky. Ct. App. 2018).)

18. Does your jurisdiction recognize anticipatory breach as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Anticipatory breach (also known as anticipatory repudiation) is a defense to a breach of contract claim under Kentucky law. A defendant should raise this defense if the plaintiff provided unequivocal words or conduct showing an intent to repudiate the contract (*Upton v. Ginn*, 231 S.W.3d 788, 792 (Ky. Ct. App. 2007)).

Under the Uniform Commercial Code, in order for a party to a contract to take action based on the alleged anticipatory repudiation of the contract by the other party, the other party's failure of performance must substantially impair the value of the contract to the party claiming the breach (*KRS 355.2-610*).

19. Does your jurisdiction recognize economic duress as a defense to contract performance? If so, when should a defendant assert this defense?

Although not clearly decided by Kentucky state court, economic duress may be a defense to a breach of contract claim (*Atmos Energy Corp.*, 2013 WL 285397, at *6).

To prove economic duress, a defendant must show something more than a difficult bargaining position or the pressure of financial circumstance, as the question is not whether one party drove a hard bargain, but rather whether there was overreaching (*PNC Bank, Nat'l Ass'n*, 2015 WL 4068380, at *19-20 (applying Kentucky law)). The court looks at the totality of

the circumstances, including the defendant's experience, background, and education, and the amount of time the defendant had to consider whether to sign the contract ([Williams, 2003 WL 22927708, at *5](#)).

20. Does your jurisdiction recognize equitable estoppel as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Equitable estoppel is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense when they can establish the following elements:

- Conduct by the plaintiff, including acts, language and silence, amounting to a misrepresentation or concealment of material facts.
- The plaintiff had knowledge, actual or constructive, of the real facts.
- The defendant had no knowledge of the truth as to the facts in question.
- The plaintiff acted with the intention or expectation that their conduct would be acted on by, or influence, the defendant.
- The defendant relied in good faith to their detriment on the plaintiff's conduct.

([Cabinet for Health & Fam. Servs. v. Batie, 645 S.W.3d 452, 469 \(Ky. Ct. App. 2022\)](#); [Benton v. Boyd & Boyd, PLLC, 387 S.W.3d 341, 344 \(Ky. Ct. App. 2012\)](#).)

21. Does your jurisdiction recognize failure of a condition precedent as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Failure of a condition precedent is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense when the contract is dependent on a future event or performance, such as an agreement requiring the consent or approval of a third person, and that event has not occurred. ([Hopkins, 866 S.W.2d at 441](#).)

The failure of a condition precedent to contract formation invalidates the entire agreement, while the failure of a condition precedent to performance excuses the performance obligation subject to that condition ([Mercury Dev. LLC v. Motel Sleepers, Inc., 2013 WL 5374184, at *5 \(E.D. Ky. Sept. 25, 2013\)](#)).

22. Does your jurisdiction recognize failure of consideration as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Failure of consideration is a defense to a breach of contract claim under Kentucky law (*Smith v. Bethlehem Sand & Gravel Co., LLC*, 342 S.W.3d 288, 293 (Ky. Ct. App. 2011); *O.P. Link Handle Co. v. Wright*, 429 S.W.2d 842, 845 (Ky. 1968)). A litigant should raise this defense if there is either:

- No benefit given to the party making the promise.
- No loss or detriment to the party to whom the promise is made.

(*Smith*, 342 S.W.3d at 293.)

23. Does your jurisdiction recognize frustration of purpose as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Kentucky courts have recognized frustration of purpose as a potential defense to a breach of contract claim, but the application of the defense is extremely limited. A defendant might raise this defense if supervening, unexpected circumstances nearly or completely destroy the purpose that both parties had in mind for the contract (*Frazier v. Collins*, 187 S.W.2d 816, 818 (Ky. 1945)). Courts applying Kentucky law have held:

- The frustration must be substantial, and it is not enough that the transaction has become less profitable for the affected party or even that the affected party will sustain a loss.
- The defense applies only when the frustration is not the defendant's fault.

(*W. & S. Life Ins. Co. v. Crown Am. Corp.*, 877 F. Supp. 1041, 1045 (E.D. Ky. 1993).)

24. Does your jurisdiction recognize breach of the implied covenant of good faith and fair dealing as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Under Kentucky law, breach of the implied covenant of good faith and fair dealing typically serves as a basis for a claim, but it could be argued that a violation of the implied covenant can serve as a defense to a breach of contract claim. In Kentucky, every contract contains an implied covenant of good faith and fair dealing (*Ranier v. Mount Sterling Nat'l Bank*, 812 S.W.2d 154, 156-57 (Ky. 1991); *Morris v. Tyson Chicken, Inc.*, 497 F. Supp. 3d 282, 288-89 (W.D. Ky. 2020)). The duty is violated when a party does not do everything, according to reason and justice, which is necessary to carry out the purpose for which the contract was made (*Ranier*, 812 S.W.2d at 156-57).

If a defendant can prove that the plaintiff breached the implied covenant of good faith and fair dealing prior to any alleged breach of contract or the implied covenant by the defendant, it is possible that the plaintiff's breach could bar recovery, as the party who breaches a contract first generally cannot claim a breach by the other party (see *Hall v. Rowe*, 439 S.W.3d 183, 186-87 (Ky. Ct. App. 2014)).

25. Does your jurisdiction recognize impossibility of performance as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Impossibility of performance is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if the defendant's performance under the contract became impossible due to:

- An unavoidable accident, such as an act of God.
- A governmental act which rendered the obligation unlawful, prohibited performance, or otherwise made it impossible for the defendant to perform.

(*Louisville & Jefferson Cnty. Metro. Sewer Dist. v. T+C Contracting, Inc.*, 570 S.W.3d 551, 569-70 (Ky. 2018); *Jackson Hosp. Corp. v. United Clinics of Ky., LLC*, 545 S.W.3d 327, 333 (Ky. Ct. App. 2018).)

This defense does not apply if the defendant agreed to accept or undertake the risk in the contract (*Louisville & Jefferson Cnty. Metro. Sewer Dist.*, 570 S.W.3d at 569-70).

26. Does your jurisdiction recognize novation as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Novation is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if:

- The parties had an existing contract.

- The parties intended to extinguish their obligations under the original contract.
- The parties intended to substitute a new contract for the old one.

(*Wells Fargo Fin. Ky., Inc. v. Thomer*, 315 S.W.3d 335, 339 (Ky. Ct. App. 2010); *G.D. Deal Holdings, Inc. v. Baker Energy, Inc.*, 501 F. Supp. 2d 914, 919-20 (W.D. Ky. 2007).)

27. Does your jurisdiction allow the parties to modify the terms of their written contract? If so, under what circumstances may a modification vary the terms of a written contract?

Kentucky law permits parties to modify a written contract with either oral or subsequent written instruments (*Ham Broad. Co., Inc. v. Cumulus Media, Inc.*, 2011 WL 13232371, at *3 (W.D. Ky. Oct. 17, 2011)).

A subsequent oral agreement may alter or modify a written agreement:

- Even if the contract states that no modification may be made except in writing.
- Only if the statute of frauds does not require the contract to be in writing.

(*Hyatt Corp. of Del. v. Young & Assocs., Inc.*, 2005 WL 3004744, at *3 (Ky. Ct. App. Nov. 10, 2005).) A defendant must present clear and convincing evidence for an oral contract to modify a written contract (*Kincaid v. Johnson, True & Guarnieri, LLP*, 538 S.W.3d 901, 915 (Ky. Ct. App. 2017)).

28. Does your jurisdiction recognize ratification as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Ratification is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if:

- The defendant performed an act that breached the contract, but the plaintiff continued to affirm the contract.
- The plaintiff had full knowledge of the facts and had a clear intent to affirm the contract despite the breach, such as acceptance of any benefits.

(*Hampton v. Suter*, 330 S.W.2d 402, 406-07 (Ky. 1959).)

29. Does your jurisdiction recognize unclean hands as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

In Kentucky, the doctrine of unclean hands generally bars equitable recovery if the plaintiff engaged in fraudulent, illegal, or unconscionable conduct in connection with the matter in litigation (*Boling*, 324 F. Supp. 3d at 895-96). Although not clearly addressed by Kentucky state court decisions, unclean hands does not appear to be a defense to a breach of contract claim for damages (see *Dixie Fuel Co., LLC v. Straight Creek, LLC*, 2010 WL 11526870, at *8 (E.D. Ky. Aug. 30, 2010) (holding that the unclean hands doctrine, which is based on equity, had no bearing on the plaintiff's claim for damages due the defendant's breach of contract)). The doctrine may potentially apply to bar equitable relief (see *Boling*, 324 F. Supp. 3d at 895-96).

30. Does your jurisdiction recognize waiver as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Waiver is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if the plaintiff:

- Voluntarily and intentionally surrendered or relinquished a known right.
- Chose to forego an advantage which the plaintiff had the option to demand.

(*Conseco Fin. Servicing Corp. v. Wilder*, 47 S.W.3d 335, 344 (Ky. Ct. App. 2001).) Waiver may be either express or implied, although courts do not infer waiver lightly (*Conseco*, 47 S.W.3d at 344).

31. Does your jurisdiction recognize any additional defenses to a breach of contract claim? If so, when should a defendant assert the defenses?

The party who breaches a contract first generally cannot claim a breach by the other party (*Hall*, 439 S.W.3d at 186-87). A defendant should assert this defense if the defendant can show that the plaintiff breached the contract first or otherwise failed to perform the obligations imposed on the plaintiff by the contract.

Defenses Related to Damages

32. How, if at all, does your jurisdiction prevent a plaintiff's double recovery for a breach of contract claim?

Kentucky law prohibits double recovery for the same loss (*Metro Louisville/Jefferson Cnty. Gov't v. Abma*, 326 S.W.3d 1, 12-13 (Ky. Ct. App. 2009)). The measure of damages for a breach of contract action is limited to the amount which will put the injured party into the same position they would have been in had the contract been performed (*Hogan v. Long*, 922 S.W.2d 368, 371 (Ky. 1995)).

33. Under what circumstances may a liquidated damages clause be unenforceable in your jurisdiction?

In Kentucky, a [liquidated damages](#) provision is generally enforceable if both:

- Actual damages would be difficult to ascertain.
- The amount agreed to by the parties is not grossly disproportionate to any actual injury suffered.

(*Louisville & Jefferson Cnty. Metro. Sewer Dist.*, 570 S.W.3d at 573.) Courts do not enforce a liquidated damages provision that amounts to a penalty rather than a mutual effort to quantify damages for failure of performance (*Goetz v. Asset Acceptance, LLC*, 513 S.W.3d 342, 346 (Ky. Ct. App. 2016)).

34. What kinds of damages, if any, does your jurisdiction prohibit a plaintiff from recovering for a breach of contract claim?

Kentucky law prohibits a plaintiff from recovering the following for a breach of contract claim:

- Duplicative damages for the same loss (*Metro Louisville/Jefferson Cnty.*, 326 S.W.3d at 12-13).
- Uncertain, contingent, and speculative damages (*Ford Contracting, Inc. v. Ky. Transp. Cabinet*, 429 S.W.3d 397, 407 (Ky. Ct. App. 2014)).

- [Punitive damages](#) (*Nami Res. Co., L.L.C. v. Asher Land & Min., Ltd.*, 554 S.W.3d 323, 336 (Ky. 2018)).

35. What restrictions, if any, does your jurisdiction place on a plaintiff's ability to recover general compensatory damages for a breach of contract claim?

Kentucky courts generally restrict a plaintiff's ability to recover general [compensatory damages](#) if there is a valid liquidated damages clause in the contract (*G.D. Deal Holdings, Inc.*, 501 F. Supp. 2d at 923).

36. What restrictions, if any, does your jurisdiction place on a plaintiff's ability to recover special or consequential damages for a breach of contract claim?

Kentucky courts restrict a plaintiff's ability to recover special or consequential damages for a breach of contract claim if either:

- The defendant did not know or could not have reasonably known about the general or particular requirements which led to the consequential damages.
- The contract expressly excludes liability for special, indirect, or consequential damages.

(*Wahba v. Don Corlett Motors, Inc.*, 573 S.W.2d 357, 360 (Ky. Ct. App. 1978); *Marley Cooling Tower Co. v. Caldwell Energy & Env't, Inc.*, 280 F. Supp. 2d 651, 658 (W.D. Ky. 2003).)

37. Does the failure to mitigate damages preclude or limit recovery for breach of contract in your jurisdiction?

Under Kentucky law, the failure to mitigate damages may preclude or limit recovery for a breach of contract claim. The breaching party must show that the injured party failed to use reasonable efforts to mitigate their damages. However, the injured party need not use efforts that are unduly risky, expensive, burdensome, or humiliating. (*Jones v. Marquis Terminal, Inc.*, 454 S.W.3d 849, 852 (Ky. Ct. App. 2014).)

38. Does your jurisdiction recognize any additional damages defenses to a breach of contract claim? If so, when should a defendant assert the defense?

Kentucky does not recognize any additional damages defenses to a breach of contract claim.

Procedural Defenses

39. Does your jurisdiction recognize lack of legal capacity to sue or be sued as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Lack of legal capacity is a defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if they did not have the ability to understand and appreciate the consequences of the particular transaction (*Baker v. Shapero*, 203 S.W.3d 697, 700 (Ky. 2006)). Kentucky law recognizes there can be no meeting of the minds where either party to the agreement is mentally incapable of understanding the consequences of their acts (*Conners*, 269 S.W.2d at 718).

40. Does your jurisdiction recognize a plaintiff's lack of standing as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

A plaintiff's lack of standing is a defense to a breach of contract claim under Kentucky law. No stranger to a contract may sue for its breach unless the contract was made for their actual and direct benefit (*Phoenix Am. Adm'rs, LLC v. Lee*, 670 S.W.3d 832, 838-39 (Ky. 2023); *Presnell Constr. Managers, Inc. v. EH Constr., LLC*, 134 S.W.3d 575, 579-80 (Ky. 2004)).

A defendant should raise this defense if the plaintiff is neither a party to the contract nor a direct beneficiary of the contract.

41. Does your jurisdiction recognize laches as a defense to a breach of contract claim? If so, when should a defendant assert this defense?

Laches is a potential defense to a breach of contract claim under Kentucky law. A defendant should assert this defense if they can show:

- The plaintiff created an unreasonable delay in asserting their rights.
- The delay resulted in prejudice or an injury to the defendant.

(*Satterfield v. Satterfield*, 608 S.W.3d 171, 174-75 (Ky. Ct. App. 2020); *Owensboro Grain Co., LLC v. AUI Contracting, LLC*, 2008 WL 5381914, at *6 (W.D. Ky. Dec. 18, 2008).) Laches arguably may be limited to claims brought in equity (see *Gover's Adm'r v. Dunagan*, 184 S.W.2d 225, 226-27 (Ky. 1944); *Bank Josephine v. McGuire*, 2005 WL 856896, at *1-2 (Ky. Ct. App. Apr. 15, 2005)).

42. What is the statute of limitations for a breach of contract action in your jurisdiction?

In Kentucky, the [statute of limitations](#) for a breach of contract action is:

- Five years for an oral contract ([KRS 413.120\(1\)](#)).
- Ten years for a written contract executed after July 15, 2014 ([KRS 413.160](#)).
- 15 years for a written contract executed before July 15, 2014 ([KRS 413.090\(2\)](#)).
- Four years for a contract for the sale of goods under the Uniform Commercial Code ([KRS 355.2-725](#)).

43. Does your jurisdiction recognize any additional procedural defenses to a breach of contract claim? If so, when should a defendant assert the defense?

Kentucky does not recognize any additional major procedural defenses to a breach of contract claim.

Equitable Defenses

44. What defenses based in equity, if any, can a defendant assert in a breach of contract action in your jurisdiction?

Under Kentucky law, a defendant may assert defenses based in equity, including:

- Equitable estoppel (see [Question 20](#)).
- Laches (see [Question 41](#)).
- Mutual mistake (see [Question 9](#)).
- Unclean hands, potentially (see [Question 11](#) and [29](#)).
- Unilateral mistake (see [Question 14](#)).
- Waiver (see [Question 30](#)).