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SOCIETY

CONTRACTS

You should understand your legal rights and duties before you enter or sign a contract.

What is a contract?

A contract is an agreement between two or more persons, or between persons and companies, to do a particular thing. Usually, a seller agrees to deliver a product or perform a service, and you agree to pay money. A contract may be oral or in writing. Some contracts must be in writing. In order to protect yourself in case something goes wrong, and prevent any misunderstandings, it is best to put any agreements in writing. A written contract may look very formal and official, or it may be handwritten on a plain sheet of paper. A contract states the rights and duties of you and the seller/provider. A contract may be a bill of sale, a service agreement, or even an employment agreement.

What contracts must be in writing?

Some contracts must be in writing. This includes the following contracts:

- An agreement to buy a house or land.
- An agreement to rent a house or land for more than one year.
- An agreement to buy something from a merchant for \$500 or more.
- An agreement that can't be completed within one year.
- An agreement to pay someone else's debt.

What does signing a contract mean?

When you sign a contract, it means you read it, understood it, and agreed with it. This is usually true even if you have not or could not read it. This usually is true even if you were physically or mentally impaired. If you do not understand a contract, get individual legal advice before you sign. The legal

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effect of voluntarily and knowingly signing a contract is that the parties may be sued and found liable if they fail to abide by (breach) the contract.

What should be included in a contract?

- Who the parties are that are involved in the transaction.
- The services being performed or the product being purchased.
- The purchase price.
- How and when payment will be made.
- How long the contract will last.
- The reasons that you or the other person may terminate the contract, and how that may be done.
- Any specific terms that you and the other person may agree to, such as extra services, a return policy, warranty, etc.

Can a contract be changed after it is signed?

If you want to change a contract, you need to do that before you sign it. You should not rely on the seller's explanation. You may ask to add or remove terms to a contract. You and the seller should initial each change before anyone signs. After a contract has been signed, it cannot be changed unless you and the seller agree, and you each sign and date the changes.

What are some things to avoid having in a contract?

First, if the seller is unwilling to negotiate changes before signing, this may be a good warning that you should not do business with this seller.

Some sellers will put in their contracts language saying that, in case of a future dispute you can't have a jury trial, you have to sue far away, or can't even sue at all. If the seller will not change this language, then you should take your business elsewhere.

Other things the seller may insist on that are usually not to your advantage are mandatory arbitration and liquidated damages. Mandatory arbitration means that you have to try to settle any disputes through a decision maker other than a judge in court. Such a person usually favors the seller and not you. You should be especially careful to not agree to giving up your rights to sue in court.

Liquidated damages means the amount of money the seller would automatically get from you if they say you breached the contract. Sometimes the courts rule liquidated damages to be an illegal penalty. You should avoid signing a contract with liquidated damages because it may mean you're giving up a chance to dispute amounts owed.

What are some contract "do's" and "don'ts"?

1. Never sign a contract with blank spaces.
2. You should never depend on an oral promise made by the seller. Oral promises usually don't affect the written contract. You must insist all promises be written into the contract.

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3. If you are writing your own contract, use simple language that all parties can easily understand. If the contract is written by another party, make certain you understand exactly what has been written. This is your last chance to ask any questions, make any changes, or change your mind about agreeing to the contract.
4. If you don't understand the document, don't sign it.
5. Make certain that the document has a title clearly showing that it is a "CONTRACT."
6. Make certain the names of all the parties involved in the contract, and all of their contact information, are clearly listed and correctly spelled.
7. Make certain the date is clearly written and correct.
8. Each page should be initialed by all parties, and signed in blue or black ink so the signatures will copy clearly.
9. Always get a signed copy of the contract and save it. This is your only proof of the terms of your agreement.
10. Always get a signed and dated receipt for any payment, and save it. This may be your only proof that you have paid. Money orders are hard to trace. Cash payments cannot be proved without a receipt.

What is "buying on credit"?

You can pay for things two ways. You can pay in full. You also can finance over time. When you buy on time, the seller is giving you credit. This is the same as a loan. In return, you promise to pay the amount of the loan plus interest. If you finance over time, the total cost increases. This is because you also are paying for the cost of credit.

If you finance over time, be sure you read, understand, and agree with everything on all of the papers, before you sign anything. The papers should tell you the following things:

- What you are purchasing.
- The exact price you are paying.
- Any down payment or trade-in.
- The amount you are financing.
- The finance charge (the dollar amount the credit will cost you).
- The annual percentage rate (APR), which is the rate of interest stated as a yearly rate.
- The number and amount of payments.
- The date the payments are due.
- The total sales price (the sum of the monthly payments, plus any down payment or trade-in).

What happens when two or more buyers or debtors sign a contract?

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When two or more buyers or debtors sign a contract or loan, it generally results in "joint and several liability." This means the seller has many ways to collect the debt. The seller may collect the debt from one debtor entirely. The seller may collect the debt from the other debtor entirely. The seller may collect some of the debt from each debtor, as long as the seller collects no more than the entire debt.

If you pay more than your share of a debt, you may file a lawsuit for "contribution" from another person who is liable under the contract. You may be able to get a judgment against the other person for the amount you paid above and beyond your share.

What is "co-signing" a contract?

By co-signing a contract, you are agreeing to pay for the debt if the primary signer does not. Before you co-sign, the seller or lender must give you a separate written notice. It must say the following things:

"You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract that makes you liable for the debt."

Should I co-sign a contract?

When you are asked to co-sign, you are being asked to take a risk that a business will not take. The seller or lender would not ask you to co-sign if the other person signing the contract were a good risk. Despite the risk, there may be times when you want to co-sign. Before you co-sign you should think about the following things:

- Be sure you can afford to pay the entire amount owed. If you are asked to pay and cannot, you could be sued. Also, your credit rating could be hurt.
- Even if you are not asked to pay, your owing on the debt may keep you from getting other credit you need. Your credit report will include debts for which you've co-signed, and are generally treated by future creditors the same as if you were the only signer for the debt.
- Before you put up property as security for the debt, be sure you understand what could happen. If the debt is not paid, you could lose these items.

Can a contract be cancelled after it is signed?

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Once you sign a contract, it is valid and enforceable right away. Usually, there is no right to cancel. Generally, you cannot get out of, or “void,” a contract by refusing to accept a product or service, or by returning what you bought.

“Home solicitation” sales contracts:

In the following cases, unless you purchased the product or service with cash for less than \$25, or you requested that the product or service be provided immediately because of an emergency, there is a "three day right to cancel:"

- A telephone or internet sale.
- A home solicitation sale, or door-to-door sale. This means any sale or lease away from the seller's place of business.
- A home mortgage not used to buy the house.

In these cases, the seller must give you the following things:

- A contract with the date of sale, and the seller's name and address.
- A statement telling you about your right to cancel within 3 business days.
- A "notice of cancellation" form which you can use to cancel the contract, and may appear as follows:

Notice of Cancellation
..... (Date of Transaction)
To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a fax to
....., at
(name of seller) (address of seller's place of business)
not later than midnight of
(Date)
I hereby cancel this transaction
..... (Date)
..... (Buyer's signature)

If you want to cancel, you must sign, date, and return the notice of cancellation form. You must do this by midnight of the third business day. Saturday counts as a business day. You should send the notice of cancellation by certified mail, return receipt requested. You should copy the notice of cancellation, and

save it. You should save the certified mail receipt and the green return receipt. The seller then has 10 days to refund your money to you.

There may be other reasons that a contract may become void, but contract law is complicated so you should have your contract and situation reviewed by an attorney.

What is a breach of contract?

A breach of contract occurs when one party does not follow the terms of the contract, such as by failing to make payment on time, or failing to perform a service or deliver a product. There are two different types of breaches of contract, “material” and “immaterial.” The type of breach of contract is important when deciding what type of legal action to take against the other party or in determining how the breach can be remedied.

What happens if there is a breach of contract?

If a contract is breached, then the person who breached the contract is held responsible for making amends to the other party. The person who breached the contract may have to pay the other person a certain amount of money or perform a service. These requirements may be specifically written in the contract, or they may be determined by a court according to Virginia law. A court may also decide to “rescind” or cancel the contract as if it never happened, in which case neither party would have to make payment or perform the actions that were originally agreed to.

A breach of contract can be very expensive, as the judge can order the breaching party to pay not only the original amount or the value of the service agreed to in the contract, but may also include fees and punitive damages. This judgment will be listed on your credit report until it is paid off and cause you a great deal of difficulty in obtaining housing, credit, and sometimes even employment. It is always best to know exactly what you are agreeing to before signing a contract. If you have any doubts about the contract you should have an attorney review it. If you cannot afford an attorney you may receive a 30 minute consultation with an attorney by calling Virginia Lawyer Referral Service at 1-800-552-7977. The consultation will cost \$35 which must be paid using a debit or credit card when you call.

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Free Legal information by Web and Phone: www.vlas.org
1-866-LegalAid (534-5243)

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