

Get It in Writing...

Q: *I sometimes hear about companies offering services with “no contract.” Is this true?*

A: If you are paying money in exchange for something in return (and that something isn't already owed to you), then you have a contract — plain and simple. What you should discern from a service advertiser who promotes that they have “no contracts,” is that there are “no ongoing commitments.”

For example, say a cellular telephone service provider states that it is offering unlimited service for \$50 a month “with no contract.” Bob decides this is a good deal, so he goes to the store, purchases a cell phone and pays \$50 for the first month of service. Does Bob have a contract? Does the cellular service provider owe Bob anything in return for his \$50 payment? Obviously, it owes him one month of cellular telephone service. But why? If the service provider did not owe Bob one month of service *under a contract* in return for his payment, then the \$50 was nothing more than a gift to the cellular service provider, and it owes Bob nothing in return.

The fact is, in my example, Bob *does* have a contract. He doesn't have an *annual* contract. He doesn't have any ongoing commitments to continue his service after the first month. But, he has a month-to-month contract, and the cellular service provider does owe Bob a *contractual* duty to provide him with one month of service in exchange for his payment. Actually, this scenario should make Bob happy that he does have a contract, since the cellular service provider cannot accept his money without being bound to provide him with service in return. — *Ron Hertel, Esq.*



Ron Hertel

Q: *I had a verbal agreement with someone who later provided me with a written contract that I signed without reading. I assumed that the document I signed was the same as our verbal agreement, but it is totally different. Am I really bound by the written document when it doesn't reflect what I actually agreed to?*

A: Generally, yes. Under Florida law, people are presumed to have read and agreed to the terms of any written contract they sign — and the presumption is a strong one!

Absent some sort of fraud or duress on the other party's part, which is usually very difficult to prove, or incapacity on your part, the court will treat the document like you understood and agreed to its terms. The court will, further, disregard outside evidence that varies with the terms of the document, such as your oral agreement, and enforce the contract as written. In short, you sign a written contract at your own peril; therefore, read everything you sign.

This rule may be a harsh one, but the economy is very much driven by written contracts, and the courts strive to protect the stable expectations and integrity they provide the marketplace. In many respects, the old rule still applies: Buyer beware! — *Ron Hertel, Esq.*



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