



Villamanta Disability  
Rights Legal Service Inc.

# Villamanta Disability Rights Legal Service Inc. Information Sheet

Updated September 2008

## Contracts

### What is a Contract?

A contract is basically an agreement between you and one or more other people. Whenever you buy or sell something, swap something valuable, pay someone to do something for you or get paid for doing something for someone else, the arrangement is probably covered by a contract.

Most contracts involve an agreement of some sort of exchange between the people who are parties to the agreement - such as when you pay money to another person and, in exchange for the money, the other person agrees to do some work for you. Generally speaking, a contract will only arise if there is such an exchange.

An agreement that lacks such an exchange, may sometimes not be treated as a contract and the people that are parties to the contract cannot be held to their promise. The law says that there is a contract if all of the following can be shown to have existed at the time the contract is entered into:

- There is an offer or promise by someone that is accepted by someone else;
- There is an agreement that the person accepting the promise will give something of value (like money or labour or agreeing to abide by a set of rules) in return for what is offered or promised;
- Both people have the same understanding of what is being offered and what is expected in return;
- Both people have legal capacity to enter into contracts and understand what the agreement means, what they have to do, what the other person has to do and that it is a fair deal;
- Both people have made the agreement of their own free will, without being forced or pressured to make the agreement;
- Both people are serious about the arrangement and want it to be a legal agreement, rather than a simple informal agreement between friends or family where everyone will understand and forgive someone that breaks a promise;
- It is an agreement allowed under the law. The law will not allow agreements which
- encourage someone to break the law or which are intended to be outside the legal system.

### IMPORTANT NOTE!

Remember - this Information Sheet has been produced only for use in Victoria, Australia. Some of the laws mentioned in this Information Sheet will be different in other places.

### **Does a contract always have to be in writing?**

A contract does not always need to be in writing. It should be in writing to record the terms of the agreement to avoid any arguments but it is not always necessary. Some contracts must be in writing. Contracts to buy and sell land or a car and door to door sales must be in writing. Some contracts can be partly in writing and partly spoken. For example: Entering into a contract for a holiday with a travel agent. You may see a brochure describing a package holiday but want to change some of the things in the package. After you have sorted out what you want, you make an offer to the travel agency and, if the travel agency is happy with the arrangement that you are proposing, they will accept. The agreement will therefore be partly based on what is written in the brochure, and partly based on what you and the travel agent have said about the changes you want.

Some contracts can have nothing in writing. For example: Entering into a contract every time you take a taxi. The law says that a taxi driver at a rank is making an offer to drive passengers where they want to go in exchange for the passenger paying the taxi fare.

You accept the offer to drive you by getting into the cab and by getting into the cab you also agree to pay the taxi fare. When you get to where you want to go you will have to pay the fare in return for the taxi driver driving you. This contract is legal even though nothing is in writing, and all you have said to the driver is where you want to go.

### **What happens if I don't understand something in a contract?**

Never agree to anything if you do not understand. Some contracts are confusing on purpose to take advantage of people's confusion. If someone is offering you something for which you have to pay or do something in return, you have a right to know exactly what you are being offered and how much you will have to pay, or exactly what you will have to do. Get the person making the offer to write down what they have said, so you can get an independent person to help you understand it if necessary.

Never sign something you do not understand. Get help from an independent person about what the contract means. Always ask if you can take a copy of the contract away with you before you sign it, so you can spend time making sure you are not being taken advantage of.

### **Can I change something in a contract after I have agreed to it or signed it?**

Contracts can only be changed if all the parties to the contract agrees. Most companies selling goods or services have standard contracts. It is usually impossible for a consumer to alter a standard contract.

### **Can someone enter into a contract on my behalf, and thereby force me into paying something or doing something?**

Your guardian or administrator will also have authority to enter into a contract on your behalf. Someone that you have given legal authority can also enter into a contract on your behalf. You can give someone legal authority to enter into a contract on your behalf by making them your agent. Unless someone has been formally appointed to enter into a contract on your behalf, you are not bound by any agreements that are made.

You must be careful that you do not unintentionally give someone legal authority to act as your agent. Legal authority does not have to be in writing and what you say or do can be interpreted by others as giving someone legal authority to enter into a contract on your behalf. If this occurs, the contract may become binding on you.

### **What happens if I was misled by something in the contract?**

It is unlawful to be deliberately misleading. You may be entitled to compensation if you have suffered some loss or harm as a result of someone making a misleading or deceptive offer to you in a contract. If you think that this has happened, you should talk with a lawyer so that you can find out what your options are.

### **What should I do if:**

- I have paid the right amount of money but I have not received anything?
- I have paid for something but it is not what I thought I was getting?
- I have paid for something but I am not happy with what I received?
- I have received something but do not have the money to pay for it?
- I have changed my mind and do not want what I have agreed to pay for?

If you have any problem with a contract the first thing you should do is get independent advice as soon as possible.

### **Some useful phone numbers**

**Victoria Legal Aid: (03) 9269 0234 or  
Free call 1800 677 402**

**Villamanta Disability Rights Legal Service Inc.  
Free call 1800 014 111**



### Helpful Hint:

This Information Sheet should be read together with the Villamanta Disability Rights Legal Service Inc. Information Sheets on Guardianship, Appointing an Enduring Guardian and Capacity and Consent.

### Looking for More Information?

If you want more information about having an administrator, you can phone:  
*The Guardianship List of the Victorian  
Civil and Administrative  
Tribunal.*