

Automatic Renewal Clauses In New York State

Are they Enforceable?

There is much discussion these days regarding auto-renewals. Many subscription services, like hosted VoIP, carrier network services, alarm contracts require term agreements.

If you find yourself in a dispute over the validity of an auto renewal, consult New York Consolidated Laws, General Obligations Law - GOB § 5-903.

The Automatic renewal provision of contract for service, maintenance or repair is unenforceable by a contractor unless notice thereof given to recipient of services.

1. As used in this section, "person" means an individual, firm, company, partnership, or corporation.
2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, **at least fifteen days and not more than thirty days previous to the time specified** for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, **served personally or by certified mail**, calling the attention of that person to the existence of such provision in the contract.
3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

The two key points are both highlighted in paragraph 2 above. First, the provider of the service must give at least 15 days and not more than 30 days prior notice of the plan to renew a contract. Assuming a contract expires on April 15th. Using the requirement, notice MUST be provided anytime between March 16th and April 1st to be a valid notice.

Second, such notice must be "served personally or by Certified Mail". This is straightforward. Personal service translates into a notice "handed" off (e.g., subpoena or other summons). Certified mail as an alternative is self-explanatory. "Personal service" From Law.com:

n. delivering a summons, complaint, notice to quit tenancy or other legal document which must be served by handing it directly to the person named in the document. Personal service is distinguished from "constructive service," which includes posting the notice and then mailing a copy or publishing a summons on a person the court has found is hiding to avoid service, and from "substituted service," which is giving the document to someone else (another resident, a secretary or receptionist, or other responsible adult) at the address.

What about a renewal reminder in an invoice?

That is neither personally served nor certified mail.

How about an email sent to the business contact?

Likewise, an email sent to a recipient with a renewal notice does not meet the requirement of personally served or certified mail.

Unsure? We recommend that you request proof of notice being served personally, or via Certified mail.

Vendor ignorance is a possibility as each State has different Laws. If in a “dispute”, point them to the Law,.