

Community Legal Aid

A non-profit law firm serving the legal needs of low-income individuals and families in central northeast Ohio



www.communitylegalaid.org

OSBA Law Facts Ohio's Credit Laws

Signing a credit purchase slip or other sales contract can have major legal consequences, creating rights and liabilities for you and others. Treat your signature carefully and with the importance it deserves. If you are ever in doubt about signing a document, see an attorney before signing.

What documents are needed for installment purchases?

Most of us have bought merchandise on a time payment or installment plan. When you buy an item such as a television set or car on the installment plan, you must sign certain papers before you can take the item. These papers may be one or a combination of legal documents: a retail installment sales contract, a security agreement, a conditional sales contract and/or a promissory note. A combination of these instruments may be found in the same document.

What does a retail sales contract involve?

In Ohio, all retail installment sales contracts or agreements for the purchase of consumer goods must be in writing. The seller must give the buyer a copy of this document either when it is signed or when the goods are delivered. There is usually a statement in the contract whereby the buyer acknowledges receipt of a copy of the signed contract. The receipt in the body of the contract that the buyer has signed is proof that the buyer has received a copy of the contract.

Certain details must appear in the written contract, including the price, down payment, cost of insurance (if any), finance charges, balance due under the contract and details of payments.

By law, a retail seller is allowed to collect certain finance charges. Many retail installment sales contracts provide for an additional charge or penalty against the buyer who is late in making a payment. There are restrictions about when this charge may be made and its amount. If charges are greater than the law allows, the excess charges may be unenforceable against the buyer. If you believe you are being overcharged, it would be wise to contact an attorney.

What is a security agreement?

You may have heard the term chattel mortgage, conditional sale or security agreement. No matter what they are called, these documents are designed to create for the seller or lender a security interest in the goods that you are purchasing or are putting up as collateral for your loan.

This security interest is designed to ensure that you will pay your debt. The seller or lender, by obtaining a security interest, will have important rights, including the right to repossess (take back) the goods, sometimes without advance notice or warning, if you should fall behind in your payments.

What is a promissory note?

A promissory note is a written promise to pay a sum of money to another person or a company. This note and security interest, if any, may then be sold to a finance company, a bank or an individual. The buyer of the note and the accompanying security agreement will generally acquire the same security interest in what you purchased as the original seller had before the note was sold. If there is a later legal action against you for non-payment of the note, you may be able to claim legal defenses based on the seller's breach of warranty, fraud or breach of contract. In a consumer transaction, these legal defenses are as good against the buyer of the note as against the original seller.

A promissory note usually provides that, when you fail to pay an installment within a certain period after it is due, the entire balance may become immediately due and payable. This is called an acceleration provision.

What if I can't make the payments?

If you default in making your payments, the seller or lender has the legal right to repossess the goods that serve as collateral for the debt. Having taken the goods back, the seller or lender may, after notifying you, re-sell the goods, and you may find yourself liable for the difference between the price for which they are sold and the amount you still owe. This is called a deficiency. The law gives you certain rights to redeem the collateral before the seller or lender sells the goods.

On the other hand, the seller or lender, after notifying you, may keep the goods as a full satisfaction of your obligation. If the goods are consumer goods (used primarily for personal, family or household purposes), and you have paid more than 75 percent of the purchase price, the seller or lender cannot repossess the goods, but can only sue you for money damages for breach of contract.

In any case, when goods you have purchased are repossessed, it would be wise to see your attorney, who can tell you what rights you have with respect to the goods or payments you have made.

If you fail to pay an installment, the seller or owner of the promissory note may get a court judgment against you for the balance owed rather than to repossess the article you purchased.

What about car insurance?

When automobiles are financed or sold on an installment plan, the seller or financing agency often requires you to insure against damage to the automobile so that the seller's or agency's secured interest in the vehicle is protected. Such insurance can be provided by an ordinary, full-coverage auto insurance policy.

If you fail to obtain or provide proof of insurance, the seller or financing agency may obtain property damage insurance on the vehicle to protect their interests. This is often called forced placed insurance, the cost of which is added to the amount you owe on the automobile. Forced placed insurance is generally very expensive.

Remember that Ohio law requires you to keep and provide proof of financial responsibility to satisfy your liability for personal injuries and property damage you cause to others. If you do not carry the required proof of financial responsibility, your driving privileges may be suspended.

The seller or financing agency may offer you credit life insurance and disability life insurance that would cover the payments on the vehicle in the event of your death, disability or unemployment. However, you should investigate such plans thoroughly to consider the cost and scope of the coverage.

Some people consider the purchase of "gap" insurance. If your vehicle is totaled, your insurance (or that of the person causing the accident) may pay you the value of the vehicle, which could be less than the amount owed to the lender. "Gap" insurance is designed to cover this shortfall between the value of the vehicle and any amount owed.

What should I know about credit cards?

Before you "charge it," you should understand the obligations you are assuming and carefully read all applications for charge accounts and credit cards, as well as all charge slips and notices, before signing or accepting them.

Many businesses or credit card companies will allow you to defer the payment of amounts owed for 30 days without interest, while others add interest immediately. If stated in the credit agreement, Ohio law allows for a creditor to charge you as much as 25 percent annual interest on the unpaid balance.

How can I check my credit rating?

The amount of "credit power," or your credit score, is based on many factors. These include

income, payment history, secured and unsecured debt and the amount of credit available to you. Generally, you may be able to qualify for a lower interest rate for various types of loans if your credit score is higher. The federal Fair Credit Reporting Act (FCRA) states that U.S. consumers are entitled to a free copy of their credit report each year. The nation's credit reporting agencies have jointly developed the following website that you can use to get your free credit report: www.annualcreditreport.com, or you can request your free credit report by calling 877-322-8228.

The FCRA, which is enforced by the Consumer Financial Protection Bureau, gives the consumer some rights against the use of wrong information in the files of credit bureaus. In part, the FCRA provides:

- You have the right to know the “nature and substance of all information.”
- You have the right to be told the source of almost all information if credit is denied.
- You have the right to be told the names of any firms that received your credit record during the previous six months (or two years if the report was furnished for employment purposes).
- You have the right to obtain the information free of charge from the credit agency if you have been denied credit, insurance or employment within 30 days of your inquiry. Otherwise, the reporting agency is permitted to charge a reasonable fee for making the disclosure.
- The credit bureau must investigate any information that you feel is incorrect. If the information proves incorrect, the agency must remove it from its files and, on your request, inform those who have received the information that it has been removed.
- After investigation, you can write a brief statement of your side of the story to put in the file. At your request, the agency must send your version of the dispute free of charge to anyone who has denied you credit within the past 30 days. If you ask, the agency also must send a copy of your version of the dispute to selected other businesses for a reasonable fee.
- You have the right to have a consumer report withheld from anyone who, under the law, does not have a legitimate business need for this information.

While the FCRA gives you certain rights, it also imposes some restrictions. It does not give you the right, when you visit the credit bureau, to receive a copy of or to physically handle your file, and it does not apply when you apply for commercial credit or business insurance.

What about bank charges?

Banks earn significant income from fees and charges. You may be charged an additional fee to use an ATM machine, particularly if it is not affiliated with your bank. Banks, as well as non-bank lenders, may also charge you an additional fee if you write a check or submit an online payment that is dishonored for insufficient funds, so use caution in keeping your checkbook balanced. Also, lenders may charge you a late payment fee if you do not pay the amount owed on time.

What other liability could I have?

It is possible to be subject to legal liability arising out of a transaction even though you have not signed anything or know of it. For example, one partner in a partnership may be held liable for acts or agreements of other partners, or a husband or wife may be responsible for a spouse's

charge accounts or installment purchases in certain situations, such as when both spouses' names are on the account. Also, in some situations, parents may be liable for their children's actions if property was damaged willfully or there is damage as a result of the use of a motor vehicle.

You also may be liable for a credit obligation if you have co-signed a credit agreement or guaranteed the payment of the debt of a friend or relative. Be sure you understand all the circumstances before you sign because your liability for the debt is the same as that of the maker (e.g., friend or relative) even though you have received no benefit.

You should also know that, when a lease is signed by more than one person, such as for a college apartment, each party is responsible for the full rent, not just his or her share (unless otherwise stipulated in the lease).

Student loans, whether signed by a parent or a student, cannot be discharged in bankruptcy, unless you can show that paying the loans will create "undue hardship," which is very difficult to prove. A test commonly used by courts allows for a student loan to be discharged only when: 1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living if forced to repay the loans; 2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the student loan repayment period; and 3) the debtor has made good-faith efforts to repay the loans. Student loans may also require the borrower to pay attorney fees and collection costs.

Check before you sign:

- Read every paper you are asked to sign, including the fine print.
- Don't sign any paper that has blank spaces on it. Every space should be filled in.
- Compare the total charges—cost of item plus credit charges, etc.—with the cash price.
- Don't rely on sales talk. Oral promises usually are not enforceable unless included in the contract.
- Don't sign if you can't understand the words. Ask questions!
- Take your time. Don't be in a hurry.

If in doubt, consult your attorney, who can do more good before you sign than after.

2/15/2012

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*This handout is meant to give you general information and not specific legal advice.
Prepared by Community Legal Aid Services, Inc. Info Updated February, 2012. CE-06-F038-CLAS*

Printed: August 10, 2020

<http://www.communitylegalaids.org/node/30/osba-law-facts-ohio's-credit-laws>

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