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Contracts 101 For Creditors (In a Nutshell)

The commencement of a lawsuit to collect monies owed for goods sold and delivered, or services rendered, is an action based upon a breach of contract. It is important, therefore, to understand these considerations: the elements of a contract; the elements necessary to create a binding contract; and what damages are recoverable for a breach of contract. This article will provide the creditor a very brief discussion and overview of these contract basics. The law of contracts is extremely vast. Therefore, no attempt will be made to consider every aspect of this broad area of the law. Rather, this article is meant to aid the creditor in understanding the basic concepts of contract law.

Basically, a contract, *whether oral or written*, is a legally enforceable agreement between two or more parties. It is a promise by one party or a set of promises between parties. A common example of the commercial contract is when the creditor agrees to sell a product or provide a service in return for a promise to pay. A failure to carry out the promise allows the creditor to whom the broken promise was made to seek recovery of damages by way of a lawsuit. Some promises must be in writing to be legally enforceable.

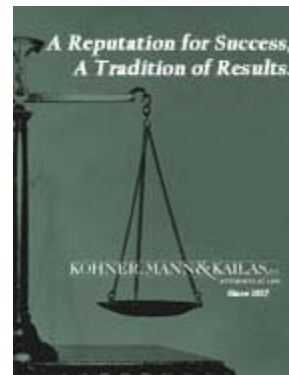
Contracts can be either formal or informal. Formal contracts are those written in formal legal language and executed, i.e. signed, by the parties. All contracts must contain an offer, an acceptance and a consideration.

The Offer

The offer is that definite expression of action which commences a contract. It is what one party offers to another for the other party's promise to take some form of action. It cannot be ambiguous but must be definite and specific. If the offer is accepted, it is enforceable as a binding contract. Mere negotiations or discussions between parties concerning the possibility of making an offer do not constitute an offer and therefore are not enforceable. Advertisements are mere statements that certain items are available for purchase at a particular price.

The Acceptance

The acceptance of an offer by a party is the mechanics by which the contract is created. The acceptance once given generally cannot be withdrawn. It cannot vary any of the offer's terms. It cannot alter or modify the offer. To do so makes the acceptance a counteroffer. Offers and



acceptances between business entities are generally governed by the provisions of the Sales Act as included in the Uniform Commercial Code as adopted by the state of the jurisdiction of the contracting parties.

The Consideration

Consideration may be in the form of money; it may be another right, interest or benefit; it may be a detriment, loss or responsibility given up. Consideration must be present to have a legally enforceable contract. It can be expressly agreed upon or it can be implied from the contract terms themselves.



Capacity to Contract

The parties to a contract must have the legal capacity to enter into the contract. The law presumes parties have the capacity. Infants, minors and incompetents do not have capacity to enter into binding contracts.

About KMK Collections

KMK Collections is a division of **Kohner, Mann & Kailas, S.C.**, a law firm founded in 1937 as a result of a conviction that businesses deserved more aggressive and cost-effective advocacy for their interests and contractual rights. Over 70 years as leaders in debt liquidation and commercial law, Kohner, Mann & Kailas, S.C. and KMK Collections have earned an industry-wide reputation. Each year we handle many thousands of commercial contract and collection matters for the liquidation of commercial debt and recovery of goods and services provided, delivering the consistently exemplary results that our American and international clientele has come to rely upon and expect of us. **Kohner, Mann & Kailas, S.C.**, is a business law firm listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers that provides exemplary legal service in all areas of law encountered by businesses in the normal course of their operations and growth.

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