

NEW YORK STATE BAR ASSOCIATION



# NYSBA

**Now that  
You've Turned  
18**

YOUNG LAWYERS SECTION



# Now that you've turned 18

## Young Lawyers Section

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## PREFACE

This booklet is published by the New York State Bar Association Young Lawyers Section Committee on Community Service and Pro Bono. The Committee's primary objective is to increase the public's understanding of the law and this publication is being provided to give young adults an overview of their basic legal rights and responsibilities. **It is not intended to provide legal counsel or to advise. It is for informational purposes only. No one should attempt to interpret or apply any law without the aid of an attorney.**

The inspiration for this booklet came in part from the publication, "18, a handbook on your legal rights and responsibilities" originally produced by the Virginia State Bar. We acknowledge, with gratitude, the cooperation of Thomas A. Edmonds, Esq., Executive Director of the Virginia State Bar.

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Now that you're 18 or about to turn 18, your legal rights and responsibilities change as you progress to adulthood in the eyes of the law and society. It is an exciting time in your life, and we wish you much success in the years to follow.

## GENERAL INFORMATION

### What are some of the rights I have at 18 that I didn't have before?

- You have the right to vote in national, state and local elections.
- You have the right to run for local and certain state political offices.
- You have the right to enter into a contract.
- You have the right to make a will.
- You have the right to obtain medical treatment without the consent of your parents.
- You have the right to apply for credit in your own name.
- You have the right to work in all types of jobs.
- You have the right to live independently from your parents and be free of their control.
- You have the right to marry without your parents' permission.

### What are some of the new responsibilities that I'll have when I turn 18?

- Your parents are no longer required to support you.
- You are responsible for all your actions. If you violate the law, you will be tried and sentenced as an adult, not a juvenile.
- You may sue and be sued by others for contracts that you make.
- You may be called for jury duty.
- If you are male, you must register with the Selective Service System to be eligible in the event of a military draft. Failure to register can result in imprisonment, fines, and ineligibility for federal student loans and many government jobs.

## FREE SPEECH

### Do public school students have an absolute right to express their opinions in school?

It is not an absolute right, but political and religious speech is generally protected. For example, the U.S. Supreme court in *Tinker v. Des Moines School District* (393 U.S. 503 (1969)) ruled that a school could not suspend students for wearing black arm bands to protest the Viet Nam war.

### Are there limitations on a student's right to express himself or herself in school?

Yes. Although a student's right to free speech and symbolic expression "does not end at the school house gate," U.S. Supreme Court rulings have provided that:

- "Offensive" and "indecent" speech (yet not obscene) is not protected. (The Supreme Court ruled that principals could discipline a student for using "lewd" language during a student-election campaign speech.)
- School officials may impose "reasonable" restrictions on the speech of a student if it is inconsistent with "the school's basic educational mission." (In this case, a high school principal deleted two pages from a school newspaper dealing with teen pregnancy and divorce.) Generally, these decisions give broad discretion to school administrators to determine whether or not speech is protected.

### Can a school regulate what students wear?

Schools can adopt a dress code if it serves a specific educational purpose such as teaching students socially appropriate behavior or to promote safety. However, a dress code may not be based solely on taste or fashion, and students cannot be restricted from wearing clothes that make a political or religious statement unless it is deemed disruptive or offensive.

### Do these rulings apply to private schools?

No. The First Amendment limits government restrictions on your freedoms; however, private schools are not limited by the First Amendment in the restrictions they may impose. The rights of private school students are generally governed by the contractual arrangement between the school and parents or by a student handbook.

### Are students in public college entitled to First Amendment protection?

Yes. Since most college students are not minors, the courts have almost always extended full First Amendment protections. In public college, students generally would enjoy constitutional free speech

protections and such rights may even be greater than those enjoyed by public elementary and secondary school students. Given the fact that college students are older and less impressionable, public colleges may have less of a right to limit their modes of expression. For example, college students are less likely to perceive that student expressions are necessarily promoted or endorsed by their institutions of higher learning.

## **RIGHT TO PRIVACY**

### **Do students in schools enjoy the same rights under the Fourth Amendment (Search and Seizure) as do adults?**

Although lockers and desks are private in relation to other students, since such items are school property, it is assumed that students have a diminished expectation of privacy in relation to school authorities. Students and their personal property may be searched without a warrant and without probable cause (the standard required of police when searching a suspect) just as long as school officials have reasonable suspicion before making the search. For example, the U.S. Supreme Court has ruled that a principal who found illegal drugs in a student's purse while looking for cigarettes was not violating the student's privacy, even though the search was not for illegal drugs. Generally, the more intrusive the search, the higher the standard of what constitutes "reasonable suspicion."

### **Can school officials conduct a "strip search" to look for illegal items?**

Yes. Most recently, a federal appellate court with jurisdiction over New York State has held that, in order to conduct a strip search of a student, administrators and teachers need not necessarily have probable cause relative to the nature of the violation and surrounding factual circumstances must be considered. The court ruled that the standard of "reasonable suspicion" on the part of school officials is sufficient to justify a strip search.

### **Can school officials bring in drug sniffing dogs?**

This is an open question in New York. Federal courts in other regions have determined that use of dogs to sniff lockers and other property is legal. However, the use of dogs to sniff the body of a student is typically viewed as a Fourth Amendment search, and thus requires the party conducting the search to demonstrate a reasonable suspicion of illegal activity by the individual student who is being searched.

### **Can I be subject to random drug tests at school?**

The U.S. Supreme Court has found suspicionless, random drug testing of students participating in school athletics programs legal, provided that students and parents sign a consent form. The New York Commissioner of Education has found that testing conducted without parental consent is in excess of a school district's legal authority. The U.S. Supreme Court recently extended the scope of drug testing to include students who participate in any after school activities or teams. This ruling means that most students may be subjected to random drug tests, but not necessarily in NY State.

## **SCHOOL RECORDS**

### **Do I have the right to have my school records kept confidential from outsiders?**

Yes. The Federal Family Educational Rights and Privacy Act (FERPA), also called the Buckley Amendment, requires written parental or student consent in order for outside parties to have access to school records.

### **Can I see my school records?**

Parents of students under the age of 18 and all students 18 or older, or those attending college, have the right to inspect most student records.

### **What can I do if I believe there is incorrect information in my file?**

You, or your parents, can request that false, misleading or inappropriate information be changed. If the request is denied, you can ask for a hearing. Even if you lose at the hearing, you have a right to put your own explanation or information in the file.

# **MARRIAGE/ DIVORCE/ CHILDREN**

## **When can I get married in NY?**

You may get married without a parent's consent at the age of 18. The minimum age to get married is 16 with the consent of your parents or guardian.

## **What are my duties and responsibilities once I get married?**

Marriage is a contract and a married couple has duties and responsibilities to one another until one of them dies or the marriage is legally terminated. Each spouse has the duty to provide physical and mental support to the other spouse for necessities throughout the marriage and this obligation may even continue after a divorce or separation.

## **How do I get a marriage license?**

You and your fiancé must go to the clerk of the city, town, village or county in which you reside and fill out an application. You must bring with you picture identification and any divorce or annulment papers if one of you was married before. Once you receive your marriage license you must have a commencement of your vows within 60 days of the issuance of the marriage license. However, you must wait 24 hours between the time your marriage license is issued and the commencement of your vows.

A blood test is not required in New York.

## **Do I have to get married in a church for the marriage to be legal?**

No. You may get married in a church or you may choose to have a civil ceremony, which is performed by a judge or a justice, or others pursuant to the NY Domestic Relations Law.

## **What happens if I want to get a divorce?**

A divorce is a legal termination of the marriage and dissolves the legal contract between the married couple. In New York, the couple must have "grounds" or legal reasons that allow the court to grant a divorce. To obtain a divorce in New York, one of the following grounds must be shown:

- Cruel and inhuman treatment;
- Abandonment;
- Imprisonment;
- Adultery;
- Living separate and apart pursuant to a separation judgment or decree; or
- Living separate and apart pursuant to a separation agreement.

Additionally, there are certain legal procedures you must follow to get a divorce. A petition is filed with the court and a notice is served on the other party. If both parties agree to the divorce, the parties can file for the divorce on their own. You may be able to obtain an uncontested divorce packet at the court clerk's office in your county. However, if the parties cannot agree on terms such as division of property, debts, financial support and custody of the children, it is best if you retain a lawyer to assist you in this process.

## **How does the court determine who gets custody of the children?**

A judge considers a number of factors in deciding a custody case, but the overriding concern is the best interest of the child. The judge can order who gets custody based on his or her determination or he or she can issue an order based on an agreement between the parents. Courts prefer to order joint or shared custody, but may award custody to one parent if the circumstances warrant. The other parent may be given visitation rights if this happens.

## **Will the court determine who has to pay child support and how much?**

Yes. Both parents are responsible for the support of their children. New York has enacted the Child Support Standards Act. This act calculates the amount of child support based on both parent's income and the number of children who are entitled to child support.

The State has established procedures for ensuring that the court ordered amount of child support be paid. The parent who is responsible for paying the child support may pay the child support directly to the other parent

on a set schedule or the Support Collections Unit may be utilized. The Support Collections Unit is a state agency that assists in obtaining child support that has been ordered by the court. The Support Collections Unit requires that the parent ordered to pay child support make the payment to the Support Collections Unit and they will forward the payment to the other parent, or, the Support Collections Unit may deduct the payment directly from the paying parent's paycheck.

### **What happens if child support is not being paid?**

If you have a child and the other parent is refusing to make court-ordered child support payments, contact a lawyer or the local Support Collections Unit. They can help you enforce the child support order, even if the parent has left the state. If the other parent is disobeying a court-ordered child support payment, that parent's driver's license may be suspended, their income tax refund may be withheld, or they may be incarcerated for a period of time.

### **Who is responsible for supporting a child who is born to parents who are not married?**

Both parents are responsible for the support, care and education of the child regardless of whether you are married to the child's other parent or not. If you, or the child's other parent, do not take financial responsibility for your child, the court may order you to pay child support in a fixed amount. This responsibility usually continues until your child graduates from high school.

If a man denies that he is the child's father, the court could order blood tests to prove paternity.

## **CONSUMER CREDIT**

### **What is credit?**

Credit is a means of buying goods and services now and paying for them later. Credit also enables you to borrow money with the promise to repay it in the future.

### **Who can get credit?**

Federal law provides that everyone has an equal right to credit. Credit cannot be denied because of your race, sex, color, religion, national origin, marital status, age (unless you are under 18), or because you receive public assistance.

### **What information does a company need in determining whether to give me credit?**

Whenever you apply for credit, the creditor (lender providing the credit) wants to be sure the money will be paid back. To determine if you are a "good risk," the creditor will want to know:

- Do you have a steady income?
- Have you demonstrated stability in your job and where you live?
- Do you make enough money to pay for the goods or services?
- Do you have a good record in paying off previous debts?

### **What is a credit bureau?**

A credit bureau is a private company that compiles your credit history. It keeps track of whether you pay your bills on time and gives you a credit rating. These credit reports contain both financial and personal information and inform the lender whether you are a good or poor credit risk.

### **What rights do I have if credit is denied?**

You have the right to inquire as to the reasons for such denial. Sometimes, if you are applying for credit for the first time and have no record at all, the creditor may deny you credit. If you are denied credit based on information received from a credit bureau, the lender must inform you of the name and address of the credit bureau that supplied the report. You then have the right to request a copy of your credit report. If your credit file contains false, misleading, or out-of-date information, you can require the credit bureau to investigate the problem and make the necessary changes. If the bureau refuses to cooperate, you may file a brief statement stating your side of the story and this information must be placed in your file. You may also request the names of companies who have requested and/or received a copy of your credit report.

### **How can I establish a good credit history?**

- Make sure you have a steady income.
- Open a checking and savings account.
- Apply for credit at a department store.
- Make small purchases and repay the debt as soon as possible.

If you continue this practice, you will create a good credit rating that will make it easier for you to apply for credit cards and other types of credit in the future (car, house, etc.).

### **How do credit cards work?**

Credit cards enable you to buy goods or services on credit. There are two basic kinds of credit cards. First, many national and local department stores issue credit cards for purchases of their goods. Second, many banks issue credit cards that allow you to buy goods on credit from any store that honors the card. Some companies provide these cards free; some charge an annual fee. The law requires that the seller completely disclose to you how much the card will cost you. The finance charges and other credit costs must be included in the annual percentage rate (APR) of interest that the lender makes known to you. Knowledge of this uniform rate allows you to “shop around” for credit, comparing the rates of various lenders. It may be to your advantage to apply for credit cards from an out-of-state bank if their rates are lower. In addition, the New York State Banking Department maintains a toll-free number where you can obtain information regarding various credit card rates and fees.

### **Will I be sent a copy of my charges?**

You will receive a monthly statement that lists the purchases you made. Most credit card companies allow you to spread your payments out over time, making minimum monthly payments. If you pay the entire bill on or before the due date, there is usually no extra charge. If you do not pay off the entire bill, you must pay a finance or interest charge, which can be as high as 21%.

### **What if I discover a mistake on my statement?**

To avoid billing problems, save all of your receipts and go over each monthly statement carefully. If you believe a billing error exists, you should take the following steps:

- You must submit a written notice to the creditor within a reasonable period of time.
- You must set out in this notice the reasons you believe there is a billing error and the amount of the error.

In turn, the creditors are required to do the following:

- Respond to your written complaint within 90 days.
- Refrain from reporting the matter to a credit bureau until the problem is resolved.

You may withhold payment of the amount in dispute pending the investigation.

### **What if my credit card is lost or stolen?**

In order to protect yourself in the event this happens, you should keep a record of all credit card numbers and the telephone numbers of the companies from which they have been obtained. Once you discover your card is missing, telephone the bank or store immediately. Once you have notified them, you are not responsible for charges made on the card. As far as charges made BEFORE the notification—you are only responsible for a maximum of \$50. There are several private services available which allow you to register all of your credit cards. In the event of a loss, you need only contact that agency and they will notify all of the appropriate companies.

### **What happens if I cannot keep up the payments?**

A consumer who does not pay off a debt goes into default and should consider the following:

- Notify each creditor IMMEDIATELY to work out a payment plan that you can meet. Do not simply discontinue payments until your financial situation improves. This will only hurt your credit rating. Many companies are quite willing to have the term of the debt extended in order to reduce your monthly payments.
- Seek help from a reputable Consumer Credit Counseling Service. They will help you devise a budget and plan for repaying your debts.



### **What protection do I have from companies trying to collect from me?**

Federal law protects you in connection with the collection of debts. The debt collector's communications are limited to reasonable times and places. False or misleading statements and harassment and abuse are prohibited. For example, a debt collector cannot threaten you, use obscene language, publicize that you refuse to pay a debt, or telephone you repeatedly or without identifying himself. Without your prior consent, a debt collector cannot communicate with any third party other than your lawyer or a credit reporting agency. If you feel that you are being harassed, you should report the collector to the Federal Trade Commission or local consumer protection agency. You may also contact the telephone company if you are receiving harassing calls.

### **What steps can a creditor take to collect from me?**

A creditor has the power to REPOSSESS or take back the goods. The creditor can sell the goods and apply the proceeds of the sale to the debt. A creditor can also file a suit against you. If the creditor wins and still cannot collect from you, he can get a court order GARNISHING your wages — this forces your employer to withhold a part of your paycheck and pay it directly to the creditor. A creditor can also ATTACH your money or property. A court order of attachment forces a bank to pay the creditor out of your bank account or allows the court to seize your property and sell it to satisfy the debt.

### **How should I use a credit card?**

Very carefully. Making purchases on credit is very easy: paying for them may not be. Credit cards can be a wonderful convenience — you don't have to carry cash, and they are easier to use than checks. However, improper use of them can be dangerous. If you use credit cards like free money that you never have to pay back, you may find yourself deep in debt very quickly. As a general rule, use credit cards only as a convenience, and pay the bill in full every month. If you choose to use a credit card to make a larger purchase to pay over time, plan in advance how much you will pay each month until the amount is paid in full.

Most credit cards have high interest rates and low monthly payments. While a low payment may sound appealing, be aware that if you pay only the minimum each month, you are usually paying only the interest accrued that month plus approximately \$10 toward the amount you originally borrowed by using the credit card. It can take a very long time to pay off a credit card debt by only paying the minimum payment, and by the time you get it paid off, you have paid almost as much or more in interest as you originally borrowed. You can develop a good credit history and make shopping convenient by using a credit card responsibly. The examples below highlight the reasons you should be careful when using credit cards.

Example 1: You purchase \$1,000 worth of furniture with a credit card having 18% APR and a 2% or \$20 minimum payment. You decide to pay only the minimum payment. Assuming you do not use the card for anything else, it would take you more than 7½ years to pay off the debt and you will have paid \$803.97 in interest. On the other hand, if you plan this purchase, and commit to paying \$150 a month until it is paid off, it will take you seven months with only \$45 interest.

Example 2: You max out a credit card with a \$2,500 limit, 18% APR and a 2% or \$20 minimum payment. You decide to pay only the minimum payment. Assuming that after you reach the limit you do not use the card again, it will take you almost 22 years to pay off the debt, and you will have paid \$4,964.32 in interest. Of course, if you keep using the card every time you have room on your credit limit, or if the company raises your credit limit (which they often do if you pay the minimum monthly payment on time), then you will never get ahead.

## **EMPLOYMENT**

### **How do I find a job?**

Finding a job can be hard. You can begin by reading the classified ads in your local newspaper, watch for "help wanted" signs, use Internet resources and tell friends and neighbors that you are looking for employment and the types of positions you are seeking. If you are attending school, many schools have career centers, which assist students in finding a job.

### **How can I improve my chances of getting a job?**

An employer's first impression of you is extremely important. Arrive at the interview on time. Dress neatly and appropriately. Be thoughtful and truthful when filling out the job application. Make sure you know what the job entails, and emphasize the skills and talents that make you the best candidate for the position.

### **Must an employer give employees a written contract?**

No. Most employment agreements are verbal.

### **Am I entitled to sick days, personal days and vacation days?**

No. You must ask your prospective employer what sick days, personal days and vacation days you are entitled to. If you are entitled to sick days, personal days and vacation days, there may be a waiting period before you are eligible for any paid time off. There is not a law that requires that you receive paid days off.

If you work for an employer with 50 or more employees, the Family and Medical Leave Act entitles you to up to 12 work weeks of unpaid leave during a 12-month period for birth or adoption of a child; to care for your spouse, child or parent with a serious health condition; or for a serious health condition that makes you unable to perform the functions of your position.

### **What if my employer fails to pay me?**

You may file a wage claim with the U. S. Department of Labor.

### **For what reasons can I be fired?**

If there is no employment contract between you and your employer, you are an "employee at will" and can be fired for any reason except one prohibited by law such as age, race, sexual discrimination, sexual harassment or disability. If an employment contract exists, the contract will dictate the terms for dismissal. If your position is classified as a civil service position, New York State Civil Service Law dictates the procedure for terminating an employee with civil service protection.

### **What are unemployment benefits?**

Unemployment benefits are government funds provided to an employee who is laid off or discharged through no fault of their own for approximately 26 weeks following the termination from employment. However, you must apply for these benefits at your local unemployment office.

### **What is workers' compensation?**

Workers' compensation provides for payment of certain expenses incurred by an employee for injuries or illness arising out of, or in the course of, employment. You should report all such injuries or illnesses to your employer immediately. You should also review the situation with both the workers' compensation department and a lawyer, to be fully advised of your legal rights.

### **What should I do if I think I have been discriminated against?**

You should contact the New York State Division of Human Rights, U.S. Equal Employment Opportunity Commission (EEOC), or private organizations that deal with discrimination. You should contact the agency/ organization as soon as you believe you were discriminated against because there is a specified time frame in which you can commence a claim. The law protects you from discrimination in hiring, firing, wages, hours and promotions.

## **LANDLORD/TENANT**

### **Must a lease be written to be enforceable?**

No. An oral lease is also enforceable if it is for a term of less than one year.

### **What should I be concerned about when signing a lease?**

As with any written contract you should understand and agree with all of the terms. Leases usually are form contracts that may contain language not easily understood and which may unfairly favor the landlord. If you

don't understand something, ask questions or seek help from a friend, parent, teacher or lawyer. Signing a lease begins a relationship with your landlord that will continue throughout the term of the lease. You should therefore keep good records of rental payments, repair requests, etc.

### **What are my obligations as a tenant?**

Your chief obligations are to pay the rent on time and to maintain the property in the condition you received it, except for normal wear and tear. A good tenant is considerate of neighbors and mindful of neighbors' rights as well.

### **What is a security deposit and what is it used for?**

A security deposit is an amount of money, not to exceed two months' rent, required by the landlord at the beginning of a lease term. It serves as a security for the landlord to cover any damages to the leased property above and beyond normal wear and tear caused by the tenant or any guests or to cover unpaid rent and late charges.

The landlord and tenant should walk through the property together at the beginning and at the end of the lease term. An inspection report should be signed by both the landlord and the tenant to document the condition of the property. This report will protect the tenant from an unscrupulous landlord who may try to keep the security deposit to pay for a condition that existed prior to leasing the property.

The security deposit is not supposed to be used for the last month's rent but is returned to the tenant after the landlord conducts a favorable walk-through inspection after the lease expires.

### **In a monthly lease, can I end the lease by just leaving at the end of a month?**

No. If the lease term is month to month, 30 days written notice to the landlord is required.

If I sign a lease with three friends, and they move out, do I have to pay the full rent or only my share?

Most leases signed by more than one person provide that the tenants are "jointly and severally liable" for the rental payments. That means the landlord has the right to seek the entire monthly rent from any one of the co-tenants even though one or more may have moved.

### **If I break a lease, for what amount can I be sued?**

If you break a lease, your landlord may seek the loss of rent to the end of the lease term minus any amount received when the property is re-let. The landlord has a duty to try to lease the property to someone else. The landlord can also seek recovery for any damages to the property above ordinary wear and tear.

### **How does a landlord terminate a lease for nonpayment of rent?**

A landlord may terminate a lease for nonpayment of rent by giving notice to the tenant to either pay what is owed or leave the property. If the tenant pays within three days of receiving that notice, the tenant may remain. If payment is not made, the landlord may begin proceedings to evict the tenant by filing a Notice of Petition and Petition (eviction action) with the local court.

### **When can my landlord enter the space I've rented?**

A landlord may only enter in case of emergency or after giving you reasonable notice.

### **What can I do if a landlord refuses to make repairs to the premises?**

If the condition for which the repairs are needed threatens your health and safety, you should send the landlord a written request that the repairs be made within 21 days. If the landlord refuses, you may cease rental payments directly to the landlord and place the amount in a special account until the repairs are made.

### **Are there laws that govern the rental of mobile home lots in mobile home parks?**

Yes. In New York, the law seeks to protect landlords and tenants of mobile home lots. The law has very specific provisions, and if you have a dispute involving the rental of a mobile home lot, you should contact a lawyer for advice.

# CONTRACTS

## What is a contract?

A contract is an agreement between two or more people that creates some type of obligation between them.

## Can I enter into any type of contract once I reach the age of 18?

Generally, yes. However, you cannot enter into contracts for which New York establishes a higher age requirement. For example, New York requires a person to be 21 years of age before being eligible to purchase alcoholic beverages.

## Do contracts have to be in writing in order to be legal?

No. A contract need not be in writing unless a statute or law requires it. Those contracts that **MUST** be in writing include:

- Contracts for the performance of services that cannot be performed within one year.
- Contracts which promise to pay the debt of another.
- Contracts involving real estate (including contracts to enter into leases of more than one year).
- Contracts for the sale of goods over \$500.

## Why should I prefer a contract to be in writing?

- Better understanding of the terms of the contract.
- Better understanding of the obligations of all parties involved.
- Ability to bring legal action if obligations of the contract are not met.

## Can I cancel my contract?

There are certain situations when you may be able to cancel the agreement for a limited period of time after you have actually signed the contract. Instances in which you can cancel include, but are not limited to, situations where:

- You entered into the contract as a result of fraud or misrepresentation by the other party;
- You were not legally competent to enter into the contract; or
- Both parties entered into the contract based on a mistake of fact which is material to the agreement.

## How can I protect my rights when I am asked to sign a contract?

If you sign a contract, the court presumes that you have read it and that you understand its contents. If you do not understand some portion of the contract, **DO NOT SIGN IT!** Consult with a parent, friend, or lawyer who can explain the terms to you. Here are some other tips:

- Never sign a contract with blank or open spaces. These should be filled in with the appropriate terms before you sign.
- You can negotiate over terms and cross out those terms you do not want included.  
Do this on all copies.
- Both parties should initial any changes to the contract on all copies.
- Make sure all **ORAL** promises are written into the contract before you sign.
- Never sign a contract under pressure.
- Keep a copy for your own records.

## What rights do I have if the other party breaches the contract?

There are several remedies available to you:

- You may seek damages (money) in an amount that would put you in as good a position as if the contract had not been breached. You cannot seek damages intended solely to punish the other party for breaching the contract.
- You may seek to rescind or cancel the contract and refuse to continue performance of the contract. You may ask for specific performance of the contract if damages are not adequate. For example, if you hire a specific band to perform for you on a certain date and they refuse, you would ask the court to order them to play.

### **What is a warranty?**

A warranty is a promise made by a seller as to the quality of goods offered. Warranties give you important rights and should be considered before you make a purchase.

### **Are there different types of warranties?**

Yes. EXPRESS WARRANTIES are statements—either written, oral or by demonstration, made by the seller concerning the quality or performance of the goods being sold. IMPLIED WARRANTIES exist even though they are unwritten, and even if the merchant makes no promise.

### **What should I be aware of if the merchant does give me a written warranty?**

If you purchase an item and receive a written warranty, it must be in simple language and made available to you before the sale. The warranty must also tell you exactly what is and what is not included, and it must say whether it is a “FULL” or “LIMITED” warranty.

### **What is the difference between a “full” and “limited” warranty?**

A “full” warranty means a defective product will be fixed within a reasonable time and free of charge. If the item cannot be fixed after a reasonable number of attempts, the consumer is allowed a refund or replacement. A “limited” warranty does not provide all of these promises and the seller can choose which ones he or she wishes to leave out.

### **Do I have any protection if the seller makes no promises?**

Yes. Implied warranties offer you protection even though the merchant has made no promise. A warranty of MERCHANTABILITY means that the item sold is of at least average quality for that type of item. For example, a stereo must play music as well as similar stereos do. If it doesn't, you have the right to demand a remedy from the merchant.

NOTE: The Seller can avoid this duty if he informs you he is selling the item “AS IS” or “WITH ALL FAULTS” or something similar. In addition, if you examine the goods prior to buying them (or choose not to examine them prior to buying them), there will be no implied warranty with regard to any defects that you could have discovered upon inspection. Also, this implied warranty does not apply to goods sold by casual sellers (individuals who sell something in the want ads or at a garage sale, with a few exceptions).

## **JURY DUTY**

### **What are the qualifications for jury service?**

A juror must be a U.S. citizen, resident of the county, not less than 18 years old, not have been convicted of a felony, and be able to understand and communicate in the English language.

### **If I'm called to serve on a jury, do I have to go?**

Yes. All qualified citizens have a legal and civil obligation to serve as jurors when called.

### **Can jurors postpone jury service for a later date?**

You may apply, usually by mail or phone, to your local Commissioner of Jurors. Your first request for a postponement will be granted automatically. Subsequent requests for postponement will be considered individually by the Commissioner of Jurors Office.

### **Are jurors compensated?**

Yes. The state will pay a fee of \$40 for each day of physical attendance. However, there are some exceptions.

#### **EXCEPTION # 1**

Jurors who are employed CANNOT be paid a jury fee for any day(s) on which they receive regular wages unless their regular wage is less than \$40. In that case, the state will pay the difference between the juror's wage and the \$40 fee.

## EXCEPTION # 2

Jurors who work for an employer with more than 10 employees **MUST** be paid by their employer, at least \$40 of their regular daily wage — whichever is less, for the first three-days of service.

Note: The obligation of the employer to pay only applies if the juror is serving jury duty on a regularly scheduled workday. If not, the state pays the daily fee of \$40.

### **Can I request a financial or medical hardship?**

Yes, but jurors are normally required to provide supporting documentation to the Commissioner of Jurors Office.

### **What happens if I ignore a jury notice?**

A person who ignores a jury notice is subject to civil and criminal penalties. If a court judgment is made, it may affect any future application you make for credit or car insurance.

## VOTING

### **How old do I have to be to vote?**

Under the federal and New York state constitutions you are eligible to vote, provided you meet all other requirements, when you reach 18 years of age.

### **What are the requirements for voting?**

Even though you are 18, age alone does not make you eligible to vote. You must be a U.S. citizen and a resident of the state in which you intend to vote for at least 30 days before the election. You must also register to vote.

### **How do I register to vote?**

You can register to vote by appearing personally at the voter registration office. Generally, these offices are in the county courthouse, post office or other public buildings. You may also register to vote at the Department of Motor Vehicles; at the same time you obtain or renew your driver's license, or obtain an identification card. If you appear in person, you must bring documents to prove your name, address and age.

### **How do I know where to vote?**

After you register to vote, you will be sent a voter's card that will tell you where to vote. You will also typically receive a reminder of your polling place in the mail several weeks prior to the election. Where you vote will depend upon where you live. Your local government designates where you must vote, usually at public places, such as a school, fire station, community center, City Hall or similar location. The building is called a polling place or the "polls."

### **How do I vote?**

You go to your assigned polling place with your voter registration card on the date of the election. You vote in privacy and your choices are secret. Depending on the practices in your district, you will make your selection by filling out a paper ballot, moving levers on a voting machine or using a wand on a computerized panel.

### **What happens if I have registered but cannot appear at the poll on Election Day?**

If, in advance of the election, you apply with the Registrar of Voters for an absentee ballot, you may cast your vote by mail prior to the election. However, if you fail to vote by absentee ballot and you do not appear at the polls on Election Day to vote, you lose your opportunity to vote in the election.

## MILITARY SERVICE

### **When can I enlist in the Armed Forces?**

You must be 18 to enlist, but with the written consent of your parent or guardian, you may enlist at the age of 17.

### **Are all 18-year-old males still required to register with the Selective Service System?**

Absolutely. Even though this country has not had a “draft” for quite some time, every male citizen of the United States is still required to register with the United States Selective Service System within 30 days of an 18th birthday. Females still do not need to register for the Selective Service. All males between the ages of 18 and 26 who are not citizens of the United States must also register, unless they have legally entered the

U.S. as non-immigrants. You may be exempt from registering if you are already on full-time active duty with the Armed Forces, but part-time duty with the National Guard or Reserves does not exempt you from registering.

If you failed to register when you turned 18, you should register as soon as possible. The federal government will not prosecute you if you register before criminal action against you has started. But, if criminal charges against you have commenced for failing to register, you could be convicted of a federal crime punishable by up to five years in prison and a fine of up to \$250,000! If you need any more reasons to register, those who fail to do so are ineligible for federally funded student financial aid, civilian jobs with the federal government, and federal job training programs.

### **How and where do I register?**

To register, you simply go to any post office and fill out a Selective Service registration form. After your registration is processed, a Selective Service registration card will be mailed to you.

The Selective Service obtains addresses of men with driver’s licenses from the Department of Motor Vehicles; so don’t be surprised if a registration form is mailed to you shortly after your 18th birthday.

### **What if I think I may be exempt from the draft?**

You still must register. Draft cards are not issued at the time of registration, and you will not get a physical examination or receive a military classification. If a draft were to occur, you would be notified by the Selective Service. Your notice would order you to report for a physical examination and would provide information on possible exemptions and deferments at that time.

## **DRIVING**

### **Is driving a right?**

No. Driving is a privilege, not a right. You need a valid driver’s license to drive a vehicle. Your license may be revoked or suspended for a significant amount of time for a multitude of reasons. Some of the reasons that your license can be revoked or suspended is for too many traffic infractions, driving while ability impaired, driving while intoxicated or when you fail to pay child support.

### **Are there any restrictions on my driver’s license when I receive it?**

Yes. If you receive your license at the age of 16, you cannot drive after 9:00 p.m. unless you have successfully completed a driver’s education class. Additionally, regardless of what age you receive your driver’s license, there is a six (6) month probation period. This means that you cannot be convicted of a traffic infraction within the first six months that you have your license or the New York State Department of Motor Vehicles may suspend or revoke your license.

### **Am I required to have car insurance?**

Yes. New York requires any vehicle that is registered to have car insurance coverage for general liability. If you do not have car insurance your license and registration can be suspended. You may also be subject to a large fine if you are found guilty of driving a vehicle which does not have insurance coverage. Both the court that found you guilty of the violations as well as the New York State Department of Motor Vehicles can fine you. Successful completion of a defensive driver course can erase up to 4 points on a license, and save a driver 10 percent on his/her liability premium.

### **What happens if I get too many traffic tickets?**

Driving violations are rated according to points. When you are convicted of certain violations, the number of points assigned to those violations penalizes your driving record. If you receive eleven (11) points within an

eighteen (18) month time frame, the Department of Motor Vehicles may suspend your driver's license for a period of time.

In New York, the Department of Motor Vehicles also may suspend your driver's license if you are convicted of three speeding violations within an eighteen-month (18) time period, irrespective of how many points you receive.

In addition to the points being assigned to your driver's license, the driving violations may impact your insurance and even your ability to obtain and maintain car insurance. A driver responsibility assessment of \$300 can be assessed if a driver amasses 6 points within an 18 month period. A driver responsibility assessment of \$750 can be assessed if a driver is convicted of DWI (alcohol or drug related), or reuses a chemical breath test is suspected of driving while under the influence.

### **Am I required to wear a seat belt?**

Yes. New York State law requires that all persons in the front seat of an automobile must wear a seat belt while the vehicle is in motion.

However, you may be exempt from this requirement if you have a doctor's statement advising that you are unable to wear a seat belt for medical reasons.

Additionally, if you are the driver, you must ensure that a child between the ages of 4 and 16 is wearing a seat belt in the back seat and children under the age of 4 must ride in an approved child safety seat.

### **What should I do if I am involved in an accident?**

Immediately stop as close to the scene of the accident as possible without obstructing traffic and contact the police or dial "911". You must then provide a valid driver's license, vehicle registration and a valid insurance card to the responding police officer. The police officer will then fill out an information form to give to each person involved in the accident. This should be done even if the accident involves an unoccupied vehicle or other property damage. In addition, you should contact your insurance company within a reasonable time after the accident (your insurance company may require that you report an accident within a specified time) to advise them of the accident.

If you leave the scene of an automobile accident without reporting the accident, you may be charged with a traffic infraction for leaving the scene of an automobile accident, which carries 3 points that may be assigned to your driver's license.

Leaving the scene of an accident in which someone was injured or killed is a crime.

## **ALCOHOL AND OTHER SUBSTANCES**

### **What is the minimum drinking age?**

You must be 21 years old to purchase or possess any alcoholic beverage whether it is beer, wine, or liquor.

### **May a person under 21 years of age buy alcohol with parental consent?**

No. Parents cannot legally authorize an underage child to buy alcoholic beverages of any type. It is against the law to sell or to purchase alcohol for a person under 21. In New York, a person under the age of 21 may possess alcohol with the intent to consume it if it is given to the person that is under 21 by his or her parent or legal guardian.

### **What are the penalties for unlawful underage possession of alcohol?**

Unlawful underage possession of alcohol with intent to consume it is a civil violation with a fine up to \$50 and/or completion of an alcohol awareness program and/or less than 30 hours of community service. Controlled substance conviction can impact eligibility for student financial aid.

### **What are the penalties for possession of marijuana and other illegal substances?**

Unlawful possession of a small quantity of marijuana is a criminal violation punishable by a fine of not more



than \$100 for a first offense. Subsequent offenses may result in increased fines up to \$250 and 15 days in jail. Possessing more than 25 grams of marijuana is a crime and could result in much more serious fines and jail sentences up to 15 years.

Unlawful possession of other controlled substances is, at least, a Class A misdemeanor, which may result in up to 12 months in jail and a fine of up to \$1,000. Depending on the amount and type of controlled substance in your possession, you could serve up to 25 years in state prison. NOTE: This may change if the Rockefeller Drug Laws (which require sentencing for drug possession) are changed by the state Legislature.

## **DRUNK DRIVING/DRIVING WHILE ABILITY IMPAIRED BY DRUGS**

### **What happens if I am stopped for drunk driving or driving while my ability is impaired by drugs?**

If you are stopped for driving while intoxicated (DWI) or Driving While Ability Impaired by Drugs, you will be questioned about your consumption of alcohol or drugs, asked to perform a field sobriety test, and requested to give an alcohol sensor test at the scene. Depending on the results of these tests, you may be arrested and taken to a police station or hospital to provide a breath or blood test to determine the amount of alcohol or drugs in your system.

By driving on a public street or highway, it is assumed that you have given your consent for the taking of such a sample. If you refuse to take either test, you may be charged with a separate violation for that refusal. Additionally, your refusal alone will result in an automatic revocation of your driver's license for at least six (6) months regardless of your guilt or innocence on the DWI or Driving While Ability Impaired by Drugs charge.

Conviction for an unreasonable refusal of a blood or breath test results in a mandatory 12-month revocation of your driver's license.

### **What are the penalties for drunk driving or driving under the influence of drugs?**

Driving While Intoxicated by alcohol or drugs is a Class A misdemeanor with penalties of up to 12 months in jail and a \$1,000 fine. However, if you are convicted of a second violation of Driving While Intoxicated or Driving While Ability Impaired by Drugs within ten (10) years, the second violation is a Class E felony and punishable by a fine up to \$5,000 and up to four (4) years in prison. In addition, there is an automatic loss of driving privileges for 90 days for a first offense. A second conviction for DWI or Driving While Ability Impaired by Drugs will result in your driving privileges being lost for one year.

The law presumes that you are under the influence of alcohol if a breath test shows that your blood alcohol content is 0.08% or higher.

Additionally, there are special provisions for persons under the age of 21 who are convicted of Driving While Ability Impaired (DWAI), DWI and Driving While Ability Impaired by Drugs. If you are convicted of a DWI either by alcohol or drugs and are under the age of 21, you may serve time in jail, even for the first offense. In addition, there is an automatic loss of driving privileges for one (1) year even for a first offense. A second conviction while under the age of 21 will result in a felony charge and a revocation of your driving privileges of one (1) year or until you turn 21, whichever is longer.

New York also has a new "zero tolerance" law. Under this law if you are under the age of 21 and have a blood alcohol content as low as 0.02% but less than 0.07%, you will lose your driver's license for six (6) months and be fined up to \$125.

### **Do drunk driving laws apply only to cars and trucks?**

No. Drunk driving laws apply to all motorized vehicles, including boats, motorcycles, ATVs, snowmobiles etc.

### **Is it true that I can lose my license before I am convicted?**

Yes. If you are arrested for DWI and refuse to take a breath test, or take a breath test which indicates a blood alcohol content of 0.08% or more, you will immediately lose your license pending prosecution of your case. This automatic loss of license is in addition to any suspension or revocation imposed as a result of a DWI conviction.

## **SMALL CLAIMS COURT**

### **What is Small Claims Court?**

The Small Claims Court is an informal court where individuals can sue for money only, up to \$3,000, without having a lawyer represent you.

### **When should I use Small Claims Court?**

You can sue in Small Claims Court whenever you feel someone owes you money and is not going to pay you voluntarily. For example, if you feel that a person or a business damaged something you own, you may sue for the monetary damages. However, you may not sue to force the performance of an act promised in a contract. You may sue only for the monetary damages caused to you by the failure to perform the act.

### **Where do I find the Small Claims Court?**

There is at least one Small Claims Court in each of the 62 counties in New York State. All city courts, and almost all town and village courts, handle small claims. Almost all of these courts have a clerk who can help you with the procedures you must take for bringing your lawsuit. In those courts that do not have a clerk, the judge will assist you in bringing the case.

### **How do I prepare for Small Claims Court?**

You should be prepared to give a statement of the facts that form the basis of your claim. Organize and be prepared to show any relevant documents or photographs. The court clerks cannot give you legal advice, but they will help you if you need to subpoena a witness to testify at your trial. If possible, you should speak with your potential witnesses to explain what you will be asking of them.

Remember that you must sue in a Small Claims Court in an area where the defendant lives or works or has a place of business. You will have to pay a small filing fee of either \$10 or \$15 depending on the amount of the claim. Once the claim is filed, the clerk will tell you when your court date is. The clerk will also mail a notice of claim to the defendant. If it is returned as undeliverable, you will have to arrange to have the defendant served personally.

Adjournments are discouraged, only the judge can grant one, so be prepared to proceed on your court date. If you must request an adjournment, you should notify the other party in advance. Ask the court clerk if you must still appear or have someone appear on your behalf, or if the court allows the request to be made by mail.

On your court date, before your trial starts, the judge will encourage you and the other party to try to negotiate a settlement. You may be able to compromise with the other party and avoid the risk of going to trial, but you do not have to settle; you always have the right to go to trial.

You should also be prepared for the other party to bring a counterclaim against you if the circumstances warrant it. This is where the defendant replies to your claim and counter-sues you at the same time. You are the defendant in a counterclaim and you may reply to it, but you are not required to do so if you do not contest the counterclaim.

### **If I win, how do I collect?**

If you win your case, the judge will enter a judgment against the defendant for a sum of money. The court can help you collect by ordering the defendant to disclose assets prior to entering the judgment. You should contact the defendant to collect your judgment, but if he or she does not pay you, then you may need the services of an enforcement officer, i.e. a sheriff or city marshal. You will provide the enforcement officer with the information needed to locate assets so that those assets may be seized to satisfy your judgment.

## **WILLS**

### **What is a will?**

A will is a legal document in which a person directs what is to be done with his or her property after death. Although it may be depressing to think about, a little planning can help your family and friends later.

### **Why should I have a will and what happens if I don't have one?**

A will allows you to determine how you want your property divided if you should die. This includes the distribution of your personal property (i.e. cars, jewelry, or furniture). You may also name the person whom you would like to handle your affairs after your death. A will is the best way to make special provisions for your children and others who may depend on you. If you have children, it also allows you to dictate who will be deemed your child's legal guardian and possibly physical custody in the event that both you and the child's other parent are deceased. If you don't have a will, New York State law determines how your property is distributed. (For more, see section on Marriage/Divorce/Children)

### **Who should draft a will?**

Although there are many computer programs and books that give you advice on drafting a will, it is best to have a lawyer or someone familiar with New York State laws draft your will. There are many specific legal requirements that affect a simple will. If all the requirements are not met, your will may not be valid. Only a lawyer is qualified to give legal advice about writing a will and properly signing it.

## **WELFARE BENEFITS**

### **What welfare benefits are available to me?**

There are a variety of benefits available to you and your minor children through the Department of Social Services. Some benefits that are available to eligible families and children include: Medicaid, food stamps, nutritious food for eligible women and children, and temporary financial assistance. If you think you may be eligible, contact your local County Department of Social Services for more details.

## **CRIMINAL CHARGES**

### **What happens if I am charged with a crime after I turn 18?**

Always remember, one of your most precious rights is that you are presumed innocent until proven guilty!

For all criminal charges you will be tried as an adult, and a record of any conviction will be maintained by the New York State Division of Criminal Justice Services. Your criminal record is permanent and may have a negative impact on many aspects of your life whether or not you remain in New York.

### **If I am arrested for a criminal offense, what do I have a right to expect from the arresting officer?**

The arresting officer should advise you of the charge for which you are being arrested. If you are in custody - that is, not free to leave - you should be advised of your Constitutional rights before you are interrogated. These "Miranda rights" allow you to remain silent and to have a lawyer present during questioning. You usually are allowed one phone call. You should exercise your rights and never allow anyone to coerce you to waive these rights.

### **What happens if I am arrested?**

Defendants arrested on warrants are taken before a judge who decides whether to set bond or bail or send you to jail while you wait for a trial to determine your guilt or innocence. A person who is issued a summons and not taken into custody goes to court for the first time on the return date set by the court.

### **What does it mean to be released on bail?**

When a judge sets a bond/bail, consideration is given to whether the defendant is a threat to the community or is unlikely to return for the next court appearance. The amount and type of bail reflects the judge's consideration of many factors. A defendant may be released on his own recognizance (ROR), which means, after careful consideration, the judge determined that you are no threat to the community or a flight risk, and trusts that you will return to court on your own, without bail. A defendant may be placed on a surety bond or a cash bail. A surety bond or bail is a financial guarantee that the person will be on good behavior until the trial and will show up for court. A defendant who fails to abide by either condition may have the bond/bail canceled or forfeited, which means the bail/bond amount is forfeited to the state. Failure to appear is an additional charge and a bench warrant is issued.

### **What is the difference between a felony and a misdemeanor?**

A felony is a major crime punishable by possible imprisonment of more than one year in the state penitentiary. A misdemeanor is punishable by a jail sentence of up to 12 months, a fine of up to \$1,000, or both.

### **What if I cannot afford to hire a lawyer?**

If a court determines you cannot afford to hire a lawyer, and if you are charged with an offense punishable with jail or prison time, then a lawyer will be appointed for you - either a public defender or a private attorney.

## **PERSONS WITH DISABILITIES**

### **Does the law protect the civil rights of individuals with disabilities?**

Yes. The New York State Division of Human Rights assures equal opportunity to persons with disabilities in New York. The New York State Human Rights Law prohibits discrimination against otherwise qualified persons with disabilities. Additionally, the Americans with Disabilities Act (ADA) provides federal civil rights protection to individuals with disabilities that are similar to those provided on the basis of race, sex and religion. The Americans with Disabilities Act addresses equal opportunities in the areas of employment, public accommodations, transportation and state and local government.

### **Who is someone with a disability?**

Anyone who has a physical or mental impairment that substantially limits one or more "major life functions", has a record of such impairment, or is generally regarded as being disabled.

A physical impairment is any physiological disorder, condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems:

- Neurological
- Musculoskeletal
- Special sense organs
- Respiratory (including speech organ)
- Cardiovascular
- Reproductive
- Digestive
- Genitourinary
- Hemic
- Lymphatic
- Skin
- Endocrine

Examples: muscular dystrophy; epilepsy; impairment or loss of extremities such as a finger, hand, leg, etc.; amblyopic (poor vision); hearing impaired; Human Immunodeficiency Virus (HIV)

Mental or psychological disorders include:

- Mental retardation
- Organic brain syndrome
- Emotional or mental illness (i.e. depression)
- Specific learning disabilities.

Major life activities include functions such as:

- Caring for ones self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working

Generally, a person who is unable to perform a major life activity that the average person in the general public can perform, is considered disabled.

## **HIRING A LAWYER**

### **Should I hire a lawyer?**

Although there is a cost, it is always a good idea to consult with a lawyer when entering into a situation where you should know your legal rights. The best time to seek a lawyer's help is before getting into a legal dispute; in fact, many times using a lawyer from the start can prevent such disputes from occurring. Some situations where you should consider consulting with a lawyer are:

- You are planning to enter into a contract that has financial consequences.
- You want to get out of an existing contract.
- You are involved in an accident where there is property damage or personal injury.
- You are involved in a domestic controversy such as paternity, child support, or divorce.
- You want to draft a will or plan for the support of someone after your death.
- You are concerned about your legal rights or position in any matter.

There are many ways to go about finding a lawyer. Friends or family may know a lawyer that they have used and with whom they were pleased. If you don't have a lawyer and think you have a legal problem, the answer may be as convenient as your telephone. The New York State Bar Association's Lawyer Referral and Information Service operates in 41 counties throughout the state. Call 800-342-3661 from anywhere in New York State. That number will place you in direct contact with the Lawyer Referral and Information Service, maintained as a public service by the New York State Bar Association. In the Albany area, the number is 487-5709. Of course, the yellow pages lists attorneys, often by practice area.

When you call the Lawyer Referral and Information Service, you will be asked what county you are calling from. The Lawyer Referral staff will ask you to state your problem briefly (any information you provide will be held in the strictest confidence).

After listening to your problem, the Service will take your name, address and telephone number. You will then be given the name of a lawyer near you who can handle your type of legal problem. It will be your responsibility to contact the lawyer to make an appointment to discuss your legal problem. The Service does not make appointments for callers.

Lawyers participating in the Service have agreed to provide an initial consultation of up to one-half hour for a \$25 fee. During the first visit, you and the lawyer will discuss your problem. If it is determined you do have a legal problem, it is up to you to make another appointment or to authorize the lawyer to take action on your problem. Any fees beyond the initial consultation fee will be decided between you and the lawyer.

Some lawyers are general practitioners meaning they deal with many types of legal issues. There are also lawyers who focus on a particular area of law. The nature of your legal problem and the amount in controversy may impact what type of lawyer you want to hire to help you. Most lawyers will readily answer your questions about their training or area of practice.

### **How do lawyers charge for their service?**

There are several common fee arrangements offered by lawyers. Many offer free initial consultations. During the initial meeting, the lawyer's fee and costs should be discussed if you feel that you want to hire that particular lawyer or law firm. Commonly, lawyers charge an hourly fee based on a rate per hour worked on your case. Sometimes, the charge may be a single flat fee for the entire case. In some cases, such as personal injury cases, a lawyer may charge a contingency fee, which is a percentage of any money that you receive should you win or settle your case. You should ask for a written retainer agreement including the fee arrangement so that you are clear about the lawyer's representation.

### **What about confidentiality?**

With few exceptions, your lawyer has an ethical obligation to keep secret the information that you give to him as a client. You should feel free to discuss your matter openly with your lawyer. However, in limited

circumstances, your lawyer may be required to reveal information that you have told him, for example, if you intend to commit a crime.

### **What if I think my lawyer is not handling my case properly?**

You should bring up any questions or concerns about your case with your lawyer. Doing so sooner, rather than later, will help eliminate potential disputes, as well as lower your anxiety. If you and your lawyer reach a point where you cannot settle your dispute you have several options: consider hiring a new lawyer, filing a complaint, or even suing for malpractice. Your written retainer agreement should provide for some sort of dispute resolution, for example, arbitration of fee disputes.

### **What are my rights and fair expectations when hiring a lawyer?**

#### **STATEMENT OF CLIENT'S RIGHTS**

*(As adopted by the Administrative Board of the Courts)*

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory. In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.
5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.
7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).
8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.
10. You may not be refused representation on the basis of race, creed, color, age, religion, sex, sexual orientation, national origin or disability.

### **What responsibilities do I have when hiring a lawyer?**

#### **STATEMENT OF CLIENT'S RESPONSIBILITIES**

Reciprocal trust, courtesy and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the following responsibilities:

1. The client is expected to treat the lawyer and the lawyer's staff with courtesy and consideration.

2. The client's relationship with the lawyer must be one of complete candor and the lawyer must be apprised of all facts or circumstances of the matter being handled by the lawyer even if the client believes that those facts may be detrimental to the client's cause or unflattering to the client.
3. The client must honor the fee arrangement as agreed to with the lawyer, in accordance with law.
4. All bills for services rendered which are tendered to the client pursuant to the agreed upon fee arrangement should be paid promptly.
5. The client may withdraw from the attorney-client relationship, subject to financial commitments under the agreed to fee arrangement, and, in certain circumstances, subject to court approval.
6. Although the client should expect that his or her correspondence, telephone calls and other communications will be answered within a reasonable time frame, the client should recognize that the lawyer has other clients equally demanding of the lawyer's time and attention.
7. The client should maintain contact with the lawyer, promptly notify the lawyer of any change in telephone number or address and respond promptly to a request by the lawyer for information and cooperation.
8. The client must realize that the lawyer need respect only legitimate objectives of the client and that the lawyer will not advocate or propose positions which are unprofessional or contrary to law or the Lawyer's Code of Professional Responsibility.
9. The lawyer may be unable to accept a case if the lawyer has previous professional commitments which will result in inadequate time being available for the proper representation of a new client.
10. A lawyer is under no obligation to accept a client if the lawyer determines that the cause of the client is without merit, a conflict of interest would exist or that a suitable working relationship with the client is not likely.



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