



OHIO STATE BAR ASSOCIATION
LAW FACTS
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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 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 written 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 included in the contract the buyer has signed proves 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 can 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 of a *chattel mortgage*, *conditional sale* or *security agreement*. No matter what they are called, these documents 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 helps to ensure that you will pay your debt. By obtaining a security interest, the seller or lender will have important rights, including the right to *repossess* (take back) the goods, sometimes without advance notice or warning, if you 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. When goods you have purchased are repossessed, it would be wise to see your attorney, who can explain your rights 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 cars are financed or sold on an installment plan, the seller or financing agency often requires you to insure against damage to the car so that the seller's or agency's secured interest in the vehicle is protected. You can get such insurance by purchasing an ordinary, full-coverage auto insurance policy.

If you do not 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, and the cost of it is added to the amount you owe on the car. 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 may 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* to cover the payments on the vehicle if you die or become disabled or unemployed. However, you should investigate such plans thoroughly to consider the cost and scope of the coverage.

Some people consider purchasing "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 covers 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 report?

A credit report is a snapshot of your credit use history. Each of the nation's three credit reporting agencies (TransUnion, Equifax and Experian) maintains separate credit reports. While these reports may differ slightly, all three show your personal identifying information, the type of credit you use, how long credit lines have been open, how much of your credit you have used, any inquiries requesting your credit report, whether you have paid your bills on time and any public records, such as bankruptcy filings or court judgments. You are responsible for making sure all three reports are accurate.

The federal Fair Credit Reporting Act (FCRA) entitles U.S. consumers to a free copy of each credit report every year, and the three U.S. credit reporting agencies have jointly developed a website for this purpose. To get your free credit reports, visit www.annualcreditreport.com or call 877-322-8228.

Be aware, however, that none of the three free credit reports includes your credit score. Creditors and lenders most often use the Fair Isaac Company (FICO) credit score (300 – 850) to determine the amount of your “credit power.” The FICO score is based primarily on your payment history, amounts owed and credit history. Generally, a higher credit score will increase the likelihood that you will be approved for a loan or credit, and qualify for a lower interest rate and better terms. You can obtain your FICO score from www.myfico.com.

The FCRA, enforced by the Consumer Financial Protection Bureau, gives consumers some rights against the use of wrong information in credit bureau files. In part, the FCRA says:

- 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 can charge a reasonable fee for making the disclosure.
- The credit bureau must investigate any information 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.

The FCRA gives you certain rights, but 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?

You may be subject to legal liability arising from 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 when, for example, both spouses' names are on the account. Also, in some situations, parents may be liable if their children willfully damage property or there is damage resulting from 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.

Also, 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 difficult to prove. Courts commonly use a test that allows 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 indicate that this state of affairs likely will 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 cannot be enforced 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*.

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