

Built-In Contract Remedies: Avoiding the Unenforceable Penalty

Under California law, a provision of a contract found to impose a penalty is unenforceable as a forfeiture and contrary to public policy, explains **Giselle Roohparvar** of Miller Starr Regalia.

“The characteristic feature of a penalty is the lack of proportional relation between the forfeiture compelled and the damages or harm that might actually flow from the failure to perform under a contract,” she writes in the article posted by **JD Supra Business Advisor**. “Whether a contractual provision is an unenforceable penalty is a question of law subject to judicial determination. When parties are not careful, they risk having a bargained-for condition in their contract struck down as an unenforceable penalty.”

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