

**TITLE 9  
CONTRACTS AND OBLIGATIONS**

**CHAPTER 9-01  
GENERAL PROVISIONS**

**9-01-01. Definitions.**

In this title, unless the context or subject matter otherwise requires:

1. A contract is an agreement to do or not to do a certain thing.
2. An obligation is a legal duty by which a person is bound to do or not to do a certain thing.

**9-01-02. Requisites of contract.**

It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. The consent of the parties;
3. A lawful object; and
4. Sufficient cause or consideration.

**9-01-03. Executed and executory contracts defined.**

An executed contract is one, the object of which is performed fully. All other contracts are executory.

**9-01-04. Joint and several contracts.**

A promise is presumed to be joint and several when:

1. All the parties thereto receive some benefit from the consideration, whether past or present;
2. It is made in the singular number but executed by several persons.

**9-01-05. Origin and enforcement of obligations.**

An obligation arises from:

1. The contract of the parties; or
2. The operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law or by civil action or proceeding.

**9-01-06. Obligations classified.**

An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or
3. Joint and several.

**9-01-07. Joint obligation - Presumption.**

An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint and not several, except in the special cases mentioned in chapter 9-07. This presumption in the case of a right can be overcome only by express words to the contrary.

**9-01-08. Joint obligation - Contribution.**

A party to a joint obligation or to a joint and several obligation who satisfies more than that party's share of the claim against all obligors may require a proportionate contribution from all the parties joined with that party.

**9-01-09. Conditional obligation defined.**

An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

**9-01-10. Conditions of obligation - Classification.**

Conditions may be precedent, concurrent, or subsequent.

**9-01-11. Condition precedent defined.**

A condition precedent is a condition which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed.

**9-01-12. Conditions concurrent defined.**

Conditions concurrent are those which are mutually dependent and are to be performed at the same time.

**9-01-13. Condition subsequent defined.**

A condition subsequent is a condition referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party if that party chooses to apply that condition.

**9-01-14. Conditions unlawful or impossible.**

A condition in a contract, the fulfillment of which is impossible or unlawful within the meaning of chapter 9-04 or which is repugnant to the nature of the interest created by the contract, is void.

**9-01-15. Forfeiture - Interpretation.**

A condition involving a forfeiture must be interpreted strictly against the party for whose benefit it is created.

**9-01-16. Enforcement of obligations - Prerequisites.**

Before any party to an obligation can require another party to perform any act under it, that party shall fulfill all conditions precedent thereto imposed upon that party and must be able, and shall offer, to fulfill all conditions concurrent so imposed upon that party on the like fulfillment by the other party, but if one party to the obligation gives notice to another before the latter is in default that that party will not perform the same upon that party's part and does not retract such notice before the time at which performance upon that party's part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon the other party's part in favor of the former party.

**9-01-17. Option to perform alternative acts.**

If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection, unless it is provided otherwise by the terms of the obligation.

**9-01-18. Option - Limitation of time for performance.**

If the party having the right of selection between alternative acts does not give notice of that party's selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

**9-01-19. Option - Selection in entirety.**

The party having the right of selection between alternative acts shall select one of them in its entirety and cannot select part of one and part of another without the consent of the other party.

### **9-01-20. Option - Valid act prevails.**

If one of the alternative acts required by an obligation is such as the law will not enforce, or if it becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone.

### **9-01-21. Property service contracts - Exemption.**

1. The marketing, selling, offering for sale, issuing, making, providing, or proposing to make and the administering of a property service contract or vehicle theft protection product warranty is not subject to the provisions of title 26.1.
2. A property service contract is a contract or agreement for a separately stated consideration, for a specific duration, to provide for the repair, replacement, or maintenance or for the indemnification for the repair, replacement, or maintenance of new or used property if an operational or structural failure is due to a defect in materials, manufacturing, or normal wear and tear. Property covered under a property service contract may include motor vehicles; residential appliances; residential systems, including plumbing, electrical, heating, cooling, and ventilation; and other residential property. The contract may provide coverage for:
  - a. Damage to property resulting from power surges;
  - b. Accidental damage to property resulting from handling;
  - c. Payment of indemnity for incidental damages, such as food spoilage, towing, and rental and emergency road service;
  - d. The repair or replacement of tires and wheels on a motor vehicle damaged as a result of coming into contact with a road hazard;
  - e. The removal of dents, dings, or creases on a motor vehicle which can be repaired using the process of paintless dent removal without affecting the existing paint finish and without sanding, bonding, painting, or replacing a vehicle body panel;
  - f. The repair of small motor vehicle windshield chips or cracks which may include replacement of the windshield for chips or cracks that cannot be repaired;
  - g. The replacement of a motor vehicle key or key fob if the key or key fob becomes inoperable, lost, or stolen; or
  - h. In conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance, due to excess wear and use or damage to items, including tires, paint cracks or chips, missing interior or exterior parts, or excess mileage resulting in a lease-end charge, or any other charge for damage deemed excess wear and use by a lessor under a motor vehicle lease, provided the payment may not exceed the purchase price of the vehicle.
3. Under a vehicle theft protection program warranty, incidental costs may be reimbursed in either a fixed amount specified in the warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder. Payments may not duplicate any benefits or expenses paid to the warranty holder by an insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle. However, the payment of incidental costs at a pre-established, flat amount of seven thousand five hundred dollars or less does not duplicate any benefits or expenses payable under the comprehensive motor vehicle insurance policy.
4. For the purpose of this section, unless the context otherwise requires:
  - a. "Incidental costs" means expenses specified in a vehicle theft protection program warranty and incurred by the warranty holder due to the failure of a vehicle theft protection program to perform as provided in the contract.
  - b. "Road hazard" means a hazard encountered while driving a motor vehicle which includes potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.
  - c. "Vehicle theft protection product" means a device or system installed on or applied to a motor vehicle, which is designed to prevent loss or damage to a motor vehicle from theft, and includes a vehicle theft protection program warranty.

- d. "Vehicle theft protection product warranty" means a written agreement by a warrantor which provides, if the vehicle theft protection product fails to prevent loss or damage to a motor vehicle from theft, the warrantor will pay to or on behalf of the warranty holder specified incidental costs resulting from the failure or the vehicle theft protection product to perform pursuant to the terms of the vehicle theft protection product warranty.

**9-01-22. Wind option agreement - Definition - Termination.**

Redesignated as section 17-04-01 under S.L. 2007, ch. 204, § 5.