

## Reversion to Judgment Amount if Settlement Agreement Breached?

Assume you have a judgment for \$100K and are negotiating a settlement with a debtor to pay on a schedule and to be paid off once \$50K is paid. You would like a clause that requires reversion to the judgment amount if the payment schedule is breached. A.) what is this clause be called? B.) anyone have sample language?

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In the event of a default by the Defendant regarding the payment of the Settlement Sum, including, but not limited to, the dishonorment of the check given by the Defendant to the Plaintiff, which default has not been cured within five (5) days following mailing of a default notice, the Defendant consents to the immediate issuance of a money Judgment in favor of the Plaintiff for the sum of Forty One Thousand Five Hundred Fifteen (\$41,515.72) Dollars and seventy-two cents (the full amount sued upon) less any payment made after the date hereof in accordance with the terms hereof, plus statutory interest in accordance with C.P.L.R. Â§ 5004 from the date of the breach of this Settlement Agreement, as well as, costs, disbursements, and legal fees related to the instant action and the settlement thereof. In such event, the Defendant agrees that no motions to amend, no motions to stay or reargue, no appeals, and no orders to show cause may be made by the Defendant or its attorneys, or anyone else acting on its behalf, with regard to the entry of said money judgment or any action related thereto.

Joi Aberle, New York

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In NY what you would really want is a confession of judgment for 100k until the full amount is paid off.

Nick Bowers, New York

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The judgment is already in place and thus no confession is needed. And thinking about it more, maybe it could be an agreement setting forth that satisfaction will be issued provided the payment schedule is met.

Craig McLaughlin

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It is an agreement to accept X in satisfaction of the judgment. Be sure to have something to show that there is consideration being given for the agreement as the debt is already due and owing agreement to pay what is owed may not be consideration for the agreement. This language depends on what side of the agreement you are on. If the debtor has counsel, I'd have them draft first since the agreement is to benefit debtor.

When I do this as part of the judgment, I set forth that the amount owed is 100%, but if paid as X, then it will be satisfied. I think this drafting is cleaner.

Also, consider possible bankruptcy issues and the funds being pursued by a trustee later. Want to address that if it can be an issue.

Phil A. Taylor, Massachusetts

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I do this all the time with forbearance agreements and judgment payoffs. Phil has it right. You don't want to reduce the judgment on the front end. Rather, you set forth the payment schedule and, if the

judgment debtor does not default, the remainder is forgiven. The forgiveness is on the back end, never on the front end. It is much cleaner and much easier to enforce if there is a default. You may get a protest, but hold firm. It is the proper way to handle any reduced payoff.

Ken

Kenneth S. Yudell

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Why settle a \$100,000 judgment for \$50,000?

Steven Finell, California

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Simplest answer: Time value of money and costs of collection.

Regards,

Phil Taylor

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Ding ding. And a large load can make BK more attractive.

Craig McLaughlin, California

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