



BUSINESS OFFICE



Business and Corporate Information and Legal Issues for Decision Makers

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BUSINESS PARTNERSHIPS ; RIGHT TO REIMBURSEMENT

Query: When payments are made by one member of a business partnership, for the partnership, what reimbursement may one reasonably expect and claim from the other partners?

Answer: The right of **contribution** is founded on the principle that those who voluntarily assume a common burden shall bear it in equal proportions and one party shall not be subject to bear more than a just share to the advantage of his co-obligors. It is used by parties who have engaged in a common risk, liability, or burden. It is essential that the parties be on the same level or plane of liability and that one not be primarily liable and the other only secondarily liable.

By way of illustration, assume a four- member partnership. Two members each own twenty percent and the other two each own thirty percent. If one partner, owning twenty percent, pays a debt for the partnership, he or she is entitled to contribution equalling eighty percent from the other business partners.

Contribution is the equalization, in a proportionate sense, among a number of persons, of an obligation incurred by all. The term is well defined as a payment made by each person, or by any of several persons having a common interest or liability, of a share in the loss suffered or in the money necessarily paid, by one of the parties in behalf of the others. Contribution is the right of a person who has been compelled to pay what another should pay in part to require *partial (usually proportionate) reimbursement.*

Contribution may be distinguished from another commonly referred to means of seeking reimbursement, namely: **indemnity**. This legal

concept deals with the obligation or duty resting on one person to make good on any loss or damage another has incurred, while acting at his or her request or for his or her benefit. It is most often associated with the relationship of a principal indemnifying one or several sureties, as in insurance practice. Indemnity arises from the laws of *contract*, and is the right of a person or party who has been compelled to pay what another should pay in full to require *complete reimbursement*.

A third form of reimbursement sought is known as **subrogation**, which is the substitution of one person for another with reference to a lawful claim or right. Stated another way, it is the substitution of a person in the place of a creditor, to whose rights one succeeds in relation to the debt. That person is said to stand in the place of the creditor.

Subrogation is an *equitable doctrine* and, unlike indemnification, is often used when no contract had been made providing for reimbursement. ***

There are two great rules in life, the one general and the other particular. The first is that every one can in the end get what he wants if he only tries. This is the general rule. The particular rule is that every individual is more or less of an exception to the general rule.

Samuel Butler

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