

LEGAL CORNER  
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Chalkline

## WHAT'S REASONABLE ABOUT ATTORNEYS' FEES

If you every become involved in a dispute that ends up in litigation, you will learn first hand about attorney fees. Washington courts follow the so-called American rule, which requires each side to pay its own attorney fees. Courts in Washington have no authority to award attorney fees beyond a low, nominal amount according to statute.

However, the prevailing party in a lawsuit may be entitled to "reasonable" attorney fees in certain situations. Those certain situations are limited to specific state statutes, contract provisions, or well recognized equitable theories.

Because Washington courts vary as to whether a party must include a demand for attorney fees in any Complaint or Answer, the prudent litigant will include a demand for attorney fees. Some lawsuits include multiple claims, some of which attorney fees may be recoverable and others not.

An important issue for builders and developers is that you will not be awarded attorney fees unless you have a written contract, lease, or other instrument that specifically provides for attorney fees to the prevailing party in a lawsuit to enforce the instrument. Moreover, the instrument works both ways by Washington law: what's good for the goose is good for the gander.

Sometimes it is difficult to determine who the prevailing party is. The contract can define prevailing party, and the courts will generally acknowledge that the contract governs.

As to what constitutes "reasonable" attorney fees the courts have much discretion. Generally, the attorney fee award will be based on the number of hours worked multiplied by the reasonable hourly rate at the time the work was done. However, courts have been known to reduce attorney fee awards for various reasons,

for example the prevailing party angers the judge, the relative sophistication of the parties, and equitable concerns i.e., whatever the judge feels is fair.

The prudent builder will review company contracts to determine whether it includes an award of attorney fees if necessary to enforce the contract. Attorney fee clauses protect both

parties to a contract: the parties know that if the other side is unreasonable or refuses to perform, justice can include a reimbursement of attorney fees.