

Getting Around the Statute of Frauds

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Scenario: Two parties enter into an oral agreement to transfer real estate. One of the parties performs, pursuant to the oral agreement, and the other does not. The performing party sues the non-performing party under a breach of contract theory and the non-performing party asserts the statute of frauds as a defense. Does the performing party have a counterargument to this defense?

This article is intended only as a starting point with respect to responding to the statute of frauds as a defense, and is by no means an exhaustive list of all possible counterarguments.

Generally speaking, the statute of frauds is a basic contract principle, requiring an agreement to be in writing and signed by the party to be charged if the agreement cannot be performed by the parties within one year. Florida's statute of frauds is set forth in section 725.01 of the Florida Statutes.

However, more often than not, the parties to an agreement do not specify a fixed period of time for the agreement to be performed. Accordingly, the Supreme Court of Florida has stated that if an agreement does not set forth a fixed period of time for it to be performed and the terms of the agreement do not provide any indication other than complete performance by the parties within one year, then such an agreement is not deemed within the statute of frauds. *See, Yates v. Ball*, 181 So. 341, 344 (Fla. 1938). This means that such an agreement does not have to comply with the requirements of the statute of frauds.

On the other hand, if an agreement does not specify a fixed period of time for it to be performed, but it is clear from the circumstances that the parties intended the terms of the agreement to extend longer than one year, then such an agreement is within the statute of frauds even if performance within one year might be possible. *See, Yates*, 181 So. at 344. In this situation, the agreement must comply with the requirements of the statute of frauds. If the requirements are not satisfied, then the statute of frauds may be raised as a defense. Pursuant to section 725.01 of the Florida Statutes, a contract for the sale of lands is within the statute of frauds. Therefore, in our scenario, set forth above, the non-performing party may assert the statute of frauds as a defense since the agreement between the parties was not in writing and, therefore, not signed by the non-performing party.

However, despite the non-performing party's asserted defense, Florida law provides the performing party with possible counterarguments to the statute of frauds. According to the applicable case law, the statute of frauds cannot be used as a defense when an oral agreement has been fully performed by the other party. *See, W.B.D., Inc. v. Howard Johnson Co.*, 382 So.2d 1323, 1327 (Fla. 1st DCA 1980); *see also, Venditti-Siravo, Inc. v. City of Hollywood, Fla.*, 418 So.2d 1251, 1253 (Fla. 4th DCA 1982). Furthermore, for real estate transfer agreements, Florida law provides a part performance exception to the statute of frauds, when a party to the oral agreement has performed some or all of its duties under the agreement. *See, Elsberry v. Sexton*, 54 So. 592 (Fla. 1911). Thus, in our scenario, the performing party may be able to utilize this part performance exception as a counterargument to the statute of frauds defense.

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