

§12-104. Requirements for legal funding contracts

The following provisions govern the legal funding contracts used by a litigation funding provider. [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

1. All contracts must be written in a clear and coherent manner using words with common, everyday meanings to enable the average consumer who makes a reasonable effort under ordinary circumstances to read and understand the terms of the legal funding contract without having to obtain the assistance of a professional. The contract must have a meaningful arrangement that is appropriately divided and captioned by its various sections.

This subsection applies to any agreement signed by the consumer in connection with a legal funding contract entered into in this State. This subsection does not apply to any acknowledgment or representation signed by an attorney. This subsection does not apply to legal funding contracts when an organization is the plaintiff; to language or arrangements that are specifically required by federal or state law, regulation or official agency interpretation; or to agreements, the form or any part of which is required by a governmental instrumentality as a condition of the assignability of the agreement. [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

2. All contracts must be completely filled in and must contain a disclosure form on the front page in at least 12-point bold type, in the following format:

DISCLOSURE STATEMENT

1. Total amount of legal funding received by consumer under this contract: \$ _____

2. Itemized fees: \$ _____
Application \$ _____
Processing \$ _____
Attorney review \$ _____
Broker \$ _____
Other () \$ _____
Total fees: \$ _____

3. Annual percentage fee (rate of return) on advance, compounded semiannually: _____ %

4. Total amount to be repaid by consumer
if at 6 months: \$ _____
if at 12 months: \$ _____
if at 18 months: \$ _____
if at 24 months: \$ _____
if at 30 months: \$ _____
if at 36 months: \$ _____
if at 42 months: \$ _____

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

3. All contracts must provide that the consumer may cancel the contract within 5 business days following the consumer's receipt of funds without penalty or further obligation. The contract must contain the following notice written in a clear and conspicuous manner: "MAINE CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY

OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM [insert name of litigation funding provider]." The contract must also specify that in order for the cancellation to be effective, the consumer must either return the full amount of disbursed funds to the company by delivering the litigation funding provider's uncashed check to the provider's offices in person within 5 business days of the disbursement of funds or mail a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the provider's check, or a registered or certified check or money order, by insured, registered or certified United States mail postmarked within 5 business days of receiving funds from the litigation funding provider, at the address specified for such cancellation in the contract.

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

4. The consumer shall initial each page of the contract.

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

5. All contracts must contain a legend above the consumer's signature in at least 12-point bold type to read:

"NOTICE: LEGAL FUNDING PROVIDERS MUST REGISTER WITH MAINE REGULATORS. GO TO www.maine.gov/pfr/consumercredit AND SELECT THE "ROSTERS" LINK TO VERIFY A LITIGATION FUNDING PROVIDER'S REGISTRATION OR TO CONTACT PROVIDERS TO OBTAIN COMPARATIVE RATE QUOTES."

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

6. All contracts must contain a legend immediately above the consumer's signature in at least 12-point bold type to read:

"DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS CONTRACT."

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

7. All contracts for legal funding must contain the following in at least 12-point bold type to read:

"THE LITIGATION FUNDING PROVIDER AGREES THAT IT HAS NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS REMAINS SOLELY WITH THE CONSUMER AND THE CONSUMER'S ATTORNEY."

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

8. A contract may not require mandatory arbitration to resolve disputes under the contract.

[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

9. All contracts for legal funding must contain a written acknowledgment by an attorney that states that:

A. The attorney has reviewed the contract and all costs and fees have been disclosed, including the amount to be paid by the consumer; [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

B. The attorney is being paid per a written fee agreement; [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

C. All proceeds of the civil claim or action will be disbursed via the attorney's trust account; and [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

D. The attorney is following written instructions of the consumer with regard to the legal funding. [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]
[PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

10. For English-speaking, French-speaking and Spanish-speaking consumers, contracts must be written in the same language in which the oral negotiations are conducted between the company and the consumer. For consumers whose primary language is neither English, French nor Spanish, the principal terms of the contract must be translated by a certified translator in the consumer's native language and the translator must sign a notarized affirmation confirming that the principal terms have been presented to the consumer in the consumer's native language and acknowledged by the consumer in writing. Principal terms must include all of the items required to be disclosed by this section. [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

11. To the extent the contract provides for attorney's fees and costs in addition to the amount due and owing under the contract, the contract must provide that in case of a breach of the contract by either party attorney's fees and costs may be recoverable by the prevailing party and must be reasonable. Any contractual cap on such attorney's fees and costs must apply equally to both parties. [PL 2007, c. 394, §1 (NEW); PL 2007, c. 394, §3 (AFF).]

SECTION HISTORY

PL 2007, c. 394, §1 (NEW). PL 2007, c. 394, §3 (AFF).

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