

An engineer and a real estate developer entered into a written professional-services contract. The contract stated that in return for \$10,000, the engineer was to "complete a feasibility study and a master plan, and use best efforts to obtain county approval of the [developer's planned] project."

The engineer submitted a completed feasibility study and master plan to the developer. Despite the engineer's best efforts, however, the county did not approve the project. Because of this outcome, the developer refused to pay the engineer for any of the engineer's services.

In a breach of contract action by the engineer against the developer, which party will likely prevail?

- A. The developer, because an express condition to the developer's performance obligation failed to occur. (3%)
- B. The developer, because the engineer breached the contract by failing to obtain the county's approval of the project. (1%)
- C. The engineer, because the developer breached the contract by not paying once the developer's obligation to pay the engineer became due. (91%)
- D. The engineer, because the failure of an express condition to the developer's obligation to pay the engineer was excused by governmental action. (4%)

Correct

91% Answered correctly

58 secs Time Spent

2023 Version

## Explanation:

### Contract conditions

<b>Condition precedent</b>	Uncertain future event that, if it occurs, creates party's obligation to perform (e.g., A agrees to hire B <i>if</i> B graduates college)
<b>Condition subsequent</b>	Uncertain future event that, if it occurs, excuses party's existing obligation to perform (e.g., B agrees to work for C <i>until</i> B graduates college)

A **breach of contract** occurs when a party **fails to perform** a contractual duty that has become due. Performance may be predicated upon a **condition precedent**, under which a contracting party's obligation to perform arises only upon the occurrence of an uncertain future event. A condition precedent can either be:

**express** – when the parties **explicitly agree** to the condition (eg, "on the condition that," "provided that") *or*

**implied** – when the parties fail to explicitly include the condition but it is deemed to be part of the contract due to the nature of the agreement or because it is required by law.\*

Here, the engineer was obligated to "complete a feasibility study and a master plan," which it successfully did. The engineer was also obligated to use its "best efforts" (which it did) to obtain county approval. Since county approval was not explicitly required, there was no express condition to obtain it (**Choices A & D**). And the engineer did not breach the contract by failing to do so (**Choice B**). Instead, the developer breached the contract by not paying the engineer when payment was due. Therefore, the engineer will prevail in its breach-of-contract action.

\*A contracting party must fully comply with an express condition before the other party's performance is due but need only substantially comply with an implied condition before the other party's performance is due.

### Educational objective:

A condition precedent is an express condition when the parties explicitly agree to the condition (eg, "on the condition that," "provided that"). A condition precedent is implied when the parties fail to explicitly include the condition but it is deemed to be part of the contract due to the nature of the agreement or a requirement of law.

### References

Restatement (Second) of Contracts § 226 (Am. Law Inst. 1981) (explaining how a condition can be created).

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