

# CONSUMER PAMPHLET

## Legal and Binding Contracts



A contract is an agreement between people or legal entities (such as 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 begins when there is an offer and acceptance. Several elements go into the formation of a contract, but the initial step is one party making an offer and the other party accepting that offer. Another important factor in forming a contract is usually referred to as a “meeting of the minds” or “mutuality of assent.” This is when the two parties negotiate the terms of the contract, which they intend to be legally binding, and then agree on those terms. Another essential element of a legally binding contract is the presence of “consideration.” An agreement is legally enforceable only when each of the parties to it gives something and gets something. The “consideration” may be an act, a promise to do or not do something including a promise to provide goods, services, or money. A mere promise to do or not do something without “just” consideration is usually referred to as a “gratuitous promise.” Gratuitous promises, generally speaking, are not enforceable in law.

However, an agreement, even after an offer, acceptance, and consideration, 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, you must have the capacity or legal ability to enter into that contract. For example, with some exceptions, minors do not have the capacity to enter into a contract.

In addition, an agreement to do something or pay something can become binding if you act to your detriment while relying on the other party's promise to perform. 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.

### Written or Oral?

A binding, legally enforceable contract can be in writing or oral.

Oral contracts are agreements that have been spoken, but not written. Depending on the nature of the transaction, certain types of contracts in Florida are required by law to be in writing in order to be enforceable. For example, contracts related to the sale of real estate or contracts that cannot be performed within one year must be in writing. Generally, other than those required by law to be in writing, oral contracts are enforceable in Florida, especially in situations where one party has performed the obligations of the contract.

Written contracts are almost always preferable to oral contracts because a written document helps eliminate disputes about the terms and conditions of the agreement. Also, oral contracts can be difficult to enforce in a court of law. To avoid disputes and litigation, the best practice is to get an agreement in writing. The written contract will help ensure that all parties understand their rights and obligations under the contract.

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 in a Florida court.

## Understand the Terms

Contracts can limit rights as to which court a lawsuit may be brought in, they can provide whether the parties to the contract are entitled to a jury, they can allocate the payment of attorney's fees, and they can provide whether an alternative dispute resolution forum, such as mediation or arbitration, is required.

Written contracts often contain legal terms such as "liquidated damages," "special damages," "consequential damages," "court costs" or "default," which have meanings that are not generally known to nonlawyers. If one party to a legally binding contract breaches the agreement (breaks the promise under the contract), many of these terms can have a significant effect on the remedies and damages available. A lawyer can help you understand what these terms mean and the consequences of a breach. If you receive a contract and you do not understand all the terms in it, be sure to consult with an attorney before signing any contract agreement.

## 'Cooling-Off' Period

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." Generally, only certain types of contracts are required to come with a right of rescission.

For example, with some exceptions, Florida law does allow a "cooling-off period" or three-day right to cancel a contract for certain services to be rendered on a continuing basis, or on contracts for the sale of goods or services sold during the course of a "home solicitation sale," which is a sale that takes place in your home or at a location that is not the main or permanent place of business for the seller, so long as the purchase price is more than \$25. You also may be entitled to cancel a contract for future services if you no longer can physically receive the services, or the services are no longer available as originally offered.

If you have any questions about whether you have a three-day right to cancel, contact a consumer agency, such as the Attorney General's Office, the Florida Department of Agriculture and Consumer Services or your local consumer agency.

If a contract provides a right of rescission, then 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 follow the specific instructions on how to cancel such contracts or your attempt to cancel could be considered invalid.

## Contract Disputes

The breaking or "breach" of a contract can result in one party's being sued by the other to enforce the contract. You may elect to compel the other party to fill the promise called for by the contract, or to pay money instead of providing the goods or service. If you want to enforce a written contract, you usually are required by law to file the lawsuit within a maximum period set by statute usually referred to as the "statute of limitations." Chapter 95, Florida Statutes, provides the statute of limitations period for all possible causes of actions under

Florida law (usually five years from the date a written contract was breached, four years for claims involving improvement of real property, and four years if it is an oral contract). However, the deadline for filing a lawsuit to enforce a contract may be as little as one year after the agreement was breached.

If you do not sue before 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.

## Arbitration

Some contracts state that any dispute will be decided by arbitration instead of by a judge or jury in a court of law. These “arbitration clauses” are usually valid and binding. Arbitrators are trained in determining the outcome of contractual disputes. Arbitrators receive a fee from the complaining party before hearing the case, and then also are paid for their 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 they 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 you file suit and prove your case in a court of law or before an arbitrator, a judge may order that you are entitled to recover money or goods from the other 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, you generally should be able to recover interest and court costs. Sometimes, even attorney’s fees can be recovered.

## Do You Need a Lawyer?

Because of the complexity of contract law, and the consequences of entering into contracts, the state Supreme Court restricts the drafting of contracts by nonlawyers, although a person may ordinarily draft a simple contract to which he or she is a party without being deemed to be practicing law. Most printed contracts are drafted by lawyers and are designed to protect the 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. Only a qualified lawyer can advise you on whether an agreement is binding 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, detail your obligations under it and explain the consequences of a breach of the agreement. Never sign anything that you are not able to 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, your local bar association’s lawyer referral service or your local legal aid services.

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