



## Legal Guide K-4

# FOREIGN LANGUAGE TRANSLATION OF CONSUMER CONTRACTS

*May 2012*

A person in a trade or business, who negotiates primarily in the Spanish, Chinese, Tagalog, Vietnamese, or Korean language in the course of entering into a contract with a consumer, must give the consumer a written translation of the proposed contract in the language of the negotiations.<sup>1</sup> The translation must be an accurate translation of every term and condition in the contract or agreement. This requirement of California law applies whether the negotiations are conducted orally or in writing. This section does not apply to contracts negotiated in any of the above languages if the consumer has an interpreter.<sup>2</sup>

The foreign language translation must be given to the consumer **before** the consumer signs the contract. The seller or creditor must give the consumer the foreign-language translation whether or not the consumer requests it. The foreign-language translation must include the proposed contract terms, such as purchase price, finance charges, payment amount, etc.

The purpose of the law is to insure that Californians who speak a language other than English have a genuine opportunity to read the foreign-language translation of any proposed contract that has been negotiated primarily in that language, and to consult with others, **before** the contract is signed. It is never sufficient for the seller or creditor to give the foreign-language-speaking person the translation **after** he or she has executed (signed) the contract.

If a trade or business that is required to provide a foreign-language translation fails to do so, the consumer can rescind (cancel) the contract or agreement, in which event the law governing cancellation of contracts will apply.<sup>3</sup> The consumer can cancel the contract even if it has been assigned to a financial institution; but in that event, the consumer must look to the original trade or business for a return of the amounts he or she has paid. If the consumer received any goods, the goods must be returned to the original trade or business.

If a consumer rescinds, the consumer need not pay the financial institution that has received an assignment of the contract. Instead, the financial institution is entitled to return the contract to the original trade or business, and to recover from the original trade or business anything it has paid to the trade or business.

The law requiring translation of contracts negotiated in a language other than English applies to:

- Credit sale contracts involving consumer goods and services of all kinds, including automobile purchases and leases;

- Virtually all loans or other extensions of credit for use primarily for personal, family or household purposes, except loans secured by real property;
- Consumer loans secured by real property, if arranged by a real estate loan broker, or made by a personal finance company;
- Contracts for the rental, lease or sublease of apartments or other dwellings (including mobile homes) for a period longer than one month. (Month-to-month and week-to-week rental contracts are not covered);
- Contracts involving the payment of fees or charges for legal services furnished by lawyers;
- Reverse mortgages; and
- Mortgage foreclosure consulting contracts.

The foreign-language translation need not be given in the following kinds of transactions:

- Home improvement contracts.
- Contracts involving a seller who is not engaged in a trade or business.
- Contracts in which the foreign language-speaking consumer has negotiated the contract through his or her own interpreter (with limitations, see below).

However, the last exception applies only if the consumer's interpreter is able to speak fluently and read with full understanding **both** the English and the foreign language. In addition, the interpreter cannot be a minor (under 18 years of age). Nor may the interpreter be employed or made available by or through the person engaged in the trade or business.

At the same time and place where any **contract** is entered into following negotiations primarily in one of the foreign languages listed above, a notice of the consumer's rights must be displayed. This notice must be written in the language of the negotiation and must be conspicuously displayed. The notice must inform consumers of their rights under this law.

This notice need only be displayed at those locations where the foreign language is used. (The notice is not required to be given by providers of legal services or those who make or arrange loans secured by real property.)

The business must give the consumer a foreign-language translation of the original contract **and** any subsequent documents that modify the original contract or substantially change the rights and obligations of the parties. A notice of repossession and deficiency under Civil Code section 2983.2 is a document that substantially affects a consumer's rights under an automobile financing contract.<sup>4</sup>

However, the law does not require a foreign-language translation for any later documents authorized by or expected to be made under the original contract or its modifications. Examples of those documents which need not be translated include periodic statements, sales slips,

invoices, add-on sales, or refinancings that are provided by or made pursuant to the original contract.

If the contract involves a loan made by a "supervised financial organization" such as a bank, savings association, credit union or personal finance company, the organization need only provide a foreign-language translation of the credit disclosures required by the federal Truth in Lending Act. A foreign-language translation of the remainder of the contract need not be provided. Thus, the foreign-language translation need only include the amount financed, the annual percentage rate, the amount and due dates of the payments and other relevant **credit** information – the most relevant details that the average consumer would be likely to consider before signing a contract.

The rule is different in the case of preprinted automobile lease contracts provided to dealers by prospective assignees, such as banks or leasing companies. The prospective assignee must provide a Spanish-language translation of the entire lease contract to the dealer upon the dealer's request.<sup>5</sup> The dealer then provides this translation to the Spanish-speaking customer.

In interpreting a contract subject to the foreign-language translation law, the signed English contract determines the rights and duties of the parties. However, if there is a substantial difference between the English contract and the foreign-language translation, the law states that this may show that no contract was ever entered into.

All cosigners of consumer credit contracts must receive notice of their obligations in English and Spanish and/or the language in which the consumer contract is written (if not in English or Spanish) prior to them becoming obligated under the contract.<sup>6</sup> The same is true for cosigners on vehicle leases.<sup>7</sup> NOTE: This does not apply if the cosigner is married to the individual for who he/she is cosigning.

A Patients' Bill of Rights translated into Spanish, Chinese, and certain other languages must be made available to all patients speaking those languages living in long-term health care facilities, including skilled nursing facilities, intermediate care facilities, and nursing facilities.<sup>8</sup>

The provisions relating to verification of Spanish-language translations of contracts by the Department of Consumer Affairs were repealed in 2001.<sup>9</sup>

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**NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.**

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## ENDNOTES

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1. Civil Code section 1632.
  2. Civil Code section 1632(h).
  3. Civil Code sections 1688 *et seq.*
  4. *Reyes v. Superior Court* (1981) 118 Cal.App. 3d 159, 162 [173 Cal.Rptr. 267, 268].
  5. Civil Code section 2991.
  6. Civil Code section 1799.91 (a), (b).
  7. Civil Code section 1799.91(d).
  8. Health & Safety Code section 1599.61.
  9. Statutes 2001, chapter 306 (AB 446).