

## Vermont

### Limitations of Liability

**Commercial Contracts.** Vermont generally upholds limitations of liability. However, limitations of liability that are found to be unconscionable will not be enforced. 9A V.S.A. §2-719 (2006). We found no cases discussing limitations of liability for gross negligence. Courts will, however, give heightened scrutiny to contractual disclaimers of negligence liability and will construe them strictly against the party relying on them. Disclaimers are viewed as exculpatory and must possess a greater degree of clarity to be effective than would be required for other types of contract provisions. *Clorith V. Colgan v. Agway, Inc.*, 553 A.2d 143 (Vt. 1988); *Fairchild Square Co. v. Green Mt. Bagel Bakery*, 658 A.2d 31 (Vt. 1995).

**State and Local Government Contracts.** We did not identify any cases discussing the enforceability of limitations of liability in public contracts.

### Exclusions of Certain Types of Damages

**Commercial Contracts.** Parties in Vermont may limit damages e.g. consequential damages. 9A V.S.A. §2-719 (2006); *Wilk Paving, Inc. v. Southworth-Milton, Inc.*, 649 A.2d 778 (Vt. 1994); 9A V.S.A. §2-316(2006). Vermont will allow limitations of damages so long as the limit or exclusion is not unconscionable. Punitive damages are generally not recoverable for breach of contract actions. However, in rare cases, punitive damages will be allowed where the breach "has the character of a willful and wanton or fraudulent tort." *Murphy v. Stowe Club Highlands*, 761 A.2d 688 (Vt. 2000).

**State and Local Government Contracts.** We did not identify any cases discussing exclusions of damages in public contracts. However, Vermont does have maximum liability amounts in tort actions against the state. 12 V.S.A. §5601 (2006).

### Disclaimers/Limitations of Warranty

**Commercial Contracts.** In the context of contracts between private parties, disclaimers of warranty will be enforced if they are clear and conspicuous. A disclaimer may be denied enforcement if it is unconscionable. *Wilk Paving, Inc. v. Southworth-Milton, Inc.*, 649 A.2d 778 (Vt. 1994); 9A V.S.A. §2-316(2006).

**State and Local Government Contracts.** We did not identify any cases discussing disclaimers or limitations of warranty in public contracts.

### Mandatory Dispute Resolution Procedures

We did not discover any mandatory dispute resolution procedures in Vermont. The state of Vermont is immune for governmental functions for which no private analog exists. Under the private analog analysis, the state waives its immunity only to the extent a plaintiff's cause of action is comparable to a recognized cause of action against a private person. The test is whether the factual allegations satisfy the necessary elements of a cause of action against the state comparable to one that may be maintained against a private person. *Powers v. Office of Child Support*, 795 A.2d 1259 (Vt. 2002).