



## Ohio Administrative Code

### Rule 109-3-03 Remedies in the event of a breach of contract.

Effective: January 19, 2017

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(A) In the event of a breach of a contract entered into pursuant to section 9.231 of the Revised Code, a governmental entity shall have remedies including but not limited to the following:

(1) A governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient under division (A) of section 9.236 of the Revised Code. In such an action, any person with which the recipient has contracted for the performance of the recipients material obligations to a group of beneficiaries under the recipients contract with the governmental entity may be made a party defendant if the person is unable to demonstrate to the satisfaction of the governmental entity that the person has materially complied with the terms of the contract with the recipient. In such a case, the person may be made a party defendant and the governmental entity may obtain a judgment against the person in accordance with division (B)(2) of section 9.236 of the Revised Code.

(2) If a governmental entity obtains a judgment against a recipient in a civil action brought under division (B)(1) of section 9.236 of the Revised Code and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of the following:

(a) The unsatisfied amount of the judgment;

(b) The total amount received by the person from the recipient minus the total amount spent by the person on direct costs for services actually performed and retained by the person as allocable non direct costs, associated with those direct costs, as those terms are defined in section 9.231 of the Revised Code.

(3) If a governmental entity, pursuant to section 9.236 of the Revised Code, obtains a judgment against a recipient or against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, that judgment debtor shall be precluded from



contracting with a governmental entity to the extent provided in divisions (A) and (B) of section 9.24 of the Revised Code for a debtor against whom a finding for recovery has been issued.

(4) In addition to other remedies provided in divisions (A) to (C) of section 9.236 of the Revised Code and paragraph (A)(1) to (A)(3) of this rule, a governmental entity may void a contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity to the extent that the other person has not yet performed its obligations under the contract or cannot demonstrate that the money it received was expended on direct costs or retained as allocable non direct costs.

(5) If a recipient is liable to repay money to a governmental entity under section 9.236 of the Revised Code and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to other remedies provided in divisions (A) to (C) of section 9.236 of the Revised Code, and after the governmental entity has obtained a judgment against any necessary third party, the governmental agency may void any of the following contracts:

(a) A contract made not more than one hundred eighty days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if either of the following applies:

(i) The recipient has paid substantial value for the property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person shall be liable to the governmental entity for the full amount the recipient paid for the property. Otherwise, the person shall be liable to the governmental entity only for the market value of the property.

(ii) The person with whom the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and the money was not expended on direct costs or retained as allocable non direct costs. In such a case, the governmental entity may void the contract to the extent the money was not expended on direct costs or retained as allocable non direct costs, and the person shall be liable to the governmental entity for that amount.

(b) A contract made not more than one hundred eighty days before the judgment against the recipient



became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, if the employee has direct knowledge of the use of the money that the recipient obtained pursuant to the contract with the governmental entity and either division (E)(1)(a) or (E)(1)(b) of section 9.236 of the Revised Code applies;

(c) A contract is entered into between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person to the extent that the other person has not yet performed its obligations under the contract;

(d) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.