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### THE IMPLIED DUTY OF GOOD FAITH DEALING

In every contract there is an implied duty of good faith and fair dealing imposed on the parties to the contract. *Cavell v. Hughes*, 29 Wn. App. 536 (1981). This duty obligates the parties to cooperate with one another so that each party may obtain the full benefit of performance. A party for whose benefit or protection a contingency is inserted imposes upon such party an affirmative obligation to make a good faith effort and to exercise reasonable diligence to satisfy the contingency. *Highlands Plaza v. Viking Inv. Corp.*, 2 Wn. App. 192 (1970). Even as to a contingency that requires one party's subjective satisfaction or approval, such party must exercise his or her judgment or discretion in good faith. *Omni Group v. Seattle-First Nat'l Bank*, 32 Wn. App. 22 (1982).

The implied duty to operate in good faith also requires one party to afford the other party an opportunity to address a concern or objection before reneging on a deal. *McEachren v. Sherwood & Roberts, Inc.*, 36 Wn. App. 576 (1984). The obligation of good faith has been held to require a seller to comply with an FHA work order, provided that the cost of repairs is not so extensive or unanticipated so as to cause the seller to substantially lose the benefit of the bargain. *Weaver v. Fairbanks*, 10 Wn. App. 688 (1974). However, the duty does not extend so far as to require a party to accept a *material* change in the terms of the contract, such as an extension of the closing date. *Betchard-Clayton, Inc. v. King*, 41 Wn. App. 37 (1985).

The modern trend is away from strict and literal interpretation and enforcement of technical terms, and toward enforcement of the intention of the parties and requiring performance of such intention in good faith.

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