

IMPLIED CONTRACTS

When people think of a contract, the first thing that usually comes to mind is a written contract, whereby the contracting parties have put into writing what each of them is promising to the other. For example, If you want to have your trees cut, and ask the tree trimmer to do the job, the tree trimmer may provide you with a written contract, which sets forth specifically what he agrees to do, as well as how much money you agree to pay to him for doing it.

A second, very common contract is an oral contract, where the contracting parties orally agree what they are promising to do. So, if you ask the tree trimmer to trim your trees, and he says okay, he will trim them next Saturday for \$500, and you then agree to pay him that amount, a valid oral contract has been created. Of course, while a written contract is preferable to an oral contract, to avoid any misunderstanding regarding the agreed-upon terms, an oral contract is no less enforceable than one in writing, so long as its terms can be proven. The old adage that “an oral contract is worth the paper that it is written on,” is therefore not always true.

A third type of contract that most people may not think of is an implied contract. An implied contract is an agreement between the contracting parties that is neither in writing nor oral. The enforceability of implied contracts is based upon equitable principles of fairness, based upon the particular circumstances or conduct of the parties. For example, if every April you ask the tree trimmer to trim your trees, and for the past several years he has done so in exchange for a \$500 payment, and then this April, rather than asking you, he just goes ahead and does the work, while you silently watch him do it, an implied contract exists, and even though you neither expressly, nor orally agreed to pay for the tree trimming, you are still obligated to do so.

The implied contract described above is known as one that is “implied –in-fact.” If the existence of such a contract is litigated, the Courts will closely examine the conduct of the parties to determine if each of them intended to enter into a contract, and in fact acted as if the contract existed. Another type of an implied contract is one that is “implied-in-law.” An implied-in-law contract can exist even if the parties did not intend to enter into an agreement. Going back to the tree trimmer example, let’s say that there is a big windstorm and your tree falls into the street partially blocking traffic. Your tree trimmer comes to your house, and without talking to you proceeds to remove the tree. If you then refuse to pay the tree trimmer because you did not specifically request his services, resulting in a lawsuit, the Court will find that an implied-in-law contract exists, and will order you to pay reasonable compensation.

Even within an express contract, whether written or oral, certain terms that are not expressly set forth will be implied by law. An example of such a term is the “covenant of good faith and fair dealing,” which legally obligates the contracting parties to act in good faith, so as to not impair the benefits that the other party has in the contract. Both implied contracts and implied contractual terms are every bit as enforceable as written and oral contracts.