

## Legal and Binding Contracts

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Contracts are agreements between persons or legal entities (e.g.- corporations), in which one party agrees to perform a service or provide goods in exchange for the payment of money or other goods or services. The formation of a contract is accomplished when there is an offer and acceptance between the contracting parties. This offer and acceptance is sometimes referred to as a "meeting of the minds." However, an agreement, even after an offer and acceptance, is not necessarily a legally binding contract. For instance, one cannot contract for an illegal or impossible act. In addition, in order to enter into a legally binding contract, one must have the capacity to enter into that contract (e.g.- with some exceptions, minors do not generally have the capacity to enter into a contract).

To be a binding contract, there must also be an offer and acceptance that involves the exchange of promises to act and/or provide goods, services or money. The act, promises, goods, services and/or money are called "consideration." In order to have a binding, enforceable contract, there must be consideration. In addition, an agreement to do something or pay something can also become binding if one party acts to his or her detriment upon the promise or agreement to perform by the other party. Similarly, in some cases, giving up the right to act in reliance on a promise may be sufficient consideration for a binding, legally enforceable contract.

A binding, legally enforceable contract can be in writing or oral (verbal). Depending on the nature of the transaction involved, certain types of contracts in Florida are required by law to be in writing in order to be enforceable. Generally other than those required by law to be in writing, verbal contracts are enforceable in Florida, especially in situations where one party has performed his or her obligations.

Written contracts are almost always preferable to verbal contracts because a written document can eliminate disputes about the terms and conditions of the agreement. However, even a written contract must lay out the agreement between the parties with enough specificity to make it enforceable. Under Florida law, certain types of contracts must also contain the parties' agreement on specific issues in order to be enforceable. A lawyer can help you determine what needs to be in your written contract to make it a legally binding and enforceable contract.

Contracts can also limit rights as to which court a lawsuit may be brought in, whether the parties to the contract are entitled to a jury, the payment of attorney's fees, and whether a process call mediation is required.

Written contracts often contain legal terms such as "liquidated damages," "special damages," "consequential damages," "court costs," or "default" that have meanings that are not generally known to non-lawyers. If one party to a legally binding contract breaches the agreement (e.g.- breaks his or her promise), many of these terms can have a significant effect on the remedies and damages available to the non-breaching party. A lawyer can also help you understand what these terms mean and the consequences of a breach. Contracts can also limit rights as to which court a lawsuit may be brought in, whether the parties to the contract are entitled to a jury, the payment of attorney's fees, and whether a process call mediation is required.

Contrary to what many people believe, there is no automatic right to cancel a legally binding contract once there has been a valid offer and acceptance. The right to cancel a contract is called the "right of rescission." Only certain types of contracts are required to come with a right of rescission. If a contract provides a right of rescission, in order to cancel such a contract, you must give written notice of cancellation within the time provided by the contract or by law and it must be in the form required. A lawyer will be able to tell you if a particular contract comes with such a right to cancel and, if so, how to cancel. Be very careful to make sure

you follow the specific instructions on how to cancel such contracts or your attempt to cancel could be considered invalid.

The breaking or "breach" of a contract can result in the breaching party being sued by the other party to enforce the contract. The non-breaching party may elect to compel the breaching party to specifically perform the act called for by the contract, or to pay money instead of performing the act. If a party wants to enforce a written contract, the party is required by law to file the lawsuit within usually five years of the date the written contract was made, or four years if it is a verbal contract. However, the deadline for filing suit may be as little as one year after the agreement was made. If you do not sue within the deadline, you will not be permitted to sue later. A lawyer can help you determine what that deadline is for enforcing the contract by filing a lawsuit. In addition, the time frame for filing suit can be extended based upon certain actions of the parties during the contract such as continued payment.

Some contracts state that any dispute related to the contract will be decided by "arbitration" instead of in a court of law. These "arbitration clauses" are usually valid and binding, and mean that if you have a dispute regarding the contract it will be decided by an "arbitrator" rather than by a judge or jury. An "arbitrator" is trained in determining the outcome of contractual disputes. An arbitrator receives a monetary fee from the complaining party prior to hearing the case, and then is also paid for his or her time as the case progresses. These fees may be more expensive than what it would cost to bring the same case to a court of law, and may even be more than the amount of money in dispute. You should not sign a contract with an "arbitration clause" unless you are willing to give up your right to have any dispute related to the contract decided by a judge or jury, and are willing and able to pay the arbitrator's fees.

If the suing party proves his or her case in a court of law or before an arbitrator, a judge may order that the winning party is entitled to recover money or other goods from the losing party. That order is called a "judgment." There are various ways to enforce such judgments. A lawyer can help you recover on a judgment if the losing side does not voluntarily pay the judgment. In addition to the damages awarded to the winning party, he or she should also generally be able to recover interest and court costs. Sometimes, even attorney's fees can be recovered.

Because of the complexity of contract law, and the consequences of entering into contracts, the Supreme Court restricts the drafting of contracts by non-lawyers. Most printed contracts are drafted by lawyers and are designed to protect their client's rights.

Each year, Florida residents lose money because they do not understand contracts when they enter into them or what to do when the other side breaches the agreement. In many of these cases, the advice of a lawyer would have prevented the loss of money. Only a qualified lawyer can advise you on whether an agreement is binding upon you and what rights or obligations you may have if there is a breach. Before you enter an agreement requiring the giving or payment of valuable consideration, it is best to have a qualified lawyer review the agreement, explain your obligations under it, and the consequence of a breach of the agreement. Never sign anything that you do not read and understand.

If you believe you need legal advice, call your attorney. If you do not have an attorney, call The Florida Bar Lawyer Referral Service at (800) 342-8011, or the local lawyer referral service or legal aid office listed in the yellow pages of your telephone book.

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