

CONTRACTS

Introduction

Although many contracts are filled with legal gibberish, there's no reason why this has to be true. For most contracts, legalese is not essential or even helpful. On the contrary, the agreements you'll want to put into a written contract are best expressed in simple, everyday English. All that is necessary for most contracts to be legally valid are the following two elements:

- all parties are in agreement (after an offer has been made by one party and accepted by the other), and
- something of value has been exchanged, such as cash, services or goods (or a promise to exchange such an item) for something else of value.

Written Contracts

Under New York law, all contracts with an underlying value of \$500 or more must be in writing, or they are not binding on the parties.¹ Further, consumers who agree by telephone to contracts with a total value of \$500 or more without a subsequent written contract are not protected by state law, which makes oral agreements for the sale of goods of \$500 or more unenforceable.²

Canceling a Contract

General Rules

Consumers often ask whether they can cancel a contract after signing. There is no general “cooling-off” law in New York. Consumers should be very wary of salespeople who tell them differently.

There are some consumer cancellation rights, however. Whether these rights are applicable depends on the facts and circumstances surrounding each contract. Under the Federal Trade Commission's **Cooling Off Rule**,³ a consumer has until midnight of the third business day after a contract was signed to cancel either of the following:

- door-to-door sales contracts for more than \$25, or
- a contract for more than \$25 made anywhere other than the seller's normal place of business--for instance, at a sales presentation at a hotel or restaurant, outdoor exhibit, computer show or trade show (other than public car auctions and craft fairs).

A federal law called the Truth in Lending Act⁴ lets a consumer cancel a home improvement loan, second mortgage or other loan where the consumer pledged his or her home as security

¹ N.Y. UCC § 5-701(a)(1).

² N.Y. UCC § 2-201.

³ 16 CFR Part 429 (Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations).

⁴ 15 USC § 1601 et seq.

(except for a first mortgage) until midnight of the third business day after the contract was signed.

If you order goods by mail, phone, computer or fax (other than photo development, magazine subscriptions, seeds or plants), the Federal Trade Commission's **Mail or Telephone Order Rule** requires that the seller ship to you within the time promised or, if no time was stated, within 30 days.

If the seller cannot ship within those times, the seller must send you a notice with a new shipping date and offer you the option of canceling your order and getting a refund, or accepting the new date. If you opt for the second deadline, but the seller can't meet it, you must be sent a notice requesting your signature to agree to yet a third date. If you don't return the notice, your order must be automatically canceled and your money refunded. The seller must issue the refund promptly--within seven days if you paid by check or money order, or within one billing cycle if you charged your purchase.

Specific New York Contract Cancellation Laws

However, there are a number of state laws that allow a consumer to cancel written contracts covering the purchase of certain goods or services within a few days of signing, including contracts for dance or martial arts lessons, health club memberships, dating services, weight loss programs, time share properties and hearing aids. Here is a complete list of the applicable New York laws:

- Home Food Service Plan Sales.⁵ The buyer has a right to cancel a home food service plan contract until midnight of the **third** business day after the day on which the buyer executed the contract or after the day on which the seller provided the buyer with a fully executed copy of the contract, whichever is later.
- Contracts with Charitable Organizations.⁶ Whenever a charitable organization contracts with a professional fund raiser, the charitable organization shall have the right to cancel the contract without cost, penalty, or liability for a period of **fifteen** days following the date on which said contract is filed with the attorney general.
- Prize award schemes.⁷ Consumer may cancel a sale made as a result of a prize award solicitation until midnight of the **third** business day after the day on which he signed a sales agreement.
- Personal Emergency Service Response Agreements.⁸ Consumer has **seven** days to cancel the contract.
- Sale of Urea-Formaldehyde Foam Insulation.⁹ Consumer has **three** days to cancel the contract.
- Social Referral (Dating) Services.¹⁰ Consumer has **three** days to cancel the contract.
- Credit Services Business Contracts with Consumers.¹¹ Consumer has **three** days to cancel the contract.

⁵ N.Y. Ag. & Markets Law § 190-a.

⁶ N.Y. Executive Law § 174-a.

⁷ N.Y. Gen. Bus. Law § 369-ee.

⁸ N.Y. Gen. Bus. Law § 391-l.

⁹ N.Y. Gen. Bus. Law § 391-i.

¹⁰ N.Y. Gen. Bus. Law § 394-c.

- Health Club Contracts.¹² Health club contracts may be cancelled within **three** business days after the date of receipt by the buyer of a copy of the written contract.
- Membership Campground Contracts.¹³ Such contracts may be cancelled within **three** business days after the date of receipt by the buyer of a copy of the written contract.
- Automobile Broker Business Contracts.¹⁴ Consumer has **three** days to cancel the contract.
- Home Improvement Contracts.¹⁵ Consumer has **three** days to cancel the contract.
- Door-to-Door Sales Contracts.¹⁶ Consumer has **three** days to cancel the contract.
- Telephone Sales Contracts.¹⁷ Consumer has **three** days to cancel the contract.
- Sale or Lease Contracts for Subdivided Lands.¹⁸ Consumer has **ten** days to cancel the contract.

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Retail Contract Refunds

A consumer does not have a general right to a cash refund after a purchase is made. A seller isn't required to offer refunds or exchanges, though many do. Under New York law,¹⁹ sellers with a cash refund policy must post the policy and give the refund within 20 days. If a seller offers both refunds and exchanges, you may decide which you'd prefer.

“No Cash Refund” Policies May Be Deceptive

Signs in many stores specify a “no cash refund” policy. This policy is at variance with a consumer’s warranty law rights, and is deceptive. For example, if a product is defective, the consumer may have the right to revoke acceptance and receive a full cash refund. Statements or signs that there are no cash refunds, without disclosing an exception for defective merchandise, are thus deceptive because they misrepresent the consumer’s legal rights. The same can be said for store refund policies that do not make exceptions where a sale involves misrepresentations about the goods, their performance, or other characteristics. Such misrepresentation is also a basis to seek a full cash refund, and policies that do not explicitly allow for this are deceptive.

Service Contracts

If you are buying a car or major appliance, you may be offered a service contract. To many consumers, buying a service contract is like buying “peace of mind” from repair hassles. Some consumers, however, may be paying for more protection than they need. A service contract,

¹¹ N.Y. Gen. Bus. Law § 458-f.

¹² N.Y. Gen. Bus. Law § 624.

¹³ N.Y. Gen. Bus. Law § 654.

¹⁴ N.Y. Gen. Bus. Law § 738.

¹⁵ N.Y. Gen. Bus. Law § 771.

¹⁶ N.Y. Pers. Prop. Law § 428.

¹⁷ N.Y. Pers. Prop. Law § 448.

¹⁸ N.Y. Real Prop. Law § 337-c.

¹⁹ N.Y. Gen. Bus. Law § 218-a.

like a warranty, provides repair and/or maintenance for a specific time period. Warranties are included in the price of the product; service contracts cost extra and are sold separately.

Make sure you know what your warranty covers before considering a service contract. A service contract may cover only certain parts of the product or specific repairs. Service contracts do not cover repairs resulting from misuse or failure to maintain the product properly.

Service contracts often have deductible amounts. Consider waiting until your warranty period expires to buy a service contract. Before you buy a service contract, consider the following:

What does the service contract offer? A service contract, like a warranty, provides repair and/or maintenance for a specific time period. Warranties, however, are included in the price of the product, while service contracts cost extra and are sold separately.

What is covered by the service contract? A service contract may cover only certain parts of the product or specific repairs. Read the contract carefully and, if it does not list something as specifically covered, assume that it is not. Service contracts do not cover repairs resulting from misuse or failure to maintain the product properly. Also, you may be obligated to take certain action, such as notifying the company of problems, to insure the service contract is not voided.

What will the service contract give you that the warranty will not? Before considering a service contract, make sure you know what your warranty coverage is. Carefully compare the coverage of your warranty to the coverage offered by the service contract to decide if the service contract is worth the additional expense. For more information about warranties, send for a free brochure from the Federal Trade Commission, by writing to:

Public Reference
Federal Trade Commission
Washington, D.C. 20580

Is the product likely to need repairs? You may not benefit from a service contract if the product is unlikely to need servicing or if the potential cost of repairs is very low.

What other costs will you have? You may have other expenses after you buy a service contract. Service contracts, like insurance policies, often have deductible amounts. Or, you may be charged each time the item is serviced. Some expenses are limited or excluded. For example, auto service contracts may not completely cover towing or rental car expenses. In addition, you may have to pay cancellation or transfer fees if you sell the covered product or wish to end the contract.

Where can you get service? If the service contract is offered by a local retailer or dealer, you may only be able to get local service. Consider the possibility that problems may develop while you are traveling or after you move away from the area.

Who is responsible for the contract? The Federal Trade Commission often gets letters from consumers who ask what they can do about a service contract company that has gone out of business and cannot repay claims. Unfortunately, there is little recourse available to these consumers. The best way to avoid this situation is to consider, before you sign a contract, whether the company is reputable. Ask the State Insurance Department, the State Attorney General's Office, Governor Pataki's State Consumer Protection Board or the Better Business Bureau if they have any complaints against the company.

Can you purchase a service contract later? You may be better able to decide if you need a service contract after you have owned the product for some time. Consider waiting until your

warranty period expires to buy a service contract. Although the Federal Trade Commission cannot represent you directly in a dispute with a company, it wants to know if companies are not meeting their service contract obligations. Send your complaint to:

Correspondence Branch
Federal Trade Commission
Washington, D.C. 20580

