

Contracts

A contract, agreement or deed is an exchange of promises (“something for something”) that is legally enforceable. The “something” can be money, services, property, rights... almost anything. Throughout life you will enter into thousands of contracts without even realising it! For example: getting on a bus; subscribing to pay TV; buying a drink.

Contracts need 4 things: -

- **offer**: a clear offer by one person or organisation to another. If an offer is rejected then that offer automatically ends;
- **acceptance**: the other party must accept the whole offer without conditions. If you offer someone \$300 for their laptop and they ask for \$400, they haven't accepted your offer, but made a new offer that you can accept or reject. This is referred to as a “counter offer”. There can be many offers and counter offers before there is an agreement;
- **consideration**: this is what each party gives to the other, eg the laptop for the \$400. One party doesn't always have to give money. It can be another benefit;
- **intention**: the parties entering into the contract must intend to create legal relations.

How do you make a contract?

Sometimes contracts need to be written. In general, though, a contract can be:

- oral;
- in writing;
- partly oral and partly in writing; or
- made by people's actions.

This means that a contract may be made up of a number of different documents, emails and conversations.

Written contracts do not need to be the formal kind a lawyer would draft. However common contract for things like housing (eg tenancy agreements and accommodation contracts with university housing authorities), provision of telecommunications (eg mobile phones, internet services & foxtel), utilities (electricity & gas) will have been drafted by lawyers. As these contracts are not written in plain language they are difficult to understand. In these situations it is important to be clear before you sign on exactly what the contract means.

A person who breaks a contractual promise may be sued. They may have to pay the other person compensation or comply with some other court order.

Contract tips:

Do your research

The piece of paper you sign may be worthless if you are dealing with someone who is untrustworthy or bankrupt. Who are you really entering into the contract with? Are they a company or an individual? Is the name they are giving you their full, legal name? What is their address? Compare what is being offered by different providers of the same service. Consider the terms that you are being offered and compare what is offered by different service providers.

Consider the deal

Make sure that the deal meets your requirements and covers all your concerns. The law generally doesn't care if you make a rotten deal for yourself. Whether or not the contract is good or bad for you, if you have entered into it, you will probably have to perform it.

Negotiate

Sometimes you will be handed a formal-looking contract and told: “*this is our standard contract - take it or leave it*”. You may feel that you have no bargaining power to negotiate better terms for

yourself. There is generally no legal reason why a contract cannot be negotiated. Ensure you read the contract carefully, check anything you are unsure of, or make suggestions if you wish to make changes. Sometimes you will be able to convince the other person to let you strike out or add a clause or a sentence. If they won't agree to do that, you should consider whether this deal is good for you. If it isn't, then maybe you should walk away.

Get legal advice

Often you will be told that you must sign a contract within a very short time - even right now and in front of the other party. Sometimes, especially in the area of housing this cannot be avoided. However, if it can be avoided it is best not to give in to this kind of pressure. It is only reasonable that you be given sufficient time to get independent legal advice before you sign. It is much harder to retreat from a bad agreement once you have entered into it. You may find yourself with obligations you didn't fully understand or didn't even know about. If it can be avoided just don't sign before you know **exactly** what you are agreeing to!

Only promise what you can deliver

Be sure that you can deliver what you say you can. For example, if you intend to enter into a 2 year contract for a mobile phone ensure that either you will be here for the 2 years or that you fully understand the penalties and costs for breaking the contract after 1 year or 9 months.

Put everything in it

If you have a written contract, the law generally presumes that it is the whole agreement - so make sure that it is. Don't leave out things as a goodwill gesture or because you assume that they will happen anyway. Often when you tell real estate agents or telecommunication service providers that you will have a problem meeting one or more of the terms and conditions of the contract they will tell you that it "shouldn't be a problem" and can be sorted out later, or that they will "put a note on the file so it isn't a problem later". These promises are usually empty promises which will create real problems and financial liabilities for you later on. Try to get any such variation written into the terms of the contract before you sign. Think about what will happen under the contract if the other party enforces the terms and conditions. Be clear on any penalties involved.

Get it in writing

Generally very few contracts are required to be in writing. There will be times when you enter into contracts orally. If, however, there is a dispute about an oral contract, it may come down to your word against the other party's. Many disputes can be avoided if the agreement is in, or is confirmed by, writing in some form. Any written evidence of the contract, even if it is just an invoice with terms noted, will help determine what was agreed.

Keep a copy of all documents you sign!

Signing a contract is evidence that you agree to its terms. You will usually be bound to perform the contract as it is written. It is a good idea to get two identical originals of a contract signed by both parties. Each party then keeps one signed original. In the case of accommodation, telecommunication and utility provision contracts there will be a copy of the contract for you to keep. Make sure that you get your copy of the agreement after it has been fully signed and that you keep it in case there is a problem. The other party is not always obliged to give a copy of the signed contract later on!

The SUPRA legal service can assist you with legal advice about Contracts.

Disclaimer:

This information is intended as a guide to the law as it applies to people who live in or are affected by the law as it applies in NSW. It does not constitute legal advice.

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