

Plain English in Consumer Credit Contracts

By Carl S. Good

"Written in a clear and coherent manner using words with common and everyday meanings."¹ In 1981, that phrase from New York's plain language statute became a strong force behind a project at National Bank of Detroit to revise its consumer installment loan contracts. The decision to develop plain language contracts was caused by the coming together of two factors. First, the federal Truth-In-Lending Simplification and Reform Act required that all disclosures be revised. Second, the passage of the New York statute, as well as a similar law in Connecticut, showed plain language as an idea whose time was rapidly approaching.

These two factors made the decision to redo the contracts in plain language a simple and logical choice. Since the contracts had to be changed to comply with the truth-in-lending requirements, why not put them in plain language? This would save a second revision when plain language became legally required in Michigan.

Although the Legislature has not passed a plain language bill, I cannot find anyone at NBD who regrets the

decision to move to plain language. The plain language format has aided in simplifying loan closings. Because the contracts are easier for the loan closer to understand, they are easier to explain to the customers.

Once the commitment was made to go to plain language, we had to develop a standard that would determine when we reached our goal. The basic guideline was the New York standard of "using words with common and everyday meanings." We also looked to the various readability formulas used in determining plain language. These formulas generally involved counting words or syllables per sentence and sentences per paragraph. If the total was under a certain number, the document was deemed to have been written in plain language. We believed that if we could meet these standards, we should be able to satisfy any requirements of future Michigan statutes.

Setting the standard proved to be the easiest part of the process. Much energy was spent trying to satisfy various needs, both legal and business, and still have a usable form. A good example of the problems presented is the financing contract used under the Motor Vehicle Sales Finance Act.² This type of contract is used for financing credit sales by automobile dealers. The dealer is the initial creditor who assigns the contract to the bank. The factors which affected the design of this form included the requirements of a 1950 statute, truth-in-lending disclosures, and the business needs of the bank's lending areas.

The business needs were having only one piece of paper and having all blank spaces for completion by the

automobile dealer on the front of the contract. There is a need for only one piece of paper because the less paper involved, the less likely a customer will not receive all required documents. The need to have all blank spaces on the front is because this contract is a multiple copy form with carbon paper inserts. The automobile dealers mechanically complete the form for each sale. If there are blank spaces on the back of the form, the dealer would have to remove the contract from the machine, reverse the carbon paper, and hope nothing on the front was printed over.

We were aided by the fact that the Motor Vehicle Sales Finance Act allows truth-in-lending disclosures to take the place of certain disclosures required by the state law.³ We also decided to incorporate the truth-in-lending disclosures as part of the contractual terms. This eliminated the need to repeat many items.

Our next step was to set out all language that was legally required. The Motor Vehicle Sales Finance Act has several required notices. They were adopted verbatim into the contract. We then set out the truth-in-lending disclosures. As closely as possible, we used the language from the model forms in Federal Reserve Board Regulation Z.⁴ One change made was that we did not use the format of the model form. This was simply because the automobile dealers' mechanized system of completing the contracts was not programmed to accommodate the model format.

The most difficult step was the actual writing of the contract in plain language. Other than the required notices and disclosures, everything else

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

was considered fair game. We used some of the classic plain language techniques: Personal pronouns, present tense, and setting off paragraphs by using bold print headings wherever possible. Coming up with common and everyday meanings, however, did not prove to be as simple as it may sound. The difficulty was that the legalese had been ingrained through law school and several years of practice. Writer's block would often arise when trying to find the right phrase. When this happened, the philosophy we used was the simpler the better. The best technique I found was to ask myself, "What is it you are trying to say?" Putting something in my own words would give me a starting point in plain language.

For example, the security interest clause in the old form of motor vehicle financing contract was "Buyer agrees that a purchase money security interest under the Uniform Commercial Code has been retained by Seller or is hereby granted to Seller in said motor vehicle together with all parts and equipment now or hereafter acquired and attached thereto." We were trying to say that a security interest covered the automobile and accessories. This became "You give us a purchase money security interest in the vehicle purchased (called the 'collateral')" and "Our security interest includes any accessories or equipment added to the collateral."

Although it took some effort, our experience with plain language contracts has been positive. We have not encountered the alleged problems that are held out as arguments against

plain language. Since converting to plain language consumer credit contracts, the bank has not been involved in litigation over "vague" or "imprecise" wording. In fact, one attorney said plain language contracts took away one of his standard defenses—that the borrower did not understand the contract because of the complex-

ity of the language. It is our experience that providing easy-to-understand contracts benefits both the creditor and the consumer.

Footnotes

1. N.Y. Gen. Obligations Law 5-702(a)(1).
2. MCL 492.101 *et seq.*; MSA 23.628(1) *et seq.*
3. MCL 492.122a; MSA 23.628(22a).
4. 12 CFR §226, Appendix H.

FLORIDA PROBATE
Ancillary Administration—Florida West Coast

- Practice Limited to Probate & Estate Planning
- Fast & Efficient Service
- Admitted in Florida (1972) & Michigan (1965)
- Former Michigan Lawyer & Judge



G. H. Zitzelsberger, P.A.
(813) 753-2505

Suite 140, Wildewood Professional Park, 3645 Cortez Road West, Bradenton, FL 34210



**Accelerated
 Dispute
 Resolution**

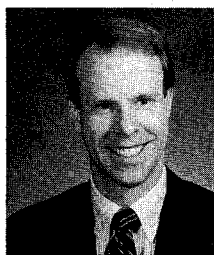
Arbitration Forums Inc.
"Out of Court Settlement at its Best"

- Over 4 million cases processed since 1943
- Most cases resolved within 3 months
- Average cost is \$350 per party

Arbitration Forums Inc. is a national nonprofit organization providing local high court judges and qualified attorneys for expeditious dispute resolution. Successfully serving attorneys for over 45 years.

**Call for free information kit -
 Arbitration/Mediation - "The Practical Alternatives"**

1-800-426-8889



Carl S. Good is Assistant Director of Legal Services for Consumer Banking in National Bank of Detroit's Law Department. Mr. Good is a 1973 graduate of Wayne State University Law School.