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Leonard DuBoff

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Can You Get Out of a Contract You Signed?

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We wrote the book on small business law.

One of the most frequently misunderstood provisions of contract law is the one that deals with the so-called three-day cooling-off period. It is very common for a client or prospective client to contact our office and ask us to confirm the fact that the caller has the right to rescind a valid contract because of the cooling off period. Unfortunately, the answer is generally that the three-day cooling-off period does not apply to the caller’s situation.

The cooling-off rule allows a buyer three days to cancel a sale only if the amount of the sale exceeds $25 and the sale took place at (1) the buyer's home, workplace or dormitory, or (2) a place rented by a seller on a temporary basis, such as a motel room, fair grounds, restaurant or the like. In addition, the rule applies only if the goods or services are intended primarily for personal, family or household purposes. There are some other requirements and exceptions as well.

When the cooling-off period applies, the law requires the seller to advise the prospective purchaser in writing that the right of rescission is available. The document must comply with the rules promulgated by the Federal Trade Commission (FTC) and, among other things, must be in the same language in which the discussion between the parties was held. It must provide the date of sale, as well as the date by which the rescission must be completed. If the seller fails to provide this document, then the three-day rescission period does not begin to run until the buyer has been given the appropriate notice. If the seller never provides the notice, and if the rule applies, the buyer may rescind the transaction at any time.

All other contracts are binding and enforceable unless there is a defense that undermines the validity of the contract. These defenses would
include, among other things, the fact that no agreement was ever made or that the purchaser lacked the legal capacity to enter into the transaction. Situations in which purchasers lack such capacity include obvious mental incapacity and obvious intoxication. Contracts by individuals who are under the age of 18 may be voidable in some situations, though these situations vary from state to state, and there is no universal right for a minor to rescind an otherwise valid contract.

Another defense is that the contract was obtained through misrepresentation or fraud. An egregious example of fraud, for example, would be where a seller represents that a used vehicle has never been in an accident and it is later learned that, in fact, it had been in several. State laws in many jurisdictions also provide the right of rescission where automobile odometers have been tampered with.

The fact that a contract is not written does not necessarily mean that it is unenforceable, though the law provides that some contracts for future performance must be in writing. Nevertheless, once the contract has been performed, it cannot be undone unless one of the rights previously discussed is available.

Individuals who enter into transactions should assume that those transactions will be valid, binding and enforceable. Buyers should be careful to avoid transactions where sellers orally represent qualities or attributes of products which sound too good to be true, when the salesperson refuses to put the representations in writing, or when the salesperson is extremely aggressive. A salesperson who states "trust me" invites distrust unless there is some written evidence of the qualities represented that becomes part of the sales agreement.

If you want the right to change your mind and the three-day rule does not apply, then you must insist on having the seller expressly provide you with that right in the written agreement itself.

By being prudent and evaluating the merits of the transaction before completing it or by obtaining the express right to rescind the transaction
within a set period of time, you may avoid having buyer's remorse. Remember that the vast majority of transactions will not provide buyers with the very limited cooling-off period prescribed by the FTC. You can obtain more information on the "cooling-off rule" at www.ftc.gov.