

3030 MODIFICATION BY MUTUAL ASSENT

One party to an existing contract cannot alter its provisions without the consent of the other party. In order that any new provisions may become part of an existing contract, it is necessary that there be a meeting of the minds of the parties on all essential terms and conditions of the new provisions. The parties must agree that the new provisions are to be made part of the existing contract. The usual procedure in modifying a contract is for one party to propose a modification and for the other party to assent to the proposal.

A modification of a contract may be written, oral, or partially written and partially oral. Regardless of whether a prior contract is oral or written, it may be modified orally.

To constitute a modification, the language used and the conduct of the parties must show that there has been a meeting of the minds of the parties on all terms of the contract modification.

[No new consideration is required to support modification of a contract which has not been fully performed.]

COMMENT

This instruction and comment were approved by the Committee in 1975. Editorial changes were made in 1993 to address gender references in the instruction. No substantive changes were made to the instruction.

Consent necessary: Meyers v. Wells, 252 Wis. 352, 31 N.W.2d 512 (1948); Weil v. Biltmore Grande Realty Corp., 251 Wis. 13, 27 N.W.2d 713 (1947).

Meeting of the minds: 17A C.J.S. Contracts § 375; 17 Am. Jur. 2d Contracts § 465.

Oral modification: Gutknecht v. C. A. Lawton Co., 231 Wis. 413, 285 N.W. 411 (1939); ABC Outdoor Advertising, Inc. v. Dolhun's Marine, Inc., 38 Wis.2d 457, 157 N.W.2d 680 (1967); Wis. Stat. § 402.209(3).

New consideration unnecessary: Everlite Mfg. Co. v. Grand Valley Machine & Tool Co., 44 Wis.2d 404, 171 N.W.2d 188 (1969); Wis. Stat. § 402.209(1).

If the original contract was required by the statute of frauds to be in writing, it cannot be modified orally; this termination is made by the judge, and in such case, paragraph 2 would not be given.