

**CHAPTER 307. PLAIN LANGUAGE CONSUMER
CONTRACT PREAPPROVAL—STATEMENT OF
POLICY**

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Source

The provisions of this Chapter 307 adopted September 23, 1994, effective September 24, 1994, 24 Pa.B. 4779, unless otherwise noted.

§ 307.1. Scope.

In this chapter, the OAG explains how to submit a contract for its preapproval under the PLA. Additional written materials are available from the OAG to help you comply with the PLA.

§ 307.2. Materials used in preapproval.

- (a) The following materials are used in preapproval:
- (1) An application for contract preapproval.
 - (2) A test of readability.
 - (3) Illustrations for the test of readability.
- (b) You can request these materials by writing or calling the OAG, and asking for the Plain Language Contract Preapproval Materials:

Office of Attorney General
Bureau of Consumer Protection
14th Floor, Strawberry Square
Harrisburg, PA 17120
ATTN: PLA
(717) 787-9707 or 1-800-441-2555

§ 307.3. Contracts and language subject to preapproval.

The PLA and our preapproval apply only to consumer contracts as defined under section 3 of the PLA (73 P. S. § 2203). For the purpose of the PLA, a consumer contract is mainly limited to transactions primarily for personal, family or

household purposes in amounts up to \$50,000. In the opinion of the Attorney General, the PLA applies only to contracts executed after June 24, 1994, the effective date of the PLA.

§ 307.4. Definitions.

(a) The following terms have the following meanings when used in this chapter:

OAG—The Office of Attorney General.

PLA—The Plain Language Consumer Contract Act (73 P. S. §§ 2201—2212).

(b) Section 3 of the PLA (73 P. S. § 2203) contains definitions as follows:

Consumer—Any individual who borrows, buys, leases or obtains credit, money, services or property under a consumer contract.

Consumer contract or *contract*—A written agreement between a consumer and a party acting in the usual course of business, made primarily for personal, family or household purposes in which a consumer does any of the following:

- (i) Borrows money.
- (ii) Buys, leases or rents personal property, real property or services for cash or on credit.
- (iii) Obtains credit.

§ 307.5. Exclusions.

The PLA excludes certain contracts from its application as stated under section 4 of the PLA (73 P. S. § 2204). The exclusions include:

- (1) Real estate conveyance documents and contracts, deeds and mortgages, real estate certificates of title and title insurance contracts.
- (2) Consumer contracts involving amounts of more than \$50,000.
- (3) Marital agreements.
- (4) Contracts to buy securities.
- (5) Documents used by financial institutions, which financial institutions are subject to examination or other supervision by Federal or State regulatory authorities, or documents used by affiliates, subsidiaries or service corporations of the financial institutions.
- (6) Contracts for insurance or insurance policies.
- (7) Contracts subject to examination or other supervision by the Pennsylvania Public Utility Commission or by the Federal Energy Regulatory Commission.
- (8) Commercial leases.

§ 307.6. Our policy in preapproving contracts.

(a) Under section 2(b) of the PLA (73 P. S. § 2202(b)), the legislative intent is to promote the writing of consumer contracts in plain language. Section 2(b) states, that the PLA will protect consumers from making contracts they do not

understand. Finally, the legislative intent is to help consumers to better know their rights and duties under those contracts.

(b) The OAG uses only the test of readability in preapproving consumer contracts. The OAG considers the contract as a whole. The OAG takes into account the nature and complexity of the transactions, the identity of the parties and the information that the parties need about their rights and responsibilities.

(c) We will try to provide helpful information. We cannot rewrite your contract for you.

§ 307.7. Instructions for obtaining preapproval.

(a) Each contract you submit to us must be accompanied by a separate application for contract preapproval even if you submit several similar contracts. If you have several similar contracts, we suggest that you submit only one for preapproval. You can then use the preapproved contract as your model for other similar contracts. However, each separate contract must be preapproved before it can be represented as complying with the PLA.

(b) To obtain preapproval:

(1) Complete the application for contract preapproval.

(2) Enclose 3 copies of each contract you wish preapproved.

(3) Underline in red on each copy language required by Federal or State law or regulation.

(4) Mail the application and 3 copies of each contract to:

Office of Attorney General
Bureau of Consumer Protection
14th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Attn: PLA

(c) We can begin processing your contract only after we receive all requested information.

§ 307.8. How we conduct our preapproval.

We will use the test of readability as a checklist. A checkmark indicates the contract fails the test of readability for preapproval purposes. A number written on your contract corresponds with the number on the test of readability. Please contact the Office of Attorney General if you wish to check on the status of your contract.

§ 307.9. Determination.

(a) We will return to you a copy of the contract and test of readability, if applicable. We will advise you whether the contract is preapproved as complying with the PLA. If the contract does not meet the test of readability under section

5 of the PLA (73 P. S. § 2205), you may make changes and resubmit your contract. You must complete a new application if you decide to submit your contract.

(b) If we determine that your contract is not a consumer contract subject to preapproval under the PLA, we will decline to preapprove it.

§ 307.10. Effect of preapproval.

(a) A consumer contract preapproved by the Office of Attorney General is considered by this Office to comply with the PLA. Preapproval of a contract will be considered by the Office of Attorney General as a good faith effort to comply with section 8(a)(3) of the PLA (73 P. S. § 2208(a)(3)).

(b) Note the limited effect of preapproval under the PLA. Plain language approval of the wording and format of a contract, or any writing required to complete a consumer transaction, does not mean or imply that its contents are approved by the Office of Attorney General. An oral or written reference to plain language approval must be accompanied by the following statement:

“In the opinion of the Office of Attorney General, a preapproved consumer contract meets the Test of Readability under 73 P. S. § 2205 of the Plain Language Consumer Contract Act. Preapproval of a consumer contract by the Office of Attorney General only means that simple, understandable and easily readable language is used. It is not an approval of the contents or legality of the contract.”

**APPENDIX A
APPLICATION FOR CONTRACT PREAPPROVAL**

You must complete this Application to obtain preapproval of a consumer contract under Pennsylvania's Plain Language Consumer Contract Act.

1. Identify the person submitting the contract for preapproval:

Name: _____ *Title:* _____

Organization: _____

Address: _____ Phone: _____

Tax I. D. # : _____ SS# : _____

Contact Person: _____

2. Identify the parties to the contract.
Example: landlord-tenant; seller-buyer.
3. Describe the transaction covered by the contract:
4. List any State or Federal statute(s) or rule(s) which requires use of specific language in the contract.
5. Have you applied for or received copyright protection for the contract?
____ Yes ____ No If yes, explain the status and scope of copyright protection.
6. Did you use a form book or other model in preparing the contract?
____ Yes ____ No If yes, which one?
7. Have you obtained plain language approval of this contract from any other State or Federal agency? ____ Yes ____ No If yes, which one?
8. Have you submitted this contract to the Pennsylvania Office of Attorney General before? ____ Yes ____ No If yes, please provide the Office of Attorney General File No., if known. _____

MAIL

1. A SEPARATE APPLICATION FOR EACH CONTRACT.
2. THREE (3) COPIES OF EACH CONTRACT WITH REQUIRED LANGUAGE UNDERLINED IN RED.

TO: Office of Attorney General
Bureau of Consumer Protection
14th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Attn: PLA

**APPENDIX B
TEST OF READABILITY**

The TEST OF READABILITY is a checklist based on section 5 of the PLA (73 P. S. § 2205). A checkmark indicates the contract cannot be preapproved under the Plain Language Consumer Contract Act. On the document you submitted, examples indicating where these problems occur are listed by number.

LANGUAGE GUIDELINES

- | | | |
|-------|-----|--|
| _____ | 1a. | Does not use short words. |
| _____ | b. | Does not use short sentences. Guide: Sentence average 25 words or less. |
| _____ | c. | Does not use short paragraphs. Guide: Paragraph average 60 words. |
| _____ | 2. | Does not use active verbs. |
| _____ | 3. | Uses technical legal terms other than commonly understood legal terms. |
| _____ | 4a. | Does not use familiar vocabulary. |
| _____ | b. | Uses Latin and foreign words or other words which require reliance upon an obsolete meaning. |
| _____ | c. | Does not rephrase legal jargon and redundant words in simple language. |
| _____ | 5. | Does not define words by using commonly understood meanings. |
| _____ | 6a. | Does not use personal pronouns, the actual or shortened names of the parties, the terms "seller" and "buyer" or the terms "lender" and "borrower." |
| _____ | b. | Does not use names or pronouns consistently. |
| _____ | 7. | Does not use sentences that contain only one condition. |
| _____ | 8. | Does not limit cross references to brief and clear description of item to which cross reference is made. |
| _____ | 9a. | Uses sentences with double negatives. |
| _____ | b. | Uses exceptions to exceptions. |

VISUAL GUIDELINES

- _____ 10a. Does not use easy to read type size.
- _____ b. Does not use line length that makes the contract easy to read.
- _____ c. Does not use column width that makes the contract easy to read.
- _____ d. Does not use margins that make the contract easy to read.
- _____ e. Does not use adequate space between lines.
- _____ f. Does not use adequate space between paragraphs.
- _____ 11. Does not use boldface type for caption sections and subsections.
- _____ 12. Does not use ink that provides a sharp contrast with the paper.

CONSUMER RESTRICTIONS

- _____ 13. Does not contain a general description of property that may be taken or affected because of a security interest or contract if consumer fails to meet terms of contract.
- _____ 14. Does not contain contract waivers of a consumer's rights in residential leases.
- _____ 15. Statement of consumer restrictions does not appear immediately following Truth in Lending Act disclosures made on the contract.

APPENDIX C
ILLUSTRATIONS FOR TEST OF READABILITY

These illustrations provide guidance as to how the Test of Readability may apply to a contract.

I. ORGANIZATION

Use headings and subheadings to show the order in which information is presented and to identify the content of each section.

These headings provide few clues about organization and document content:

- We agree to . . .
- You agree to . . .
- Both of us agree to . . .
- You also agree to . . .
- Both of us also agree to . . .

These headings identify and locate useful information:

- Borrower's promise to pay
- Interest
- Monthly payments
- Borrower's right to make prepayments
 - How much may I prepay without penalty?
 - What is the penalty if I pay more?
- Charges for late payment

II. LANGUAGE AND STYLE

A. IDENTIFICATION OF PARTIES

- Use simple names.
- Define the names and pronouns.
- Use names and pronouns consistently.

In the following example, the consumer is called "I" in one paragraph, then referred to as "borrower" in another paragraph, with no explanation:

- I will pay you for the merchandise in ____ monthly payments of \$ _____ .
- I will make payments on the _____ day of each month.
- If borrower is more than 10 days late with a payment, lender may charge a late fee of \$ _____ .

In this example, the word "BORROWER" is used consistently:

- BORROWER will pay LENDER for the merchandise in monthly payments of \$ _____ . BORROWER will make payments on the ____ day of each month.
- If BORROWER is more than 10 days late with a payment, LENDER may charge BORROWER a late fee of \$ _____ .

B. EXPLAIN AT THE BEGINNING THAT THE FORM IS A CONTRACT BETWEEN PARTIES.

A legalese start of a contract:

This agreement, made the first day of July, 1994, between Sara Smith, the party of first part, and John Jones, the party of the second part. Witnesseth;

Clearer explanation:

July 1, 1994

This is a lease.

Sara Smith is the landlord.

John Jones is the tenant.

C. *USE WORDS THAT CONVEY MEANINGS CLEARLY AND DIRECTLY.*

<i>USE</i>	<i>DO NOT USE</i>
begin	commence or initiate
seller	vendor
buyer	vendee
cancel	rescind
end	termination
under	pursuant to
if	in the event that
give or make	render
before	prior to
after	subsequent to
sign	execute
person signing below	undersigned
postpone	defer
take back	repossess
responsible	liable

D. *USE PRESENT TENSE AND ACTIVE VOICE WHENEVER POSSIBLE.*

PASSIVE

If the outstanding balance is prepaid in full, the unearned finance charge will be refunded.

Buyer is obligated to make all payments hereunder.

Membership fees paid prior to the opening of the club will be placed in trust.

ACTIVE

If I pay the whole amount before the due date, you will refund the unearned portion of the finance charge.

I will make all payments as they become due.

If I pay membership fees before the club opens, the club will put the money in a trust account.

E. *USE FAMILIAR VOCABULARY.*

Rephrase legal jargon and redundant words into simple language.

This sentence obscures the meaning with jargon:

Purchaser certifies that no oral or written statements, promises, representations or guarantees, other than those herein contained, have been made in relation to this agreement.

This sentence clarifies:

This contract contains all the agreements between the BUYER and the SELLER. By signing this contract, both the BUYER and the SELLER agree to do what the contract says. Nothing which the BUYER has said orally to the SELLER or the SELLER has said orally to the BUYER changes the terms of this contract.

F. *DEFINE TECHNICAL OR LEGAL TERMS THAT ARE NOT USED IN THE ORDINARY SENSE.*

Example:

Any payment made before it is due is called a "prepayment."

G. *CLARIFY CONDITIONS AND EXCEPTIONS.*

Do not treat rights or responsibilities of the parties as conditions or exceptions.

For example, in this contract the Seller's right to hire an attorney is treated as a condition:

If the Buyer defaults and the Seller commences collection through an attorney, the Buyer will be liable for attorney's fees.

This language clarifies the Seller's right to hire an attorney:

If the BUYER is behind in making payments, the SELLER may:

1. Hire an attorney to collect the money.

AND

2. Charge the BUYER for the attorney's fees.

III. VISUAL SUGGESTIONS

- A. Use margins adequate for ease of reading.
- B. Use easy to read type size.
- C. Use adequate space between lines and paragraphs.
- D. Use boldface type for caption sections and subsections.
- E. Use line length that makes the contract easy to read.
- F. Use column width that makes the contract easy to read.

IV. GENERAL PRACTICE POINTERS

- A. Use short words, short sentences and short paragraphs.
- B. Use active voice.
- C. Eliminate legalese such as:
HEREBY, THEREOF, HERETOFORE, THEREAFTER.
- D. Use familiar vocabulary.
- E. Rephrase legal jargon into simple language.
- F. Use names or pronouns consistently.

G. Define words by using commonly understood meanings.

Source

The provisions of the Appendix C adopted March 31, 1995, effective April 1, 1995, 25 Pa.B. 1167.

[Next page is 309-1.]

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(263406) No. 305 Apr. 00

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