

## **CHAPTER 9-08 UNLAWFUL AND VOIDABLE CONTRACTS**

### **9-08-01. Provisions that are unlawful.**

Any provision of a contract is unlawful if it is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or
3. Otherwise contrary to good morals.

### **9-08-02. Contracts against the policy of the law.**

All contracts which have for their object, directly or indirectly, the exempting of anyone from responsibility for that person's own fraud or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

#### **9-08-02.1. Contracts against liability for errors or omissions - Void.**

Any provision in a construction contract which would make the contractor liable for the errors or omissions of the owner or the owner's agents in the plans and specifications of such contract is against public policy and void.

### **9-08-03. Penalties and penal clauses void.**

Penalties imposed by contract for any nonperformance thereof are void.

### **9-08-04. Fixing damages for breach void - Exception.**

Every contract by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation is determined in anticipation thereof is to that extent void, except that the parties may agree therein upon an amount presumed to be the damage sustained by a breach in cases in which it would be impracticable or extremely difficult to fix the actual damage.

### **9-08-05. Restricting enforcement of rights void.**

Every stipulation or condition in a contract by which any party thereto is restricted from enforcing that party's rights under the contract by the usual legal proceedings in the ordinary tribunals or which limits the time within which that party thus may enforce that party's rights is void, except as otherwise specifically permitted by the laws of this state.

### **9-08-06. In restraint of business void - Exceptions.**

A contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void, except:

1. A person that sells the goodwill of a business and the person's partners, members, or shareholders may agree with the buyer to refrain from carrying on a similar business within a reasonable geographic area and for a reasonable length of time, if the buyer or any person deriving title to the goodwill from the buyer carries on a like business in that area.
2. Partners, members, or shareholders, upon or in anticipation of a dissolution of a partnership, limited liability company, or corporation; upon or in anticipation of a dissociation of a partner or member; or as part of an agreement addressing the dissociation or sale of a partner, member, or shareholder's ownership interest, may agree that all or any number of them will not carry on a similar business within a reasonable geographic area where the partnership, limited liability company, or corporation business has been transacted, or within a specified part of the area.

### **9-08-07. In restraint of marriage void.**

Every contract in restraint of the marriage of any person, other than a minor, is void.

**9-08-08. Settlement of damages for personal injuries voidable.**

Every settlement or adjustment of any claim for relief for damages on account of any personal injuries received, whether death ensues or not to the person injured, and every contract of retainer or employment to prosecute such an action, is voidable if made within thirty days after the injury or if made while the person so injured is under disability from the effect of the injury so received and within six months after the date of the injury.

**9-08-09. Rescission of contract for damages for personal injuries.**

Any person sustaining personal injuries, or in case of the person's death, the person's personal representative, may elect at any time within six months after the date of such injury to avoid any settlement, adjustment, or contract made in connection therewith within the time mentioned in section 9-08-08, by a notice in writing to that effect. The bringing of an action to recover damages for such injuries avoids any such settlement or adjustment. Whenever an action is commenced within the period of time herein limited to recover such damages, the amount received by the injured person, or the injured person's representative, in case of the injured person's death, in any such settlement or adjustment is not a bar to the prosecution of the action but may be set up as an offset or counterclaim to the amount of damages recoverable, if any, or applied toward payment of any judgment recovered in any such action if such amount so received by the injured person or the injured person's representative has not been pleaded specifically as an offset or counterclaim.