

# Plain English in Car Loans

By George H. Hathaway

Consumer finance was one of the first topics of the plain English movement in the law that began in New York in 1975. In September of that year, Citibank of New York and First National Bank of Boston wrote consumer-loan agreements in plain English.<sup>1</sup> In August 1977, National Bank of Washington did the same.<sup>2</sup> In 1978, Carl Felsenfeld and Alan Siegel wrote a great book on simplified consumer-finance documents,<sup>3</sup> and the New York legislature passed a bill that required plain English in consumer contracts.<sup>4</sup>

Representative Nick Ciaramitaro led the way in Michigan by introducing a plain-English-in-consumer-contracts bill in the Michigan House in December 1979 and again in February 1981.<sup>5</sup> The State Bar of Michigan then formed the Plain English Committee to provide State Bar input into the proposed bill in 1981. Representative Ciaramitaro has tried to pass this consumer-contracts bill for 19 years. The Board of Commissioners of the State Bar has supported the bill, but the Michigan Bankers Association has always opposed it—even though evidence shows that plain English could save business and government a ton of money.<sup>6</sup>

Some progress has been made in consumer-finance documents in Michigan.<sup>7</sup> But most consumer-finance documents continue to be written in user-unfriendly legalese. Citibank, National Bank of Washington, and First National Bank of Boston proved that these documents could be writ-

*"Plain Language" is a regular feature of the Michigan Bar Journal, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901. For information about the Plain English Committee, see our web site—www.michbar.org/committees/penglish.*

ten in plain English. Therefore, there is no reason why these documents shouldn't be written in plain English in Michigan. But they're not. Most consumer-finance documents in Michigan are still filled with legalese. These documents are impediments to the State Bar's goals of public understanding of and respect for the profession.

To promote these goals, we do three things. First, we classify consumer-finance contracts into the specific types shown in Figure 1.

Second, we identify the largest financial institutions in Michigan that write these contracts. And then we search for Clarity Award documents. We try to find a financial institution that writes plain-English contracts, and we then publicize these contracts as examples for other financial institutions to follow. Here's what we have done in each of the three main specific types of consumer-finance contracts. (Credit-card and car-loan agreements are discussed below; home-equity-line-of-credit agreements will be discussed in a future column.)

## Credit-Card Agreement

We have found that many of the open-end, unsecured consumer-finance contracts (best examples are credit-card agreements) are now written in plain English. We gave

a 1995 Clarity Award to Carl Good, Deborah McCormick, and Michele Mulder of NBD Bank for the credit-card application and disclosure statement that they wrote.<sup>8</sup> We also published an article about a Canadian bank VISA-card-application form and agreement.<sup>9</sup> Nevertheless, a major problem has always been the closed-end consumer-finance contracts (referred to as consumer-loan agreements).

## Car-Loan Agreement

A car-loan agreement is the most common example of a consumer-loan agreement that is secured by personal property. Typical documents associated with this type of loan are 1) Automobile-Loan Disclosure, Note, and Security, 2) Itemization of Amount Financed, and 3) Disclosure about Required Insurance. We gave a 1998 Clarity Award to David Trahan of Standard Federal Bank for the automobile-loan disclosure, note, and security agreement that he wrote.<sup>10</sup> See Figure 2 on page 955.

We recently found another car-loan agreement, the Michigan Simple-Interest Vehicle Retail Installment Contract of Ford Credit, that improves on the traditional agreement. See Figure 3 on page 956. We will be giving this document a 1999 Clarity Award. According to Paul Steinkraus of Ford Credit:

Figure 1. Types of Consumer-Finance Contracts

General Categories		Specific Types	Clarity Awards
Open-End	Unsecured	Credit-card agreement	1995 Clarity Award to NBD for credit-card application and disclosure agreement
	Secured by real property	Home-equity-line (of credit) agreement	
Closed-End (Consumer Loan)	Secured by personal property	Car-loan agreement	1998 Clarity Award to Standard Federal for Automobile Loan Disclosure, Note, and Security Agreement
	Secured by real property	*Home-equity loan	

\*About 99% of all home-equity agreements are home-equity lines of credit, and only about 1% are home-equity loans. Therefore, because they are not used very often, we will not discuss home-equity loans.

Figure 2. Excerpt from Standard Federal Bank's Automobile-Loan Disclosure, Note, and Security Agreement

In addition to giving us a security interest in the above automobile, you also agree as follows:

**Insurance.** You will keep the automobile fully insured against theft, loss, damage and other risks, with the proceeds of the insurance payable to us to the full extent of our security interest. You may obtain this insurance from anyone you want who is acceptable to us. In the event you do not obtain, or fail to maintain, the insurance we require we may obtain such insurance in an amount equal to the full extent of our security interest. The amount of any premiums we pay therefor shall be an amount immediately due and payable by you, with interest at the highest legal rate from the date of our payment. [This sentence could be better.]

**Sale or Transfer of Automobile.** You will not sell or transfer the automobile or take it out of this state for more than 30 days without our written consent.

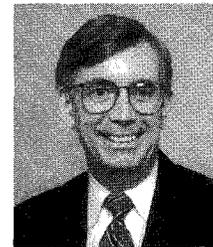
**Other Security Interests.** You will not permit any other liens or security interest to be placed on the automobile without our written consent.

**Additional Collateral.** In addition to the security interest you are giving us in the above automobile, you also grant us a security interest in all funds on deposit with us in your name or for your benefit, including funds held in checking accounts, saving accounts or certificates of deposit. We may use all or any part of these funds to cure any default under this Note or this agreement without notifying you first.

**Default.** You will be in default if any of the following events occur:

- (a) Any payment called for in the Note is not paid when due.
- (b) You fail to perform any promise contained in this Security Agreement.
- (c) We discover that any of the borrowers has given us false or misleading information on the loan application.

"This is the standard form of contract used by Ford Credit in financing purchases of motor vehicles in Michigan. Ford Credit technically doesn't loan money to consumers to purchase vehicles. Dealers enter into retail installment-sales contracts with consumers, and Ford Credit purchases the contracts from the dealers. This is known as three-party financing, with the dealer being the original seller-creditor and Ford Credit being the buyer-assignee of the contract. (In contrast, banks often engage in lending money directly to consumers for vehicle purchases.) Ford Credit supplies its form to dealers primarily to ensure that the installment-sales contracts it buys contain all the consumer disclosures required by federal and state law."



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PLAIN LANGUAGE

Figure 3. Excerpt from Ford Credit's Michigan Simple Interest Vehicle Retail Installment Contract

B. Security Interest: You give the Creditor a security interest in:

1. The vehicle and all parts or other goods put on the vehicle;
2. All money or goods received for the vehicle; and
3. All insurance premiums and service contracts financed for you.

This secures payment of all amounts you owe under this contract. It also secures your other agreements in this contract.

C. Use of Vehicle—Warranties: You must take care of the vehicle and obey all laws in using it. You may not sell or rent the vehicle, and you must keep it free from the claims of others. You will not use or permit the use of the vehicle outside of the United States, except for up to 30 days in Canada or Mexico, without the prior written consent of the Creditor. If the vehicle is of a type normally used for personal use and the Creditor, or the vehicle's manufacturer, extends a written warranty or service contract covering the vehicle within 90 days from the date of this contract, you get implied warranties of merchantability and fitness for a particular purpose covering the vehicle. Otherwise, you understand and agree that there are no such implied warranties.

D. Insurance: You must insure yourself and the Creditor against loss or damage to the vehicle. The type and amount of insurance must be approved by the Creditor. If the Creditor obtains a refund on insurance or service contracts, the Creditor will subtract the refund from what you owe. Whether or not the vehicle is insured, you must pay for it if it is lost, damaged, or destroyed.

If a charge for vehicle insurance is shown on the front, the Creditor will try to buy the coverages checked for the term shown. The Creditor is not liable, though, if he cannot do so. If these coverages cost more than the amount shown for insurance, the Creditor may buy them for a shorter term or he may give you credit for the amount shown. If he cannot buy any insurance, he will give you credit for the amount shown. The credit will be made to the last payments due.

Standard Federal and Ford Credit have proven that car-loan agreements can be written in reasonably plain English. In the future, we hope to give Clarity Awards to car-loan documents from other financial institutions in Michigan.

### Conclusion

Car-loan agreements are the first of a half-dozen or so specific types of consumer contracts that should all be written in plain English in Michigan. The list is:

1. Car-loan agreements (closed-end consumer finance contracts)
2. Home-equity-line-of-credit agreements (open-end consumer finance contracts)
3. Home-construction contracts (construction contracts)
4. Car-sales agreements (sales-of-goods contracts)
5. Attorney-fee agreements (sales-of-services contracts)
6. Union agreements (employment contracts)

The Plain English Committee will work with the Consumer Law Section and the Legal Aid Committee of the State Bar to

promote plain English in these documents. The goal is public understanding of and respect for the legal profession. ■

### Footnotes

1. *A New Legal-Ease*, Time Magazine, September 22, 1975, p 74; Hathaway, *An Overview of the Plain English Movement in the Law*, 62 Mich BJ 945 (November 1983).
2. *Banking on Simplicity*, The Washington Star, August 23, 1977, p A-3.
3. Felsenfeld and Siegel, *Simplified Consumer Credit Forms* (Warren Gorham & Lamont: Boston, 1978).
4. N.Y. Gen. Oblig. Law § 5-702.
5. Ciaramitaro, *Plain English in Consumer Contracts*, 62 Mich BJ 959 (November 1983).
6. Joseph Kimble, *Writing for Dollars, Writing to Please*, 6 Scribes J Legal Writing, 1, 3-19 (1996-1997).
7. Martin, *Plain English in Michigan Bankers Association Forms*, 68 Mich BJ 870 (September 1989); Good, *Plain English in Consumer Credit Contracts*, 68 Mich BJ 994 (October 1989).
8. *Clarity Awards for 1995*, 74 Mich BJ 440 (May 1995).
9. Watkinson, *Canadian Bank Takes Plain-Language Approach with VISA Cards*, 75 Mich BJ 548 (June 1996).
10. *The Seventh Annual (1998) Clarity Awards*, 78 Mich BJ 298 (March 1998).