



# CONSUMER LAW RESOURCE GUIDE



- your rights as a tenant
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# YOUR RIGHTS AS A TENANT

## **The Landlord-Tenant Relationship**

The landlord/tenant relationship is one generally created by agreement and, therefore, involves both rights and responsibilities on both sides of the transaction. The tenant has certain rights, including the right to possession and quiet enjoyment, as well as additional rights described by statute and by the lease terms. These rights are balanced against the tenant's responsibilities to pay rent, and to reasonably maintain the property in a clean manner. The same is true of the landlord's rights, which are to receive rent, and weighed against his responsibility to maintain the property and perform repairs. This brochure is directed primarily to residential tenants.

## **The Lease Agreement**

Preferably, the landlord/tenant agreement should be placed in writing, and signed by both parties. A written lease specifically sets forth the rights and responsibilities of the landlord and the tenant. A well-written lease will resolve most foreseeable disputes between the landlord and tenant. Any verbal or oral lease will be interpreted as a month-to-month lease. A month-to-month lease is, in essence, only a lease for 30 days, whereas a written lease can extend for a longer time. However, a month-to-month lease can only be terminated by notice, provided by either the landlord or the tenant on or around the date that the rent is due, stating that the lease will terminate 30 days after the notice.

Tenants should realize that the terms of a written lease with a landlord are negotiable. All negotiations are subject to the issue of bargaining power. In a tenant's market, a tenant may have more bargaining power to negotiate favorable terms in a written lease. Obviously, the important terms to negotiate include the amount of rent, but also include any right to have pets, the security deposit, and the duty to make repairs. Who pays for utilities can also have a significant economic impact. Of course, a landlord has no obligation to negotiate terms, but a reliable tenant with the ability to pay rent and a good credit rating may have greater bargaining power. A tenant may want to have an attorney look at the written lease before signing it. If your landlord does not want your attorney to look at the lease, you may have some cause for concern.

## **The Security Deposit**

A landlord will generally require a security deposit, which by law cannot exceed the amount of two months' rent. The security deposit is returnable at the end of the lease. The security deposit is not intended to be applied to the last month's rent, but rather is intended to protect the landlord against any damages to the property. One way for a tenant to avoid disputes with the landlord over damages to the property is to create a list, before the tenant takes occupancy of the property, identifying any damages evident in the property. These damages may vary from marks on the floor or carpet to appliances that do not work or windows that will not open. It is best to document any deficient conditions to the property in advance.

Similarly, at the close of the tenancy, the tenant has a right to notice of a walk-through with the landlord within 30 days of the termination of the tenancy to review any damage to the property. Ordinary wear and tear on the property should not be deducted from the security deposit. However, a tenant must return the premises in a reasonably clean condition. If a landlord wrongfully fails to return a security deposit, a tenant may be entitled to double damages for the wrongful retention of the deposit.

## **Who Makes Repairs?**

One of the most critical clauses of the written lease agreement is the issue of who makes repairs. Generally, in apartment leases the landlord retains the obligation to make virtually all repairs, including interior repairs and appliances. However, in house leases the duty to make repairs, including repairing appliances, is sometimes placed upon the tenant. Furthermore, the duty to maintain the yard and grounds may be delegated to the tenant in a house lease. These issues should be discussed in advance, because they frequently lead to disputes between the parties. Obviously, the duty to make repairs can be expensive.

Assuming that a lease does provide that the landlord is to make all repairs, it is rare that a landlord makes all repairs in as timely a fashion as the tenant would expect. Even if the duty to perform repairs is upon the landlord, the tenant has a duty to avoid "waste" of the property and as a result, in an emergency, has a duty to remedy conditions that will cause additional damage to the property itself or to neighboring properties or tenants. For example, if there is a plumbing leak, a weather leak, or gas leak, the tenant has a duty to turn off the water or gas and to call a roofer to temporarily stop any leaking. In the event of such incidents, the landlord generally disclaims any obligation to repair or replace the tenant's personal property. Obviously, if there is a leak or sprinkler malfunction,

a tenant's electronics and other property can suffer severe damages. The landlord has no responsibility to cover those damages unless the landlord can be demonstrated to be negligent. As a result, a tenant should consider obtaining renter's insurance to protect them against property damage, theft, and other casualty losses that may occur in connection with their tenancy.

### **What If the Landlord Does Not Make Needed Repairs?**

If a landlord fails to make repairs that they are obligated to make, unfortunately, the tenant's remedies are limited and, to some extent, cost-prohibitive. Under the law, a tenant is not able to terminate the lease due to a landlord's failure to make repairs, unless the problem is such that it makes the property "untenantable," which means uninhabitable. In other words, if you can live there, the property is not untenable. Generally, the tenant does not have the right to make the repairs and charge them back to the landlord, and the tenant does not have the right to withhold rent. The preferred remedy under the law is that the tenant pays rent and brings a claim against the landlord for the damages. Unfortunately, the cost and inconvenience of bringing a claim to court against a landlord is frequently more trouble than the cost of the repair is worth.

### **What Happens If a Tenant Does Not Pay Rent When Due?**

A landlord cannot terminate utilities to the premises, even if the tenant ceases to pay rent. In the event of a default, a landlord is prohibited from removing a tenant or the tenant's personal property from the premises without obtaining a court order, except under certain circumstances. In the event that a tenant abandons the property, Missouri statutes do set forth a procedure for the landlord to post notice on the property and give the tenant notice of their right to recover the property. If a landlord removes or excludes a tenant from the property without judicial process, the tenant may have a claim against the landlord for forcible entry and detainer. The same is true if a landlord changes the locks.

### **What Other Rights Do Tenants Have?**

Tenants do have a right of quiet enjoyment, which is sometimes overlooked by landlords. The right to possession and quiet enjoyment includes the right to be free from unlimited and unreasonable intrusions by the landlord. In other words, the landlord should not come and go frequently, and should give reasonable notice prior to entering upon the premises. Furthermore, the tenant should not be subjected to unreasonably

loud noise from neighboring tenants or the landlord, and should be free from noxious odors or other intrusions upon the premises. Consistent with the mutual rights and obligations under the lease, a tenant, likewise, may not unreasonably emit loud noises or noxious odors into the premises of other tenants or the landlord.

In most jurisdictions, the tenant will need to apply for and obtain an occupancy permit, which requires that the property be subjected to a city inspection, or the payment of a fee. However, the tenant is entitled to have the property comply with local municipal, county, and state building codes. Of course, all tenants and applicants for a tenancy have a right to be free from discrimination based upon race, color, religion, sex, familial status, national origin, or disability.

### **What Happens If a Landlord and Tenant Have a Dispute?**

Most landlord/tenant disputes can be avoided by both parties negotiating and discussing the terms of the lease agreement in advance. Once the lease is established, if both parties honor and acknowledge the rights and obligations of the parties under the lease, and act reasonably, no disputes should arise. If a tenant believes they are being strong-armed into a lease, or the landlord gives them a bad impression from the start, the tenant should walk away and seek other property. Most importantly, when presented with a written lease, every potential tenant should read the entire document and, if they do not understand something, should consult an attorney. Every tenant should ensure that they read and understand their lease.

# BUYING A HOME

## Introduction

For most of us, buying a home represents the biggest purchase of a lifetime. Carrying out such a big decision, and getting it right, involves educating yourself and getting appropriate professional help. Many people, including lawyers, are available to provide that help. In this booklet, The Missouri Bar will give you some ideas on how to help yourself, and some suggestions on how to use the professionals in the real estate industry to achieve your objective.

## Educating Yourself

Most real estate professionals agree that buying a home on a whim or impulse is a dangerous practice. Therefore, the first step in purchasing a home is defining your needs and capabilities. What size and other amenities do you need in your new house, such as number of bedrooms, bathrooms, storage, and family space? What do you want outside the house in terms of yard, garage, or garden space, as well as intangibles, such as neighborhood, area and schools? At the same time, you should determine how much house you can afford. This involves a careful calculation of how much cash you have available, and how much you can borrow. Most banks will welcome the opportunity to “pre-qualify” you for a loan by taking your loan application, reviewing your finances, and telling you the maximum amount they will lend you. A bank’s prequalification will provide one indicator of the maximum price house that a buyer can acquire. However, prequalification is no substitute for evaluating one’s own goals and budget to determine a monthly payment that a purchaser can realistically afford, and the time within which a purchaser would like to have paid off the mortgage.

Where do you want to live? You should consider factors such as proximity to work (travel time), style of the neighborhood (city, suburban, old, new, subdivision) and choice of school (public, parochial, private). The more time you spend educating yourself and “looking around,” the better decision you will make. Check out the real estate ads, drive around your favorite neighborhoods and survey available homes, and check out community resources. School districts are another factor that may affect the long-term value of your home. Realtors can be an invaluable resource

in assessing neighborhood characteristics, and their effect on a home's value, although a qualified appraiser is the only person qualified to give an accurate opinion of value. Local realtors frequently have a familiarity with the region, and can locate areas within your price range with the amenities each buyer is seeking.

## Getting Help

Throughout Missouri, real estate agents earn their commission from the seller's funds when the sale closes. You will generally find three types of agents, each of which must disclose to you the nature of the agency:

(a) a **listing agent** represents the seller only, and earns a commission from the seller's funds at the closing.

(b) a **buyer's agent** offers a confidential relationship with you, and helps you negotiate the deal. The buyer's agent also earns a share of the listing agent's commission. If you have your own buyer's agent, you will not see a selling agent. A **buyer's agent** will show you a wide variety of houses, and provide a wealth of information on your preferred neighborhood.

(c) a **dual agent** represents both sides of the transaction, a real conflict of interest. You should be careful about disclosing any confidential information, such as your "maximum price," to anyone except your own "buyer's agent" or your lawyer.

Be aware that realtors may steer a buyer away from homes that are for sale by owner because the realtor wants to make sure they earn a commission, and properties that are for sale by owner are not listed on the realtor's multi-list system.

A **lawyer** will provide you with your best source of confidential legal advice, and will help resolve any legal conflicts that arise during the contract process. Lawyers generally charge by the hour, and thus your lawyer has no financial stake in the outcome of your negotiations. The lawyer's fee typically represents a very small amount when compared to the purchase price, but the lawyer's advice can save you money and disappointment in the long run. Your lawyer will act as your advisor, choose the form of purchase contract, draft the purchase contract, and adapt it to your individual objectives. Your lawyer should also review the title insurance commitment, the closing statement and the title transfer documents prepared by the title company. Contrary to popular belief, residential sale contracts are complex and binding agreements. Every purchaser, regardless of whether they have a realtor or a lawyer, should read their contract, and ensure that they understand it. Any amendments to the standard form contract, other than filling in the blanks with numbers



or checking the boxes, is the practice of law, and should be done only in consultation with a lawyer. A lawyer may also explain the survey, the significance of a boundary survey as opposed to a spot survey, and can explain the title commitment. In most cases, lawyers will not profess an opinion on value or whether or not the decision to buy a house is a prudent decision.

Most real estate loans can be obtained through a bank. However, different rates are available at different banks or through a **loan broker**. A loan broker will charge a fee based upon the size of the loan, and may help in steering you into a specialized loan program. In the same manner that a buyer should look at different houses before deciding, shopping for different loan options is a good idea before settling upon a certain lender. In comparing loan proposals, it is important to make sure that all fees and costs are calculated into the finance cost to determine the best loan option.

The **appraiser**, chosen by your lender, will examine the property you want to buy in light of market conditions in the immediate area and the general condition of the house, and will give an opinion of value based upon an established methodology. The appraiser primarily protects the bank from making a loan on overpriced property, but this may protect you, also. Generally, if the appraisal does not equal or exceed the contract price, the bank will likely not fund the transaction, and the standard contract will let you cancel the deal, provided that the contract was written as being contingent upon financing.

The **title company** searches the public records to determine whether or not it is willing to ensure that the seller actually owns the property. If the title company considers the title “marketable,” it will issue a title insurance policy to the bank, and to you, if you request one, and will prepare all of the documents necessary to complete the transfer of ownership, called “the closing.” The title company charges a fee for its services, and a premium for the title insurance policy based upon the purchase price. A title policy may exclude significant risks from coverage, such as encroachments. An attorney can explain these exclusions and may be able to negotiate the removal of some exclusions.

A **surveyor**, of course, prepares a survey of the property. In many transactions the surveyor performs only a spot survey. A spot survey is created from the plats on record without a surveyor actually examining the property, whereas a stake survey or boundary survey is created where the surveyors mark the corners of the lot with stakes. Where only a spot survey is performed, the title insurance company will exclude coverage for any encroachments that would have been determined by a stake survey.

Spot surveys are, of course, cheaper. However the piece of mind of a stake survey is often worth the price.

**Building inspectors**, provided for in the standard purchase contract, come in various specialties. A general building inspector will look for defects in the house itself, especially structural problems. Many building inspectors have limited training, and therefore a buyer should ask for the inspector's qualifications. In the event a buyer has any structural concerns after speaking with a building inspector, they should seek additional consultation with an engineer. Each purchase generally also requires a termite and pest inspection, and an inspection for gas appliances. Some home buyers ask for a radon inspection. Radon is a potentially carcinogenic gas found in underground unventilated areas in some areas of the state. The residential sale contract usually sets forth a very rigid time frame for performing inspections. Failure to notify the seller of defects revealed by the inspections within the designated time will cause a waiver of these defects. The buyer generally pays for all of these inspections, but their modest fees represent a good investment in making the right decision about buying a house. In the St. Louis region, the seller generally pays for the municipal and gas inspection.

## Getting a Deal

Once you have educated yourself and have a good idea of the house you want, then you need to gain more information about the house before you make an offer. If the seller provides a seller's disclosure statement, then the seller has the duty to disclose all "material" defects, ones which would cause you to change your mind about buying the house. In most parts of Missouri, the listing agent has available a printed questionnaire that makes it easier for the seller to provide truthful written disclosure. You should expect to see this disclosure form completely filled out. The disclosure statement is not a substitute for qualified inspectors, and does not include all aspects of the property, such as the health of trees or the seller's opinion of his neighbors. If the seller does not provide a disclosure statement, the buyer should be very cautious.

One should also inquire how long the house has remained on the market. The real estate agent can easily get this information. The price should fall within the range you have already determined, or within your borrowing capacity, as determined by the bank, if you pre-qualified. A buyer and seller rarely agree upon the purchase price at first, and careful negotiation can save you a substantial amount of money. Your lawyer or buyer's agent can give you realistic advice on how much of a negotiating range to expect,

and can help you formulate your first offer. A seller's agent or dual agent should not be consulted on price negotiations. Negotiations will involve, most importantly, the purchase price, but may also include any number of contract terms, like the size of the "earnest money" deposit, the time limits, closing date, and clauses to deal with special situations.

Under Missouri law, only a written contract will bind the parties to the deal. In most areas of Missouri, real estate agents will generally use the same printed form for a purchase contract. The standard contracts try to anticipate most of the problems that arise during a transaction and provide a way of dealing with those problems. Your lawyer or buyer's agent can prepare the contract for you, and make sure that it meets your objectives. For example, most home buyers need to borrow money to finance the purchase. A "loan contingency" in your contract will let you out of the deal if you cannot get the loan you need. Other contingency clauses deal with the necessity of selling your present home, early possession, necessary repairs shown by the inspectors, and other problems. Your lawyer can select the most appropriate printed form for you. Only a lawyer can draft contract language that goes beyond the printed forms. If you and the seller make any changes after you have reached agreement, those changes must be reduced to writing in order to be valid amendments to the agreement.

## Getting a Loan

Once you and the seller have come to terms and agreed upon a written contract, then you will turn your attention to financing the purchase. Most sale contracts with a financing contingency require that the buyer apply for financing within a short time of final acceptance of the contract. If you have already pre-qualified for your loan, the loan process will go very smoothly. If you have not already pre-qualified, your banker or loan broker can help you learn about special or subsidized programs available in your area for first-time home buyers or a federally-insured loan under the FHA, VA, or FNMA programs. Any loan applicant should provide complete disclosure of their finances on the loan application, even if the banker does not insist upon it. Under some circumstances it is possible to assume or take over the seller's existing loan, called a "loan assumption." One advantage to a home mortgage is that the mortgage interest is deductible on your federal tax return.

Market rate loans (with no subsidies) come in a variety of forms. The bank loan officer can tell you what kind of a loan is available from that bank, but any buyer should inquire of several banks to obtain the best interest rate and loan provisions. Under federal regulations, the lender

must provide the borrower with a “good faith estimate” of the finance costs, including its fees and charges.

## Inspecting the Property

Unless you already know about the condition of the property you want to buy, or would buy it regardless of the condition, your contract should provide that you can have the property inspected and can cancel the contract if the inspection reveals material problems. The inspection clause will provide for at least the following kinds of inspections:

A **building inspection**, performed by a certified home inspection service, building contractor, engineer or architect, can report only on the conditions of the house that the inspector can see. The inspector looks for structural problems, deterioration of the structure, and building code compliance. The inspector may also give an opinion as to necessary preventive or remedial measures, and sometimes will make an estimate of the costs. No one should expect a perfect house, and inspectors almost always find some defects. If the defects do not pose structural problems, the parties will attempt to negotiate for repairs or adjustment of the purchase price before closing, as provided in the contract.

A **termite and pest inspection** will look for both active infestation and inactive evidence of old damage from termites or other wood-destroying pests. The inspector will propose remedial action, if needed, and may even propose a service contract. If the seller already has a service contract in effect, he should pass that on to you before closing.

In any area where natural gas heats most of the homes, the gas company will provide for safety inspections of all **gas appliances**, furnace, stove, and water heater. The inspector has the authority to “red tag” the appliance until the owner makes repairs.

Radon, a radioactive natural gas that percolates up through the foundation, has become a major concern as a possible cancer-causing element. **Radon testing** has become more common in residential sales. It takes about two weeks to gather the test sample, and another two weeks for the test results. Therefore, the contract must provide adequate time for testing, and you must plan to initiate the test immediately. The Environmental Protection Agency has set “safe” levels above which it recommends remedial action.

Many municipalities have a **building code compliance inspection** as a requirement before closing, or before occupancy by a new tenant. The code compliance or occupancy permit inspection looks for a whole different range of defects than the standard building inspection. If the municipality requires such an inspection, then it should be a contingency in the contract.

## Reviewing the Title Report

In most parts of Missouri (except St. Louis), the seller orders and pays for the title report, and at closing pays for the buyer's title insurance. The preliminary title report ("commitment"), issued before closing, shows who owns the property now. It may, but not necessarily, show whether the property has any restrictions on ownership or use, such as deed restrictions, easements, and subdivision restrictions. It will show any liens that the seller must clear up before closing. The commitment will also show what the title company requires the buyer and the seller to do in order to complete the closing under the terms of the contract. Reading and evaluating a commitment for title insurance requires legal knowledge, and you should make sure your lawyer has an opportunity to go over the commitment with you as soon as the title company issues it.

## Dealing with Surprises Before Closing

Surprises emerging before closing generally involve defects in the physical condition of the property. Even though the seller may have given you a good faith disclosure of his knowledge of the property condition, the inspectors may find conditions or defects of which the seller was not aware. The contract should provide that you do not have to complete the deal if the seller does not repair or compensate you for the defects.

In addition, the preliminary title report may show defects or "clouds" on the title of the property that require action by the seller, possibly even litigation, to make the title marketable. Unless the seller can deliver marketable title, you can cancel the contract.

Most contracts authorize a walk-through by the buyer before closing. This right should be exercised to ensure that the property is in the same condition as when the buyer last saw it, and to see that the seller has made any repairs discussed in the contracts. If any failure to perform repairs or damages to the property is identified in the walk-through, a portion of the sale proceeds should be placed in escrow to pay for the repairs.

Surprises before closing generally require further agreement between the buyer and seller in order to avoid terminating the contract. **You and your lawyer must pay careful attention to the time limits stated in the contract; if you miss a time limit, you may have lost the opportunity to protect your rights under the contract.** If the best efforts of buyer and seller fail to reach an agreement to deal with a surprise and allow the deal to close, then the contract should provide that you will receive a refund of your earnest money.

## Closing the Deal

Closing a real estate transaction generally involves two stages closing on the loan, and closing on the title transaction. Closing on the loan means going to the bank and signing the loan and the deed of trust, a document in which you pledge the house as collateral for the purchase loan. The loan officer will explain to you the significance of all of the loan papers that the bank wants you to sign, all of the bank's charges, and the bank's requirements for performance of your obligations. When you have finished the loan closing, the bank will give you an envelope to take to the title company with all of its documents for recording, and a check for the title company. Sometimes the bank sends all of the papers to the title company, where you will sign all of the closing documents in one place.

The title company has a duty to everyone in the transaction as the "escrow agent." This includes the buyer, the seller, the real estate agent, the bank, all lien holders, and anyone else who expects to be paid from the funds available at closing. The title company prepares all of the closing documents and handles all of the money. When you finish the closing, you own the house. The title company, as the agent of the title insurance company, will guarantee that you have marketable title by issuing an owner's policy of title insurance.

## Dealing With Surprises After Closing

Even if everything goes smoothly in your residential purchase, after you move into your newly-purchased residence you may learn things that you did not know before closing, that the inspectors did not see, and that the seller did not tell you. When that happens, you should immediately ask your lawyer to review the contract and see what remedies you have. You may also have remedies outside the contract under Missouri law. But no remedy after the closing works as well as full disclosure and investigation before the closing, when you can terminate the deal if you find the seller cannot deliver what he promised in the contract.

## Getting What You Pay For

For most people, buying a home represents both a dream come true and a business transaction requiring great care. A buyer can avoid the dream becoming a nightmare by learning as much as they can about what they want to buy, and by seeking professional help. Even if you have gone through the home-buying process before, each transaction presents new problems. Learning through the experiences of others, especially your lawyer and your buyer's agent, will give you the best chance of achieving a happy result.

# BUYING ON CREDIT

## What is Buying on Credit?

When you buy on credit, you pay extra for the privilege of spreading your payments out over a period of time.

## What Kinds of Things Are Usually Bought on Credit?

Today, virtually anything can be bought on credit. Big-ticket items such as automobiles, major appliances, furniture and jewelry are often bought on credit, but so are smaller items such as clothing, food and gasoline.

## What is the Difference Between “Open-End” Credit and “Closed-End” Credit?

“Open-end” credit is the type of credit you expect to use over and over. An example would be a credit card such as Visa, MasterCard or Discover.

“Closed-end” credit is one-time credit. Examples would be a car loan or a loan to remodel your house.

The difference is important because federal law makes creditors give you different information depending on the type of credit you get. In general, you get more information with closed-end credit. So if you’re getting a one-time loan, make sure the lender doesn’t set it up as open-end credit. Also, with open-end credit, the credit terms, such as interest rate or minimum payment, can change.

## How Can I Get the Best Credit Terms?

You can get the best credit terms if you shop around and know what to look for. Many people focus on how much they will have to pay every month. These people usually get worse credit terms than they could have received if they had shopped carefully.

The federal truth in lending law makes creditors tell you certain things about the cost of credit. Some of the more important ones include:

- The **AMOUNT FINANCED**. This is the amount of credit you are actually getting. If this amount is higher than what you thought you were borrowing, take a closer look. You may be paying for things you don’t need and don’t want.
- An **ITEMIZATION** or the **AMOUNT FINANCED**. This spells out

where the money that you are borrowing is going – to you, to your account with the lender, or to someone else. If you see anything in the itemization you don't understand, ask about it. If you don't, you may wind up paying for things you don't want or need.

- The **FINANCE CHARGE**. This is how much the credit is costing you in actual dollars. The higher this is, the more you are paying for credit.

- The **ANNUAL PERCENTAGE RATE** (sometimes called “APR” in advertising). This is how much the credit is costing you, stated as an annual rate instead of a dollar figure. The higher this is, the more you are paying for credit. APR adds the interest rate to the other costs of credit, so you can compare accurately. For example, a loan with a low interest rate but a high origination fee can be compared accurately to a higher interest rate loan that carries lower additional fees.

- The **PAYMENT SCHEDULE**. This is how many payments you have to make, how much they are, and when they have to be paid.

- The **TOTAL OF PAYMENTS**. This is the total of what you will have paid when you have made all of the scheduled payments.

- The **TOTAL SALE PRICE**. This is the grand total price of your purchase on credit, including your **DOWN PAYMENT**.

- Whether the lender or seller is taking a **SECURITY INTEREST** in what you are buying or in anything else you own. A security interest means you have given collateral for the loan. If you do not meet the terms of the loan, the collateral can be repossessed, in addition to having to pay additional money.

- Whether there will be a **PREPAYMENT PENALTY** if you pay off early.

- How much any **LATE PAYMENT** charges will be.

## **How Can Knowing This Information Help Me?**

### ***By helping you understand exactly what you're getting into***

Example: Supposed the advertised sale price of a car is \$7,495. You agree to buy the car, and to pay \$240 per month for 36 months, with a \$500 down payment. How much are you actually paying for the car? You can tell that easily by looking at the truth in lending disclosures.

Although the “cash price” was only \$7,495, your **TOTAL OF PAYMENTS**, including the **FINANCE CHARGE** of \$1,645, will be \$8,640. Add in your \$500 **DOWN PAYMENT** and your **TOTAL SALE PRICE** – the total amount you are agreeing to pay for the car – is \$9,140. You're paying \$1,645 – the amount of the **FINANCE CHARGE** – for the privilege of buying the car on credit.



***By helping you compare credit terms to get the best deal.***

Example: Dealer #1 offers you a car for \$7,495, with \$500 down and monthly payments of \$240 for 36 months.

Dealer #2 says, “We can do better than that,” and offers you the same car at \$7,295, with only \$300 down, and monthly payments of \$210 for 48 months.

Which deal is better?

In each case, you are financing \$6,995 – the cash price of the car minus the down payment. Dealer #2 is taking payments of only \$210, which seems cheaper. But Dealer #2 requires payments for 48 months. How much difference does that make?

The truth in lending disclosures will tell you. Dealer #1’s FINANCE CHARGE will be \$1,645. Dealer #2’s FINANCE CHARGE will be \$3,085 — \$1,440 more.

The ANNUAL PERCENTAGE RATE will also tell you. Dealer #1’s APR is 14.27%. Dealer #2’s APR is 19.23% — almost five percentage points higher.

Either way you look at it, Dealer #1 is giving you a better deal on credit.

**Does It Really Matter Whether You Read a Contract Before Signing It?**

Yes! Be sure to *read and understand* any contract before you sign it. Not only will it have the credit information described above, but it also contains all of the legal duties and terms to which you are agreeing. If you don’t understand something, get advice. If you feel pressured, ask to take the contract home for review. If the lender won’t let you, take your business elsewhere, because it is a violation of federal law for them to refuse to give you the written credit disclosures before you agree to the loan.

**Can the Lender Sell My Contract?**

Yes. Most loans and other agreements to pay money can be sold. It is common for sellers to sell their loans to a bank or finance company. The new owner of the loan then has the right to collect its payments from you.

**How Much Interest Can I Be Charged?**

In recent years, Missouri has removed most limits on interest rates. To check on whether an interest rate is legal, call a lawyer or the Missouri Division of Finance. Remember, though, that you can only be charged a given interest rate if you agree to it. That’s another good reason to read and understand the contract before you sign it.

## **Can I Pay Off My Loan Early?**

You can always pay your loan off early, but sometimes the contract will impose a “prepayment penalty.” Check your contract to be sure. Prepayment penalties are a sign that perhaps this isn’t the best loan for you.

## **What Are My Duties as a Buyer or Borrower?**

That depends on the contract. Of course, you will always have to make timely payments on the debt. But the contract may impose other duties on you as well. For example, it may require that you keep an automobile insured against damage or loss. If you don’t, you may be in default, and your creditor may be able to buy very expensive insurance on the car and charge the cost to you. If the creditor does buy the insurance because you have not, the insurance will be very expensive, and it will only cover the loan itself, not the value of the car or house. This is just one example of why it’s so important for you to know all of your duties under a contract.

## **What are the Seller’s Duties If I Fall Behind?**

In some cases, such as repossessing your car or foreclosing on a mortgage, the creditor must give you notice and at least 20 days to bring yourself up to date. If you do bring yourself up to date within the given time, and later fall behind again, the seller must give you a second notice before taking action. Such notice is not required in other types of credit contracts.

## **Is There Anything I Can Do If I Have a Problem Making My Payments?**

If you have a good reason for not being able to make the payments on time, talk to the creditor. You may be able to work out a more affordable arrangement. Most creditors would rather work with you, at least for a while, than go to the trouble of suing you and trying to collect. But even if you have reached an agreement about making payments lower than amounts due, the creditor does not have to continue such changes in terms and can sue you at any time.

## **If I Give the Collateral Back Voluntarily, Can I Still Be Held Liable on the Debt?**

Yes. Unless the creditor agrees otherwise, your voluntary return of the collateral will not affect the creditor’s ability to collect the rest of the debt from you if the creditor gets less than the full amount of the debt when it resells the collateral.

## **If the Collateral is Destroyed, Can I Still Be Held Liable on the Debt?**

Yes. For example, if you buy a car on credit and then destroy the car in a wreck, you still owe the debt even though you don't have the car any more. Your insurance may cover the debt, but if it doesn't, you are responsible for payment.

If the collateral was destroyed because of something for which the seller can be held liable, you may be able to avoid payment of the debt. For example, if a car burns up because of faulty wiring, and was under a warranty, you may have a claim or defense against the seller or current owner of the debt. If that's the case, you should see a lawyer.

## **What is a Co-Signer?**

A co-signer is someone who signs a contract for someone else, and agrees to be responsible for payments being made.

Think long and hard before agreeing to be a co-signer or co-buyer for someone else. If that person doesn't pay, the seller or lender will look to you for payment.

## **Can My Wages Be Tied Up Or Taken If I Don't Pay a Debt?**

Yes. In most cases, the creditor must first sue you and get a judgment. Then your wages can be subject to garnishment. The creditor can take up to 25 percent of your after-tax earnings, or 10 percent if you are a head of household. The creditor cannot take anything, however, if doing so would drive your after-tax earnings below an amount equal to 30 times the minimum wage per week. That amount is subject to change. You may also be entitled to a hardship exemption, especially if you are supporting minor children.

In rare cases, your wages can be garnished for an unpaid debt without you having been sued. This can be done, for example, on certain student loan debts or other debts owed to the government. Even then, you must be given notice and a chance to be heard on the issue.

## **What Are Some Things to Remember Before Buying on Credit?**

- Read and understand your contract before you sign.
- Don't co-sign unless you are willing and able to pay the debt in full.
- Compare credit terms before you decide where to buy.
- Don't just look at the size of the monthly payment.

- If you can't make the payments, you may get sued on the debt even if you give back the collateral.
- Decide whether it makes more sense to buy on credit or pay cash.
- If you run into a problem, talk to the creditor.

### **What If I Need Legal Advice?**

If you need help finding a lawyer, you can call The Missouri Bar's Lawyer Referral Service at (573) 636-3635. Some local bar associations also have lawyer referral services. In St. Louis, call (314) 621-6681. In Greene County, call (417) 831-2783.