

## CHAPTER 538

## TENDER OF PAYMENT AND PERFORMANCE

Referred to in §669.14

Tender under offer to confess judgment, chapter 677

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**538.1 Demand required.**

No cause of action shall accrue upon a contract for labor or the payment or delivery of property other than money, where the time of performance is not fixed, until a demand of performance has been made upon the maker and refused, or a reasonable time for performance thereafter allowed.

[C51, §959; R60, §1806; C73, §2097; C97, §3056; C24, 27, 31, 35, 39, §9443; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.1]

**538.2 Tender of labor or property.**

When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the time of performance of the contract, or where any assignee of the contract resides when it becomes due, but if the property in such case is too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the time of making the contract, or if the assignee of a written contract has no known place of residence within the state at the time of performance, the maker may tender the property at the place where the maker resided at the time of making the contract.

[C51, §960, 961; R60, §1807, 1808; C73, §2098, 2099; C97, §3057; C24, 27, 31, 35, 39, §9444; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.2]

**538.3 Tender when contract assigned.**

When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, the maker shall make the tender at the residence of the holder if the holder resides in the state and no farther from the maker than the payee did at the making thereof.

[C51, §962; R60, §1809; C73, §2100; C97, §3058; C24, 27, 31, 35, 39, §9445; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.3]

**538.4 Effect of tender.**

A tender of the property, as above provided, discharges the maker from the contract, and the property becomes vested in the payee or the payee's assignee, and the payee or assignee may maintain an action therefor as in other cases. But if the property tendered be perishable, or requires feeding, or other care, and no person is found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and shall have a lien thereon for the person's reasonable expenses and trouble in so doing.

[C51, §963, 964; R60, §1810, 1811; C73, §2101, 2102; C97, §3059; C24, 27, 31, 35, 39, §9446; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.4]

**538.5 Tender when holder absent from state.**

1. When an instrument for the payment of money is due and the holder is absent from the state or the holder's identity or whereabouts are unknown and the instrument does not provide for a place of payment, the maker may tender payment at the last known residence or place of business of the last known holder, and if there be no person there authorized to

receive payment and give proper credit therefor, the maker shall be deemed to have tendered payment and interest shall cease on the date of deposit if:

a. The maker deposits the amount due with the clerk of the district court in the county where the maker resided at the time of the making of the instrument, if the maker was then a resident of the state of Iowa, or if the maker was a nonresident of the state of Iowa at the time of making, with the clerk of the district court of Polk county, and

b. (1) The maker files an affidavit with the clerk of the court that the identity or address of the holder is unknown and that the maker has made diligent inquiry to ascertain it, or

(2) The maker within three days gives notice of such deposit by ordinary mail to the holder, if the holder's identity and address are known.

2. Upon presentment of the instrument by the holder to the clerk, the clerk shall pay the holder of such instrument the funds in the clerk's hands. If such deposit is in full payment of the instrument the clerk shall deliver the instrument to the maker. If such deposit is a partial payment thereof the clerk shall endorse such payment thereon and return the instrument to the holder.

[C51, §958; R60, §1805; C73, §2103; C97, §3060; C24, 27, 31, 35, 39, §9447; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.5]

[2012 Acts, ch 1023, §157](#)

Referred to in [§602.8102\(75\)](#)

#### **538.6 Offer in writing — effect.**

An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in [section 538.7](#); but if the party to whom the tender is made desires an inspection of the instrument or property tendered, other than money, before making the party's determination, it shall be allowed the party on request.

[C51, §967; R60, §1816; C73, §2105; C97, §3061; C24, 27, 31, 35, 39, §9448; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.6]

#### **538.7 Nonacceptance of tender.**

When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if that party sees fit, retain it in possession; but if afterwards the party to whom the tender was made concludes to accept it and gives notice thereof to the other party, and the subject of the tender is not delivered to the accepting party within a reasonable time, the tender shall be of no effect.

[C51, §966; R60, §1815; C73, §2104; C97, §3062; C24, 27, 31, 35, 39, §9449; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.7]

Referred to in [§538.6](#)

#### **538.8 Receipt — objection.**

The person making a tender may demand a receipt in writing for the money or article tendered, as a condition precedent to the delivery thereof. The person to whom a tender is made must, at the time, make any objection which the person may have to the money, instrument, or property tendered, or the person will be deemed to have waived it.

[C51, §968, 969; R60, §1817, 1818; C73, §2106, 2107; C97, §3063; C24, 27, 31, 35, 39, §9450; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §538.8]