

I have a legal controversy or disagreement that I want resolved but there is no pending court case, how do I resolve it?

12 May 2015

Answer: File for a declaratory action under chapter 231A section 1 of the Massachusetts General Laws.

Many people face the situation of having a legal conflict or disagreement and want it resolved, but if there is no pending civil action, they are left with uncertainty. They are unaware of how to resolve it, now, and before possible damages are felt. Well, Massachusetts law provides an avenue for you to obtain an answer that is legally binding. Mass. Gen. Laws c. 231 § 1 states in pertinent part:

The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such . . .

This is not to be used by curiosity seekers. As the statute states, there has to be an actual legal controversy and that actual legal controversy must be plead in the complaint. There is no need to ask for damages, and many times there has been no damages yet. A declaratory action simply declares the “right, duty, status and other legal relations” and there is no need to seek damages or other relief in addition, which is usually required in the law.

For example, if you have a contract with someone and a disagreement arises about what the obligations of the parties are, even if there has been no breach of the contract yet, you can get a declaratory judgment from a court that is binding and settles the legal question. This is especially helpful when the event that would cause the breach has not occurred yet and you want to avoid the other person breaching (and you are dealing with a person that you believe would perform if they believed they were obligated to). You can get the court to rule that you are correct about what their or your obligations are before those obligations are performed. You see, normally, under contract law, a claim for breach of contract does not arise until the breach occurs and you would have to wait to go to court until that time. But the declaratory action statute allows you to obtain a legal ruling before a breach occurs.

If you are facing a legal controversy or want it resolved soon to avoid uncertainty or for other reasons, consider seeking a declaratory action. Feel free to contact this office to see if a declaratory action is the right fit for your situation.

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