

# Legal Scope

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## Contractor's Right to Cure

A common dispute on construction projects is whether the contractor has a right to cure its own defective work. Sometimes, the owner is steadfast in its desire to terminate the contract and accordingly refuses to allow the contractor an opportunity to correct the defective work. But is there an absolute right for the contractor to cure the work, and must the owner give a reasonable opportunity or notice for curative work before terminating the contract?

The answer: It depends.

A trial judge in the Chester County Court of Common Pleas held that the property owner has no obligation to allow a contractor to cure defective work. *Wolstenholme v. Amen*, 2010 WL 4738285 (C.P. Chester Co. 2010) (citing *Church v. Tentarelli*, 953 A.2d 804 (Pa. Super. Ct. 2008)). It has also been held that if a party materially breaches the contract, then the non-breaching party may immediately and completely terminate the contract without following notice requirements. *LJL Transportation, Inc. v. Pilot Air Freight Corporation*, 962 A.2d 639 (Pa. 2009). Thus, in event of a material breach, the owner would be justified to immediately terminate the contract and refuse

any attempt of curative work.

But note that other authorities have recognized an implied right of the contractor to repair and cure defective work. 17B C.J.S. Contracts 811. Additionally, most contracts contain language addressing the potential right to cure defective work. Courts have held that under Pennsylvania law, when a contract provides for a right to cure defects, the owner must allow the contractor a reasonable time for curing the defective work. This does not allow for an unlimited number of attempts, and the owner may still terminate the contract if a material breach has occurred. *Barrack v. Kolea*, 651 A.2d 149 (Pa. Super. Ct. 1994); *Milton Regional Sewer Authority v. Travelers Casualty & Surety Company*, 648 Fed. Appx. 215 (3d Cir. 2016) (not reported). But absent a material breach, and absent an unreasonable amount of time or attempts, the owner would be bound by the terms in the contract pertaining to curative work. Under Maryland law, the owner is similarly bound by the terms of the contract, requiring an opportunity to cure. *U.K. Const. & Management, LLC v. Gore*, 199 Md. App. 81 (Md. Ct. Sp. Ap. 2011); Maryland Construction Law Deskbook, Chapter 8: Contract Terminations.

It is also worth noting that some jurisdictions have statutes governing these types of issues, called, "Right to Cure" statutes. Pennsylvania and Maryland do not have any such statutes.

Thus, depending on the facts, it is possible that the contractor has an absolute right to attempt curative work. On the other hand, depending on the facts, it is possible that the owner has the right to immediately terminate the contract and refuse any further curative attempts. Adjudication of such an issue would be decided by the trier of fact, whether that be a judge, jury, or alternative dispute resolution.

Disputes of this nature can be highly unpredictable; therefore, it is generally considered risky to terminate a contract (from either perspective of contractor or owner). When a dispute arises, it is best to document all facts and evidence in an organized fashion and immediately seek advice from legal counsel, especially before terminating the contract.

## The Numbers:

**- 3.4%**

- Total *public* construction is **3.4% less (year to date)** in 2017 as compared to 2016.
- The largest percentage decrease is power projects (-34.3%). Highway and Street and Sewage and Waste projects also have had a decrease in spending in 2017.
- Private construction has increased 6.6%.

Source(s): U.S. Census Bureau, *Monthly Construction Spending*, October 2017 (Dec. 1, 2017).



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