

You Did What?

Common Legal Mistakes Made by People Just Like You

By Laurie S. Hart

As a lawyer, I get asked the same questions over and over again at parties.

“My daughter signed a one-year lease for an apartment three months ago. She is getting married next month, can she get out of her contract?” “I signed up for a two-year health club membership and I never use it. Do I have to keep paying for it?” “The bank repossessed my car. Now they want me to pay the remaining balance owing. Do I have to pay it?” “I just bought a new car and I can’t afford it. Don’t I have three days to return it and get my money back?”

A little common sense and knowledge of the law can go a long way toward helping you avoid the everyday legal mistakes made by people just like you.

Mistake No. 1: I can always get out of a contract.

Generally, if you sign a written contract, it is legally binding. If you sign a rental agreement for a specified time period, no legal right exists to terminate it before the expiration of the agreement. It doesn’t matter if you are getting married or moving out of state. You still have to pay rent until the apartment is rented again. You can negotiate the right to get out of a rental agreement early but make sure any such agreement is in writing. The same general rule applies to contracts for buying cars or health club memberships. Once you sign on the line, you are

obligated to perform the terms of the agreement. Unless a car dealer specifically gives you, in writing, the right to return a car within a certain number of days, once you buy it you cannot return it.

In most states, buyers have a three-day right of rescission in only very limited circumstances. Generally, if the seller contacts you using any form of direct solicitation (door-to-door, phone, e-mail or fax), you may cancel the contract at any time prior to midnight of the third business day after the date of the transaction. If you contact the seller, you generally do not have a three-day right to rescind. If you have a right to cancel a contract, always cancel it in writing and keep a copy of your cancellation notice.

If you co-sign on a loan with a family member or friend, you are legally obligated to pay the loan if they do not. Don’t think that just because they are family or a close friend, they won’t leave you holding the bag. It happens all the time.

Contract Tips

- >> Never sign anything you have not read completely or do not fully understand.
- >> Think about a deal carefully before you sign a contract.
- >> Get all promises in writing and signed. Verbal promises are very difficult to enforce.
- >> Do not be intimidated by high-pressure sales tactics. Walk away and come back later if you are still interested.

Mistake No. 2: Repossession ends my obligation.

If you buy or lease a car, TV or computer and finance the purchase price through the seller or a financial institution, the seller or financial institution (the security holder) will usually take a

security interest in the car, TV or computer until you pay the full purchase price.

Sometimes, if you can't make your payments, the security holder will repossess the car, TV or computer. Most people think that after a repossession, their obligation ends. They are wrong. Once an item is repossessed, the security holder can sell the item and apply the sales proceeds to the amount of money you owe. If the sales proceeds are not enough to completely pay off what you owe, the security holder can legally require you to pay the balance owing.

For example, if you owe \$15,000 on a car and your creditor or lessor sells the car for \$13,500, the deficiency amount is \$1,500 plus any other costs you've agreed to in the contract, such as the cost of the repossession and penalties for early termination of your lease or early payoff of your loan. In most states, a creditor or lessor who has followed the proper procedures for repossession and sale is allowed to sue you for a \$1,500 deficiency judgment plus costs and expenses.

**Mistake No. 3:
Assuming you caused the accident.**

If you are involved in a car accident, don't be in a hurry to tell everyone it was your fault. It may have been your fault but maybe not. Until a police officer has investigated and determined who was at fault, don't say anything that would imply you are at fault. In fact, even if you get a ticket, don't admit liability for the accident. If you do admit liability and you are sued, your statement is admissible into evidence against you. This can make it very difficult for an attorney to defend you. You can express concern and remorse that the accident happened, but don't claim responsibility.

**Mistake No. 4:
Putting your assets into the names
of your children.**

The words "probate" and "estate taxes" scare most people like no horror movie ever could. This fear causes some to take drastic action to avoid both. Some give all of their major assets outright to their children or place their children's names, along with their own, on their major assets — like houses and bank accounts — in order to avoid probate or estate taxes. Such drastic actions are based on misinformation and can have disastrous results. Here are the simple facts.

Once you transfer an asset to your children, they own it and you do not. If your children get divorced, are sued or file for bankruptcy, you risk losing any asset with their name on it, including your home.

Probate is a straightforward process used to handle legal matters after someone dies. Generally, it is not lengthy or complicated and should not cost a lot of money if handled by an experienced probate attorney. A little over 2 percent of all estates were subject to federal estate tax in the year 2000. Today, only one-half of 1 percent of people who die (five in 1,000) pay any federal estate tax, and, under current law, that number will drop to three in 1,000 in 2009.¹

Once you transfer an asset to your children, they own it and you do not. If your children get divorced, are sued or file for bankruptcy, you risk losing any asset with their name on it, including your home. A few years ago, an elderly couple who were neighbors of mine transferred title to their house (which had no mortgage) into their oldest son's name to avoid probate. Without the parent's knowledge, the son took out a loan and pledged his parent's house as collateral. The son defaulted on the loan and the house was sold to pay off the loan. This 80-year-old couple was forced to move out of their home and into a rental. If you are thinking about transferring your assets to your children, talk to a qualified estate planning attorney first.

Taking a few simple precautions will help you avoid the most common and costly legal mistakes — as well as give you something more interesting to talk about at the next party. ☐

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¹Data is from the Internal Revenue Service, Congressional Budget Office and the Urban Institute-Brookings Institution Tax Policy Center.