JA 265

Consumer Law

Guide



September 2000

Administrative TJAGSA & Civil Law

DISTRIBUTION STATEMENT A
Approved for Public Release
Distribution Unlimited

20001204 057

REPORT DOCUMENTATION PAGE

Form Approved
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.

1. AGENCY USE ONLY *(Leave blank)*	2. REPORT DATE	3. REPORT TYPE AND DATES COVERED
	7 November 2000	

4. TITLE AND SUBTITLE
Consumer Law Guide, JA 265, Sept. 2000, 549 pages

5. FUNDING NUMBERS

6. AUTHOR(S)
TJAGSA, Administrative & Civil Law Department
600 Massie Road
Charlottesville, VA 22903

7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)
TJAGSA
600 Massie Road
Charlottesville, VA 22903

8. PERFORMING ORGANIZATION REPORT NUMBER
JA 265,Sept. 2000

9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES)
Same as 7.

10. SPONSORING / MONITORING AGENCY REPORT NUMBER

11. SUPPLEMENTARY NOTES
Revised

12a. DISTRIBUTION / AVAILABILITY STATEMENT
A

12b. DISTRIBUTION CODE

13. ABSTRACT *(Maximum 200 words)*
This publication is one of a series prepared and distributed to assist legal assistance attorneys in the delivery of legal assistance. The series continas summaries of law, guidance, and sample documents for handling common problems.

14. SUBJECT TERMS
Consumer Law Guide

15. NUMBER OF PAGES
549

16. PRICE CODE

17. SECURITY CLASSIFICATION OF REPORT	18. SECURITY CLASSIFICATION OF THIS PAGE	19. SECURITY CLASSIFICATION OF ABSTRACT	20. LIMITATION OF ABSTRACT
Unclassified	Unclassified	Unclassified	

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PREFACE

This publication is one of a series prepared and distributed by the Legal Assistance Branch of the Administrative and Civil Law Department of The Judge Advocate General's School, U.S. Army (TJAGSA) to assist legal assistance attorneys in the delivery of legal assistance. The information contained herein is as current as possible as of the date of publication. The law changes, however, much more rapidly than this publication can be updated and distributed. For this reason, use this publication only as a guide and not as final authority on any specific law or regulation. Where appropriate, legal assistance attorneys must consult more regularly updated references before rendering legal advice.

The series contains summaries of the law, guidance, and sample documents for handling common problems. The sample documents are guides only. Legal assistance attorneys should ensure that the samples are adapted to local circumstances and are consistent with current format provisions in Army Reg. 25-50 prior to reproduction and use.

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The series is part of the continuing effort to improve and expand the resources available to legal assistance practitioners. As you use this publication, if you have any recommendations for improvement, please send your comments and suggestions to The Judge Advocate General's School, ATTN: JAGS-ADA-LA, Charlottesville, Virginia 22903-1781.

Legal assistance attorneys are encouraged to maintain this publication in a three-ring binder until a replacement is issued. In future years, specific page changes may be published instead of reprinting the entire publication.

Each year, the Legal Assistance Branch receives many requests for its publications. Because of limited budgetary and personnel resources, however, additional outside distribution of these materials in printed format is not possible.

There are, however, several ways to obtain many of these publications. First, this publication is available on JAGCNET in the Legal Assistance Section. Additionally, the Defense Technical Information Center (DTIC) makes some of these publications available to government users. For a complete listing of the TJAGSA materials available through DTIC, see the March 2000 issue of ***The Army Lawyer***. Practitioners may request the necessary information and forms to become registered as a user from: Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia 22060-6218, telephone (703) 767-9087 or DSN 427-9087.

Lastly, some of these publications are also available on the LAAWS Compact Disk Series

(CD-ROM). For more information, contact the LAAWS Office located at Fort Belvoir, Virginia, telephone (703) 806-5764 or DSN 656-5764.

The following Legal Assistance Branch publications are currently available in "zipped" format:

Number	Title
JA 260	Soldiers' & Sailors' Civil Relief Act
JA 261	Legal Assistance Real Property Guide
JA 262	Legal Assistance Wills Guide
JA 263	Legal Assistance Family Law Guide
JA 265	Legal Assistance Consumer Law Guide
JA 267	Uniformed Services Worldwide Legal Assistance Office Directory
JA 269	Legal Assistance Federal Income Tax Information Series
JA 271	Legal Assistance Office Administration Guide
JA 272	Legal Assistance Deployment Guide
JA 274	Uniformed Services Former Spouses' Protection Act - Outline and References
JA 275	Model Tax Assistance Program
JA 276	Preventive Law Series

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This publication does not promulgate Department of the Army policy and does not necessarily reflect the views of The Judge Advocate General or any government agency.

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SECTION 1: WHAT IS CONSUMER LAW?[1]

[1] This discussion is adapted from the Preface and Introductory comments in HOWARD J. ALPERIN & ROLAND F. CHASE, CONSUMER LAW (West 1986 & Supp. 1996). All quotes are taken from that book.

I. SCOPE

A. Broadly defined as "the law regulating consumer transactions."

1. Includes laws, administrative agency work, and the work of courts.

2. A "curious mix of the old and the new" it includes BOTH,

   a) established doctrines from common law (especially contracts)

   b) and statutory and judicial innovations to protect consumers.

B. Does NOT generally include (although these things impact on consumers),

1. Civil Rights

2. Poverty Law

3. Minimum Wage Legislation

4. Antitrust Regulation

I. OBJECTIVES & MEANS

A. Primary Objective. Balance the interests of consumer and merchant,

1. Underlying assumption is that, without protection, consumer is at a disadvantage.

2. Sees law as a counterbalance to the inherent advantages of the merchant.

B. Primary Means. Give special protection to the consumer in the form of:

1. Information/Disclosures,

2. Limitations on behavior (e.g. cannot disclaim warranties).

I. THE PLAYERS

A. Both State & Federal Legislative Bodies

B. State & Federal Administrative Bodies

1. Attorney General's Office

   a) Investigation

   b) Injunctive Relief

   c) Restitution

   d) Civil Penalties

2. Federal Reserve Board

   a) Promulgates Rules regarding banking.

   b) Consult CFR

3. Federal Trade Commission

   a) Rules:

      (1) Interprets/Enforces FRB Rules

(2) Develops its own rules & "standards"

b) Enforcement of FTC Act (and others)

(1) Investigation

(2) Adjudication

c) Database Access Forthcoming

d) WEB SITE: *www.ftc.gov*

C. Courts at all levels.

SECTION 2: ANALYZING CONSUMER PROTECTION PROBLEMS

In considering a consumer law problem, the attorney must consider all aspects of the transaction and use all available protections/solutions to develop the most effective course of action for the client. To aid in this thought process, we offer the following as areas to think through in each case.

I. THE TRANSACTION. The first thing to consider is the way the transaction took place. Depending on where it took place, or the sales techniques used, federal and state laws may offer the consumer some protection. Except as noted, these areas are covered in the chapters of this guide.

A. State Unfair and Deceptive Acts and Practices (UDAP) laws (Chap. 3 and Appendix B)

B. FTC Door-to-Door Sales Rule (Chap. 4)

C. FTC Telemarketing Rule (Chap. 4)

D. Mail Order and Telephone Merchandise Rule (Chap. 4)

E. Consumer Leasing Act (Chap. 4)

F. Truth-in Lending Act Cooling Off Period (Chap. 6)

G. Unconscionability/Traditional Contract Law. This guide does not cover basic contract law. Legal assistance practitioners should familiarize themselves with basic contract theories to aid in their consumer protection work.

I. THE GOODS. The second place to look for possible help is the goods themselves. There may be some deficiency in the quality of the goods that will allow your client to take advantage of some protections.

A. Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-12) (Chap. 5)

B. Uniform Commercial Code Warranty Provisions (§§ 2-312 - 2-318) (Chap 5)

C. State Warranty Laws/"Lemon" Laws (Appendix B)

I. **THE PAYMENT.** The next area to look for protection is to look at how the client paid for the goods. For many transactions, this will be some form of credit transaction. In Chapter 6 of this guide, we will consider the following federal protections.

A. ***Truth-in-lending Act***

B. ***Fair Credit Billing Act***

C. ***Electronic Funds Transfer Act***

I. **THE AFTERMATH.** In order to competently and effectively represent a client, the attorney must think through all of the implications of his advice and discuss these implications with the client. For credit transactions, the client should be advised of the impact his course of action could have on possible collection activity and his credit rating. Again, federal law offers protections that will be discussed in Chapter 9 of this guide.

A. ***Fair Debt Collection Practices Act***

B. ***Fair Credit Reporting Act***

I. **SPECIFIC PROTECTIONS.** There may be client situations that, while not falling within the above mentioned areas, have remedies under federal law. This guide also addresses several specific areas of the law such as landlord-tenant law, credit discrimination, credit repair, and military specific remedies.

CHAPTER 2

PREVENTIVE LAW
& LEGAL ASSISTANCE OFFICE MANAGEMENT

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I. REFERENCES.

A. AR 27-3, Army Legal Assistance Program, para 3-3,3-4.

B. Legal Assistance Practice Advisory 5-97: Promulgation of JAGINST 5801.2 (SUBJ: NAVY-MARINE CORPS LEGAL ASSISTANCE PROGRAM) with enclosure, Legal Assistance Manual, IX, Preventive Law Activities.

C. Air Force Instruction 51-504, 1 May 1996, Legal Assistance Notary, and Preventive Law Programs, Chapter 3.

D. MCO 5800.16A, Chap. 14, Marine Corps Manual for Legal Administration, 31 August 1999.

II. INTRODUCTION.

A. ***Preventive Law focuses on preventing soldier legal problems rather than reacting to them. Knowledge sharing is key. Placing the right information at the right place and the right time so the soldier or family member can make the best, most fully informed decision under the circumstances.***

B. ***Because preventive law seeks to prevent problems, its success is sometimes difficult to measure. How, for example, does one measure the number of consumer law cases that do not turn into legal problems because the consumer is already aware of the provisions of the Federal Trade Commission's Rule on Door-to-Door Sales? This can make "marketing" the program a challenge on the installation – particularly when you are fighting for scarce resources.***

C. ***The bottom line, however, is that the preventive law program is mandatory and it belongs to the commander. Responsibility for execution of the program rests with supervisory attorneys, though. Consequently, effort must be made to "sell" the program as what it truly is -- a combat multiplier.***

D. ***Preventing legal problems is a*** **readiness** ***issue. Attorneys must ensure that commanders see the program in this way. More importantly, attorneys must plan their preventive law campaigns with readiness in mind. Aim at the issues that will cause readiness problems. Use forums that will maximize benefit to***

the unit's readiness. Then use these facts to demonstrate to the commander that the program is well worth the resources he is putting toward it.

III. THE PREVENTIVE LAW MISSION.

AR 27-3, para. 3.3 General

a. Commanders are responsible for ensuring that preventive law services are provided within their commands.

b. Supervising attorneys will ensure that preventive law services are provided by attorneys performing legal assistance duties, as well as by others under their supervision. Attorneys should be aggressive and innovative in disseminating information to service members and their families that is responsive to potential legal problems and issues.

AR 27-3, para. 3.4 Preventive law measures

a. In assisting commanders to carry out their preventive law responsibilities, supervising attorneys should--

(1) Examine the common legal problems confronted by service members and family members to determine whether changes in law or regulation could benefit them, and then suggest regulatory changes or legislation through appropriate channels to effect those changes.

(2) Seek support from bar associations to provide no-fee or reduced-fee legal services for service members and family members with low incomes.

(3) Identify businesses that take unfair advantage of service members and family members and develop procedures to help combat such practices.

(4) Assist military housing referral offices and disciplinary control boards in ensuring fair treatment of service members and family members by landlords and businesses.

(5) Share innovative measures (for example, the use of mediation services to resolve certain legal disputes) and other items of interest (for example, changes in State law affecting service members and family members) with other attorneys providing legal assistance, such as by publishing articles in military legal publications of general circulation and placing information on the electronic bulletin board.

b. Local print, electronic media, training and education programs will be used to advise service members and their families of:

(1) Their legal rights and entitlements.

(2) Timely legal issues and local legal problems and concerns.

(3) The importance of considering the legal consequences of their actions prior to signing legal documents such as purchase agreements, contracts, leases, and separation agreements.

(4) The importance of recognizing legal issues and seeking timely legal advice rather than ignoring potential legal problems.

(5) The office locations (with telephone numbers and hours of operation) where legal assistance is available.

IV. ELEMENTS OF A SUCCESSFUL PREVENTIVE LAW PROGRAM.

The elements listed below are critical to a successful program. The ideas listed below each element are merely suggestions of methods you could use to incorporate the element into your program. These lists are NOT exclusive – use your imagination and resourcefulness to make your program the best it can be!

A. ***Information Dissemination***

1. Articles in weekly post newspaper/"Ask the JAG."
2. Video presentations for newly arrived soldiers undergoing post in processing.
3. Electronic Bulletin Board Entries/Newsletters
4. Bulletin Board in Unit Area
5. Post Internet Home Page
6. Preventive Law Card. (See Supplemental Materials).
7. Newcomer's Briefings
8. Overseas: Armed Forces Radio and TV stations
9. Law Day (Annually in May)
10. Fact Sheets

B. ***Education***

1. Any officer and/or NCO meetings.
2. Command information classes for soldiers in their unit areas.
3. Family Support Groups
4. Army Family Team Building
5. Commander/1SG Courses

C. ***Liaison Functions with Consumer Agencies***

1. Local Bar
2. Consumer Organizations/Community and on-post
3. Federal Trade Commission
4. Command Organizations

V. PREVENTIVE LAW AS A COMMAND PROGRAM.

A. ***Sales techniques. The initial step in improving or building any preventive law program is to get the commander's support. Some tools to use in doing that are these:***

1. Strong Language in the Regulation. The *Army* is saying it's the commander's program. This is *not* a program made up by the SJA Office.

2. Force Multiplier. This refers to the readiness arguments mentioned in the introduction.

3. 90% - 10 % rule. Commanders often complain that they spend 90% of their time with the 10% of their soldiers who are causing trouble. Preventive law is a way of doing two important things:

   a) Helping the good soldiers in their command who are doing a good job.

   b) Keeping soldiers from becoming part of the "10%" who are in trouble.

B. ***An effective program is advantageous for the legal assistance office:***

1. Improves public relations.

   c) Provides a forum to interact with and to provide information to First Sergeants and Commanders.

   d) Allows attorneys to become more involved with the military community.

2. Improves mobilization readiness (i.e. meeting deployment needs early).

VI. PROFESSIONAL RESPONSIBILITY CONSIDERATIONS.

A. ***Confidentiality. Often, you will want to discuss actual cases in your preventive law efforts. While these "stories" are an effective method of conveying information in an interesting fashion, attorneys must be extremely cautious that they do not reveal confidential information. Supervisors must take reasonable measures to ensure that their subordinates meet their professional obligations in this regard.***

B. ***Conflicts of Interest/Screening. If there is any type of give and take in the preventive law program (questions taken after class, question and answer pages on a post BBS or internet site, etc.), attorneys must be sensitive to whether they have formed an attorney-client relationship and whether that creates any conflicts of interest within the office. The best idea is for attorneys to be very circumspect in their questioning and stay very general. If a person wants to discuss the specifics of his situation, the attorney should give him the number at the legal assistance office and advise the person to make an appointment. If possible, you may want to have a legal clerk attend the sessions and make appointments there.***

C. ***Copyright Considerations/Plagiarism (See Supplemental Materials).***

VII. CAUTIONS.

A. ***Don't get so specific as to give advice on a particular situation.***

B. ***Include language in publications that the article is not a substitute for the legal advice of an attorney. Encourage readers to seek legal advice. Include the hours of the legal assistance office and phone numbers to make an appointment.***

C. ***Choose issues that would be informative to a large portion of your audience, as opposed to more obscure legal issues.***

D. ***Observe copyright laws when using a previously published article. Get permission to reprint.***

VIII. MANAGEMENT FUNCTIONS TO CONSIDER.

A. Organization & Delivery of Services

1. Customer Service Orientation
2. Mutual Support Agreements
3. "Off-site" Legal Assistance

B. Technology Tools

1. Client Records
2. Information Distribution

C. Conflict Management

1. Screening
2. Referrals
3. Opposite Parties in the Same Office

D. Subordinate Issues

1. Evaluation
   a) Management By Objective
   b) Periodic Feedback
2. Competence.

E. Professional Development

1. Training
   a) Legal & Military
   b) How Do We Make Time?
2. Mentoring

F. Interface with the SJA Office

SUPPLEMENTARY MATERIALS

1. Excerpt from Alfred F. Arquilla, *The New Army Legal Assistance Regulation*, ARMY LAW., May 1993, at 34.

2. Excerpt from Mark E. Sullivan, *Preventive Law by HandOUT,* ARMY LAW., MAY 1984, at 29.

3. Excerpt from Mark E. Sullivan, *Preventive Law: The Genuine Article*, ARMY LAW., Sep 1984, at 35.

4. Excerpt from Mark E. Sullivan, *Preventive Law: The Speaker's Circuit.*

5. Excerpt from Captain Morris, *The Fort Riley Preventive Law Program,* TJAGSA Practice Note, ARMY LAW., Nov. 1994 at 39-42.

6. Preventive Law Card, developed and used at Fort Riley, Kansas.

7. Professional Responsibility Note, *Professional Responsibility Opinion 93-1*, ARMY LAW., Jun 1993, at 54-57.

Army Lawyer
May, 1993

Department of the Army Pamphlet 27-50-246

*3 THE NEW ARMY LEGAL ASSISTANCE REGULATION

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B. Preventive Law Services

Preventive law once was a separate program with its own Army regulation. [FN271] The "program" and its regulation then ***35** was incorporated in the previous legal assistance regulation. [FN272] AR 27-3 discusses preventive law as an important area in the Army Legal Assistance Program, but dispenses with much of the verbiage that was used to describe it in previous regulations. [FN273]

Preventive law is not peculiar to legal assistance, despite its close association with legal assistance in the past. [FN274] For government practitioners, preventive law is an effective method to practice law, whether the area of law is legal assistance, contract law, environmental law, claims, administrative law, or criminal prosecution. Preventive law saves time, effort, and expense by preventing problems instead of solving them.

AR 27-3 requires commanders to sponsor preventive law initiatives, [FN275] and makes them responsible for ensuring that preventive law services are provided in their commands. [FN276] SJAs, on the other hand, are required to seek "command support and involvement" on their own preventive law initiatives, [FN277] and are encouraged to be aggressive and innovative in their preventive law efforts. [FN278]

Preventive law remains an important area in the Army Legal Assistance Program. Keeping a client out of legal trouble is more important to a client than helping him or her with damage control after the mistake is made. AR 27-3 directs that the common legal problems of soldiers and their families be examined for ways in which those problems can be avoided, that regulatory or statutory "fixes" be recommended, and that these solutions be shared with other attorneys providing legal assistance. [FN279] AR 27-3 also requires that "[l]ocal print and electronic media and training and education programs" be used to inform soldiers and their families of their legal rights and entitlements; local legal problems and ways to avoid them; and the location, telephone numbers, and hours of operation of the legal assistance office. [FN280]

* * *

FN271. Dep't of Army, Reg. 600-14, Personal General: Preventive Law Program (30 Sept. 1965).

FN272. AR 27-3 (1989), supra note 3, chap. 4.

FN273. Preventive law is no longer a program within a program. Cf. id.

FN274. Although AR 27-1, supra note 72, para. 5-3, suggests that preventive law is limited to legal assistance, Draft Revision to AR 27-1, supra note 69, para. 5-3, clearly indicates that it is not so limited.

FN275. AR 27-3, supra note 1, para. 1-4f(3).

FN276. Id. para. 3-3a.

FN277. Id. para. 1-4g(8).

FN278. Id. paras. 1-4g(9), 3-3b.

FN279. Id. para. 3-4a(1), (5).

FN280. Id. para. 3-4b.

* * *

Army Lawyer
May, 1984

Department of the Army Pamphlet 27-50-264
TJAGSA Practice Note: Legal Assistance Item

*29 PREVENTIVE LAW BY HANDOUT

Colonel Mark E. Sullivan
JA, USAR

Opinions and conclusions in articles published in the Army Lawyer are solely those of the authors. They do not necessarily reflect the views of the Judge Advocate General, the Department of the Army, or any other government agency.

Preventive Law by Handout

Introduction

It has long been recognized by legal assistance officers that an ounce of legal prevention is worth far more than a pound of cure. The avoidance of legal problems, through education and publicity, can go a long way toward reducing the time and expense of legal problems for the man or woman in uniform. Preventive law naturally contributes to higher morale and efficiency because the client is working to get a job done or a mission performed, not worrying about a car repossession, credit problem, or custody dispute. If a problem can be avoided or detected early, the time spent will be far less than if it is brought to the legal officer when it is really too late – the car has been towed away by the finance company, the credit rating is shot, or the child has just been snatched.

Legal assistance officers prefer preventive law; it keeps the client caseload at a manageable level and reduces the incidence of schedule-crippling emergency walk-ins. Commanders are just as fond of preventive law; it keeps the troops busy at work, rather than hanging around the JAG office. Because of the substantial savings in time, money, and anxiety, preventive law is a favorite with the soldier as well.

The Facts of Life

The newly appointed legal assistance officer quickly learns three facts of life. These are common to all offices, regardless of location or branch of service. First, a high percentage of the office workload is composed of a half dozen or so key subjects. The best examples are:

1) Immigration and naturalization (visas, marriage to citizens, nonresident alien status, and deportation);

2) Housing and real estate (evictions, security deposits, housing codes, interpretations of

leases, home purchases, and problems of the absent military landlord);

3) Consumer protection (used cars and car repairs, freezer meat sales, interstate land contracts, door-to-door sales, mail-order offers, time-sharing agreements, and so-called "free gifts");

4) Criminal and traffic offenses (speeding, driving while impaired, lack of proper registration or inspection);

5) Family law (divorce, separation agreements, property division, child custody and visitation, alimony, child support, and paternity disputes);

[6) Estate planning (wills, guardianships, life insurance)];

[7) Military Administrative matters (reports of survey, NCOER/OER appeals, letters of reprimand)].

Thorough knowledge of these key problem areas will inevitably expedite the intake, interview and assistance processes, as well as improve the ability of the legal assistance officer to render meaningful and effective aid to the client.

Second, there are certain key questions that continue to be asked in each subject area, such as:

1) How do I get a divorce?
2) Do I need a lawyer ("civilian-type") to take Uncle Joe's Used Cars to court?
3) How can I get my child support on time?
4) Why can't I get back my rental security deposit?
5) How do I apply for citizenship?

These are asked by dependents and service personnel alike, regardless of education level, age, grade, and job assignment.

Third, the creation and avoidance of legal problems often depends on factors that can be taught as basic skills, e.g., how to read a contract, compare costs or exercise sales resistance; that can be identified and publicized in advance; and that are generic in nature, rather than specific to a certain soldier, installation location or legal problem area. A soldier who knows how to read a contract will usually avoid problems with separation agreements, as well as leases and credit applications. A soldier who can budget, plan ahead and avoid impulse buying will usually avoid problems with repossessions and foreclosures as well as command complaints regarding child support.

Key Questions and the Handout Strategy

So long as certain key questions continue to be asked by legal assistance clients, it will remain the responsibility of the staff judge advocate and the legal assistance officer to devise ways to answer them. This can be done in the time-honored one-by-one method ... or it can be handled on a broad but efficient basis with the use of legal assistance fact sheets, handouts and pamphlets. These can be made available at racks in the legal assistance waiting room as well as in other heavy-traffic locations, such as the base library, exchange, housing referral office, inspector general office and [internet web pages].

Handouts are superior to printed manuals on state law for the soldier because they tend to be picked up, read and used, rather than handed out, skimmed and stored for future use. In addition, they are usually cheaper to reproduce and easier to amend as the law changes. Finally, they can speed up or eliminate the interview process by providing concise and realistic answers to the most common questions in certain key legal areas.

The ABCs of Handouts

When choosing the subjects for a pamphlet series to be developed on-post, these rules must be remembered:

1) Each handout should cover a specific and well-defined subject. The client should be able to recognize the subject in the title of the fact sheet, such as "Child Support and the Soldier," "So Your Used Car is a Lemon. . .," or "The Case of the Missing Security Deposit."

2) The subject covered should not be too broad. It is simply impossible to treat "Texas Family Law" or "Consumer Protection in California" in a single handout. The more narrow and specific the topic, the better. This, of necessity, makes for shorter, easier read pamphlets, and less strain on the attention span of the target population. In each case, keep it short and (if possible) sweet.

3) An editor or project officer should be designated to outline the series in advance, delegate the writing responsibilities, and phase-in each set of pamphlets. It is impossible to do an entire series in a month, or even a season, given the usual schedule priorities and manpower constraints. Doing a fact sheet series in phases makes the project manageable and does not overwhelm the editor or authors. It allows for ready revisions based on format modifications or changes in statutes or case law. It permits others to provide criticism, suggestions, questions and other useful feedback, and the workload can be spread evenly and fairly among present and future legal assistance officers, both active duty and Reserve. It may even be possible to obtain contributions from the local district attorney, motor vehicle department officials, consumer protection specialists, the attorney general's office, Better Business Bureau or Chamber of Commerce, local housing or public health officials, and the federal government's Consumer Information Center in Pueblo, Colorado. The assignment of a single project director will give the series continuity and a uniform writing style.

4) The questions and answers must be clear and readable. It takes a conscious effort to write for the soldier-client and not for the staff judge advocate or the military judge. Where lawyers use

words like "litigation," "marital dissolution" and "motor vehicle," the usual client would prefer "court fight" or "trial," "divorce" and "car." Keep most words at one or two syllables. Use common nouns and verbs. Write in the active voice whenever possible. A reading specialist at a local school can help in the editing process by performing readability studies to determine the reading level required for selected writing samples or pamphlets.

5) Answers should usually be broader than the original question. Too many single-line questions and answers will take up more space than necessary and provide less useful information than the format of a single-line question and full paragraph answer. The function of the question is to attract the reader's attention when the question is relevant, and allow him or her to skip ahead when it is not. A paragraph answer can be helpful in addressing the follow-up inquiries generated by the answer to the initial question.

6) Do not re-invent the wheel. If it is possible to use and modify materials already developed by others, the resulting savings of time will allow more pamphlets in the series to be drafted or other legal assistance projects to be started.

7) Know your resources. This seventh and final rule is to be used when time and resources do not allow the development of pamphlets and fact sheets at the installation itself. It is always more desirable to prepare the materials at the installation legal office to give a specific orientation to the needs and circumstances of service personnel and their dependents. When this is not possible, the legal assistance officer must look elsewhere for handouts for clients; there are usually a good number available for use. The state bar association may have pamphlets on buying a house or choosing a lawyer; the legal aid society on tenants' rights and repossessions; the state trial lawyers' association on automobile accidents and testifying in court; the attorney general's office on unfair trade statutes and how to sue in small claims court; and the governor's office on the new DWI law. An excellent rack of helpful handouts can be prepared for the legal assistance office with these primary source materials. Curiosity, diligence and imagination are the keys to unlocking these resources.

Conclusion

Handouts and fact sheets developed for soldiers by military lawyers can be helpful in preventing the soldier's legal problems and useful in solving difficulties at an early state. They can also reduce legal assistance interview time because the client can obtain many answers before seeing the legal assistance officer. In considering the many advantages of using legal handouts with the time necessary for preparation and the cost of printing, it is clear that the handout strategy is an important phase of a serious preventive law program at the military installation.

Army Lawyer
Sept, 1984

Department of the Army Pamphlet 27-50-264
TJAGSA Practice Note: Legal Assistance Item

*35 PREVENTIVE LAW: THE GENUINE ARTICLE

Colonel Mark E. Sullivan
JA, USAR

Opinions and conclusions in articles published in the Army Lawyer are solely those of the authors. They do not necessarily reflect the views of the Judge Advocate General, the Department of the Army, or any other government agency.

Preventive Law: The Genuine Article

Major Mark E. Sullivan, USAR

INTRODUCTION

The most important aspect of a preventive law program aimed at avoiding or minimizing a soldier's legal problems is getting the message to the field. Memoranda, staff papers, and command information letters about preventive law topics are worthless to the average soldier at an installation if he or she does not see and read that particular paper. This article is about preparing and publishing preventive law items that soldiers will read and remember.

IDENTIFYING THE PROBLEM

The problems that a military legal assistance office should address in a thorough, competent preventive law program are similar to those encountered in the offices of any general practice law firm. Some common examples include:

1. Powers of attorney (types; potential uses; problems caused by failing to execute a power of attorney before it is needed, such as in the event of deployment or mental incapacity; and possible misuse);
2. Consumer fraud (interstate land sales; magazine and photo developing promotions; "bait and switch" schemes; door-to-door sales; mail-order merchandise; "free gifts");
3. Commercial law (warranties; written contracts; finance charges; default; down payments);
4. Landlord-tenant problems (rental security deposits; lock-outs and evictions; warranties of habitability and quiet possession; "fair wear and tear"; duty to mitigate damages; "military clauses";
5. Other housing matters (contractors; materialman's liens; leases; closing costs; surveys,

easements; encroachments);

6. Traffic law (DWI; vehicle registration; drivers' licenses; state taxes; car inspections; speeding violations); and

7. Family law (divorce and annulment; custody and visitation; child support and alimony; paternity; and property division).

While many other topics are also appropriate and relevant to a particular locality or installation this list constitutes an adequate starting point for the staff judge advocate or legal assistance officer who intends to initiate an aggressive preventive law publication program.

CHOOSING THE MEDIUM

It is essential to select a medium that attracts the attention of the target population – in most cases, soldiers and their family members. Unlimited media coverage of preventive law topics can be expensive and unnecessarily tax the resources of the SJA office. Telephone recordings, radio, or television may be used to convey preventive law messages effectively. Most of the time, however, the printed word, because of cost and convenience, will be selected as the most appropriate medium.

It is vitally important that the printed medium be widely circulated to insure that it is read and retained by soldiers and family members. Frequently, the installation newspaper offers the best opportunity for publication. It is usually distributed to a large audience, contains articles of general interest to the target population, and its editors are usually eager to get "good copy" and newsworthy articles and features.

An off-post newspaper may also be targeted for preventive law features and articles. It will usually be published more often than the installation newspaper and will have a wide circulation among service members, retirees, and their family members. Articles will have to be tailored to be relevant to both the civilian and military readers, and space may be restricted for features or articles which are not "hard news."

Some editors insist on topical stories or "hard news;" meeting this requirement is easier than one might suspect. For example, a judge advocate preparing a story on drunk driving and DWI might begin the story with a summary of the latest available statistics on convictions and penalties in civilian courts, an interview of a drunk driving accident victim, or a profile of the trial and sentencing in a particular case. Or a military lawyer writing a story about child support could begin the article with an interview of a local family court judge or social services official, or with a paragraph on the most recent federal and state statistics on the problem of nonsupport. Finally, a legal assistance officer preparing a feature on consumer protection might focus the article on recent actions by the state attorney general's office against consumer fraud, profile a soldier who was "ripped off," or list merchants and business establishments recently placed off limits by the installation's Armed Forces Disciplinary Control Board.

Additional media sources are available at most installations. The daily bulletin is frequently an excellent place for spot advertising items of interest. There may be weekly advertising

packets or traders' exchanges published on post that can also be used to publicize preventive law. Occasionally, the monthly circular or newsletter printed by an individual command, wives club, religious activity, on-post housing community, or civilian employee organization is available for preventive law articles.

THE MESSAGE

The choice of medium will always be closely connected to the particular message to be conveyed. The author of preventive law series, frequently a legal assistance officer, should carefully analyze what he or she wishes to convey and tailor the message to the publications available.

The lesson is simple: determine the goals to be achieved before deciding on the medium or message.

KNOW THE "ROPES"

While knowing the enemy may be vital on the battlefield, knowing the procedures for publication helps insure that the article, item, or feature story gets printed with minimum delay and editing, and with maximum impact.

Knowing the "ropes" begins with the public affairs officer or publication information coordinator. He or she can provide guidance as to what items or facts might be restricted from release, how to contact particular editors or publishers, and what to cite for certain standard items included in news stories, i.e., the size of Ft. Quagmire, the number of civilian dependents, the amount of the monthly military payroll, etc. The editor of a particular newsletter, bulletin, or newspaper can also be extremely helpful with information about deadlines, guidelines for articles, and standard feature sections that may be logical locations for an article on preventive law.

Contact with the installation newspaper is essential. Seek out the feature writer responsible for stories of interest to the general readership. He or she may be willing to write an article based on information provided by the attorney, transforming the attorney into a player in the drama, a character in the story. This is probably better than the article on the issue you would have prepared and certainly would be much easier to do and less time-consuming.

DO NOT REINVENT THE WHEEL

On those occasions when the legal assistance officer must research, draft and submit a preventive law article, there are several resources which will simplify the task. The first and most obvious source of information is the legal assistance office itself. This office, with its direct contact with clients, weekly or monthly reporting requirements to the SJA, and its comprehensive overview of commonly encountered legal difficulties, provides the pulse-beat of preventive law. It is here that the author will first encounter the legal problems that must be publicized to be prevented. The best source of preventive law material is always one's own

office.

Additional resources are readily available. In the consumer protection field, the state attorney general's office will frequently have handouts and news releases on common fraud schemes that may be adapted for use in a news feature. Another source of consumer information and news articles is the local Better Business Bureau of Chamber of Commerce. Consumer fraud might be researched by interviewing local officials in the district attorney's "white collar crime" or "consumer fraud" division. Also, the federal government's Consumer Information Center has a wealth of information available.

Finally, a writer should consider previous articles concerning the same or similar topics and remedies. Check with the particular medium to see whether articles have been written on the same topic and, if so, when. Articles over four years old can probably be "recycled" for use in the installation newspaper, since the readership has probably changed over that period of time.

An excellent source of previously written articles is the article bank maintained by The Judge Advocate General, U.S. Air Force. Further information concerning this vast compendium of preventive law articles may be obtained by contacting:

Office of the Judge Advocate General, USAF
ATTN: JACA
Washington, D.C. 20330

This represents one of the best sources of well-written preventive law articles, available for pure plagiarism, partial modification or entire rewriting. If it has been written once, why reinvent the wheel?

GUIDELINES FOR THE AUTHOR

The first-time writer should remember that articles are more interesting if they feature real people, quoted and identified by name and position. State and local officials enjoy being quoted and mentioned favorably in preventive law articles. It is common to create a quote (favorable, of course) for the official and to later obtain approval of the quoted words before release of the article.

Well-written articles use the active voice and summarize the topic in the first few sentences. After the first paragraph, everything else is progressively less and less important. One should assume that the reader only has time to read the first, or first few, paragraphs.

Preventive law articles need not be complex or esoteric excursions into the law.

CONCLUSION

Without a doubt, the media are there and waiting to be tapped as a resource for preventive

law. All it takes is selection of the proper medium and messages, creativity to craft features and articles, and dedication to make publicizing preventive law a full-fledged command activity.

PREVENTIVE LAW: THE SPEAKER'S CIRCUIT

COL Mark E. Sullivan, USAR

INTRODUCTION

THE TEN COMMANDMENTS

An officer assigned to make a preventive law presentation to a military audience will arrive early, be in proper uniform, know the subject matter thoroughly, keep the speech lively and interesting, and take questions from the audience. In addition to these obvious observations, here is a decalogue for the dedicated speaker.

1. Use an outline. Outlines are easier to follow and allow greater flexibility than prepared speeches. A good preventive law presentation will be just flexible and informal enough to let the speaker linger on a point, expand on a question from the audience or jump ahead in the sequence of instruction if the occasion demands it. Even excellent presentations can put some soldiers in the audience to sleep. A speaker reading the text of a prepared speech risks putting all the audience asleep.

2. Spotlight salient subheadings. It is important to write down (even in abbreviated form) a phrase, sentence or word as a reminder for each topic, example or point to be covered within the outline. These are too easy to forget after the presentation has begun and the questions start coming from the audience.

3. Use short, declaratory sentences. This is the best means of addressing the audience, making a point and keeping their attention. Long sentences, which are complex in construction and redundant by repetition, tend to lose the reader and tire the audience.

4. Know your audience. A consumer protection speech before an infantry battalion would (hopefully) be vastly different in speaking style, vocabulary and approach than a program on wills and estate planning for an officers' wives club. Make sure your illustrations, choice of words and other aspects of the presentation are appropriate for the size, education level and background of your audience. In the latter group, for example, a consumer protection speaker might talk about "implied warranties" and "revocation of acceptance," whereas an infantry battalion might better understand "unwritten promises" or "returning the clunker." If it is important on the battlefield to "know your enemy," it is equally vital in the classroom to "know your audience."

5. Sexy slogans sell. Whenever possible, use a memorable motto or catchy phrase to reinforce your message. In an estate planning class, a slide or handout with "Where There's a Will, There's a Way" should help to emphasize the importance of a valid Last Will and Testament. For a class on claims, "Lock It or Lose It" might make the point. Slogans and sayings that employ alliterations or rely on rhymes and repetition will hold the attention of the audience and be remembered.

6. Use visual aids. Studies have been conducted over a number of years on the value of visual and oral presentations. Some have been done for lawyers on methods of persuading a jury. Others involve salesmen persuading their customers. In each case, the study shows a substantial increase in memory retention for combined audio-visual approaches over the purely oral or entirely visual presentation. Your audience remembers your message better if you both say it and display it. "Show-and-Tell" is still in style.

7. Know your limits. A long speech, however profusely illustrated and interspersed with witticisms, will bore the audience at some point. Concentrate on a limited number of main points or lessons, develop them with slides, slogans or examples, and then finish the speech. If a large number of points must be made, use several presentations on different dates or else prepare handouts for the audience on the many points to remember and just hit the highlights during your speech. In addition to KISS ("Keep It Short and Sweet"), also remember LSMFT ("Long Speeches mean Fatigue and Tedium").

8. Keep an eye on organization. High points should be made first or last in the speech, as these are the times when the audience will be most alert. Studies have shown that people's memories are sharpest at the start or end of a sequence and best impressions are made on the listener by the beginning or ending speaker in a series. Details and suggestions which are lumped together in the middle of a speech are most likely to be forgotten.

9. Vary your style of presentation. Occasionally forego the lectern-and-microphone standard speech for some alternatives. Try taking questions or reactions from the audience in the middle of the presentation. Put together a skit using audience members or members of the speakers' panel. Develop a panel discussion format or try co-teaching the class with the company or battalion commander. In persuading your audience, remember that "Diff'rent Strokes Can Help You Coax."

10. Preview and review your lessons for the audience. A good speaker will orient and acquaint the audience with the subject, make the presentation itself and then summarize the major points of discussion. The best format for an informational speech has always been: "Tell 'em what you're going to tell 'em; then tell 'em what you've told 'em!"

The point is, you don't have to be a great orator to give a good preventive law presentation. A speaker who does some practicing in advance and who understands the rules of effective speaking will have no trouble in delivering the message to an audience.

Army Lawyer
November, 1994

Department of the Army Pamphlet 27-50-264
TJAGSA Practice Note: Legal Assistance Item

*39 THE FORT RILEY PREVENTIVE LAW PROGRAM

Captain Morris
Legal Assistance Attorney, First
Infantry Division (Mech), Fort Riley, Kansas

Opinions and conclusions in articles published in the Army Lawyer are solely those of the authors. They do not necessarily reflect the views of the Judge Advocate General, the Department of the Army, or any other government agency.

The Fort Riley Preventive Law Program

The Fort Riley Solution

The Fort Riley LAO developed a three-pronged preventive law program to address common legal hazards facing Fort Riley soldiers as outlined and discussed below.

The Preventive Law Card (PLC)

The Fort Riley LAO developed a tri-fold wallet-sized reference card for soldiers highlighting information such as the ***40** LAO location, telephone number, available services, and the common legal pitfalls encountered by Fort Riley soldiers. [FN5] The card is designed in the tradition of the graphic training aid (GTA) routinely distributed to soldiers on various military subject areas. The Fort Riley LAO sought to place something in the soldier's hands that would not end up in the waste basket or on the floor at the end of a preventive law briefing. Making the PLCs wallet-size increases the chances that soldiers will retain and use them when needed. [FN6] The PLC contains the essence and character of the preventive law briefing while providing soldiers with a permanent, readily accessible legal reference. [FN7]

The PLC is widely distributed to clients seen in the LAO, at soldier readiness programs, inprocessing and outprocessing briefings, family support briefings, retirement briefings, and preventive law briefings. The goal of the Fort Riley LAO is to place a PLC in the hand of every soldier on the post -- to include the Commanding General. [FN8]

FN5. See Appendix for a copy of The 1994 Fort Riley Preventive Law Card. Special thanks to Trial Defense Service attorney Captain Wilhelm F. Bierman for his assistance in the design of the PLC. The PLC was designed "in-house" on Microsoft Word 6.0 and

printed at the post printing facility.

FN6. The Fort Riley LAO decided that a wallet-sized card would be more effective than a legal pamphlet or guide for distribution to soldiers. The logic behind using the PLC over a multipage legal guide was the ease of development and update, lower printing costs, and the greater chance that a soldier will retain the PLC over time.

FN7. In addition to the legal assistance information provided, the PLC contains claims information highlighting common errors soldiers make when filing claims for missing or damaged household goods and privately owned vehicles.

FN8. As of 1 May 1994, the Fort Riley LAO printed 12,500 PLCs and distributed over 9500 PLCs to soldiers during the months of February through April 1994-- the inception of Fort Riley's new preventive law program.

PREVENTIVE LAW CARD

Provided by the Staff Judge Advocate
Patton Hall (Bldg 200)
Fort Riley, Kansas W442

Legal Assistance

The Soldier's Lawyer-239-3117/2820

Legal Advice on The Following Subject Areas Is Available:

- **Family Law:** Adoption, Custody, Divorce, Paternity & Support.
- **Landlord & Tenant Law:** Lease/Sales Agreements, Evictions.
- **Consumer Law:** Sales Contracts, Debt Collection Actions.
- **Military Admin Law:** Reports of Survey, OER/NCO-ER Appeals.
- **Immigration/Naturalization Law**
- **Bankruptcy Law**
- **Tax Preparation & Filing**
- **Wills/Powers-of-Attorney/Notary**

Credit Reports: Adverse credit info stays on your report for 7 years: Bankruptcy for 10 years. If denied credit due to a bad mark on your credit report, you have the right to know what Credit Reporting Agency provided this info. Request a copy of your report. Explain disputed info by placing a letter in your credit file for inclusion with future reports.

Used Cars: 'AS IS' means what it says! Have the car inspected by a qualified mechanic before you buy.

Car Repairs: Most states require repair shops to give you a written estimate. Get a written estimate before you leave the shop.

Remember: if a deal sounds too good to be true, It is too good to be true!

Army Community Service: 239-9435
ACS Financial Planning Advice - 9-9450 Emergency after-hours Service - 9-3052

Legal Landmines!

Consumer Scams & Door-To-Door Salesmen: DON'T GET RIPPED OFF! Watch out for magazine, life insurance, encyclopedia, and film processing contracts. . HAVE YOUR JAG ATTORNEY READ THE CONTRACT BEFORE YOU SIGN!

Bad Checks: DON'T WRITE POST-DATED CHECKS! They can legally be cashed early. PAY OFF BAD CHECKS ASAP! If you don't, your creditor can collect over $500 in charges & fees. DON'T PAY *$500 FOR A $10 PIZZA!*

Garnishment: PAY DEBTS ON TIME! Otherwise, your creditor can sue you, obtain a judgment, apply to Army Finance, & take money directly out of your pay without your consent!

PCS & Debts: YOU CANNOT ESCAPE DEBTS BY PCSing! Notify creditors of your new address when you PCS. PROTECT YOUR CREDIT RATING! Pay creditors: otherwise, they can sue you and destroy your credit rating.

Deployment Issues:

Soldiers & Sailors Civil Relief Act: Soldiers whose military service prevents them from appearing at civil court proceedings may get a postponement If you are Involved In a lawsuit, D0 NOT write or call the court before seeing your Legal Assistance Office first!

SGLI: Soldiers must designate all beneficiaries BY NAME. It you have minor children, talk to Legal Assistance about creating a trust within your will for SGLI Insurance proceeds.

Wills/Powers of Attorney: Are your legal, financial, and personal affairs in order? Who will pay your bills during deployment? Make plans now BEFORE YOU DEPLOY!

Farnily Care Plans: Review your plan. Make sure it is complete and up to date.

Voluntary Repossession: If you return your car to this dealer or bank to satisfy the loan, YOUR DEBT IS NOT PAID OFF! You still own the loan balance, minus the resale price plus expenses of the sale.

Lease Agreements: PROTECT YOURSELF! Does your lease contain a Military Clause that allows you to break the lease if you come up on PCS or ETS orders? Conduct a walk-through inspection of the promises and document all pre-existing deficiencies on a paper signed by you and the landlord. NOTE: Oral promises by your landlord are not legally enforceable unless in writing!

Renter's Insurance: If your house, or quarters, or apartment bums, the value of your personal property can only be protected by renters' insurance. Consider insuring for "replacement value." Keep a record of what you own, to include serial numbers.

Claims

239-2633/3620

Household Goods: DON'T LET THE MOVERS RUSH YOU! Check items off the inventory sheet as they are brought into your house.

- List all missing and damaged items on DD Form 184.
- READ THE FORMS! Don't rely on the mover's advice
- You must file DD 1840 within 70 days of delivery or your recovery may be reduced.

POV'S: For theft & vandalism claims, you MUST also file a claim with your insurance company!

- Collision and hit & runs cannot be claimed.
- Maximum claim allowed for any car stereo system is only $500!
- Large-Ticket Items: RECORD ALL SERIAL NUMBERS! If an item is stolen, a serial number will help police track it down.

Army Lawyer
June, 1993

Department of the Army Pamphlet 27-50-247
Professional Responsibility Note

*54 ETHICAL AWARENESS

OTJAG Standards of Conduct Office

Opinions and conclusions in articles published in the Army Lawyer are solely those of the authors. They do not necessarily reflect the views of the Judge Advocate General, the Department of the Army, or any other government agency

The Standards of Conduct Office normally publishes summaries of ethical inquiries that have been resolved after preliminary screening. These inquiries -- which involve isolated instances of professional impropriety, poor communication, lapses in judgment, and similar minor failings -- typically are resolved by counseling, admonition, or reprimand. More serious cases, however, are referred to The Judge Advocate General's Professional Responsibility Committee (PRC or Committee).

The following PRC opinion, which applies the Army's Rules of Professional Conduct for Lawyers [FN1] to a case involving a legal assistance attorney's plagiarism of copyrighted publications, is intended to promote an enhanced awareness of professional responsibility issues and to serve as authoritative guidance for Army lawyers. To stress education and to protect privacy, neither the identity of the office, nor the name of the subject, will be published. [FN2] Mr. Eveland.

Editor's Note -- Every attorney is well advised to credit his or her sources properly and to avoid even the appearance of claiming another's work as his or her own. Even if an author obtains permission to use another's work -- whether copyrighted or not -- the author has committed an act of plagiarism if he or she fails to acknowledge that the information being presented is not his or her original work. Plagiarism never is "authorized" merely because the subject materials may be reprinted. Likewise, a party cannot consent to having his or her work "plagiarized." While copyright infringement may be avoided by obtaining the copyright owner's consent or by complying with the law of fair use, plagiarism may be avoided only (1) by citing the source from which the material was taken, or (2) if the source does not want to be acknowledged or the actual source is not known, by clearly indicating that the material is not exclusively the author's original work.

*55 Professional Responsibility Opinion 93-1

The Judge Advocate General's Professional Responsibility Committee

Facts

Mr. X is an attorney employed in the Office of the Staff Judge Advocate, Fort Defense. During the events discussed herein, he worked as a legal assistance attorney.

In conjunction with his legal assistance duties, Mr. X authored three articles which he arranged to have published in the Fort Defense Gazette, the installation newspaper. When the last of these articles appeared in print, the byline indicated that the article was "By Mr. X, Legal Assistance Office." This particular article was based substantially on a syndicated columnist's copyrighted article that had appeared in a major metropolitan newspaper seven months earlier. Despite extensive reliance on the copyrighted article -- including verbatim copying of many passages -- Mr. X's article did not attribute a source of any kind. Additionally, Mr. X failed to obtain prior permission to reprint or to use the copyrighted article.

One month after the article appeared in the Fort Defense Gazette, the copyright owner wrote Mr. X that his article was taken from its article, inquired whether he had permission to use it, and indicated that the matter was being referred to the syndicated columnist. Within a week, Mr. X wrote to the columnist seeking retroactive permission to "publish" the article. Shortly thereafter, the copyright owner wrote directly to the editor of the Fort Defense Gazette. The copyright holder described the unauthorized use of the article and lack of attribution as both a violation of copyright protection and plagiarism. It further demanded and received $100 in satisfaction for publication of Mr. X's article. Mr. X subsequently reimbursed the United States for the copyright holder's charges.

The Fort Defense Gazette previously had published two other articles by Mr. X -- based extensively on sources that were not credited or recognized. Neither Mr. X, nor the Fort Defense Gazette, obtained permission to publish the articles from the copyright holders.

Applicable Law

17 U.S.C. § 106 Exclusive rights in copyrighted works

Subject to sections 107 through 120, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyright work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly. [FN3]

17 U.S.C. § 107 Limitation on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work. [FN4]

***56** Rules of Professional Conduct Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

....

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.... [FN5]

Discussion

Based on his submissions to the preliminary screening official and to the PRC, Mr. X raises two matters worthy of discussion. Mr. X considered the use of the source materials to be a "fair use" under copyright law. The PRC does not agree. While arguably the article Mr. X authored met most of the "fair use" considerations, the Committee believes that the extent of copying employed went beyond that which an attorney could assume would be "fair use" under 17 U.S.C. § 107's "amount and substantiality" factor. [FN6] Even the "expert" opinion of a private practitioner in copyright law-submitted by Mr. X and carefully considered by the Committee - does not unequivocally declare Mr. X's actions a "fair use." Instead, that opinion views Mr. X's conduct as "trivial in comparison" to what others have done. We also note that the reaction of the copyright holder to Mr. X's last article was not trivial.

Secondly, Mr. X forwarded the original source documents along with his articles to the Fort Defense paper, and the staff compounded the error by failing to obtain permission and properly identify authorship. In effect, Mr. X claims that he relied on the Fort Defense paper to sort out these issues by comparing the text. Mr. X has admitted that, in retrospect, this reliance was an error in judgment. We agree. An attorney, particularly one as experienced as Mr. X, has an obligation to the public and to those who will publish his work product to ensure that copyrights are honored. The public rightfully expects attorneys to respect the rights of others; therefore, attorneys have a special standard of care. By failing to, at the least, highlight potential copyright or source attribution issues, Mr. X negligently failed to meet this expected standard of care. While the Committee agrees that the Fort Defense Gazette's staff frequently made mistakes and was inexpert, that does not excuse Mr. X's negligence.

We also note that Mr. X's second argument undercuts the first. Forwarding the source articles to

the Fort Defense Gazette to determine copyright issues implies that he recognized that "fair use" may have been questionable. Mr. X had a duty to satisfy himself on the issues, and was negligent for failing to do so.

Even if Mr. X's articles were "fair uses" of the source materials, a case of plagiarism remains. Plagiarism by an attorney is a serious matter considered to violate Rule 8.4 and has been the subject of serious disciplinary proceedings by state courts. [FN7]

In his articles, Mr. X failed either to credit or to cite his sources in any manner, despite extensive reliance on, and wholesale copying of, entire passages. Mr. X admitted to this practice and explained it as a shortcut during busy periods. This is unacceptable conduct from an attorney and is the type of negligent misrepresentation that violates Rule 8.4(c).

In considering possible violations of the Rules of Professional Conduct, all relevant circumstances - including aggravating and mitigating matters - must be considered. Accordingly, the Committee notes that Mr. X's conduct is aggravated by several factors. First is Mr. X's persistent pattern of plagiarism - that includes several articles and sources - and his failure, over a lengthy period of time, to use professional care. Mr. X's lengthy experience also makes his subsequent negligence disturbing. We also note the obvious embarrassment his actions have brought to the Army and Fort Defense. Finally, the Committee notes Mr. X's lack of immediate apology to his sources or efforts to see that the Fort Defense Gazette retracted or corrected errors.

The Committee, however, does recognize several significant mitigating factors in this case. First, Mr. X lacks any apparent improper motive. We can find no intentional personal financial gain or significant professional gain. Rather, we are presented with a case of overzealous desire to provide timely legal assistance-related information to the Fort Defense community. Mr. X's prior extensive effective service and his lack of any prior disciplinary problems also are important. We also consider that little significant harm to the general public or to the copyright holders resulted from Mr. X's actions. In this regard we note that he eventually made restitution.

We also note Mr. X raised the Legal Assistance Program's proactive publication emphasis and its frequent encouragements to freely copy, reuse, and "plagiarize" materials that are distributed by the Program. While we do not believe these encouragements constitute an excuse or justification for Mr. X's failure to distinguish between copyrighted and Legal Assistance Program materials - entitled to little or no copyright protection - we do believe these statements by the Program did contribute to the development of Mr. X's negligent lack of care.

***57** Finally the Committee notes that Mr. X is unlikely to repeat this conduct. He has admitted that he was wrong and made a mistake in judgment. He has completed remedial training at his personal expense.

After carefully considering all of the factors, as well as Mr. X's submissions to the preliminary screening official and this Committee, the Committee considers that Mr. X negligently violated Rule 8.4(c).

CHAPTER 3

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

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OUTLINE OF INSTRUCTION

I. RESOURCES

A. NATIONAL CONSUMER LAW CENTER, UNFAIR AND DECEPTIVE ACTS AND PRACTICES (4th ed. 1997 and 1999 Supp.).

B. Federal Trade Commission Act, 15 U.S.C. § 45.

C. State UDAP Statutes (listed by state at Appendix B).

I. INTRODUCTION.

I. UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP) - LABEL FOR A VARIETY OF STATUTES WITH BROAD APPLICABILITY TO MOST CONSUMER TRANSACTIONS AIMED AT PREVENTING CONSUMER DECEPTION AND ABUSE IN THE MARKETPLACE.

A. Coverage: UDAP statutes cover a wide range of consumer topics. They range from regulation of sales practices to regulation of advertising, warranties and credit offers. Current UDAP and consumer protection statutes have been described as a "curious mix of the old and the new."[2] UDAP can include a wide range of merchant activity. The term is a somewhat imprecise term that includes a full range of consumer protection statutes. These can include protections running from consumer sales acts, and deceptive trade practices acts all the way to common law actions for fraud[3].

B. History: The impetus behind many of the current generation of UDAP statutes is the Federal Trade Commission Act (described below). Other authors often attribute the rise in consumer protection acts to the work of Ralph Nader and other Consumer Advocates.

C. Federal Trade Commission Act. 15 U.S.C. § 45.

1. "Unfair methods of competition ... are declared unlawful."

[2] HOWARD J. ALPERIN AND ROLAND F. CHASE, CONSUMER LAW: SALES PRACTICES AND CREDIT REGULATION § 1 (1986) [hereinafter ALPERIN AND CHASE].
[3] NATIONAL CONSUMER LAW CENTER, UNFAIR AND DECEPTIVE ACTS AND PRACTICES §1.1 (4th ed. 1997) [hereinafter NCLC UDAP].

2. The Federal Trade Commission Power under 15 U.S.C. § 45 is, however, in *addition to* the authority of the states. The FTC does not displace state law unless the state law is inadequate or contrary to the Commission's regulations. *See, American Financial Services v. FTC*, 767 F. 2d 957 (D.C. 1985).

3. Enforcement - only by the FTC. This can be a severe limitation on the utility of the FTC Act. Therefore, state statutes become very important to the consumer law practitioner, since these statutes will, at a minimum, give state agency enforcement. In addition, many allow for private causes of action as a remedy.

D. State UDAP statutes. The provisions of these statutes will vary by state. Thus, legal assistance practitioners must familiarize themselves with the protections their state offers when they arrive at a new installation. Some general features of these statutes include the following.

1. Every state and the District of Columbia have passed at least one statute that deals broadly with most consumer transactions.[4] Also see Appendix B.

2. States call these statutes a variety of names including consumer protection acts, consumer sales acts, unfair trade practice acts, deceptive and unfair trade practices acts, deceptive consumer sales acts, deceptive trade practices acts, and consumer fraud acts. The National Consumer Law Center labels all state consumer statutes of general applicability as Unfair and Deceptive Acts and Practices (UDAP) statutes.[5]

3. The state statutes supplement the FTC Act; they do not displace it in any fashion.

4. "Legislatures and courts have been careful to guarantee that UDAP statutes are broad and flexible, so that they can apply to creative, new forms of abusive business schemes in almost all types of consumer transactions. Even when UDAP statutes enumerate specifically prohibited

[4] NCLC UDAP at § 1.1. For a State by State Guide to these statutes, *see id.* at Appendix A.
[5] *Id.*

practices, most statutes also prohibit other unfair, unconscionable, and/or deceptive practices in more general terms."[6]

5. States will usually authorize enforcement by state authorities (usually the Attorney General), as well as private enforcement.

6. Many include award of private damages as well as attorneys' fees. This is often a critical aspect of a consumer statute for the legal assistance practitioner. Absent an Expanded Legal Assistance Program (ELAP) at their installation, legal assistance attorneys will have to refer many of these cases to private practitioners if the parties do not resolve the situation out of court. Private practitioners, whose livelihood depends on getting paid, may hesitate to take a case if the potential for the court awarding attorney's fees is not present.

7. May provide a source of counter-claims. Many cases in the consumer area come to light as counterclaims to actions against the consumer. For example, a creditor sues the consumer to recover a debt allegedly owed. The consumer will then raise consumer protection violations by the creditor as defenses or counter-claims against the creditor. In addition, some state statutes provide a mandatory counterclaim provision. If the consumer has a claim against the merchant, it must be resolved in the same suit as the underlying action against the consumer.

I. GENERAL UDAP PRINCIPLES.

A. Burden of Proof:

1. Pleadings must allege a UDAP Statute Violation

2. Burden is on consumers to allege facts that show that they meet the statutory definitions required by the statute.

B. Liberal Construction: UDAP statues should be interpreted liberally to effect their object, to eradicate deception, protect consumers, and to correct marketplace imbalances. UDAP Statutes are generally considered remedial in nature. Thus, courts construe them liberally in favor of consumers. See *e.g.*,

[6] *Id.*

Boubelik v. Liberty State Bank, ***527 N.W.2d 589 (Minn. App. 1995);*** **Iadanza v. Mather,** ***820 F.Supp. 1371 (D.Utah 1993);*** **Smith v. Commercial Banking Corp.,** ***866 F.2d 576 (3d Cir. 1989).***

I. SCOPE.

A. Statutory Definitions: Many state statutes limit their applicability to certain kinds of transactions. The common definitions for the general types of transactions covered are below.

1. Trade or commerce: Usually a very broad interpretation that would apply to almost any profit-oriented transaction. This would normally include sales, financing, debt collection, and warranty actions. Some things not commonly thought to be trade or commerce are considered to fall into this category. For example, doctors, lawyers, and other professionals are considered to be conducting trade or commerce.

2. Goods:

   a) Some apply UCC definition from 2-105 and 9-105, rather than their own definition.

   b) Case law has found that the following:

      (1) Are NOT Goods: Money;

      (2) ARE Goods: Living property like a horse; construction of a house on land (although the real estate is not)

3. Merchandise: Sometimes given a broader scope than goods. Usually includes various types of property such as goods, services, realty, commodities, and intangibles. Thus, money and real property have been considered merchandise even though they are not "goods." It can also include a service!

4. Services: Many items of consumer interest are services.

   a) Generally performing some needed or desired action in support of or benefiting another.

   b) Included are home construction, tax and investment advice to include brokerage, snow removal, heir tracking, legal services, banking services, mortgage brokering, and insurance adjusting.

5. Personal, family or household use: Many UDAP statutes limit applicability to these types of transactions and do not cover business transactions.

   a) Objective v. Subjective. Courts differ as to which standard applies:

      (1) Subjective: The consumer's own personal intent for the property.

      (2) Objective: What most purchases of that type are used for.

b) Other statutes (such as Truth in Lending, Magnuson-Moss Warranty Act, Fair Debt Collection) use this term and precedent under those statutes may be helpful.

c) A wide variety of things have been found to be for personal, family or household use. For example, an antique is personal even when bought for display at the office. A pyramid scheme has been considered a consumer transaction, even though it is a "business" opportunity.

B. Scope issues that may sometimes exempt a transaction from UDAP coverage:

1. Credit and banking activities.

a) Usually INCLUDED where UDAP statute applies to "goods & services" or "Trade or Commerce."

b) Usually specifically exempted if it is going to be excluded.

2. Debt collection.

a) Usually INCLUDED where UDAP statute applies to "Trade or Commerce." The NC Supreme Court is alone in ruling that debt collection does NOT fall under "Trade or Commerce" but the NC statute was amended to include debt collection activities following this holding.

b) The underlying debt, however, must be connected to the sale of goods and services for the collection to be covered.

3. No-purchase activities.

a) UDAP statutes generally require a purchase (sale) or solicitation in order to apply.

b) Thus, sweepstakes offers, free counseling, mere offers to sell have been found to NOT fall under UDAP statutes.

4. Post sale procedures - most states do include this in "trade or commerce" and in "sales of goods and services." However, it may be an issue in a minority of states.

5. Real property and Mobile Homes. States split on this issue.

   a) "Trade or commerce" and "merchandise" states: Courts in these states consistently find that real property falls within the UDAP statute.

   b) "Sales of consumer goods & services" states tend to find that real property does NOT fall within the UDAP scope. (e.g. AK, FL, MO, TX, & D.C.). A few courts, however, still include real property (e.g. PA, CO, & IL).

6. Residential Leases.

   a) Many states include these within UDAP, especially those that use the "trade or commerce" definition.

   b) A few states have held that comprehensive landlord-tenant regulation occupies the field and prevents UDAP action. (KS, OH, & WA).

I. ANALYZING UDAP CASES.

A. Look for per se violations

1. Statutory "Laundry list" (per se violations)

2. State UDAP regulations (per se violations)

3. Violation of Federal Consumer Protection Statutes

4. Make sure violation is within the scope of the UDAP statute.

B. Proving violation when there is no per se violation

1. Develop the Facts

   a) Advertising

   b) Written promotional material

   c) Oral claims

   d) Sales techniques

   e) Contract terms

   f) Collection practices

   g) Credit terms

2. Look for precedent applicable to specific practice

   a) Case Law

   b) State & Federal Statutes (Don't forget legislative history!)

   c) State/Federal Regulations

   d) Staff Commentaries

   e) FTC Cases/Consent Agreements

   f) FTC Trade Regulations, Rules, Letter Rulings

3. Use General UDAP Standards – Broad Deception & Unfairness Standards

I. GENERAL UDAP VIOLATIONS.

A. Deception/Statutory Fraud. Some states prohibit deception. Others prohibit misleading or fraudulent conduct.

1. Compare to Common Law Fraud

a) Common law fraud required proof of:

(1) A false representation of a material fact.

(2) Detrimental reliance on the fact at issue.

(3) Damages as a result of the reliance.

(4) Scienter: Defendant's knowledge of the falsity.

(5) Defendant's intentional misrepresentation seeking reliance.

b) Deception - modern conception - Virtually eliminates these proof requirements:

(1) Shaped by federal court interpretation of the FTC Act.

(2) CAPACITY TO DECEIVE is enough! Proof that a practice has a tendency or capacity to mislead or deceive even a significant minority of consumers.

(a) FTC now says "likely" to deceive.

(b) State courts have not followed suit.

(3) No proof of intent, scienter, actual reliance or damages, generally. Even if a requirement is found, it is construed liberally in favor of the consumer.

(4) Seller's Behavior may not even save him!

(a) Good faith efforts, e.g. acting on advice of counsel.

(b) Cessation of Practice (but may have to be considered in a case seeking an injunction.)

(c) Industry-wide practice.

(d) Mere Puffing.

(5) Lower burden of proof - preponderance vs. clear and convincing.

2. Vulnerable Consumers

   a) Historically - "the ignorant, the unthinking, and the credulous. . . ." *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F.2d 676, 679 (2d Cir. 1944). Courts today label these consumers the "least sophisticated." *See, e.g., Taylor v. Perrin, Landry, Delaunay & Durand*, 103 F.3d 1232 (5th Cir. 1997); *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993).

   b) FTC has begun to look at the target audience and see if they are behaving reasonably under the circumstances.

   c) Courts have stuck to the least sophisticated standard.

B. Unfairness. Does not mislead, merely takes advantage of.

1. Broader than deception.

2. Historical Criteria. *FTC v. Sperry and Hutchinson Company*, 405 U.S. 233, 244-45 (1972)[hereinafter "S&H"].

   a) Does the practice offend public policy? (Is within at least the penumbra of some common law, statutory, or other established concept of unfairness?)

   b) Is the practice immoral, unethical, oppressive, or unscrupulous?

   c) Does the practice cause substantial injury to consumer?

3. FTC Standard (1980; codified in 1994, 15 U.S.C. § 45(n))

   a) Fairly broad acceptance federally. However, States tend to stick to the S & H standard and their own jurisprudence.

   b) Focuses almost exclusively on substantial consumer injury.

c) Criteria

(1) The injury must be substantial;

(2) The injury must NOT be outweighed by any countervailing benefits to consumers or competition that the practice produces; AND

(3) The injury must be of the type that the consumers themselves could not have reasonably avoided.

d) Application of Unfairness

(1) Contracts of Adhesion

(2) Coercive (High Pressure) Sales

(3) Vulnerable Groups (like children).

C. Unconscionable.

1. Considered an alternative to Unfairness since most states prohibit one or the other.

2. Factors.

   a) Seller took advantage of inability of consumers to protect their interests.

   b) Price grossly exceeded that of similar available items.

   c) Consumer unable to receive a substantial benefit from transaction.

   d) No reasonable probability that the consumer could pay in full.

   e) Transaction was excessively one-sided in favor of the seller.

   f) Seller made a misleading statement of opinion that was likely to cause the consumer to rely to his/her detriment.

I. TYPES OF UDAP ACTIONS.

A. Unsubstantiated claims.

1. Deception action. More than just wishful thinking about a product.

2. Unfairness action. Based on an imbalance of knowledge. Economically more reasonable for the manufacturer to substantiate a claim than for the consumer.

B. Deceptive Pricing.

1. Bait and Switch. The advertising of a product with no intention of selling it (the Bait) in order to get consumers into the building and get them to buy something else (the switch).

2. Unavailability of advertised items. Similar to a bait and switch, except the business does intend to sell the advertised products, but has very few of them. The purpose is the same. Once the business sells the few it has, the business will try to get the consumer to buy something else.

3. Bargain sales. Comparing a "sale" price to a reference price that makes it appear that consumers are getting a bargain when, in fact, they are not.

4. Other: Wholesale, factory-direct, seconds, "below-cost/invoice," "liquidation sale," "going-out-of-business."

5. Free. Usually to get the "free" item, you must buy another item that is marked up to help defray the cost of the "free" item to the business. The FTC also prohibits many of these types of schemes.

6. Low-balling. The seller advertises a low price, but through a variety of means, ends up selling it to the consumer for a higher price. This frustrates the consumer's comparison-shopping.

7. Consumer special selection / winning. Making the offer seem like a good deal by saying the consumer is "specially selected" or has won the opportunity for the deal.

C. General Misrepresentation:

1. Uniqueness. Making false claims about a product's uniqueness, exclusiveness, or originality.

2. Safety. Failure to disclose latent safety risks associated with a product.

3. Quality and comparison. Misrepresenting "a product's quality, style, nature, composition, identity or ingredients."[7]

4. Size. Misrepresenting a product's size or weight usually by using oversized containers, slack fill in the container, etc.

5. Endorsement. Misrepresenting the endorsement or approval of a product by an agency, company, or government organization.

D. Deceptive Performance Practices.

1. Layaway. Sellers must disclose all aspects of their layaway policies to consumers. Specifically, they must disclose the goods covered, the period the offer is held open, the down payment, and the cash price.

2. Delay and non-delivery. Failure to make prompt delivery or to honor a request for a full refund when delivery is delayed unreasonably.

3. Damaged and Defective goods. Failure to disclose defects or damages known to the seller, even if the sale is "as is."

4. Used as new. Sellers must disclose when a product is rebuilt, reconditioned, etc.

I. UDAP APPLICATION TO SELECTED AREAS.

A. Debt collection.

1. May provide relief when FDCPA cannot

2. Misrepresentations as to

   a) Identity/Affiliations of Collector

[7] NCLC UDAP at § 4.7.3.

b) Imminence of threatened actions

(1) Can't threaten nonpayment "may" result in litigation unless suit is the ordinary response.

(2) Can't threaten that if no payment is received within a specified number of days, a specified action will be initiated if that determination has yet to be made.

c) Legal consequences

(1) Can't be designed to create fear and take advantage of consumer's ignorance of legal procedures.

(2) Can't threaten garnishment without telling the consumer; a court order is required.

3. Harassment

B. Contracts/Warranties.

1. UDAP not to provide disclosures in same language as the advertisements.

2. Misrepresentation as to cancellation rights.

3. Confusing contract terms may even be unfair. *See, e.g., Michaels v. Amway Corp.*, 206 Mich. App. 644, 522 N.W.2d 703 (1994); *Orlando v. Finance One*, 369 S.E.2d 882 (W.Va. 1988). Oral representations inconsistent with the written contract, even if the contract states that oral representations inconsistent with the contract are not part of the deal.

C. Insurance

1. Look at State Unfair Insurance Practices (UNIP). UNIP is legislation defining and prohibiting unfair methods of competition and unfair or deceptive acts and practices in the insurance business.

2. Violations of State UNIP are probably *per se* violations of State UDAP.

3. If not UNIP violation, still look to State UDAP.

D. Rent-to Own.

1. Deceptive inducements or sales practices. RTO companies will often use many of the techniques already mentioned including, bait and switch, low-balling, etc. In addition, look carefully for other misrepresentations, such as describing the transaction as a lease when it is in fact a contract for sale.

2. Disclosure Problems. Look for lack of disclosure in the sale. Usually, the companies will not disclose the total of all the payments (which is 3 or 4 times the normal sale price) or the effective annual percentage rate which is often usurious.

3. Repossession. Many times the RTO companies will use misrepresentations in repossession efforts to coerce the consumer into paying. This includes threats of criminal or civil actions they have no intention of pursuing, misrepresenting their workers as law enforcement officials, and seeking more than they are entitled to under the contract to settle the matter.

I. GENERAL UDAP PROCEDURE.

A. A demand letter is required in a number or states as a precondition to suit.

1. Give seller an opportunity to resolve informally.

2. Different from notice provisions. Notice to the Attorney General before judgment is entered is a precondition to suit.

3. Must give the seller sufficient information to review the law and determine whether the requested relief should be granted.

   a) Identify claimant.

   b) Reasonably describe the unfair and deceptive practice.

   c) Reasonably describe the injury.

4. Written.

5. MailBox Rule. The principle that when a pleading or other document is filed or served by mail, filing or service is deemed to have occurred on the date of mailing.

B. Public interest.

1. In some states (mainly WA, IL, GA, SC, NY.), the suit must be in the public interest.

a) Violates a statute that has a specific legislative declaration of public interest impact, or

b) Part of pattern or general course of conduct that has the real potential of repetition.

2. Most states do not have this requirement.

C. ***Damages. A Private Cause of Action exists in every state except AR and IO, but actual damages may be a pre-requisite in some states.***

1. Actual. Some damage.

2. Statutory. Vary between $25 to $5,000.

3. Treble damages are possible for willful and intentional violations.

D. ***Class Actions. Preconditions by one may satisfy preconditions for all.***

E. ***Attorneys fees.***

1. Almost all states that authorize a private cause of action, authorize reasonable attorney's fees for successful litigants.

2. However, some limit the amount/allowance of fees based on the consumer status (personal v. business); certain defenses (bona fide error defense); or the seller's conduct (willful v. negligent).

I. CONCLUSION

CHAPTER 4

PROTECTIONS BASED ON THE TRANSACTION

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OUTLINE OF INSTRUCTION

I. COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES (a.k.a. Rule Concerning Cooling-Off Period For Sales Made At Homes Or At Certain Other Locations).

A. References.

1. 16 C.F.R. 429.

2. National Consumer Law Center, *Unfair and Deceptive Acts and Practices*, § 5.8 (4th Ed. 1997 and 1999 Supp.).

3. State Statutes, Appendix B.

B. General.

1. Rule grants unilateral right to rescind consumer purchase contracts for three business days following a door-to-door sale.

2. Rule contains disclosure requirements and notice requirements.

C. Definitions & Exclusions.

1. Door-to-door Sale.

   a) Sale, lease or rental...

   b) ...of consumer goods and services (primarily for personal, family, or household purposes)...

   c) ...with a total purchase price of $25.00 or more (includes interest and service charges)...

   d) ...personally solicited by the seller...

e) ...at a place other than the permanent place of business of the seller. For example:

(1) Buyer's residence;

(2) Facilities rented on a temporary or short-term basis including hotel or motel rooms, convention centers, fairgrounds, restaurants;

(3) Sales at the buyer's workplace;

(4) Sales in dormitory lounges (barracks).

2. Business day: Any calendar day except Sundays and federal holidays. The current federal holidays are New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving and Christmas. Day of sale is excluded in the calculation.

3. Exclusions.

   a) Pre-arranged visits after initial contact at a seller's regular place of business.

   b) Contracts in which the cooling-off period of the Truth-in-Lending Act applies. (See TILA outline).

   c) Buyer-initiated contacts for a bona-fide emergency need provided the seller obtains a written waiver dated and signed by the buyer explaining the emergency.

   d) Solicitations by mail or telephone, but the Mail and Phone Order Rule or the Telemarketing Rule may apply.

   e) Buyer initiated visit for repairs of personal property.

   f) Sale (or rental) of:

      (1) Real Property.

      (2) Insurance.

      (3) Securities.

g) Automobile tent sales/auctions (where dealer has permanent place of business elsewhere).

h) Craft Fairs.

D. Requirements of the Rule.

1. Copy of the fully completed contract for the consumer to retain.

2. Oral and written notice of the rescission right:

a) One easily detachable, fully completed copy for consumer, one copy for consumer to send to seller to cancel the contract;

b) Date of transaction, and;

c) Name and address of seller;

d) Seller must orally inform the consumer of the right to rescind;

e) Notice of right to rescind must be in close proximity to the signature block of the consumer;

f) Seller must not attempt to misrepresent right to rescind;

g) Notice must be in bold print;

h) Notice must be in the same language as that used during the sales presentation;

i) Notice *need not conform exactly* to FTC recommended language.

3. Waiver is not allowed. (Exception - emergency needs).

4. Sellers must honor rescission.

   a) Seller not permitted to sell or transfer credit note before midnight on the fifth business day following the transaction.

   b) If the consumer cancels the contract, the seller has 10 days within which to provide consumer with instructions regarding the disposition of the goods already delivered to the consumer.

E. Mechanics of Rescission.

1. Consumer must mail or deliver written notice to seller before midnight of the third business day following the transaction.

2. Use cancellation form provided by the seller, or, use any written form, to include a telegram, that communicates the desire to rescind to the seller.

3. Seller must return trade-in, if any, within 10 days or receipt of consumer's notice.

4. Consumer then must:

   a) Make goods already delivered available to the seller, or,

   b) Follow the seller's instructions regarding return of the goods.

5. Return must be at the cost of the seller.

6. Risk of loss during return is on the seller.

7. If the seller fails to pick up the goods within 20 days, the consumer may retain the goods with no further obligation to the seller.

F. FTC Application and Interpretation of the Rule.

1. Strict interpretation against the seller.

2. If buyer cancels the contract, but the seller has performed - there is no recovery for the seller based on quantum meruit. Some states, however, do interpret their own rule to allow for quantum meruit recovery. If the seller is performing work in order to discourage the buyer from exercising cancellation rights, look to State UDAP statutes for relief.

3. The Federal Rule does not provide for an extended right to rescind for noncompliance with the notice provisions, but State UDAP statutes may.

G. Remedies.

1. No independent cause of action for rule violation.

2. Rule violation may be prima facie evidence of a state UDAP violation.

H. Relationship with State Laws.

1. Rule does not preempt state law, except when state law is directly in conflict with the rule.

2. Examples:

   a) State law authorizing a cancellation fee preempted.

   b) State law with no requirement for providing notice preempted.

I. FEDERAL TELEMARKETING RULE

A. References.

1. 16. C.F.R. Part 310.

2. 15 U.S.C. §§ 6101 - 08 (1996).

3. National Consumer Law Center, Unfair and Deceptive Acts and Practices § 5.9 (4th Edition 1997 and 1999 Supp.).

4. State Telemarketing Statutes, Appendix B.

B. Purpose.

1. The Rule implements the Telemarketing & Consumer Fraud and Abuse Protection Act, which was enacted to "offer consumers necessary protection from telemarketing deception and abuse."

2. The Rule prohibits certain telemarketing practices and prescribes certain disclosures.

C. Key Definitions:

1. MATERIAL means likely to affect a person's choice of, or conduct regarding, goods or services.

2. CUSTOMER means any person who is or may be required to pay for goods or services offered through telemarketing.

3. SELLER means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

4. TELEMARKETER means any person who, in connection with telemarketing, initiates or receives telephone calls to or from the customer.

D. Scope.

1. Telemarketing under the Rule is:

a) Any plan, program or campaign . . .

b) which is conducted to induce the purchase of goods or services . . .

c) by use of one or more telephones . . .

d) AND which involves more than one interstate telephone call.

2. Specifically excluded are:

a) Catalog sales where:

(1) The catalog:

(a) Contains written description or illustration of goods.

(b) Gives the business address of seller.

(c) Contains multiple pages of written material and illustrations; and

(d) Is issued at least once per year.

(2) AND the seller only RECEIVES calls initiated by consumer to take orders without further solicitation.

b) Sale of pay-per-call services (already regulated under 16 C.F.R Part 308).

c) Sale of franchises (already regulated under 16 C.F.R. Part 436).

d) Calls where the sale is not complete until after a face-to-face presentation by the seller.

e) Calls initiated by consumer:

(1) Without any solicitation on the part of the seller;

(2) In response to an advertisement through any media, EXCEPT:

(a) investment opportunities,

(b) Services to remove derogatory credit information.

(c) Services to assist in the return of money or value for previous telemarketing transactions.

(d) Ads that promise a high degree of success in obtaining or arranging extensions of credit.

(3) In response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information required by the Rule.

f) Calls between a telemarketer and any business (except for the sale of nondurable office or cleaning supplies).

g) Any plan conducted to induce the purchase of goods or services by use of one or more telephones but involving only **intrastate** phone calls. Check state statutes for applicability to this situation.

E. Prohibitions of the Rule.

1. Deceptive Telemarketing Acts or Practices (16 C.F.R. § 310.3).

a) Failure to disclose:

(1) Total costs of transaction.

(2) All material restrictions, limitations, and conditions of transaction.

(3) Any policy of not making refunds, cancellations, or exchanges.

(4) All material terms and conditions of any refund, cancellation, or repurchase policy that IS mentioned in the call.

(5) In a prize promotion, the odds of receiving a prize and all material conditions or costs to receive or redeem the prize.

b) Misrepresenting, directly or by implication:

(1) Total costs of transaction.

(2) Any material restrictions, limitations, and conditions of transaction.

(3) Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

(4) Any material terms and conditions of any refund, cancellation, or repurchase policy

(5) Any material aspect of a prize promotion.

(6) Any material aspect of an investment opportunity.

(7) Seller's affiliation with any government or third party organization.

c) Obtaining or submitting for payment a form of negotiable paper without the person's express verifiable authorization. Authorization is verifiable if it is:

(1) Express and in writing.

(2) Express and made orally and is tape recorded.

(3) Written confirmation of the transaction has been sent to the customer PRIOR TO submission for payment and the confirmation includes all disclosures required under the Rule.

d) Making a false or misleading statement to induce any person to pay for goods or services.

2. Abusive Telemarketing Acts or Practices.

a) Threats, intimidation, profane, or obscene language.

b) Requesting or receiving payment for goods and services to fix credit reports UNLESS:

(1) The time frame in which the seller is supposed to have provided all goods and services has passed AND

(2) The seller provides the person with documentation of success in the form of a credit report having been issued more than 6 months after the results were achieved.

c) Requesting or receiving payment for goods and services promising to obtain a return of money or other value incurred during a previous telemarketing transaction until 7 business days after the promise is fulfilled and the money or other item is returned to the consumer.

d) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

e) A PATTERN OF PHONE CALLS that is:

(1) causing the phone to ring repeatedly and continuously with intent to annoy, abuse, or harass any person at the called number OR

(2) Initiating a call when a person has previously stated that he or she does not wish to receive calls made by or on behalf of the seller whose goods or services are being offered. EXCEPT, seller or telemarketer is not liable under this section IF:

(a) It has established and implemented WRITTEN procedures to comply with this rule;

(b) It has trained its personnel on these procedures;

(c) The seller or telemarketer has maintained a list of those who may not be called; AND

(d) The subsequent call is a result of error.

f) Calls made earlier than 8:00 a.m. or later than 9:00 p.m. at the called person's location UNLESS the person consents to calls outside that time frame.

g) Failure to make the following oral disclosures:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods and services;

(3) The nature of the goods and services; AND

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered.

3. Record Keeping Requirements:

a) Seller or telemarketer must keep for 24 months:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for all prizes represented to have a value of $25 or more.

(3) The name and address of each customer who purchases goods, the date the goods were shipped, and the amount paid.

(4) The names and addresses of all current and former employees directly involved in telephone sales.

(5) All verifiable authorizations (for cashing checks, etc.) required by the rule.

b) Records may be kept in any form the seller or telemarketer keeps similar records in the ordinary course of business.

F. Enforcement of the Rule.

1. Violation of the Rule is an unfair and deceptive act or practice under the 15 U.S.C. § 57a.

2. Any state officer can bring an action on behalf of consumers.

3. Private causes of action ARE authorized for violations of certain provisions of the rule. Actual damages or up to $500 statutory damages are available for violations of the "no call" provision. Treble damages are available if the telemarketer willfully or knowingly violates this rule.

4. Prior to initiating an action (if feasible), notice is to be given to the FTC.

G. Interrelationship with Other Protections.

As with all consumer cases, attorneys must look to all available protections to protect the consumer's interests. Here are two protections related to telemarketing that a consumer might be able to assert.

1. Fair Credit Billing Act (FCBA)

a) If the consumer purchases goods from a telemarketer using a credit card, consider the claims and defenses protections under the FCBA. (15 U.S.C. § 1666i)

b) Basic Requirements (For more detail, see Chapter 6).

(1) Claims and defenses may include a dispute as to quality of merchandise and nondelivery of goods.

(2) A consumer has the right to assert against card issuer claims or defenses concerning property or services purchased with credit card, if:

(a) *The consumer has made a good faith effort to resolve the problem with the* ***merchant*** *honoring the card;*

(b) *The amount of the initial transaction exceeds $50;*

(c) *The initial transaction was in the same state as the cardholder's designated address or within 100 miles of such address; and*

(i) Location of transaction is matter of state law; states differ on whether mail or telephone order occurred at consumer's home or seller's place of business.

(ii) In a telemarketing case, the consumer's position is that the transaction took place in her home state because the telemarketer conducted the solicitation there. You, as the attorney should anticipate an argument from the telemarketer.

(d) *The merchant is not controlled by or the same as the card issuer (e.g. Sears or J.C. Penney - store card).*

2. The FTC Mail or Telephone Order Merchandise Rule. (See below). This rule requires delivery of goods ordered over the phone within 30 days.

I. THE MAIL OR TELEPHONE ORDER MERCHANDISE RULE

A. Reference. 16 C.F.R. Part 435.

B. Requirements of the Rule (16 C.F.R. § 435.1).

1. TIMELY SHIPMENT. It is an unfair and deceptive act or practice for a seller to solicit any order for the sale of merchandise to be ordered by the buyer through the mails or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

   a) Within that time clearly and conspicuously stated in any such solicitation, OR

   b) if no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer.[8]

2. SYSTEMATIC RECORDS. Failure of the merchant-seller to have records or other documentary proof establishing its use of systems and procedures which assure the shipment of merchandise in the ordinary course of business within the time period required above will create a rebuttable presumption that the seller lacked a reasonable basis for any expectation of shipment within that time.

3. OPTION TO CANCEL. Where a seller is unable to ship merchandise within the time set forth above, the seller must

   a) offer to the buyer, clearly and conspicuously and without prior demand, an option either;

[8] Note that if the seller applies for credit at the time of the sale, the seller has 50 days to ship the merchandise.

(1) to consent to a delay in shipping, OR

(2) to cancel the buyer's order and send a prompt refund.

b) The offer must be made within a reasonable time after the seller first becomes aware of its inability to ship within the time limit, but in no case later than end of the time limit.

c) Any offer to the buyer of such an option shall fully inform the buyer about the buyer's right to cancel the order and to obtain a prompt refund and shall provide either;

(1) a definite revised shipping date, OR

(2) notice that the seller is unable to make any representation regarding the length of the delay.

d) If the revised shipping date is 30 days or less AFTER the applicable time limit expires, the buyer is deemed to have consented to the delay if:[9]

(1) Seller does not receive, prior to shipment and prior to the expiration of the definite revised shipping date, a response from the buyer rejecting the delay and canceling the order, AND

(2) The merchandise arrives on or before the revised shipping date.

e) If the definite revised shipping date is more than thirty (30) days AFTER the applicable time limit expires, the buyer is automatically deemed to have CANCELED UNLESS[10]:

(1) The seller ships the merchandise within thirty (30) days of the expiration of the applicable time limit (and has not received an affirmative cancellation before shipping), OR

[9] Seller must EXPRESSLY inform buyer of this provision in its notice regarding the revised shipping date.
[10] Seller must EXPRESSLY inform buyer of this provision in its notice regarding the revised shipping date.

(2) The seller has received from the buyer within thirty (30) days of the applicable time limit a response specifically consenting to the shipping delay.

f) The seller may solicit buyer's consent to further unanticipated delay.

4. EXERCISING THE OPTION TO CANCEL: SELLER must:

a) Furnish the buyer with adequate means to exercise the option/notify the seller regarding cancellation;

b) at the seller's expense.

5. HONOR CANCELLATION. The seller must deem an order canceled and make a prompt refund to the buyer whenever the seller receives, prior to the time of shipment, notification from the buyer canceling the order pursuant to any option described above.

C. Definitions. (16 C.F.R. § 435.2)

1. "Mail or telephone order sales:" sales in which the buyer has ordered merchandise from the seller by mail or telephone, regardless of the method of payment or the method used to solicit the order.

2. "Telephone:" refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.

3. "Shipment:" the act by which the merchandise is physically placed in the possession of the carrier.

4. "Receipt of a properly completed order:"

a) Where the buyer tenders full or partial payment in the proper amount in the form of cash, check, money order, or authorization from the buyer to charge an existing charge account, THEN

b) The time at which the seller receives both said payment and an order from the buyer containing all of the information needed by the seller to process and ship the order.

c) However, if the seller receives notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, "receipt of a properly completed order" means the time at which:

(1) The seller receives notice that a check or money order for the proper amount tendered by the buyer has been honored,

(2) The buyer tenders cash in the proper amount, OR

(3) The seller receives notice that the buyer qualifies for a credit sale.

d) "Refund:"

(1) RULE 1: Cash Sales/Goods not Shipped

(a) the buyer tendered full or partial payment in the form of cash, check or money order, AND

(b) the merchandise has not been shipped.

(c) Refund = a return of the amount tendered in the form of cash, check or money order.

(2) RULE 2. Credit Sales

(a) There is a credit sale, AND

(b) The seller is a creditor.

(c) Refund = a copy of a credit memorandum or the like or an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account.

(3) RULE 3: Credit Sales/Third Party Creditor

(a) There is a credit sale, AND

(b) A third party is the creditor.

(c) Refund = a copy of an appropriate credit memorandum or the like to the third party creditor which will remove the charge from the buyer's account OR a statement from the seller acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party.

(4) "Prompt refund" shall mean:

(a) Cash, Check, or Money Order: refund sent by first class mail within 7 working days of the date on which the buyer's right to refund vests.

(b) Credit Sale: a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests.

(5) The "time of solicitation" of an order shall mean that time when the seller has:

(a) Mailed or otherwise disseminated the solicitation to a prospective purchaser,

(b) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or canceled without incurring substantial expense, or

(c) Made arrangements for the printing of a catalog, brochure or the like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

D. Exclusions. (16 C.F.R. § 453.3).

1. Subscriptions, such as magazine sales, ordered for serial delivery, after the initial shipment is made in compliance with this part.

2. Orders of seeds and growing plants.

3. Orders made on a collect-on-delivery (C.O.D.) basis.

4. Transactions governed by the Federal Trade Commission's Trade Regulation Rule entitled "Use of Negative Option Plans by Sellers in Commerce," 16 C.F.R. part 425.

E. Relationship to Other Laws/Rules

1. FTC does not intend to preempt action in the same area, which is not inconsistent with this part, by any State, municipal, or other local government.

2. The Rule does not annul or diminish any rights or remedies provided to consumers by any State law, municipal ordinance, or other local regulation, insofar as those rights or remedies are equal to or greater than those provided by this part.

3. The Rule does not supersede those provisions of any State law, municipal ordinance, or other local regulation which impose obligations or liabilities upon sellers, when sellers subject to this part are not in compliance therewith.

4. The Rule **DOES** supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with this part to the extent that those provisions do not provide a buyer with rights which are equal to or greater than those rights granted a buyer by this part.

F. Enforcement Provisions.

1. No Private Cause of Action under the Federal Rule.

2. Federal Trade Commission.

3. Look to State UDAP statutes. These may provide a private cause of action.

I. UNORDERED MERCHANDISE

A. Federal Law prohibits use of the mails to send unordered merchandise, except for free gifts. Must provide notice that consumer may treat the unsolicited merchandise as a gift.

B. UDAP violation to send a document that looks like an invoice as part of an offer of services attempting to imply services were ordered.

C. UDAP violation to deliver and bill the consumer for more than the consumer ordered.

CONSUMER LEASING

I. REFERENCES

A. Chapter 5 of the Truth in Lending Act, codified at 15 U.S.C.A. §§ 1667a-f (West 1999).

B. Regulation M, 12 C.F.R. Part 213.

C. National Consumer Law Center, Truth in Lending Chapter 9 (4th ed. 1999).

I. PURPOSE

A. To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;

B. To limit the amount of balloon payments in consumer lease transactions; and

C. To provide for the accurate disclosure of lease terms in advertising.

I. KEY DEFINITIONS (12 C.F.R. § 213.2)

A. "Open-end lease" means a consumer lease in which the lessee's liability at the end of the lease term is based on the difference between the residual value of the leased property and its realized value.

B. "Closed-end lease" means a consumer lease other than an open-end lease as defined in this section. As a practical matter, closed-end leases are the most common ones you'll see. According to the Federal Trade Commission, "[w]ith a closed-end lease, you may return the vehicle at the end of the lease term, pay any end-of-lease costs, and walk away." *Keys to Vehicle Leasing, available at* http://www.ftc.gov/bcp/conline/pubs/autos/leasing/index.htm (visited 5 May 2000).

C. "Realized value" means:

1. The price received by the lessor for the leased property at disposition;

2. The highest offer for disposition of the leased property; or

3. The fair market value of the leased property at the end of the lease term.

D. "Residual value" means the value of the leased property at the end of the lease term, as estimated or assigned at consummation by the lessor, used in calculating the base periodic payment.

I. SCOPE

A. Requirement 1: A "consumer lease". These are contracts in the form of a bailment or lease for the use of personal property;

1. By a natural person,

2. Primarily for personal, family, or household purposes,

3. For a period exceeding four months, and

   a) Rent-to-Own appliance leases that can be terminated at any time *without penalty* have been held to NOT meet this requirement. Thus, the Act would not apply to them. See Annotation, *Construction And Application Of Consumer Leasing Act* (15 U.S.C.A. SS 1667- 1667E), 129 A.L.R. Fed. 587, §3a. (1996).

   b) However, if there is a penalty to terminate, the Act has been held to apply. See Official Staff Commentary, § 213.2(e)-2(ii).

4. For a total contractual obligation **not exceeding $25,000;**

   a) Total Contractual Obligation is not defined in the statute or rule.

   b) A new provision in the Official Staff Commentary, however, indicates that the total contractual obligation is not necessarily the same as the total of payments disclosed under §213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

      (1) Residual value amounts or purchase-option prices,

      (2) Amounts collected by the lessor but paid to a third party, such as taxes, license and registration fees.

      c) This requirement exempts many automobile leases from the Act. STATE LAW may help here.

5. The applicability of the Act does NOT depend on whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease.

B. Requirement 2: A "lessor" makes the lease. This is:

1. A person who regularly leases, offers to lease, or arranges for the lease of personal property under a consumer lease.

2. A person who has leased, offered, or arranged to lease personal property more than five times in the preceding calendar year or in the current calendar year is subject to the act.

I. EXCLUSIONS

A. The Act does NOT apply to "credit sales" under Regulation Z (12 CFR 226.2(a)).

B. It also does not apply to leases for agricultural, business, or commercial purposes or a lease made to an organization.

C. The Act does not apply to a lease transaction of personal property which is incident to the lease of real property and which provides that:

1. The lessee has no liability for the value of the personal property at the end of the lease term except for abnormal wear and tear; and

2. The lessee has no option to purchase the leased property.

I. REQUIREMENTS OF THE ACT

A. Disclosures.

There is a new Regulation M (12 C.F.R., Part 213) that substantially changes disclosures under the Act. The new regulation was effective 31 Oct 1996, but compliance was made optional until 1 January 1998.

1. Form of Disclosures (12 C.F.R. § 213.3)

a) The disclosures shall be made;

(1) clearly and conspicuously,

(2) in writing,

(3) in a form the consumer may keep.

b) The writing must:

(1) be dated,

(2) identify the lessor and the lessee.

c) Disclosures may be made:

(1) in the contract or other document evidencing the lease,

(2) in a separate statement that identifies the consumer lease transaction.

(3) Disclosures required to be segregated may be provided in a separate dated statement that identifies the lease, and the other required disclosures may be provided in the lease contract or other document evidencing the lease.

d) Timing of disclosures. A lessor shall provide the disclosures to the lessee prior to the consummation of a consumer lease.

e) Minor variations. A lessor may disregard the effects of the following in making disclosures:

(1) That payments must be collected in whole cents;

(2) That dates of scheduled payments may be different because a scheduled date is not a business day;

(3) That months have different numbers of days; and

(4) That February 29 occurs in a leap year.

2. Content of disclosures. 12 C.F.R. § 213.4. For any consumer lease subject to this part, the lessor shall disclose the following information, as applicable.

a) *Segregation of certain disclosures.* The following disclosures shall be segregated from other information and shall contain only

directly related information. The disclosures shall be provided in a manner substantially similar to the applicable model form in appendix A to Regulation M (The Federal Box). (2) §§213.4(b) through (f), (g)(2), (h)(3), (i)(1), (j), and (m)(1).

(1) Amount due at lease signing. The total amount to be paid prior to or at consummation, using the term "amount due at lease signing." The lessor shall itemize each component by type and amount.

(2) Payment schedule and total amount of periodic payments. The number, amount, and due dates or periods of payments scheduled under the lease, and the total amount of the periodic payments.

(3) Other charges. The total amount of other charges payable to the lessor, itemized by type and amount, that are not included in the periodic payments.

(4) Total of payments. The total of payments, with a description such as "the amount you will have paid by the end of the lease." This amount is the sum of the amount due at lease signing (less any refundable amounts), the total amount of periodic payments (less any portion of the periodic payment paid at lease signing), and other charges. In an open-end lease, a description such as "you will owe an additional amount if the actual value of the vehicle is less than the residual value" shall accompany the disclosure.

(5) Payment calculation. In a motor-vehicle lease, a mathematical progression of how the scheduled periodic payment is derived. The calculation must show the following 11 steps:

(a) Gross capitalized cost. *If requested by the lessee, an itemization shall be provided before consummation.*

(b) Capitalized cost reduction. *"The amount of any net trade-in allowance, rebate, noncash credit, or cash you pay that reduces the gross capitalized cost."*

(c) Adjusted capitalized cost.

(d) Residual value.

(e) Depreciation and any amortized amounts. *The difference between the adjusted capitalized cost and the residual value.*

(f) Rent charge. *This is the difference between the total of the base periodic payments over the lease term minus the depreciation and any amortized amounts.*

(g) Total of base periodic payments.

(h) Lease term.

(i) Base periodic payment.

(j) Itemization of other charges. *An itemization of any other charges that are part of the periodic payment.*

(k) Total periodic payment. *The sum of the base periodic payment and any other charges that are part of the periodic payment.*

(6) Early-termination notice. In a motor-vehicle lease, a notice substantially similar to the following: "Early Termination. You may have to pay a substantial charge if you end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier you end the lease, the greater this charge is likely to be."

(7) Notice of wear and use standard. In a motor-vehicle lease, a notice regarding wear and use substantially similar to the following: "Excessive Wear and Use. You may be charged for excessive wear based on our standards for normal use." The notice shall also specify the amount or method for determining any charge for excess mileage.

(8) Purchase Option at End of lease term. Notice of the purchase price and when the lessee may exercise this option.

(9) Statement referencing nonsegregated disclosures. A statement that the lessee should refer to the lease documents for additional information on early termination,

purchase options and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.

(10) Rent and other charges. The rent and other charges paid by the lessee and required by the lessor as an incident to the lease transaction, with a description such as "the total amount of rent and other charges imposed in connection with your lease [state the amount]."

b) Other (Non-segregated) Disclosures

(1) Description of property. A brief description of the leased property sufficient to identify the property to the lessee and lessor.

(2) Conditions and disclosure of charges for early termination. A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term; and the amount or a description of the method for determining the amount of any penalty or other charge for early termination, which must be reasonable.

(3) Maintenance responsibilities. The following provisions are required:

(a) Statement of responsibilities. A statement specifying whether the lessor or the lessee is responsible for maintaining or servicing the leased property, together with a brief description of the responsibility;

(b) Wear and use standard. A statement of the lessor's standards for wear and use (if any), which must be reasonable

(4) Purchase option during the lease term. A statement of whether or not the lessee has the option to purchase the leased property and, if prior to the end of the lease term, the purchase price or the method for determining the price and when the lessee may exercise this option.

(5) Liability between residual and realized values. A statement of the lessee's liability, if any, at early termination or at the end of the lease term for the

difference between the residual value of the leased property and its realized value.

(6) Right of appraisal. If the lessee's liability at early termination or at the end of the lease term is based on the realized value of the leased property, a statement that the lessee may obtain, at the lessee's expense, a professional appraisal by an independent third party. The third party must be agreed to by the lessee and the lessor and will estimate the value that could be realized at sale of the leased property. The appraisal shall be final and binding on the parties. Practice tip: identify the appraiser at the beginning of the transaction.

(7) Liability at end of lease term based on residual value.

(8) Fees and taxes. The total dollar amount for all official and license fees, registration, title, or taxes required to be paid to the lessor in connection with the lease.

(9) Insurance. A brief identification of insurance in connection with the lease including:

(a) Voluntary insurance. If the insurance is provided by or paid through the lessor, the types and amounts of coverage and the cost to the lessee; or

(b) Required insurance. If the lessee must obtain the insurance, the types and amounts of coverage required of the lessee.

(10) Warranties or guarantees. A statement identifying all express warranties and guarantees from the manufacturer or lessor with respect to the leased property that apply to the lessee.

(11) Penalties and other charges for delinquency. The amount or the method of determining the amount of any penalty or other charge for delinquency, default, or late payments, which must be reasonable.

(12) Security interest. A description of any security interest held or to be retained by the lessor; and a clear identification of the property to which the security interest relates.

B. Limits on Advertisement (12 C.F.R. § 213.7)

1. General rule. An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.

2. Clear and conspicuous standard. Disclosures required by this section shall be made clearly and conspicuously.

a) Amount due at lease signing. Any affirmative or negative reference to a charge that is a part of the total amount due at lease signing shall not be more prominent than the disclosure of the total amount due at lease signing.

b) Advertisement of a lease rate. If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures required to accompany the rate; and the lessor shall not use the term "annual percentage rate," "annual lease rate," or equivalent term.

c) Advertisement of terms that require additional disclosure.

(1) Triggering terms. An advertisement that states any of the following items shall contain the disclosures required by paragraph (2):

(a) The amount of any payment;

(b) The number of required payments; or

(c) A statement of any capitalized cost reduction or other payment required prior to or at consummation, or that no payment is required.

(2) Additional terms. An advertisement stating any item listed in paragraph (1) shall also state the following items:

(a) That the transaction advertised is a lease;

(b) The total amount due at lease signing, or that no payment is required;

(c) The number, amounts, due dates or periods of scheduled payments, and total of such payments under the lease;

(d) A statement of whether or not the lessee has the option to purchase the leased property, and where the lessee has the option to purchase at the end of the lease term, the purchase-option price;

(e) A statement of the amount, or the method for determining the amount, of the lessee's liability (if any) at the end of the lease term; and

(f) A statement of the lessee's liability (if any) for the difference between the residual value of the leased property and its realized value at the end of the lease term.

(3) Alternative disclosures -- merchandise tags. A merchandise tag stating any item listed in paragraph (1) may comply with paragraph (2) by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures.

(4) Alternative disclosures -- television or radio advertisements.

(a) Toll-free number or print advertisement. An advertisement made through television or radio stating any item listed in paragraph (1) complies with paragraph (2) if the advertisement states the items listed in paragraphs (2)(a) - (c), and:

(i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the other information required; or

(ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name

and the date of the publication, with a statement that information required by paragraph (2) is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(b) Establishment of toll-free number.

(i) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.

(ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

C. State Leasing Disclosure Statutes.

The following states have leasing disclosure statutes that may provide additional protections:

1.	Arkansas	1999 Ark. Acts § 1059
2.	California	Cal. Civil Code § 2985.8
3.	Colorado	Colo. Rev. Stat. §§ 5-2-311 - 13
4.	Connecticut	Conn. Gen. Stat. §§ 36a-675 - 85
5.	DC	DC Code Ann. § 28-3810
6.	Florida	Fla. Stat. § 521
7.	Hawaii	Haw. Rev. Stat. § 481L
8.	Illinois	815 Ill. Comp. Stat. Ann. § 636
9.	Indiana	Ind. Code §§ 9-23-2.5-1/24-4.5-2-101
10.	Iowa	Iowa Code § 537.1101
11.	Kansas	Kan. Stat. Ann. § 16a-1-101
12.	Louisiana	La. Rev. Code § 9:3301
13.	Maine	Me. Rev. Stat. Ann. Tit. 9-A § 5-101
14.	Maryland	Md. Code Ann. Com. Law § 14-2001
15.	Michigan	Mich. Comp. Laws § 445.991
16.	New Hampshire	N.H. Rev. Stat. Ann. Ch. 361-D
17.	New Jersey	N.J. Rev. Stat. § 56:12-60
18.	New York	N.Y. Pers. Prop. Law § 331
19.	Oklahoma	Okla. Stat. Ann. Tit. 14A § 1-101
20.	South Carolina	S.C. Code Ann. § 37-1-101
21.	Washington	Wash. Rev. Code § 63.10.010
22.	West Virginia	W.Va. Code § 46A-1-104
23.	Wisconsin	Wis. Stat. § 429-101

D. Taking Leased Vehicles Overseas.

1. With standard leases this is not allowed. The leasing company still owns the vehicle and can prevent its removal from the state.

2. The SSCRA **does not provide for the termination of auto leases**. However, for leases entered into before military service, if an Option to Purchase Clause is included in the lease agreement, and the service member can show material affect as to ability to pay then the creditor must obtain a court order to repossess. The creditor may be subject to criminal penalties for violating the repossession provisions of this section. (50 U.S.C. App. § 531).

3. Consider adding a provision when the lease is negotiated. You may want to use language like this:

> **Government Employee:** Notwithstanding any other provision of this lease, a Government employee who is not in default on the lease when reassigned or transferred to another location outside the current commuting area may, upon 30 days written notice to lessor accompanied by a copy of the transfer orders, either:
>
> a. terminate this lease agreement or,
>
> b. in the alternative, remove the vehicle to the new duty location at lessee's expense. The Government employee-lessee, agrees to surrender the vehicle at a location determined by lessor (or return it to the original location from which the lessee took possession of the vehicle), at the lessee's expense upon expiration of the lease, unless the lessee elects the purchase option otherwise provided for under this agreement or the lessor and lessee otherwise agree.

This provision also applies to spouse-lessees of Government employees who accompany the Government employee to the new duty location.

> Lessees electing to terminate the lease hereby agrees to pay, one month's lease payment if the lease has been in existence for less than six months upon termination, or one-half month's lease payment if the lease has been in existence for over six months at the termination date.

4. This is critical item for preventive law classes!!!

5. Practice Pointer: While you may not threaten criminal action to settle a civil matter, you may point out any potential violations of this section to a creditor or their counsel (self-help repossession), and suggest a possible settlement of the matter, by allowing the soldier to voluntarily surrender the vehicle in return for the creditor waiving all early lease termination penalties!

SUPPLEMENTARY MATERIAL

PLEADING IN *FTC V. SURECHEK SYSTEMS, INC.*

This pleading demonstrates the utility of the FTC's Telemarketing Rule against one of the common problems that consumers – especially soldier consumers – face today. The problem is called an "advanced fee" credit card. Essentially, the scam works this way: the consumer is "guaranteed" a major credit card, regardless of his credit history, if he pays a fee ranging from $75 to well over $100. The consumer either does not get the credit card at all, or gets a routine application for the card subject to all the normal credit checks by the issuing institution. The FTC recently[11] said that this was currently the number one complaint by soldier consumers.

[11] This "ranking" of the advanced fee credit card scam was given by Mr. Paul Davis of the Atlanta Regional Office, Federal Trade Commission, in February 1998.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEDERAL TRADE COMMISSION, and
STATE OF ARKANSAS ex rel. WINSTON BRYANT, ATTORNEY GENERAL, Plaintiffs,

v.

SURECHEK SYSTEMS, INC., d/b/a CONSUMER CREDIT CORP., and CONSUMER CREDIT DEVELOPMENT CORP., a Georgia corporation; DOUGLAS S. DERICKSON, individually and as an officer of SureCheK Systems, Inc., d/b/a Consumer Credit Corp., and Consumer Credit Development Corp.; and STEVE LOVERN, individually and as an officer of SureCheK Systems, Inc., d/b/a Consumer Credit Corp., and Consumer Credit Development Corp., Defendants.

CIVIL ACTION NO.

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission ("FTC" or "the Commission"), and the State of Arkansas, for their complaint allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, to secure preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief for defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

2. Plaintiff, the State of Arkansas, brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), to secure similar injunctive and equitable relief.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, 6102(c), 6105(b) and 6103(a).

4. Venue in the United States District Court for the Northern District of Georgia is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b) and 6103(a).

PLAINTIFFS

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq*. The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part

310, which prohibits deceptive and abusive telemarketing acts or practices. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and violations of the Telemarketing Sales Rule, in order to secure such equitable relief as may be appropriate in each case, and to obtain consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c) and 6105(b).

6. Plaintiff, the State of Arkansas, is one of the fifty sovereign states of the United States. Winston Bryant is the duly elected Attorney General acting for Plaintiff, and brings this action in his official capacity. The State of Arkansas is authorized to initiate federal district court proceedings to enjoin telemarketing that violates the Commission's Telemarketing Sales Rule, and, in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of Arkansas, and to obtain such further and other relief as the court may deem appropriate. 15 U.S.C. § 6103(a).

DEFENDANTS

7. Defendant SureCheK Systems, Inc., is a Georgia corporation with its office and principal place of business located at 5430 Jimmy Carter Blvd., Norcross, GA 30093. SureCheK transacts or has transacted business in the Northern District of Georgia. SureCheK is doing or has done business using the fictitious names "Consumer Credit Corporation" and "Consumer Credit Development Corporation" (hereinafter collectively referred to as "CCC").

8. Defendant Douglas S. Derickson ("Derickson") is an officer, director or principal owner of the corporate defendant. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices set forth in this complaint. Defendant Derickson resides and transacts or has transacted business in the Northern District of Georgia.

9. Defendant Steve Lovern ("Lovern") is an officer, director or principal owner of the corporate defendant. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices set forth in this complaint. Defendant Lovern resides and transacts or has transacted business in the Northern District of Georgia.

COMMERCE

10. At all times relevant to this complaint, the defendants have maintained a substantial course of trade in telemarketing advance fee credit cards, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

11. Since at least early 1996, the defendants have engaged in a scheme to defraud consumers throughout the United States through the telemarketing of advance fee credit cards. To secure payment of this fee for the credit cards, the defendants utilize demand drafts whereby funds are obtained from consumers' checking accounts without consumers' signatures on the negotiable instruments.

12. Defendants contact consumers through telephone calls and have made, or caused to be made, the

following representations, at various times:

a. the caller is calling on behalf of CCC;

b. regardless of the consumers' past credit history, the consumers are offered an unsecured Visa or MasterCard with absolutely no security deposit;

c. consumers are guaranteed to receive a major credit card or that there is a high likelihood that they will receive a major credit card through CCC;

d. in order to receive the major credit card, the consumers have to pay a fee or will be charged a fee ranging from $79.95 to $130.00; and

e. the advance fee is a one-time charge for the major credit card and other purported "benefits," including membership in defendants' U.S. Gold & Diamond Exchange catalog promotion.

13. CCC not only does its own telemarketing, but it also contracts with, and provides substantial assistance or support to, numerous other third-party telemarketing operations who solicit consumers in the name of, and on behalf of, CCC.

14. In connection with taking applications over the telephone, the defendants persuade consumers to divulge their checking account information, including their name as it appears on the account and the account number.

15. The fee, ranging from $79.95 to $130.00, is withdrawn by CCC from the consumers' checking accounts on unsigned bank drafts and thereafter deposited into a bank account belonging to SureCheK/Consumer Credit Corporation.

16. In some instances, the withdrawals are made without consumers' express authorization.

17. After paying the fee, consumers do not receive a major credit card.

18. In fact, in some instances, in order to obtain a credit card, consumers would have to pay additional fees or submit additional applications which would still have to be approved by a card issuing bank based upon the card issuing banks' own credit criteria.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT ONE

(By Plaintiff Federal Trade Commission)

19. In numerous instances, in connection with telemarketing offers to provide credit cards to consumers for a fee, defendants have made a material representation, expressly or by implication, that consumers will receive a credit card, such as a Visa or MasterCard, in return for the payment of a fee.

20. In truth and in fact, in numerous instances, after paying a fee, consumers do not receive a credit

card in return for payment of a fee.

21. Therefore, the representation set forth in Paragraph 19 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

22. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.,* Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule became effective on December 31, 1995.

23. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

24. The Telemarketing Sales Rule prohibits telemarketers and sellers from, *inter alia*, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit. 16 C.F.R. § 310.4(a)(4).

25. The Telemarketing Sales Rule also prohibits telemarketers and sellers from misrepresenting the total costs to purchase, receive, or use any goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(i).

26. The Telemarketing Sales Rule also requires telemarketers and sellers to disclose, in a clear and conspicuous manner, the total costs to purchase, receive, or use, any goods or services that are the subject of the sales offer, and all material restrictions, limitations or conditions regarding the goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(1)(i) and (ii).

27. The Telemarketing Sales Rule's Statement of Basis and Purpose explains that, "[t]he Commission intends that the disclosures be made before the consumer sends funds to a seller or telemarketer or divulges to a telemarketer or seller credit card or bank account information. Thus, a telemarketer or seller who fails to provide the disclosures until the consumer's payment information is in hand violates the Rule." 60 Fed. Reg. 43842, 43852 (Aug. 23, 1995).

28. The Telemarketing Sales Rule also prohibits any seller or telemarketer from obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's "express verifiable authorization." 16 C.F.R. § 310.3(a)(3).

29. The Telemarketing Sales Rule also prohibits any person from providing substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice in violation of the Telemarketing Sales Rule. 16 C.F.R. § 310.3(b).

30. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute unfair or

deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

(By Plaintiffs Federal Trade Commission and State of Arkansas)

31. In numerous instances, in connection with telemarketing offers to obtain extensions of credit for consumers (i.e., the obtaining of major credit cards), the defendants have requested or received payments of fees in advance of obtaining such extensions of credit when defendants have guaranteed or represented a high likelihood of success in obtaining the extensions of credit for such consumers.

32. The defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

COUNT THREE

(By Plaintiffs Federal Trade Commission and State of Arkansas)

33. In numerous instances, in connection with telemarketing offers to obtain extensions of credit for consumers, the defendants have represented, directly or by implication, that defendants will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard, for a one-time fee ranging from $79.95 to $130.00.

34. In truth and in fact, in numerous instances, defendants do not provide consumers with, or arrange for consumers to receive, major credit cards such as Visa or MasterCard for a one-time fee ranging from $79.95 to $130.00.

35. The defendants have thereby violated Section 310.3(a)(2)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(i).

COUNT FOUR

(By Plaintiffs Federal Trade Commission and State of Arkansas)

36. In numerous instances, in connection with telemarketing offers to obtain extensions of credit, the defendants have failed to disclose, in a clear and conspicuous manner, before a customer pays for the goods or services offered, the total cost to receive, or the material restrictions, limitations or conditions to receive an extension of credit, including but not limited to the following, that:

a. additional applications for a credit card will be required;

b. credit cards will be issued only if the applications of the consumers are approved by the card issuing bank; and

c. the consumers must pay additional fees to the card issuing bank if the consumers are approved for the major credit cards.

37. The defendants have thereby violated Section 310.3(a)(1)(i) and (ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i) and (ii).

COUNT FIVE

(By Plaintiffs Federal Trade Commission and State of Arkansas)

38. In numerous instances, in connection with telemarketing offers to obtain extensions of credit, the defendants obtained or submitted for payment, a check, draft or other form of negotiable paper drawn on consumers' checking accounts without the consumers' express verifiable authorization.

39. The defendants have thereby violated Section 310.3(a)(3) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(3).

COUNT SIX

(By Plaintiffs Federal Trade Commission and State of Arkansas)

40. In connection with telemarketing offers to obtain extensions of credit for consumers, in numerous instances, third-party telemarketers who solicit consumers in the name of, and on behalf of, CCC have: (1) requested or received payments of fees in advance of obtaining such extensions of credit, when said third-party telemarketers have guaranteed or represented a high likelihood of success in obtaining the extensions of credit for such consumers; (2) represented, directly or by implication, that defendants will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard, for a one-time fee ranging from $79.95 to $130.00; and (3) failed to disclose, in a clear and conspicuous manner before the customer pays, the total costs to receive, or the material restrictions, limitations or conditions to receive, an extension of credit. The third-party telemarketers have thereby violated Sections 310.4(a)(4), 310.3(a)(2)(i) and 310.3(a)(1)(i) and (ii) of the Telemarketing Rule, 16 C.F.R. §§ 310.4(a)(4), 310.3(a)(2)(i) and 310.3(a)(1)(i) and (ii).

41. In numerous instances, in connection with providing various services to third-party telemarketers, including creating and providing scripts to be used in the telemarketing of advance fee credit cards, providing names and telephone numbers of potential customers, providing customer service, and processing and depositing unsigned bank drafts into CCC's bank accounts, defendants provide substantial assistance or support to the third-party telemarketers knowing, or consciously avoiding knowing, that the third-party telemarketers are engaged in acts or practices that violate Sections 310.4(a)(4), 310.3(a)(2)(i) and 310.3(a)(1)(i) and (ii) of the Telemarketing Rule, 16 C.F.R. §§ 310.4(a)(4), 310.3(a)(2)(i) and 310.3(a)(1)(i) and (ii), as set forth in paragraph 40 above.

42. The defendants have thereby violated Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b).

CONSUMER INJURY

43. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of the defendants' unlawful acts or practices. In addition, the defendants have been

unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

44. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

45. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission or reformation of contracts, and the refund of money.

46. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes the Court to grant to the State of Arkansas, on behalf of its residents, injunctive and other equitable relief, including damages, restitution, other compensation, and such further and other relief the Court deems appropriate.

47. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, and plaintiff State of Arkansas pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), and the Court's own equitable powers request that the Court:

1. Award plaintiffs such preliminary injunctive and ancillary equitable relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin the defendants from violating the FTC Act and the Telemarketing Sales Rule, as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Telemarketing Sales Rule, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award plaintiffs the costs of bringing this action, as well as such other and additional equitable relief as the Court may determine to be just and proper.

MODEL LEASE DISCLOSURE FORM

The attached is a form prepared by the Federal Trade Commission to assist consumers in leasing vehicles. It contains spaces for lessors to disclose all required information under the Consumer Leasing Act. Consumers should present this form to lessors and ask that it be filled out before signing a lease. The form is available in Adobe Acrobat format (*.pdf) at www.ftc.gov.

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CHAPTER 5

PROTECTIONS BASED UPON PROBLEMS WITH THE GOODS

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WARRANTY LAW

I. REFERENCES.

A. U.C.C. Article 2.

B. Magnuson-Moss Warranty - Federal Trade Commission Improvement Act, 15 U.S.C.A. §§ 2301-12 (1998).

C. 16 C.F.R. Subchapter G - Rules, Regulations, Statements, and Interpretations Under the Magnuson-Moss Warranty Act (Parts 700-03).

D. National Consumer Law Center, Consumer Warranty Law (1997 and Supp. 1998).

I. INTRODUCTION.

I. THE UNIFORM COMMERCIAL CODE, ARTICLE 2 (SALES)

A. Basic framework for warranty law:

1. Determines when express and implied warranties are created.

2. Provides initial regulation of disclaimers of implied warranties.

3. Initially determines the rules concerning privity of contract.

4. Sets out requirements as to notice of breach of warranty and determining when a warranty is breached.

B. Scope of Article 2:

1. Has been enacted in every state EXCEPT LA.

2. Applies to "transactions in goods." (U.C.C. § 2-102).

3. U.C.C. shall be liberally construed and applied to promote its underlying purposes and policies. U.C.C. § 1-102. U.C.C. doesn't repeal earlier consumer protection laws. All statutes provide cumulative protections to buyers.

4. Generates two main questions when deciding U.C.C. applicability:

   a) Are "goods" involved?

      (1) Can be used as well as new. For example, virtually every state applies the U.C.C. Warranty of Merchantibility to used automobile sales by merchants. *See* NATIONAL

CONSUMER LAW CENTER, WARRANTY LAW § 1.4 & n.36 (1997 & Supp. 1998) and cases cited therein.

(2) SERVICES are ***not*** covered under Article 2.

(3) Real property and houses are not covered. However, mobile homes are generally covered as well as some prefab homes to the extent they are treated as personalty, not reality.

(4) Mixed Goods & Services:

(a) Predominant Purpose Test: Was the predominant purpose of the transaction the purchase of goods?

(b) Courts use varying tests - Know your state. Two of the more popular are:

(i) The Finished Product Test: Are the goods finished and just being installed or are the goods being created from raw materials specifically for this job? (NJ)

(ii) The *Bonebrake v. Cox* Test: Is the case one of the sale of a service with goods incidentally involved (contract with an artist for a painting as an example) or is it a sale with labor incidentally involved (contract for the purchase of a water heater that includes installation.) *Bonebrake v. Cox*, 499 F.2d 951 (8th Cir. 1991) (Applying Iowa law).

b) Was there a "transaction" or a "sale" involving those goods?

(1) A "sale" consists in the passing of title from the seller to the buyer for a price (U.C.C. § 2-106)

(2) Article 2 may apply to leases. However, a majority of jurisdictions have enacted Article 2A, which covers leases specifically.

5. Some U.C.C. provisions apply to PRIVATE sellers as well as merchants! (Compare U.C.C. § 2-103(1)(d) ("Seller") with § 2-104(1) ("Merchant")).

C. Warranties in General, (U.C.C. §§ 2-312 through 2-318).

1. Inspection of the Goods:

   a) May limit the defects the consumer can complain about. In order to vitiate an express warranty, the inspection must be sufficiently thorough and the buyer sufficiently sophisticated to make material discoveries. Inspection after sale doesn't avoid an express warranty.

   b) May also expand the basis of the bargain. Discovered characteristics constitute an express warranty that the goods will be sold and delivered in the present condition or will conform to the characteristics of the inspected sample or model.

2. When one or more warranties arise, they are CUMULATIVE unless they are inconsistent.

3. Resolving Inconsistent Warranties (U.C.C. § 2-317) Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

   a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

   b) A sample from existing bulk displaces inconsistent general language of description.

   c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

D. Warranty of title. (U.C.C. § 2-312)

1. Seldom an Issue in Consumer Transactions.

2. Warrants that the goods are transferred free of any security interest, lien, or encumbrance that was not known to buyers at the time they entered into the contract.

3. Disclaimer/Modification are allowed so long as the buyer is protected from surprise.

E. Warranties of quality - Express Warranties.

1. Created in a number of ways:

   a) Orally or in writing,

   b) Advertising or pictures of product,

   c) Label or words on container,

   d) Observable qualities of product (odometer reading, etc.).

2. Three Types of Express warranties. (U.C.C. § 2-313):

   a) Affirmation of Fact or Promise. Must Have:

      (1) Affirmation of fact or promise,

         (a) Intended to be broad. Includes:

            (i) Statements of Quality, Characteristics or Conditions,

(a) *"mechanically perfect"*

(b) *"This car has never been in an accident"*

(c) *"This car is still under the manufacturers warranty"*

(d) *"The car is in good working condition"*

(ii) Statements of Gas Mileage, Prior Repairs or Maintenance,

(a) *"We gave it a full inspection and tune-up"*

(b) *"It was driven only on Sundays to church . . ."*

(b) Distinguish from mere opinion ("puffing"). Statement must be the kind of statement that reasonably could play a role in the buyer's decision.

(i) "This car is what a car should be"

(ii) Buyer's sophistication may be a factor.

(2) Made by Seller to Buyer:

(a) Need not be made by the actual retail seller (could be made by manufacturer, for example, in advertising).

(b) Need not be in the seller's own words (the seller can incorporate third party statements into the bargaining).

(c) A non-merchant seller can make statement.

(d) Can be made to the public. Does NOT have to be made directly to the individual buyer. But the individual must in fact see or hear it.

(3) Which relates to the goods, AND

(4) Becomes part of the "Basis of the Bargain":

(a) Encompasses the ENTIRE transaction, not just the contract or negotiations, including all reasonable assumptions and inferences.

(b) Do NOT have to prove actual reliance. Seller has the burden to show statement's weren't part of the basis of the bargain.

(c) May include statements made after the deal is complete:

(i) Statements in product labels at delivery

(ii) Written Manufacturer Warranty received with goods.

b) Description of Goods

(1) Any description that is reasonably part of the basis of the bargain, regardless of the source. It can be picture or a label.

(2) The warranty is that the goods will meet that description.

(3) For example, a "wool coat" must be made of wool. A "1974 Pontiac" must be one.

c) Sample or Model

(1) If a sample/model is used, the seller is warranting that the item purchased is the same as the sample/model.

(2) Sample is an example piece drawn from a group of virtually identical products to be bought. Therefore, you see one of the actual things you buy (e.g. showing consumer one floor tile in the course of a sale of boxes of tile).

(3) A model is an example offered for inspection when the product being purchased is not present (e.g. you test-drive a car on the lot, then order the one that is the color you want).

(4) Generally, whatever the buyer sees in the example must be in the goods purchased unless the seller warns of discrepancies.

3. Intent to create a warranty is NOT an element. Neither is the seller's good faith in believing the truth of the statements.

4. Express warranties may not be disclaimed. U.C.C. § 2-316(1).

5. Three questions must be answered in an express warranty action. All are questions of fact:

a) Was there an express warranty?

b) What did the warranty cover?

c) Did the product live up to the warranty?

F. ***Warranties of quality*** - Implied Warranties.

1. Warranty of merchantability. (U.C.C. § 2-314).

a) The most important warranty in the code. Unless excluded or modified, a warranty that the goods shall be merchantable is implied in every contract if the seller is a MERCHANT with respect to goods of that kind.

b) Elements of the Warranty:

(1) Sale of Goods,

(2) By a seller,

(a) Usually not a big issue,

(b) Can be an issue whether a distributor or indirect manufacturer is a "seller."

(3) Who is a merchant with respect to goods of that kind.

(a) "a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill." (U.C.C. § 2-104(1)).

(b) Applies even to the first sale someone ever makes in the business.

(c) "Goods of that kind" are not limited to specific makes and models. For example, a car dealer is a merchant with respect to cars, even if he is a Ford dealer selling a used Chevy.

c) Goods Must be Merchantable. (U.C.C. § 2-314(2)) Six factors. The goods must be of the type that:

(1) pass without objection in the trade under the contract description; and

(2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

d) Basic Principles:

(1) Strict Liability - "No Fault."

(2) No language/assertions are required.

(3) No reliance is required.

(4) Ensures a basic standard or quality.

(a) Quality measured at the time of the sale or delivery.

(b) There must be a defect proven.

e) The warranty has not been validly excluded or modified.

2. Warranty of fitness for a particular purpose. U.C.C. § 2-315

a) Basic Provisions:

(1) Imposed by law whenever the seller at the time of contracting has reason to know:

(a) Any particular purpose for which the goods are being purchased, and

(b) That the buyer is relying on the seller's skill or judgment to provide goods suitable for that purpose.

(2) Both implied warranties can exist in one transaction.

b) Elements of the Warranty:

(1) The "Seller" . . .

(a) Does NOT have to be a merchant,

(b) However, the seller must have appropriate "skill and judgment" about the goods.

(2) At the Time of the Contracting, has reason to know . . .

(a) Told by buyer,

(b) ACTUAL knowledge is NOT required. Constructive knowledge from the circumstances is sufficient.

(c) Example. "I need a car that gets thirty miles to the gallon, what do you recommend?"

(3) Any particular purpose . . .

(a) May be a related "special" purpose,

(b) "Ordinary Use" may qualify. For example, a salesman who bought a car that turned out to be unreliable. The problem was that the product could not perform its ordinary use – to drive. However, the buyer had a particular purpose in that his livelihood depended on that ordinary use.

(4) And that the buyer is relying . . .

(a) The buyer must be actually relying.

(b) Reliance only requires that the seller's skill and judgment influence the buyer.

(5) On the seller's skill and judgment . . .

(a) Third party statements won't work (ex. Gov't study, another retailer, or friend).

(b) The seller must hold himself out to have certain skills and judgment.

(6) To select or furnish suitable goods . . .

(a) Can be a group of goods – "Any of my four cylinder cars will get 30 MPG" - whichever car the buyer buys, the warranty will apply for MPG.

(b) Seller must make the decision that the goods are suitable for the buyer's purpose.

(7) The goods are impliedly warranted to be fit for that purpose.

(a) More specific than other warranties

(b) The goods may do exactly what the manufacturer intended, but violate the warranty because they do not meet the buyer's intended purpose!

(8) Seller's good faith is irrelevant.

G. Disclaimers & Modifications of Warranties of quality.

1. Disclaimers are disfavored by U.C.C. policy. Courts construe disclaimers as narrowly as possible to protect the buyer.

2. Express Warranties

a) Modifying express warranties. Attempts to negate or limit the warranty are construed wherever reasonable as staking out the boundaries of the warranty.

b) Disclaiming: Express warranties may NOT be disclaimed (U.C.C. § 2-316(1)).

3. Implied Warranties.

a) Modifying implied warranties.

(1) Exclusion or modification is generally permitted by the use of appropriate language.

(2) In addition, implied warranties may be excluded or modified by course of dealing or trade usage, or may be precluded by the buyer's prior inspection of the goods.

b) State specific – About half of the states preclude or restrict a seller's ability to disclaim implied warranties. Be sure to check your state law.

c) Disclaimers. The following arguments may be used to defeat disclaimers of warranties in contracts. They are based largely on the U.C.C. policy that disclaimers are NOT favored.

(1) Must be conspicuous – written so that a reasonable person against whom it is to operate ought to have noticed it.

(2) Must be available before K is signed.

(3) Some states require that the consumer have actual knowledge of the disclaimer.

(4) Disclaimers of Implied Warranty of Merchantability MUST have the word merchantability in it (U.C.C. § 2-316), unless the words "as is" or "with all faults" are used in a clear conspicuous manner.

(5) "As Is" disclaimers may be attacked using the circumstances of the sale to include the seller's conduct and the level of the consumer's knowledge. In order to be effective, must be clear to the buyer that there is no implied warranty (contract signing rushed, discouraging from reading the contract, or indicating that it is just a bunch of legalese).

H. Procedural requirements for enforcing rights under warranty.

1. Consumers seeking to enforce warranty rights normally must notify the seller that the warranty has been breached within a reasonable time after the breach is or should have been discovered. U.C.C. § 2-607(3)(a). Failure to do so precludes most Code remedies.

2. Actions must also be brought within the statute of limitations. U.C.C. § 7-725.

   a) The UCC defines the statute of limitations as 4 years after the cause of action accrues.

   b) The UCC statute of limitation begins to run at the time of delivery of the goods, not from the time the defect is discovered or the time of injury.

I. Remedies for breach of U.C.C. warranties. U.C.C. § 2-711.

1. Buyer has the burden to prove the goods failed to meet the warranty standard.

2. Buyer's remedies for breach of warranty.

   a) The primary U.C.C. remedy for defective goods is revocation of acceptance, which permits the buyer to recover any money paid to the seller.

   b) Obtain a judicial declaration that a warranty "fails of its essential purpose." U.C.C. § 2-719(2).

   c) Sell the goods and obtain the difference in value from the original seller.

d) "Cover" - go into the market place to buy other goods to replace the defective goods received from the seller, then recover the excess price paid for the substitute goods. U.C.C. § 2-712.

e) Keep the goods and either deduct the amount of damages from the unpaid purchase price or, if the buyer has already paid for the goods, sue for damages. U.C.C. §§ 2-714, 2-717.

3. Possible defenses to Breach of warranty.

a) Buyer's conduct as to cause of damage or misuse of product.

b) Non-compliance with any conditions precedent to warranty coverage.

c) Expiration of the express warranty period.

4. Possible recovery for breach of warranty.

a) General damages. U.C.C. § 714. Generally this is the difference at the time of acceptance between the value of the goods as accepted and the value the goods would have had if as warranted.

b) Incidental damages. U.C.C. § 2-715(1). Damages directly and immediately resulting from seller's breach pertaining to the goods themselves (e.g. inspection, transportation).

c) Consequential damages. U.C.C. § 2-715(2). Damages resulting less directly and less immediately from the breach and generally pertain to the buyer's circumstances.

d) Punitive damages. General rule, punitive damages are unavailable. May be available if the conduct is egregious enough to amount to an independent tort (i.e. willful, wanton and malicious disregard for the rights or buyers).

e) Liquidated damages.

f) Other remedies agreed to by the contracting parties.

g) Attorney's fees. Not recoverable as a general rule absent contractual or statutory authority.

5. Conditions for invoking remedies.

a) The defect in the goods must be serious enough to "substantially impair" their value to the buyer. U.C.C. § 2-608(1).

b) The seller must first be given an opportunity to "cure" the defect before the buyer is allowed to revoke acceptance of the goods. U.C.C. § 2-508.

I. THE MAGNUSON-MOSS WARRANTY ACT.

A. Applicability of the Magnuson-Moss Warranty Act.

1. Purpose:

a) Regulate, simplify, and standardize warranties given by manufacturers.

b) It does not mandate warranties or warranty duration.

c) Does mandate certain disclosures if the seller gives a warranty.

d) Provides for damages if warranties given are breached.

2. Consumer products manufactured after 4 July 1975.

a) Consumer products are those "normally" used for personal, family, or household purposes. They do NOT have to be used exclusively for that purpose. 16 C.F.R. 700.1. Applies to new and used products.

(1) Goods are "normally" used for consumer purposes if that use is "not uncommon."

(2) "Normally" does not mean that consumer use is the predominant use, just that this use is not atypical.

(3) Ambiguities are resolved in favor of coverage.

b) They must be *tangible* property.

c) Must be *personal*, not real property.

(1) Some things that may become fixtures are still personal (e.g., air conditioners, insulation, siding, dropped ceilings, etc.)

(2) If the item is integrated into a structure at the time of purchase, however, it is not a consumer product (e.g., beams, wallboard, wiring, plumbing, etc.)

(3) Mobile homes are personal, not real.

d) Does NOT apply to services unless it covers both the parts and the labor (e.g. rebuilding a engine and parts.)

B. Parties Liable Under The Act.

1. Any supplier. "Supplier" is any person engaged in the business of making a consumer product directly or indirectly available to consumers. All entities in the chain of production and distribution of a consumer product including the manufacturer, component supplier, distributor, wholesales, and retailer.

2. Any warrantor. A "warrantor" is any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

3. Any service contract provider

4. "Other Person"

   a) No privity of contract required

   b) Third party warrantors (like Good Housekeeping) who don't sell products but who offer warranties are covered.

C. Enforcing Implied and Written Warranties and Service Agreements.

1. Prohibits Breaches of Warranties:

   a) Implied – Any warranty arising under state law in connection with the sale of a consumer product.

      (1) Even if no written warranty is given!

      (2) Applies to any warrantor, not just suppliers.

(3) Existence of the warranty is a matter of state law.

(4) Once warranty exists, however, Magnuson-Moss gives a federal remedy for breach of that warranty.

b) Written:

(1) Provides a specific statutory remedy for breach of warranties.

(2) Provides a federal cause of action for damages and attorney's fees.

(3) State law privity requirements do not apply (see below).

c) Service Contracts:

(1) Defined by the Magnuson-Moss Warranty Act as a "contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product." 15 U.S.C. § 2301(8).

(2) The Magnuson-Moss Warranty Act specifically recognizes the right of a supplier or warrantor to enter into a service contract with the consumer in addition to or in lieu of a written warranty, as long as the service contract "fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language." 15 U.S.C. § 2306(b).

(3) Act provides a federal cause of action for breaching requirements under the Service K.

2. Prohibitions on Disclaimers & Modifications of Implied Warranties:

a) Prohibited when there is a written warranty or service contract within 90 days of sale.

b) Unless the written warranty is labeled "limited," then the seller/supplier may limit the duration of implied warranties to a period no less than the duration of the written warranty.

c) Magnuson-Moss ***prohibits*** modification or disclaimer of implied warranties in these circumstances.

(1) Modification/Disclaimer is ineffective both under the Act and state law.

(2) Consumer may sue for breach of warranty.

3. Impact on Privity of Contract Requirements:

a) Horizontal privity – Someone other than the retail buyer (someone who receives the product as a gift, subsequent purchases) seeks to sue the seller.

(1) Act protects any "consumer" damaged by a violation of the Act or by failure to comply with a written warranty, implied warranty or service contract.

(a) Buyers

(b) Any person to whom the goods are transferred during the duration of the implied or written warranty, or service contract.

(c) Any other person protected under the terms of the warranty.

(2) Thus horizontal privity requirements are ineffective as to all owners of the product.

(3) Suppliers/Warrantors may limit to the original owner by saying "for as long as you own your car" in express warranties. In this case look to implied warranties.

(4) "Limited" warranty providers may limit implied warranties to the original owner if a notice of this provision is prominently disclosed in the warranty.

b) Vertical Privity – Can the buyer sue someone up the distribution chain with whom the buyer didn't actually deal?

(1) Written warranties. Magnuson-Moss virtually eliminates vertical privity requirements through the broad definitions of supplier, warrantor, and service contract provider.

(2) Implied Warranties. State law MAY require vertical privity here. Courts are mixed as to whether Magnuson-Moss supersedes these requirements. (AL, CT, FL, GA, IN, NY, OR all require vertical privity.)

D. Restrictions on Written Warranties (Both Full & Limited).

1. Many provisions of the Act apply only if there is a written warranty.

   a) A written warranty is:

      (1) A written affirmation that the product is defect free or will meet a specified level of performance for a specified period, OR

      (2) A written undertaking to refund, repair, replace or remedy a product **IF** it fails to meet specifications.

      (3) Which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

b) Whether the written warranty remains in effect is the most difficult question for USED products.

2. Tie-ins are Prohibited.

a) Cannot condition warranty applicability on using a particular part or certified product.

b) Cannot limit to factory servicing.

c) Cannot mandate a specific brand name.

d) CAN mandate a particular grade of product. For example, cannot say Quaker State Motor Oil, but CAN say 10W-40 motor oil.

e) There are only two exceptions:

(1) The manufacturer provides a product or service that is free of charge, OR

(2) The FTC approves a waiver in the public interest.

3. Warrantor cannot be the final arbiter of warranty disputes. A warrantor cannot grant itself the sole authority to determine whether a defect or nonconformity within the scope of the written warranty exists or to have the final or binding decision in a dispute.

4. Warranty Registration Cards.

   a) Full Warranty – May NOT condition the warranty on returning a card.

   b) Limited Warranty – MAY condition the warranty on the return of the card so long as that fact is disclosed in the warranty.

   c) Implied Warranties – the act is silent on this, but this should be considered an invalid limitation on an implied warranty.

E. Requirements Applicable to Only "Full" Warranties:

1. The Act requires that EVERY warranty be labeled as "full" or "limited."

2. To be labeled "full," the warranty must comply with the following:

   a) It cannot restrict the rights of subsequent owners during the warranty period.

   b) It must promise to remedy defects within a reasonable time and without charge.

   c) It cannot limit the duration of any implied warranty.

   d) It cannot limit consequential damages unless the limit is conspicuously present on the face of the warranty.

e) It MUST permit the consumer to elect a refund or replacement after a reasonable number of attempts by the manufacturer to fix the problem; AND

f) It must require no duty of the consumer other than notice of the defect, unless the duty is "reasonable." For example to use product in a reasonable manner and perform any necessary maintenance.

3. Any warranty that does not meet the requirements above must be labeled "limited."

F. Disclosure Provisions.

Although the Magnuson-Moss Warranty Act does not require that any consumer product be warranted, it does provide for certain disclosures if the manufacturer of a product chooses to give a written warranty:

1. If the product costs more than $10, the warrantor must properly designate the warranty as a "full" or "limited" warranty (in compliance with federal minimum warranty standards.)

   a) The designation must be a caption or prominent title, clearly separated from the warranty text.

   b) For a Full Warranty ONLY, there must be a reference in the caption/designation to the duration of the warranty.

   c) Examples of PROPER designations: "full one-year warranty;" "limited warranty;" "limited 60-day warranty;" "limited warranty for as long as you own your car."

   d) Note that a warrantor can give BOTH a full and a limited warranty on the same product as long as it is properly differentiated (clear and conspicuous). For example, full three-year warranty against mechanical defects, limited rust-through warranty on same car.

2. General Disclosure Principles.

   a) The disclosures must be in a single document.

   b) The language must be "simple and readily understood."

   c) The disclosure must be made clearly and conspicuously.

   d) Consumer reading the warranty should be able to see exactly what is and is not covered by the warranty.

   e) Duration of the warranty.

   f) The warranty must be made available to the consumer before the decision to buy is made. The seller may comply by:

(1) Providing a Copy with every product; OR

(2) Clearly and conspicuously displaying the text of the warranty "in close conjunction to" the warranted product, and/or

(3) Maintaining readily available binders containing copies of the warranties for the products sold in each department of the seller's store, and/or

(4) Displaying the package of a warranted consumer product in such a way that the printed text of the warranty on the package is clearly visible to prospective buyers at the point of sale, and/or

(5) Placing a notice containing the text of the warranty in close proximity to the warranted consumer product, in a manner that clearly indicates to prospective buyers the product to which it applies.

(6) Special Rules for Mail Order or Catalogue Sales. These sellers must disclose the warranty:

(a) On the same page as the product; OR

(b) On the page facing that page; OR

(c) In a clearly referenced information section; OR

(d) By disclosing the address where the consumer can get a copy free of charge.

3. Specific Disclosure Requirements: All written warranties, full or limited, on consumer products costing more than $15 are required to disclose the following:

   a) *Parties who can enforce the warranty:* The identity of the parties to whom the warranty is extended, including any limitations (such as to the original purchaser of the product).

   b) *Warranty Coverage:* A clear description and identification of products, parts, characteristics, components, or properties covered by the warranty.

   c) *Warrantor's Performance Obligations:* A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform to the written warranty.

   d) *Warranty Duration:* The point at which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration.

   e) *Consumer's Duties to Exercise the Warranty:* A step-by-step explanation of the procedure that the consumer should follow to obtain performance of any warranty obligation.

   f) *Registration Cards*: Whether the return of any registration is required (if allowed).

   g) *Informal Dispute Resolution:* Information about the availability of any "informal dispute settlement mechanism" elected by the warrantor.

   h) *Duration Limitation on Implied Warranties:* Any limitations on the duration of implied warranties.

   i) *Any exclusions of or limitations* on relief available to the consumer, such as incidental or consequential damages.

j) The following statement: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state."

G. Relationship Between Various Warranty Protections.

1. Nothing in the Act "shall invalidate or restrict any right or remedy of the consumer under State or federal law. 15 U.S.C. § 2311(b)(1). The Act does not preempt the U.C.C. or State UDAP statutes.

2. Because some states have special consumer warranty statutes which may give the consumer greater protection than the Magnuson-Moss Warranty Act, and thus take precedence over that Act, the FTC has required that all written warranties covered by the MMWA must clearly and conspicuously disclose from one to three additional provisions.

a) All such warranties must say: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state." 16 C.F.R. § 701.3(a)(9).

b) In addition, if the written warranty contains any limitations on the duration of implied warranties, such limitations must be disclosed on the face of the warranty accompanied by the following statement: "Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you." 16 C.F.R. § 701.3(a)(7).

c) Any limitations on remedies for breach of warranty, such as exclusion of incidental or consequential damages, must be accompanied by the following statement: "Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you."

H. Who can sue?

1. Anyone who buys a consumer product for purposes other than resale.

2. Anyone to whom the product is transferred during the life of a written or implied warranty.

I. Remedies.

1. USAG and the FTC have authority to pursue preliminary and permanent injunctions. As well as cease and desist orders, restitution and civil penalties.

2. Private civil relief under the Magnuson-Moss Warranty Act.

   a) Negotiation and/or mediation through an informal dispute settlement mechanism. Although a warrantor need not provide this nonjudicial alternative for the resolution of warranty disputes, if such a mechanism is available a consumer can be required to use the mechanism before beginning civil action provided:

      (1) The mechanism and its implementation meet the requirements established by the FTC. For example, it must be:

         (a) Free of charge,

         (b) Sufficiently funded & competently staffed,

         (c) Provide quick and fair resolution,

         (d) Have no undue influence by warrantor.

      (2) The warrantor incorporates into the written warranty the requirement that the consumer resort to the mechanism before pursuing any legal remedy under the Magnuson-Moss Warranty Act.

      (3) See 16 C.F.R. Part 703 for more details.

b) Industry complaint bureaus.

c) Consumers can sue for damages and other legal and equitable relief in either state or federal court. State court is the predominant jurisdiction.

d) The amount in controversy for suit in federal court must exceed $50,000 for both individual and class actions.

e) Personal injury damages.

(1) Typically, private actions for breach of warranty may be brought under the Magnuson-Moss Warranty Act only for direct economic damage.

(2) Consequential damages, such as personal injuries, cannot be recovered unless there has been a violation of certain of the Act's substantive provisions.

f) Punitive damages may be recovered in suits brought under the Magnuson-Moss Warranty Act if available under state law.

g) Damages for emotional distress can be recovered under the Magnuson-Moss Warranty Act if they are available in breach of warranty actions under state law.

h) Attorneys' fees and courts costs are allowable if the consumer prevails in the action.

SPECIFIC PROTECTIONS FOR AUTOMOBILES

NEW CARS

I. STATUTORY WARRANTIES IN AUTO SALES: "LEMON LAWS"

A. Introduction.

All 50 states and the District of Columbia have some form of "lemon law." See Appendix B.

B. Impact of typical state "lemon" law.

1. Creates a new statutory warranty that modifies every manufacturer's warranty.

2. Sets standards for consumers and manufacturers in determining when a buy-back must be awarded.

3. State lemon laws may be applied to automobiles purchased before the law went into effect if the warranty period has not expired at the time relief is sought under the law's provisions.

4. Common provisions. Although there is a great deal of variety among the various "lemon" laws, the lemon laws include many common provisions.

   a) Most lemon laws apply only to new cars, although some also apply to used cars, motorcycles, off road vehicles, and mobile homes. *See, e.g.*, N.Y. Gen. Bus. Law § 198-b (1990) (used cars with less than 36,000 miles are covered if they are sold by persons selling three or more used cars per year and they develop serious problems in the first 60 days or 3,000 miles, which ever comes first; cars with more than 36,000 are covered for 30 days or 1,000 miles). Some states may apply these laws to leased vehicles.

   b) Many statutes provide that the manufacturer must allow the consumer to return the car for a full refund or a replacement vehicle if:

      (1) The consumer reports the defect within the warranty period or within one year of the date of actual delivery of the vehicle, whichever is earlier.

      (2) A substantial defect in a new automobile cannot be repaired in a reasonable number of attempts.

         (a) Three or four attempts to correct the same or substantially the same defect is normally "reasonable."

(b) Some statutes allow the consumer the benefit of the statute if the car is out of use for 30 or more days. Some use calendar and others use business days.

c) All state lemon laws contain an explicit "savings clause" that preserves consumers' rights under all other laws.

d) The good faith of the dealer in attempting to repair the vehicle does not defeat the consumer's right to relief under a lemon law if the malfunction goes uncorrected. See, e.g., Muzzy v. Chevrolet Div., General Motors Corp., No. 87-272 (Vt. Dec 1, 1989) (in five separate attempts, dealer was unable to correct stalling problem and rough running engine; dealer then installed valve that it said corrected problem--court affirmed refund of portion of purchase price and other expenses: statutory criteria was three repair attempts and satisfaction (subjective) of customer).

e) Under most lemon laws, the repair attempts must be made even after the manufacturer's warranty expires, as long as the defect was first reported within the warranty period.

f) Lemon laws generally are limited to defects covered by the manufacturer's written warranty, so the malfunction must be shown to have resulted from a defect in material or workmanship.

g) Manufacturers are seldom held liable for defects resulting from the consumer's abuse, neglect or unauthorized modifications. The abuse should be abnormal, unforeseeable conduct and not conduct that merely puts the warranty to the intended test.

h) Under all lemon laws, the consumer must give notice of the defect, but the notice provisions vary greatly.

(1) Most allow notice to either the manufacturer, its agent, or an authorized dealer.

(2) However, it is wise to provide written notice to the manufacturer by certified mail.

i) No lemon law requires that after the consumer notifies the dealer or manufacturer of the substantial defect the consumer discontinue use of the vehicle while awaiting the dealer's repair attempts.

j) Most lemon laws permit the dealer an affirmative defense if:

(1) The defect or nonconformity does not substantially impair the value or use of the vehicle.

(2) The consumer's abuse, neglect, or unauthorized modifications or alterations cause the defect.

k) Offsets. Almost all state laws provide that the consumer will pay the dealer an offset:

(1) This is usually a reasonable allowance for use of the vehicle.

(2) An example is a formula used in several states which is (# of miles driven)/100,000 x (the cost of the vehicle).

5. Remedies available under lemon laws.

a) Most lemon laws require consumers first to resort to an informal dispute settlement mechanism (IDSM) designated by the manufacturer, if the IDSM complies with FTC guidelines contained in 16 C.F.R. § 703, before being eligible to receive a full refund or a replacement vehicle.

(1) The lemon laws of some states require that the consumer use the manufacturer's IDSM only if the IDSM complies with the FTC guidelines "completely," while others require that the consumer comply with the IDSM if it complies with the FTC guidelines "substantially."

(2) States vary as to which programs they find consistent with FTC guidelines, and the court may ultimately make this determination.

b) Some states provide state-organized and funded IDSM mechanisms. See e.g., Hawaii Rev. Stat. § 490:2-313.2; N.Y. Gen. Bus. Law § 198-a(g).

c) The basic remedy of refund of the purchase price includes, in most states, all taxes, preparation fees, and other charges or fees paid by the consumer.

d) Most states also require deduction of the reasonable value of the consumer's use of the automobile up to the first time the car was submitted for correction of the defect.

e) Attorneys' fees and court costs may be made available for consumers who successfully sue to obtain lemon law remedies.

f) Some lemon laws include prohibitions against waiver of lemon law protection and resale of a returned lemon unless full disclosure of the car's history is made to the buyer.

g) Some lemon laws permit consequential and incidental damages.

h) Under a few statutes, manufacturers who are sued in bad faith or without substantial justification are entitled to recover legal expenses from the consumer.

I. LATENT DEFECTS (After Lemon Law Period Expires).

A. Discovery During the Written Warranty Period. (See Warranty Law Above.)

1. Use the Magnuson-Moss Act to bring a suit for damages for breach of the warranty.

2. Revoke acceptance under the UCC.

B. Discovery After the Warranty Period Expires

1. Secret Warranties: A strategy where the manufacturer pays for repair of defects after warranty period, but only for those consumers who complain.

a) These policies are "secret" because they are normally passed only to regional offices and never to buyers.

b) These are tough to find and document. The only strategy is to complain long and loud. You, as a LAA, may be able to help here in dealing with the regional office.

c) An important resource here is The Center for Auto Safety, 2001 S Street, NW, suite 410, Washington, DC 20009, (202) 328-7700. They have information on secret warranty programs for specific model cars.

3. UDAP Violations. Don't forget your state statute. Failure to disclose a latent defect when the manufacturer knows about it should almost certainly be a UDAP violation.

USED CARS

I. AVOIDING "AS IS" SALES.

A. Find Express Warranties (*See also* Warranty Law Above) because express warranties cannot be disclaimed.

1. Manufacturer's Warranties: Written warranties apply to subsequent purchasers unless expressly limited to first purchaser. Note that certain parts (drive train, emission control, etc.) may be covered even if the entire vehicle is not.

2. Dealer's Warranties:

a) Descriptions of the Make, Model, Year, Options, Odometer Reading etc. in sales agreement.

b) Oral Representations by sales personnel. Note that dealers often try to avoid these by merger clauses in the sales agreement. These types of waivers are often ineffective.

c) Advertising about vehicle.

d) Dealers may argue that the FTC Used Car Rule (see below) Buyer's Guide supersedes these warranties when it says, "As Is." The FTC Rule only requires disclosure of certain listed types of warranties so this argument should not be effective.

B. Implied Warranties:

1. Disclaimer limitations. These cannot be disclaimed if the dealer gives a written warranty or "enters into" a service contract.

a) May be an issue about whether dealers "enter into" a service contract if they do not provide the service themselves, but simply offer a third party service contract.

b) The Magnuson-Moss Act (see Chapter 5) has limited applicability if the state regulates service contracts.

2. State Law limitations. A number of states restrict the disclaimer of implied warranties including AZ, CA, DC, IL, KS, LA, ME, MD, MA, MN, MS, NH, OR, RI, WA, WV, and WI.

C. Adequate Disclosure of "AS IS" Disclaimer.

1. Available to consumer before purchase?

2. Conspicuous – either a larger type size or otherwise set out from the rest of the K.

3. Must make plain that implied warranties are disclaimed.

D. Non-Warranty Claims.

1. UDAP – *See* Chapter 3. Deception, misrepresentation or the like

2. Traditional Legal Theories: Fraud, Tort Liability (Negligence, strict liability)

I. CAR'S TRUE HISTORY NOT DISCLOSED.

A. The Federal Odometer Act -- Inaccurate Odometer Readings.

1. Resources.

   a) 49 U.S.C. §§ 32701-32711.

   b) 49 C.F.R., Part 580.

   c) NATIONAL CONSUMER LAW CENTER, ODOMETER LAW (3d ed. 1992 and Supp. 1997).

2. Congressional Findings and purposes. (49 U.S.C. § 32701)

   a) Findings:

      (1) buyers of motor vehicles do and are entitled to rely heavily on the odometer reading as an index of the condition and value of a vehicle;

      (2) an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle.

   b) Purposes of the Federal Odometer Act:

      (1) to prohibit tampering with motor vehicle odometers; and

      (2) to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers. Requires

that any car transfer include an odometer disclosure statement.

3. Definitions (49 U.S.C. § 32702).

a) "Dealer" means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.

b) "Leased motor vehicle" means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.

c) "Odometer" means an instrument for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument designed to be reset by the operator of the vehicle to record mileage of a trip.

d) "Transfer" means to change ownership by sale, gift, or any other means.

4. Primary Protections of the Odometer Act:

a) Prohibition on Odometer Tampering (49 U.S.C. § 32703). A person may not--

(1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;

(2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;

(3) with intent to defraud, operate a motor vehicle on a street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating; or

(4) conspire to violate this section.

b) Disclosure Requirements (49 C.F.R. § 580.5).

(1) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space to provide odometer disclosures at the time of future transfer.

(2) Any documents that are used to reassign a title shall contain a space for the required odometer disclosures at the time of transfer of ownership.

(3) Written Disclosure.

(a) Made on the title or on the document used to transfer ownership. Transferors must sign this written disclosure and include their printed name. In addition, the written disclosure must contain the following information:

(i) The odometer reading at the time of transfer (not to include tenths of miles);

(ii) The date of transfer;

(iii) The transferor's name and current address;

(iv) The transferee's name and current address; and

(v) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.

(b) The statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.

(c) Certification by the owner that either,

(i) To the best of his knowledge the odometer reading reflects the actual mileage, or;

(ii) If the transferor knows that the odometer reading reflects an amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(iii) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(d) If the vehicle has not been titled, or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

c) Other Requirements.

If the odometer must be repaired, serviced, or replaced, the mileage must be set the same as before the service or set to 0 and a notice attached to the frame reflecting the prior mileage. (49 U.S.C. § 32704)

5. Penalties and enforcement (49 U.S.C. § 32709):

a) **Civil penalty.** Liable to the United States Government for a civil penalty of not more than $2,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is $100,000. In determining the amount

of a civil penalty under this subsection, the Secretary shall consider--

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

b) **Criminal penalty.** A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both.

c) **Civil actions by Attorney General.** The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter.

d) **Civil actions by States.** The chief law enforcement officer of the State in which the violation occurs may bring a civil action--

(1) to enjoin the violation; or

(2) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.

6. Civil actions by private persons (49 U.S.C. § 32710).

a) **Violation and amount of damages.**

(1) Violates with intent to defraud.

(2) Liable for 3 times the actual damages or $1,500, whichever is greater.

(3) The court shall award costs and reasonable attorney's fees to prevailing consumers.

b) **Statute of Limitations.** The action must be brought not later than 2 years after the claim accrues. The claim "accrues" when the particular plaintiff (and not prior purchasers) has reason to know of the violation. *John Watson Chevrolet, Inc. v. Willis*, 890 F. Supp. 1004 (D. Utah 1995). *See also Ferris v. Haymore*, 967 F.2d 946 (4th Cir. 1992).

B. Lemon Laundering.

1. Defined: "the practice of manufacturers reselling cars returned as lemons, without disclosing the car had previously been returned pursuant to a state lemon law" NCLC, CONSUMER WARRANTY LAW, § 14.3.3.1.

2. State Statutory Protection. Most states have statutes governing this practice.

3. Statutes require disclosure of the prior history on the title or other sale documents. Some states mandate a warranty.

C. Salvage Vehicles.

Similar to Lemon Laundering. Selling rebuilt cars or vehicles assembled from salvaged parts, without disclosures. Statutory protection that requires disclosure. Also look to state UDAP statutes or common law fraud.

I. THE FTC USED CAR RULE.

A. The FTC issued a trade practice rule, effective 9 May 1985, in an attempt to reduce oral misrepresentations, particularly with respect to warranty coverage. 16 C.F.R. Part 455.

B. While the rule does not require that used cars be sold with a warranty, it does require disclosure, through the use of a mandatory "Buyers Guide" window sticker, of the existence of any warranty coverage which does exist. The Guide MUST Disclose:

1. Make, model, year, and VIN.

2. Name & address of dealer (or other party who will accept complaints).

3. A warning that all promises from dealer should be in writing because spoken promises are hard to prove.

4. The meaning of the term "As Is".

5. Clear Disclosure of Warranty Coverage. Either:

   a) AS-IS – NO WARRANTY,

   b) WARRANTY,

   c) IMPLIED WARRANTIES ONLY (If dealer chooses not to disclaim them or state law prohibits them from doing so.)

6. Availability of Service Contracts.

7. A suggestion to the consumer to ask the dealer whether a pre-purchase independent inspection is permitted.

8. On the back, a list of the 14 major mechanical and safety systems of a car and a partial list of defects likely to occur within those systems in used cars.

C. Deceptive acts and practices.

1. Pursuant to the rule, it is a deceptive act or practice for a used car dealer to:

   a) Misrepresent the mechanical condition of a used vehicle.

   b) Misrepresent the terms of any warranty offered in connection with the sale of a used vehicle.

   c) Represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

2. Pursuant to the rule, it is an unfair practice for a used car dealer to:

   d) Fail to disclose, prior to sale, that a used vehicle is sold without any warranty.

   e) Fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

3. No private right of action for FTC Rule violation, but:

   f) Rule violations may be remedied using state UDAP statutes

   g) Might argue violation of Rule is automatic violation of Magnuson-Moss Act, which authorizes private action for damages and attorney fees. See Currier v. Spencer, 299 Ark. 182, 772 S.W.2d 309 (1989). Trial court apparently awarded Magnuson-Moss attorney's fees for violation of FTC Used Car Rule. Arkansas Supreme Court, without discussing whether Magnuson-Moss Act can be used to challenge FTC Used Car Rule violations, affirmed trial court award.

I. STATE USED CAR "LEMON LAWS."

A. Some states have passed used car lemon laws. These states are currently:

1. Hawaii (Haw. Rev. Stat. §§ 481J-1 to 7)

2. New York (N.Y. Gen. Bus. Law § 198-b)(McKinney)

3. Rhode Island (R.I. Gen. Laws § 31-5.4)

4. Massachusetts (Mass. Gen. Laws. Ann. Ch. 90 § 7N ¼)

5. Minnesota (Minn. Stat. Ann. § 325F.662)

6. New Jersey (N.J. Rev. Stat. Ann. § 56:8-67 to 80 (West).

B. Most state lemon laws, although designed primarily to protect new car owners, also cover subsequent purchasers of warranted vehicles during the warranty period.

C. Most used car lemon laws only apply to "dealers."

1. A dealer is usually defined as one who has sold or offered to sell at least three vehicles in the prior twelve months.

2. This will usually include even unlicensed "backyard" dealers.

D. Basic Protections.

1. States that have a lemon law mandate certain warranty protections and specify the duration of the protection.

2. The duration is normally tied to the number of miles on the car at purchase.

3. Remedies. If the warranty is breached during the period the statutes provide that:

   a) If the dealer is notified of the defect, AND

   b) fails to remedy the problem in a reasonable number of attempts; AND

   c) the defect substantially impairs the value of the car;

   d) The dealer will accept return of the car and, at the consumer's option,

      (1) replace it with a comparably priced vehicle, OR

      (2) Refund the purchase price less certain adjustment.

CHAPTER 6

PROTECTIONS BASED UPON THE TYPE OF

PAYMENT

(FEDERAL CONSUMER CREDIT PROTECTIONS)

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I. TRUTH IN LENDING ACT (TILA).

A. References.

1. 15 U.S.C. §1601-1667.

2. Regulation Z (12 C.F.R. Part 226).

3. Official Staff Commentary on Regulation Z (12 C.F.R. Part 226.101).

4. NATIONAL CONSUMER LAW CENTER, TRUTH IN LENDING (4th. ed. 1999).

5. Alperin and Chase, Consumer Law: Sales Practices Credit Regulation, Vol. I & II, (West Pub. Co. 1986) with Supplements.

B. Purpose.

1. Economic stabilization and competition is strengthened by informed use of credit by consumers.

   a) TILA requires "meaningful disclosure of credit terms."

   b) TILA also designed to protect consumer against inaccurate and unfair credit billing and credit card practices.

2. TILA is to be liberally construed in favor of consumers, with creditors who fail to comply with TILA in any respect becoming liable to consumer regardless of nature of violation or creditors' intent.

3. The Act is in Title I of the Consumer Credit Protection Act and is implemented by the Federal Reserve Board via Regulation Z (12 C.F.R. Part 226).

   a) The Regulation has effect and force of federal law. (*Gray-Taylor, Inc. v. Tennessee*, 587 S.W.2d 668 (Tex. 1979).

b) But see, *Porter v. Hill*, 838 P.2d 45 (Or. 1992) (While regulations promulgated by the FRB pursuant to its authority to construe provisions of TILA are not binding on courts, they are entitled to substantial deference, since agency has interpretive powers).

C. Method of Analysis

1. Collect all documents related to the extension of credit.

   a) Note or contract

   b) TIL disclosure statement

   c) Itemization of amount financed or HUD-1 statement

   d) Notice of right to rescind, if applicable

2. Evaluate the accuracy of the numerical disclosures on their face.

3. Determine if the numerical disclosures were made IAW TILA.

4. Evaluate the adequacy of the non-numerical disclosures under TILA.

5. Determine if there is applicable state law and whether it's provisions have been complied with.

D. Scope.

1. TILA **applies to** :

   a) Each individual or business that offers or extends credit when 4 conditions are met:

      (1) Credit offered or extended to consumers,

(2) Done "regularly" - extends credit more than 25 times (or more than 5 times for transactions secured by dwelling) per year,

(3) Subject to a finance charge or is payable by written agreement in more than 4 installments, and

(4) Primarily for personal, family, or household purposes.

b) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, is not payable by agreement in more than 4 installments, or if the credit card is used for business purposes.

c) Also, certain requirements apply to persons who are not creditors but who provide applications for home equity plans to consumers.

2. TILA is **inapplicable to**:

a) Creditors who extend credit primarily for business, commercial, agricultural, or organizational purposes or other purposes that are otherwise regulated, such as securities brokers.

b) Student Loan Programs.

c) Credit transactions, over $25,000.00, **except** those involving a security interest in real property, or in personal property used or expected to be used as the principal dwelling of the consumer.

E. Material Disclosures Required.

1. Required disclosures must be made clearly and conspicuously, in meaningful sequence, in writing, and in a form the consumer may keep.

2. FRB promulgates model disclosure forms, but where they would be misleading, lenders should provide tailored notice consistent with TILA.

3. States also regulate credit disclosure:

a) **CHECK CASHING COMPANIES**

(1) *Virginia v Allstate Express Check Cashing, Inc.*, No. HC-44-1; *Virginia v Foremost Group, Inc.*,No. HC-1234-1; *Virginia v Ameracheck Corp.*, No. HC-1232-1 (Cir. Ct., Richmond Sep. 1993) - Check-cashing companies violated Virginia Consumer Finance Act by making short-term advances to customers who write personal checks in return

for substantially smaller amounts of on-the-spot cash in transactions amounting to short term loans with annual percentage rates sometimes higher than 2,000%. (Cases cited in BNA Antitrust & Trade Reg. Daily (Oct. 7, 1993).

(2) *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999) for a description of the mechanics of a check advancement loan; *White v. Check Holders, Inc.*, 1999 Ky. LEXIS 68 (Ky. 1999)(holding check advancement transactions are loans for purposes of state usury laws); *Smith v. The Cash Store*, 1999 U.S. Dist. LEXIS 9040 (N.D. Ill. 1999)(applying TILA to check advancement loans).

b) **TAX REFUND ANTICIPATION LOANS**

(1) *North Carolina Ass'n of Electronic Tax Filers v Graham*, 429 S.E.2d 544 (N.C. 1993) (North Carolina's Refund Anticipation Loan Act (N.C. Gen. Stat. §§ 53-245-254) which imposes registration and disclosure requirements on and otherwise regulates tax refund anticipation loans does not violate U.S. Constitution and was not preempted by federal tax and banking laws. State law ensured residents were fully informed as to difference between refund anticipation loan and simple electronic filing of returns and as to potentially high cost of refund loan.

(2) Texas Attorney General settled deceptive trade practices lawsuit with H&R Block, Inc. forcing tax return company to advertise its "Rapid Refund" program is actually a loan program charging customers up to 150% in annual interest. Filed as UDAP suit. [Case reported in National Association of Attorneys General Consumer Protection Report (Sep. 1993)]

(3) Cades v. H. & R Block, Inc., 43 F.3d 869 (4th Cir. 1994), cert. Denied, 515 U.W. 1103 (1995); Zawikowski v. Beneficial National Bank, 1999 WL 35304 (N.D. Ill. 1999)(applying TILA to refund anticipation loan); Affatato v. Beneficial Corp., 1998 WL 472404 (E.D.N.Y. 1998)(discussing timing of refund anticipation loan disclosures); Basile v. H & R Black, Inc., 897 F. Supp. 194 (E.D. Pa. 1995).

(4) But see Cullen v. Bragg, 350 S.E.2d 798 (Ga. App. Ct. 1986)(holding TILA inapplicable to refund anticipation transactions because the consumer had no obligation to repay.

c. **PAWN TRANSACTIONS/AUTO PAWN**

(1) Burnett v. Ala Moana Pawn Shop, 3 F.3d 1261 (9th Cir. 1993)(decision discusses extensively factors considered, including, e.g., fact that 75% of customers "repurchased" the goods; parties' intent; title to property did not pass until end of repurchase option period, which could be extended for a fee, which court held analogous to charging interest; "sales" prices related to amount customer needed, rather than fair market value of goods).

(2) Pendleton v. American Title Brokers, Inc., 754 F. Supp. 860 (S.D. Ala. 1991)(where the ad read, "Pawn your title, keep your car;" the borrower signed a "pawn ticket/loan" contract, repayable with interest in weekly installments and executed a leaseback of the automobile, to run concurrently with the loan repayment, for a weekly rental amount equal to 10% of the loan; also included a provision granting the creditor the right of repossession in the event of default. This was a credit transaction, therefore TILA applied and since the proper disclosures were not made, TILA was violated). Good example of a disguised Credit Sale.

F. Open-end Credit Transactions:

1. Definition: Open-end credit includes bank and gas company credit cards, stores' revolving charge accounts, telephone credit cards, and cash-advance checking accounts.

a) Typical features: (12 C.F.R. § 226.2(a)(20)).

(1) Creditors reasonably expect the consumer to make repeated transactions.

(2) Creditors may impose finance charges on the unpaid balance.

(3) As the consumer pays the outstanding balance, the amount of credit is once again available to the consumer.

b) Disclosures:

(1) Annual percentage rate including applicable variable-rate disclosures,

(2) Method of determining finance charge and balance upon which finance charge imposed, as explained in 12 C.F.R. § 226.6,

(3) Amount or method of determining any membership or participation fees,

(4) Security interests if applicable to transaction, and

(a) Most cards are unsecured but typically 3 ways to take collateral:

(i) Items purchased with card,

(ii) Secured by a bank deposit,

(iii) Home equity loan.

(5) Statement of billing rights.

c) Other requirements include furnishing consumer with a periodic statement of the account.

(1) 12 C.F.R. § 226.12 details special credit card provisions, including liability of cardholder and assertion of claims and defenses against card issuer (see Fair Credit Billing Act outline).

(2) 12 C.F.R. § 226.13 details billing error resolution (see Fair Credit Billing Act outline).

G. Closed-end Credit Transactions:

1. Definition: "other than open-end credit" - Credit is advanced for a specific time period and, the amount financed, finance charge, and schedule of payments are "agreed upon" by the creditor and the consumer. (See 12 C.F.R. § 226.2(a)(10)).

2. Closed End Disclosures:

   a) Identity of the creditor,

   b) Amount financed,

   c) Itemization of amount financed,

   d) Annual percentage rate, including applicable variable-rate disclosures,

   e) Finance charge,

   f) Total of payments,

   g) Payment schedule,

   h) Prepayment/late payment penalties, and,

   i) If applicable to the transaction:

      (1) Total sales cost,

      (2) Demand feature,

      (3) Security interest,

      (4) Insurance,

(5) Required deposit, and

(6) Reference to contract.

H. Violations of TILA.

1. Creditors are liable for violation of the disclosure requirements, regardless of whether the consumer was harmed by the nondisclosure, **UNLESS**:

   a. The creditor corrects the error within 60 days of discovery and prior to written suit or written notice from the consumer, or,

   b. The error is the result of bona fide error. The creditor bears the burden of proving by a preponderance of the evidence that:

      (1) The violation was unintentional.

      (2) The error occurred notwithstanding compliance with procedures reasonably adapted to avoid such error (error of legal judgment with respect to creditor's TILA obligations not a bona fide error).

2. Civil remedies for failure to comply with TILA requirements:

   a. Action in any U.S. district court or in any other competent court within one year from the date on which the violation occurred. This limitation does not apply when TILA violations are asserted as a defense, set-off, or counterclaim, except as otherwise provided by state law.

   b. Private remedies - applicable to violations of provisions regarding credit transactions, credit billing, and consumer leases.

      (1) Actual damages in all cases.

      (2) Attorneys' fees and court costs for successful enforcement and rescission actions.

      (3) Statutory damages.

         (a) Individual actions - double the correctly calculated finance charge. For closed end transactions secured by real property – not less than $200 or more than $ 2,000.

(b) Class actions - an amount allowed by the court with no required minimum recovery per class member to a maximum of $500,000 or 1% of the creditor's net worth, whichever is less.

(c) Can be imposed on creditors who fail to comply with specified TILA disclosure requirements, with the right of rescission, with the provisions concerning credit cards, or with the fair credit billing requirements.

c. Enforcement by administrative agencies.

(1) Who:

(a) Banks - Federal Reserve Board, the Federal Deposit Insurance Corporation, and other agencies.

(b) Others not subject to the authority of any specific enforcement agency - Federal Trade Commission.

(c) Nine separate agencies currently have enforcement responsibilities.

(2) What - Enforcement agencies can do:

(a) Issue cease and desist orders or hold hearings pursuant to which creditors are required to:

(i) Adjust debtors' accounts (15 U.S.C. § 1607(e)(4)(A), (B)) to ensure that the debtor is not required to pay a finance charge in excess of the finance charge actually disclosed or,

(ii) the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(b) If the FTC determines in a cease and desist proceeding against a particular individual or firm that a given practice is "unfair or deceptive," it may proceed against any <u>other</u> individual or firm for knowingly engaging in the forbidden practice, even if that entity was not involved in the previous proceeding.

3. Criminal penalties - Willful and knowing violations of TILA permit imposition of a fine of $5,000, imprisonment for up to 1 year, or both.

4. Rescind the contract (see below).

H. Truth In Lending Act Rescission Rights. 3-Day Cooling Off Period (15 U.S.C. § 1635; 12 C.F.R. § 226.15).

1. General - **In addition to remedies described above**, consumers who enter into certain home equity loans may also have rescission rights as described below.

a) Under TILA, a consumer may rescind a consumer credit transaction involving a "non-purchase money" security interest in the consumer's **principal dwelling:**

(1) **Within 3 business days** (excludes Sunday and most Federal holidays) if all TILA disclosure requirements are met, or

(2) During an extended statutory period for TILA disclosure violations:

*(a) Failure to give adequate **notice** of right to rescind, clearly and conspicuously in a form the consumer may keep.*

*(b) Failure to give adequate TILA credit term **disclosures**.*

b) Rescission **voids the security interest** in the principal dwelling.

c) Consumer must have ownership interest in dwelling that is encumbered by creditor's security interest. Consumer need not be a signatory to the credit agreement.

d) TILA rescission rights do not apply to business credit transactions, even if secured by consumer's principal dwelling.

2. Scope of Rescission Rights (WHAT).

a. Applies to loan involving a non-purchase money security interest in consumer's principal residence (i.e., home equity loans/lines of credit/home improvement loans, etc.).

b. A consumer can have only one principal dwelling at a time. A vacation or other second home is not a principal dwelling. A transaction secured by a second home cannot be rescinded even if the consumer plans to reside there in the future.

3. Time to Exercise Right to Rescind (WHEN).

a. Right to rescind until midnight of third business day following the later of:

(1) Consummation of transaction,

(a) In the case of closed-end credit, when the credit agreement is signed.

(b) In the case of open-end credit, the occurrence giving rise to the right to rescind:

(i) Opening the plan,

(ii) Each credit extension above previously established credit limit,

(iii) Increasing the credit limit,

(iv) Adding to an existing account a security interest in the consumer's principal dwelling, and

(v) Increasing the dollar amount of the security interest taken in the dwelling to secure the plan.

(2) Delivery of the required rescission right notice, or

(3) Delivery of all material disclosures.

b. Extended right to rescind.

(1) Continuing right to rescind if required disclosures not made or made incorrectly, but...

(2) Statutory cut-off of extended right to rescind at 3 years after consummation.

(3) Will be cut off earlier by transfer of all of the consumer's interest in the property (including involuntary transfer such as foreclosure), or sale of the property.

(4) Violations Giving Rise to An Extended 3-Year Right to Rescind.

(a) Failure to give proper rescission notice.

(b) Creditors are required to deliver two copies of the right to rescind to each consumer entitled to rescind.

(c) Notice must disclose the following:

(i) The retention or acquisition of a security interest in the consumer's principal dwelling,

(ii) The consumer's right to rescind,

(iii) How to exercise the right to rescind, with a form for that purpose, setting forth the creditor's business address,

(iv) The effects of rescission, and

(v) The date the rescission period expires.

4. Waiver of the Right to Rescind.

a. Consumers may modify or waive the right to rescind the credit transaction if extension of credit is needed to meet a bona fide personal financial emergency before end of rescission period. Waiver must be knowing and voluntary.

b. Consumer must provide creditor with dated written statement describing emergency,

(1) Specifically modifying or waiving right, and

(2) Signed by all consumers entitled to rescind.

2. Delay of Performance.

a) Unless the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party,

(1) Disburse advances to the consumer or others,

(2) Begin performing services for the consumer, or

(3) Deliver materials to the consumer.

b) During the delay period, a creditor may:

(1) Prepare cash advance check (or loan check in the case of open-end credit),

(2) Perfect the security interest and/or

(3) Accrue finance charges,

(4) In the case of open-end credit, prepare to discount or assign the contract to a third party.

c) Delay beyond rescission period.

(1) Creditor must wait until he/she is reasonably satisfied consumer has not rescinded.

(2) May do this by:

(a) Waiting reasonable time after expiration of period to allow for mail delivery, or

(b) Obtaining written statement from all eligible consumers that right not exercised.

3. Mechanics of Rescission Process.

a) Consumer sends or delivers written notice to creditor.

b) When consumer rescinds, the security interest becomes void and consumer is not liable for any amount, including finance charges.

(1) Within 20 calendar days after receiving notice of rescission, creditor must:

(a) Return any property or money given to anyone in connection with the transaction,

(b) Take whatever steps necessary to reflect termination of the security interest.

(2) When creditor meets its obligations, consumer must tender the money or property to creditor, or if tender not practicable, it's reasonable value.

(3) If creditor fails to take possession of tendered money or property within 20 days, consumer may keep it without further obligation.

c) Court may modify procedures.

(1) Court has power to exercise equitable discretion and condition rescission of a loan upon the return of the loan proceeds.

(2) *See* Family Financial Services v. Spencer, 677 A.2d 479(Conn. App. 1996)(creditor's failure to honor the rescission nullified the security interest, barring foreclosure, and the consumer was not required to tender back the proceeds).

(3) *See* Reynolds v. D & N Bank, 792 F. Supp. 1035 (E.D. Mich. 1992). Consumer canceled home improvement contract 14 months after signed; 4 TILA violations; creditor failed to respond (did not return money or cancel security interest); consumer sued to enforce rescission, obtain damages, and **keep value of property purchased rather than tender it to creditor**. Court gave creditor 20 days to comply with its obligations, which creditor then failed to do. Court, in unreported opinion, then granted consumer's request. Creditor blew second chance! (See NCLC Reports, Vol. 11, March/April 1993).

4. Particular Types of Transactions.

a) Refinancing and Consolidation.

(1) Rescission rights **do not** apply to refinancing or consolidation by same creditor of an extension of credit already secured by consumer's principal dwelling.

(2) Rescission rights **do** apply to extent new amount exceeds unpaid balance, any earned unpaid finance charges on existing debt, and amounts attributed solely to costs of refinancing or consolidation.

b) Open-end line of credit secured by home used to pay off loan **not** originally secured by home requires complete rescission rights.

c) Door-to-door sales.

(1) When home solicitation sale is financed with second mortgage loan, consumer may be entitled to two separate rights to cancel when the transactions are independent.

(2) When consumer offers to obtain his/her own financing independent of assistance or referral from seller, sale and financing are separate transactions.

(3) When there are separate transactions,

(a) FTC Rule (Cooling Off Period for Door-to-Door Sales) applies.

(b) TILA requires 3-day rescission period (unless extended for TILA violation).

(c) Seller bound by consumer's timely cancellation regardless of which party receives notice of cancellation.

(4) For single transactions (seller arranged financing), look to state home solicitation law to determine whether transaction still covered by state's home solicitations statute 3-day cooling off period.

(a) When seller finances or arranges financing with second mortgage, this is considered a single transaction.

(b) When there is a single transaction, TILA rescission rights apply, but not FTC Rule 3-day cooling off period.

(i) FTC Rule does not apply to transactions in which there is a TILA right to rescind (i.e., second home mortgage transactions).

(ii) Therefore, consumer has only TILA right to rescind and not the 3 day cooling off period rights under FTC Rule.

(c) <u>But</u>, state cooling off periods may apply even when TILA rescission rights are available. If there is a state statute that is not inconsistent with TILA, both must be complied with.

J. Truth in Lending Act Update.

1. Issue #1: Car dealerships who work with auto manufacturer financiers are "credit arrangers," not "creditors." *Riviere v. Banner Chevrolet, Inc.*, 158 F.3d 335 (5th Cir. 1998), *citing Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 101 S.Ct. 2239 (1981).

The district court found that Banner was not a creditor under the current version of TILA:

> Banner does not meet the first condition that the individual or business must offer or extend credit.

> Although Banner has a credit department, it investigates credit histories, and it prepares forms; ultimately, Banner assigns the loan to GMAC, FMC, or another entity. It is that entity who "lends" the money to the consumer to enable him to purchase a vehicle. If a vehicle buyer defaulted on monthly payments, Banner would have no right to repossess the vehicle, or to sue for the balance unpaid. That right would belong to the lienholder or the extender of credit, ***336** here GMAC, the sole lender/creditor in the transaction.

2. **Issue #2:** The inclusion of the Holder in Due Course language required by the FTC is not sufficient, by itself to subject an assignee to liability. Pursuant to "§ 1641(a), assignees can be liable only for violations that are apparent on the face of the disclosure statement." *Ellis v. GMAC* below.

3. **Issue #3:** The TILA 1-year statute of limitations for filing civil actions is NOT jurisdictional. Therefore it is subject to equitable tolling.

   a. *Ramadan v. The Chase Manhattan Corporation*, 156 F.3d 499 (3d Cir. 1998).

   > The purpose underlying TILA is "to assure meaningful disclosure of credit terms ... and to protect the consumer against inaccurate and unfair" practices. 15 U.S.C. § 1601. Thus Congress enacted TILA to guard against the danger of unscrupulous lenders taking advantage of consumers through fraudulent or otherwise confusing practices. As the Burnett Court noted, the main inquiry is whether allowing tolling of the statute of limitations is consistent with this policy. We believe that it is.

   b. *Ellis v. General Motors Acceptance Corporation*, 160 F.3d 703 (11th Cir. 1998).

   > "Equitable tolling" is the doctrine under which plaintiffs may sue after the statutory time period has expired if they have been prevented from doing so due to inequitable circumstances.

> The issue of whether TILA is subject to equitable tolling is one of first impression in this circuit. Every other circuit that has considered the issue has held that TILA is subject to equitable tolling.
>
> In this case, we examine TILA, a consumer protection statute which . . . is remedial in nature and therefore must be construed liberally in order to best serve Congress' intent.
>
> [W]e apply the general rule that equitable tolling applies to all federal statutes unless the statute states otherwise. . . . We therefore agree with the Third, Sixth, and Ninth Circuits that the statute of limitations in TILA is subject to equitable tolling.

4. **Issue # 4:** Post-consummation events do not trigger additional TILA disclosure requirements. *Begala v. PNC Bank, Ohio, National Association*, 163 F.3d 948 (6th Cir., 1998).

> [U]nder TILA, a creditor's principal disclosure obligations arise before the credit transaction is consummated.
>
> In closed-end transactions . . ., the required disclosures under TILA are to be made as of the time that credit is extended, 15 U.S.C. § 1638(b), and it is as of that time that the adequacy and accuracy of the disclosures are measured.

5. Truth In Lending Act Rescission Rights: 3-Day Cooling Off Period.

   a. **Issue #1:** Running of the 3-year time period for rescission extinguishes the right. *Beach v. Ocwen Federal Bank*, 523 U.S. 410, 118 S.Ct. 1408 (1998).

West Headnote: "Three-year period for rescinding loan agreement under Truth-in-Lending Act (TILA) clearly precluded right of action after specified time; accordingly, it [3-yr time to rescind] was not a statute of limitation, and mortgagors could not assert right to rescind as recoupment defense in foreclosure action brought by mortgagee more than three years after consummation of loan transaction."

   b. **Issue # 2a:** "[T]he filing of a lawsuit can be sufficient written notice of rescission under TILA so long as the complaint seeks

rescission." *Jones v. Saxon Mortgage Incorporated*, 161 F.3d 2, 1998 WL 614150 (4th Cir.)(unpublished opinion).

Issue #2b: "[W]e hold that § 1635(f) is an absolute time limit and cannot be tolled to allow a party to rescind after a foreclosure sale." *Id.*

c. **Issue #3:** Home Improvement Application. Consumer had a three year extended right to rescind a home improvement contract where notices required by the TILA were not properly given by the third party financing company and where the work began prior to the completion of the rescission period. *Taylor v. Domestic Remodeling, Inc.*, 97 F.3d 96 (5th Cir. 1996).

I. BANKING REFORM OF 1994.

A. Reverse Mortgages. 15 U.S.C. § 1648, 12 C.F.R. § 226.33

1. Consumer agrees to mortgage property to bank in return for payments from lender. At death, transfer, or the consumer ceasing to occupy the property as a principal dwelling, the lender assumes full ownership in fee of the property.

2. Regulation under the new act:

a) Disclosure to the consumer of the following information:

(1) Calculate the APR using three different appreciation models for three different credit models. The credit models include a conventional short-term mortgage, a mortgage with a term equal to the actuarial life expectancy of the mortgagor and a third method determined by the Federal Reserve Board.

(2) That the consumer is granting a security interest in the home.

(3) A number of other specific disclosures

b) All disclosures must be made no less than 3 days before the loan closing.

3. Don't Forget Preventive Law to Your Retiree Population

B. High Cost Mortgages. 15 U.S.C. ∋1639, 12 C.F.R. § 226.32.

1. Applicability. The act applies to a closed end credit transaction secured by the consumer's principal residence if:

a) Mortgages with an interest rate 10 percentage points higher than the federal treasury securities of comparable term, or

b) In which the closing costs exceed $441.00 or 10% of the loan's value. This amount is updated annually based upon the CPI.

c) Does NOT apply to:

(1) Residential mortgages (initial purchase or construction)

(2) Reverse mortgages as defined above

(3) Open-end credit

2. The Section Mandates Certain Disclosures:

a) The CFR mandates a verbatim statement in the notices:

"You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

b) Must be given three days before closing.

c) Must be conspicuous and in a certain type size. 15 U.S.C. § 1639(a)(1).

3. Restrictions:

a) No negative amortization. A situation where the amount financed actually increases over time because each monthly payment is less than the interest which accrued each month.

b) Limits the inclusion of a prepayment penalty in the loan terms.

c) May not include a term which increases the interest rate in the event of default.

d) Lender may not engage in lending without regard to the borrower's ability to pay.

e) Home Improvement Contracts are limited.

C. Home Equity Lines of Credit (HELCs)

1. Home Equity Loan Consumer Protection Act, passed in 1988 amended TILA to require disclosure of certain information earlier than is required for most open-ended credit transactions. The Act applies to HELC plans entered into after 7 November 1989.

2. HELC rules apply to open-end credit plans secured by the consumer's "principal dwelling". The definition of "principal dwelling" under HELC is more expansive than under TILA. Under HELC, the rules apply to consumer's second or vacation home, as well.

3. Disclosures required at time of application.

a) Disclosures:

(1) Consumer should keep a copy of the disclosures,

(2) Right to obtain a refund of fees if terms change and they decide not to enter into the contract,

(3) They risk the loss of the dwelling in the event of default,

(4) Creditor may terminate a plan or suspend future advances under certain circumstances.

b) Disclosure required at plan opening.

(1) Conditions under which the credit may terminate the plan or change its terms.

(2) Payment terms of the plan.

(3) Negative amortization.

(4) Transaction requirements.

(5) Tax implications

(6) Fact that APR does not include costs other than interest.

(7) Example showing how long it would take to repay a hypothetical balance of $10,000 if only making minimum payments.

(8) Variable-rate disclosures, including the "worst case" scenario.

4. In addition to disclosure mandates, there are substantive limitations that apply to the draw period of a HELC, the repayment period, and any renewal or modification of the HELC agreement.

a) Creditors may not terminate a HELC and accelerate payment of the outstanding balance before the scheduled expiration of the HELC plan, unless

(1) consumer fraud or material misrepresentation in connection with the plan,

(2) consumer has failed to meet the repayment terms of the agreement,

(3) consumer action or inaction that adversely affects the creditor's security for the HELC.

b) A creditor may not unilaterally change the terms of an HELC plan after the account has been opened, unless

(1) the contract contained the change contemplated on the occurrence of an event, or

(2) consumer expressly agrees in writing to the change,

(3) In a variable-rate HELC, the index and margin used under the plan may be changed if the original index becomes unavailable,

(4) the change unequivocally benefits the consumer or is insignificant.

5. Remedies. TILA remedies are available for most violations of HELC.

I. FAIR CREDIT BILLING ACT (FCBA) & ELECTRONIC FUNDS TRANSFER ACT.

A. References.

1. Fair Credit Billing Act.

a) 15 U.S.C. § 1601 et. seq.

b) 15 U.S.C. § 1666

c) 12 C.F.R. § 226.13

d) NATIONAL CONSUMER LAW CENTER, TRUTH IN LENDING (4th ed. 1999).

2. Electronic Funds Transfer Act.

a) 15 U.S.C. § 1693.

b) 12 C.F.R. Part 205.

B. Introduction.

The two referenced acts provide similar types of protections to different types of transactions. Consequently, we will look at them side-by-side in the table below.

C. The Basics.

	Fair Credit Billing Act	Electronic Fund Transfer Act
Applicability	✓ Open-end consumer credit transactions (i.e., credit cards, store charge accounts, telephone charge cards).	✓ Electronic Transfer: Any transfer of funds, other than a transaction by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution **to debit or credit an account**. ✓ The term includes, but is not limited to: ❑ Point of sale transfers, ❑ ATM transfers, ❑ Direct deposit or withdrawal of funds, and ❑ Transfers initiated by telephone. ❑ The term includes all transfers resulting from debit card transactions. ✓ The Act does not apply to the following: ❑ Check guarantee or authorization services that do not result directly in a debit or credit

	Fair Credit Billing Act	Electronic Fund Transfer Act
		to consumer's account. ❑ Wire transfers used primarily for transfers between financial institutions or businesses. ❑ Certain automatic transfers, ❑ Between consumer's accounts within the institution, ❑ Into a consumer's account by the institution, such as the crediting of interest, ❑ From a consumer's account to an account of a family member whose account is within the same institution. ❑ Certain telephone-initiated transfers that are, ▪ Initiated by telephone conversation between consumer and employee of institution, and ▪ Are not under a telephone bill-paying or other prearranged plan or agreement in which periodic transfers are contemplated. ❑ Transactions with a stock brokerage (Institutions regulated by the Securities and Exchange Commission Act).
Billing Errors (Defined)	✓ Bills for transactions that never occurred. ✓ Transactions by unauthorized people. ✓ Bills for erroneous amounts. ✓ Bills for goods/services that were not delivered or were not accepted. ✓ Failure to credit account properly. ✓ Computation errors. ✓ Bills sent to incorrect addresses, provided that the creditor received notice of the change of address at least 20 days before the end of the billing cycle for which the statement was sent out.	✓ An unauthorized electronic fund transfer, ✓ An incorrect electronic fund transfer to or from consumer's account, ✓ Omission from a periodic statement of an electronic fund transfer to or from consumer's account that should have been included, ✓ Computational or bookkeeping error made by financial institution relating to an electronic transfer, ✓ Consumer's receipt of an incorrect amount of money from an electronic terminal, ✓ An electronic fund transfer not identified in accordance with regulations, or, ✓ A consumer's request for any documentation required to be given by the financial institution, or additional clarification concerning an electronic transfer. Does not include routine inquiry about the balance of account.
Billing Error Procedure (Consumer)	✓ Consumer notifies card issuer IN WRITING w/i 60 calendar days of transmittal of periodic statement to the consumer. ❑ If the error was failure to transmit the billing statement, then the 60 days runs from the time when the creditor should have sent it. ❑ If the error is failure to credit a payment,	✓ In order to limit liability, the consumer must furnish to the financial institution **WRITTEN OR ORAL** notice of the error within 60 days of the erroneous statement's transmittal. Notice should include: ❑ Consumer's name and account number. ❑ Consumer's belief that an error exists and the amount of the error.

	Fair Credit Billing Act	Electronic Fund Transfer Act
	60 days begins to run when the credit should have appeared on the statement. ✓ The consumer's billing error notice must include: ❑ Sufficient information to enable the creditor to identify the consumer and his/her account number and, ❑ To understand the nature of the complaint. ✓ The creditor must disclose on the billing rights statement or on the periodic statement an address for billing error inquiries. The notice must be received at that place for notice to be effective. ✓ After the consumer gives notice, he/she may withhold payment of the disputed amount or pay the amount without waiving billing error rights. ❑ However, paying the disputed amount does waive assertion of claims and defenses against a credit card issuer.	❑ The reasons for the consumer's belief.
Billing Error Procedure (Card/Access Device Issuer)	✓ Creditor must conduct a reasonable investigation, unless creditor corrects the account as requested or the consumer withdraws the complaint. ✓ Creditor shall mail or deliver written acknowledgment of the complaint to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with appropriate resolution procedures within that 30-day period. ✓ The creditor must comply with the resolution procedures within two billing cycles (but in no event, later than 90 days) after the creditor's receipt of the debtor's notice of error. ✓ If creditor determines that error has occurred, creditor shall, within the time limits above: ❑ Correct the error and credit the consumer's account with any disputed amount and associated finance charges, and, ❑ Mail or deliver a correction notice to consumer. ❑ Report to resolution to each credit agency notified of the delinquency. ✓ If, after conducting investigation, creditor determines no billing error occurred or that a different error occurred from that asserted, the creditor shall, within time limits above:	✓ Upon notification: ❑ The institution has 10 business days (20 days if the consumer is overseas) to investigate and report the results of the investigation to the consumer. ❑ The institution, at its option, may extend the report period by provisionally re-crediting the account within 10 business days of the consumer's notice. Re-crediting gives the bank 45 days (90 days if the consumer is overseas) to investigate and report the results of the investigation to the consumer. ✓ Following completion of the investigation, the institution shall: ❑ Correct any errors within 1 business day. ❑ If no errors are found, so notify the consumer within 3 business days and forward copies of all documents relied upon if requested by the consumer. ❑ If there was no error discovered, and upon debiting a provisionally recredited amount, the financial institution ❑ Shall orally report or mail notice to consumer of date and amount of debiting and fact they will honor checks, drafts, or similar paper instruments to 3d parties and preauthorized transfers from consumer's account for 5 business days after transmittal of notice.

	Fair Credit Billing Act	Electronic Fund Transfer Act
	❑ Mail or deliver to consumer an explanation setting forth reasons creditor believes alleged error is incorrect in whole or part. ❑ Furnish copies of documentary evidence of consumer's indebtedness, if consumer so requests. ✓ If a different billing error occurred, correct the error and credit the consumer's account. ✓ Until the billing error is resolved under the FCBA procedures, creditors may not: ❑ Take any action to collect the amount in dispute. ❑ If the consumer keeps a deposit account with the creditor and has direct payment deducted automatically, the creditor may not deduct any part of the disputed amount or related finance charges if the notice of error is received any time up to 3 business days before the scheduled payment date. ❑ Restrict or close the account in issue based on the debtor's failure to pay the disputed amount. ❑ Report or threaten to report adversely on the debtor's credit rating based on the disputed amount. ✓ Creditor **may** ❑ seek collection of unpaid, undisputed amounts. ❑ decrease credit limit by amount in dispute. ✓ If, after the creditor follows resolution procedures, and the consumer still claims there is an error, the creditor may report the delinquency to a credit reporting agency provided: ❑ Creditor also reports that the amount is in dispute. ❑ Mails or delivers to consumer the name and address of each person to whom creditor made the report, and, ❑ Promptly reports any subsequent resolution of reported delinquency to all persons to whom creditor made the report. ✓ A creditor who has fully complied with FCBA procedures is under no further responsibilities if consumer reasserts same billing error.	❑ Institution need only honor items that it would have paid if the provisionally recredited funds had not been debited.

	Fair Credit Billing Act	Electronic Fund Transfer Act
Unauthorized Use (Definition)	Use with no actual, implied, or apparent authority from the cardholder. (Question of State Law) ❑ Not Unauthorized Use: ❑ Attempt to orally limit spending. *See, e.g., Martin v. American Express, Inc.*, 361 So.2d 597 (Ala. Civ. App. 1978). ❑ Use of card by authorized person for unauthorized purpose. *Master Card v. Town of Newport*, 396 N.W. 2d 345 (Wis. 1986). ▪ Letter to credit card issuer to limit credit limit did not shield cardholder from liability for excess charges by an apparently authorized person. *Id.* ▪ State law imposes no duty on issuer to mitigate despite cardholder notification that an authorized user is making unauthorized charges. *American Express v. Web*, 261 Ga. 480, 405 S.E.2d 652 (1991). ▪ But see *Standard Oil Co. v. Steel*, 489 N.E. 2d 842 (Ohio Misc. 1985). Cardholder who voluntarily gave her card to a friend liable for all charges friend made before she notified card issuer of unauthorized use, but not for charges made after notification. ❑ *Society National Bank v. Kienzle*, 463 N.E.2d 1261 (OH App. 1983). The Court held that a husband's liability for his estranged wife's use of his credit card was limited by the FCBA to $50. The wife was never an authorized cardholder on the account and had apparently stolen the card. ❑ *See also Universal Bank v. McCafferty*, 88 Ohio App. 3d 556, 624 N.E.2d 258 (1993). Cardholder had issuer send card to friend's address so his wife would not find out about card. Friend kept card and used it. Court held consumer liable for only up to $50 of friend's charges. State law determines whether the use is authorized or unauthorized.	✓ An electronic fund transfer from a consumer's account initiated by a person other than the consumer without **actual authority** to initiate the transfer **and** from which the consumer receives no benefit. ✓ Does not include: ❑ Transfers initiated by one furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that the transfers by that person are no longer authorized. ❑ Transfers initiated with fraudulent intent by the consumer or a person acting in concert with the consumer. ❑ Transfers initiated by the financial institution or its employees.
Unauthorized Use (Conditions for Liability)	✓ A cardholder is liable for unauthorized use only if: ❑ The card is an accepted credit card (by the consumer), ❑ The liability is not in excess of $50.00, ❑ The card issuer gives the cardholder:	✓ A consumer is liable for any unauthorized electronic fund transfer only if: ❑ The card or other means of access utilized for such transfer was an accepted card or

	Fair Credit Billing Act	Electronic Fund Transfer Act
	▪ adequate notice of the potential liability, ▪ a description of the means to notify the card issuer of the loss or theft of the card, ▪ a method whereby the user of the card can be identified as the person authorized to use it. ❑ The unauthorized use occurs before the consumer notifies the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. ✓ Except as provided above, the cardholder incurs no liability from the unauthorized use of a credit card.	other means of access, and ❑ if the issuer of such card, code, or other means of access has provided a means whereby the user of ❑ such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. ✓ Restriction on liability. ❑ The EFTA imposes no liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution. ❑ Except as provided in the EFTA, a consumer incurs no liability from an unauthorized electronic fund transfer.
Liability for Unauthorized Use	✓ $50 maximum ✓ In action to enforce liability, the burden of proof is upon the card issuer to show: ❑ that the use was authorized or, ❑ if the use was not authorized, then issuer must show the conditions of liability have been met.	✓ Three-Tiered Liability ❑ Maximum liability of $50 if the consumer reports the loss or theft of the debit card within 2 business days of discovering the loss/theft. ❑ Maximum liability of $500 if consumer fails to notify institution within 2 business days and institution can show it could have stopped the unauthorized use if it had been notified. ❑ If consumer fails to report within 60 calendar days of transmittal of the periodic statement and institution can show it could have stopped the unauthorized use if it had been notified, consumer is liable for: , Up to $500 for the period between the discovery of the loss and 60 calendar days (like #2 above) to be calculated as follows: ➢ $50 maximum for transactions made during the first 2 business days, PLUS ➢ The amount of unauthorized transfers made between 2 business days and 60 calendar days from transmittal of the periodic statement up to the $500 maximum. (For example, if the consumer was liable for $50 of a $100 dollar transfer on business day 1, liability would be limited to $450 for the transfers after day 2 and out to the 60th day

	Fair Credit Billing Act	Electronic Fund Transfer Act
		from transmittal of the statement.) , PLUS Unlimited liability for all unauthorized transfers made more than 60 calendar days following the transmittal of the periodic statement. ✓ The consumer **cannot waive** these limitations or any other protections provided by the Act. ✓ Financial institutions **cannot attempt to circumvent** the Act's protections by adding "fault" language in ATM agreements. ✓ For example, the financial institution MAY NOT try to limit its liability if the consumer is negligent in co-locating the ATM card with the PIN number and both are stolen and used.
Other Provisions	✓ Some claims & defenses that you have against the merchant may be asserted against the credit card issuer IF: ❑ The consumer has made a good faith effort to resolve the problem with the **merchant** honoring the card; ❑ The merchant is not controlled by or the same as the card issuer (e.g. Sears or J.C. Penney - store card) ❑ The contract is entered into w/i 100 miles or within the same state as billing address, and ❑ The contract is for >$50 ✓ Claims and defenses may include: ❑ Unauthorized use of the card, ❑ Dispute as to quality of merchandise. ❑ Nondelivery of goods, ❑ Claims that can be asserted under the billing error resolution procedures. ✓ Location of transaction ❑ A matter of state law; states differ on whether mail or telephone order occurred at consumer's home or seller's place of business. ❑ *See Lincoln First Bank v. Carlson*, 426 N.Y.2d 433, 103 Misc.2d 467 (1980) (no presumption that consumer gives up all defenses if transaction takes place at distance greater than 100 miles). ✓ Once the criteria have been met, the consumer may withhold payment of the disputed amount to the extent of the credit outstanding on that transaction and any finance charges	✓ Issuance of Access Devices. ❑ "Access device" means a card, code, or other means of access to a consumer's account. ❑ Financial institutions may only issue access devices to consumers, , In response to an oral or written request or application, or , As a renewal of, or substitute for, an accepted access device. ❑ **Except**, may distribute access device to consumer on unsolicited basis if: , Access device is not validated, , Distribution is accompanied by ➢ A complete disclosure of consumer's rights and liabilities that will apply if device is validated, ➢ A clear explanation that access device is not validated and how consumer may dispose of it if validation not desired, and ➢ Access device is validated only in response to consumer's oral or written request or application and after verification of consumer's identity by any reasonable means such as photo, fingerprints, personal visit, or signature comparison. ✓ Access device considered validated when financial institution has performed all procedures necessary to enable consumer to use it to initiate an electronic transfer. ✓ Pre-Authorized Transfers From Consumer's Account - Consumer's Right To Stop Payment.

	Fair Credit Billing Act	Electronic Fund Transfer Act
	attributable thereto. ✓ Payment of the disputed amount waives right to assert claims or defense as to the card issuer. ✓ If only part of a single transaction is disputed (i.e., multiple purchases at the same time), payments shall be prorated according to prices and applicable taxes. ✓ Relationship to Billing Error Resolution procedures. ❑ Even though certain merchandise disputes, such as nondelivery of goods, may also constitute "billing errors," the protections operate independently. For example: ▪ A cardholder that asserts billing error involving undelivered goods may institute error-resolution procedures, but whether or not the card issuer has done so, the cardholder may assert claims or defenses, as well. ▪ Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims or defense, but still may be able to assert a billing error if notice of the error is given in the proper time and manner. ✓ State statutes may be more favorable to consumers. See Mass. G.L.A. c. 255, § 12F, which makes credit card issuers subject to all defenses a consumer may have arising from a sale or lease transaction without any condition or limitation.	❑ Consumer must notify financial institution orally or in writing at any time up to 3 business days before the scheduled day of transfer. ❑ Financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification is made if, the requirement is disclosed to consumer along with address to which confirmation should be sent. ❑ If consumer does not provide written confirmation, stop-payment order ceases to be binding 14 days after it has been made.
Remedies	✓ Because the FCBA is part of TILA, it carries the same remedies as TILA, except that the remedy of rescission is not available for failure to comply with billing requirements. 15 U.S.C. § 1640. ✓ In addition to the remedies available for TILA violations, if the creditor violates the billing error resolution procedures, the consumer recovers from creditor the disputed amount and any finance charges thereon up to $50. 15 U.S.C. § 1666(e). ✓ Also, consider UDAP action.	✓ Actual damages. ✓ Statutory damages of $100 to $1,000. ✓ Court costs and reasonable attorney's fees. ✓ Criminal penalties of up to 1 year's imprisonment and a $5,000 fine for knowing and willful noncompliance. ✓ Criminal penalties of up to 10 years' imprisonment and a $10,000 fine for violations affecting interstate or foreign commerce. ✓ Treble damages (3 times the consumer's actual damages) if: ❑ The account is not properly provisionally recredited. ❑ The institution fails to conduct a good faith

	Fair Credit Billing Act	Electronic Fund Transfer Act
		investigation. ❑ The institution knowingly and willfully concludes that no error exists contrary to the available evidence.

D. Fair Credit Billing Act Update

1. **Issue #1:** Cardholders cannot ignore their statements! *Minskoff v. American Express Travel Related Services Company, Inc.*, 98 F.3d 703 (2d Cir. 1996).

   WEST SUMMARY: (1) [Company] president was not accountable for assistant's initial possession of fraudulently obtained corporate credit cards, but (2) president was liable for purchases assistant made after credit card statements were issued.

2. **Issues #2:** Credit Card Issuer May Have to Police Participating Merchants. *Citicorp Credit Services, Inc.*, FTC File No. 892 3033 (Nov. 10, 1992)(consent order). Credit card issuer continued to process credit card sales when it knew or should have known that seller engaged in deceptive sales practices (UDAP case).

   a) Consent order said that Citicorp should have known about fraud by merchant due to high volume of consumer complaints, ongoing government investigations, and 25% charge-back rate (about 20 times national average). "Charge-back" is where credit charge removed from consumer's account and charged back to merchant.

   b) Consent order included ways Citicorp could investigate a merchant, including reviewing merchant's advertising, sales scripts, promotional materials, goods and services offered, and truth of claims being made.

   c) NCLC suggests that case provides a third remedy for defrauded consumers (in addition to claims and defenses and error resolution procedures under FCBA discussed above): "That a card issuer is liable under a UDAP statute for aiding and abetting a deceptive scheme by not adequately investigating the merchant."

CHAPTER 7

CREDIT REPAIR

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OUTLINE OF INSTRUCTION

I. REFERENCES.

A. 15 U.S.C.A. §§ 1679 – 1679j.

B. National Consumer Law Center, Fair Credit Reporting Act § 8.2 (4th Ed. 1998 and Supp.).

I. INTRODUCTION.

Credit has taken on increasing importance in the daily lives of U.S. citizens. As a result, credit reporting is also increasingly important. Many consumers worry about problems in their credit history that may affect their access to credit in the future. This worry leaves them open to businesses that prey on these insecurities and offer credit repair services. Congress, concerned about unscrupulous businesses in this field passed the Credit Repair Organizations Act in 1996.

I. PURPOSE OF CREDIT REPAIR ORGANIZATION ACT (15 U.S.C. § 1679).

A. Congress found that:

1. "Consumers have a vital interest in establishing and maintaining their credit worthiness and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers."

2. "Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters."

B. Purposes

1. to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and

2. to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

I. SCOPE – WHO IS A "CREDIT REPAIR ORGANIZATION?" (15 U.S.C.A. § 1679a).

A. The term "credit repair organization"--

1. means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of--

a) improving any consumer's credit record, credit history, or credit rating; or

b) providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and

2. Automobile dealers have been found to be credit repair organizations when targeting individuals with bad credit and promising to find financing or offering to help them reestablish credit or improve their credit records even if no separate fee is charged for credit repair. *See Hall v. Jack Walker Pontiac, Toyota, Inc.*, Clearinghouse No. 52,143, Ohio C.P. Mar. 15, 1999.

B. The term does not does not include--

1. any nonprofit organization which is exempt from taxation 26 U.S.C.A. § 501(c)(3);

2. any creditor (as defined in section 1602 of this title), with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or

3. any depository institution (as that term is defined in 12 U.S.C.A. § 1813) or any Federal or State credit union (as those terms are defined in 12 U.S.C.A. § 1752), or any affiliate or subsidiary of such a depository institution or credit union.

I. REQUIREMENTS OF THE ACT.

A. Specific Disclosures (15 U.S.C.A. § 1679c).

1. Mandatory Disclosure Statement. Any credit repair organization shall provide any consumer with the written disclosures at Appendix A to this Chapter before any contract or agreement between the consumer and the credit repair organization is executed: Consumer must sign to acknowledge receipt.

2. The credit repair company must provide the required written statement as a separate document from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

3. Retention of compliance records.

   a) The credit repair organization must maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

   b) The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

B. Protections in the Act.

1. Required Terms of Credit Repair Contract (15 U.S.C.A. § 1679d).

a) Written contracts required. No services may be provided by any credit repair organization for any consumer unless there is a written and dated contract (for the purchase of such services) which meets the requirements below.

b) **Three Day Waiting Period.** Additionally, once the written contract is signed, the services cannot be performed before the end of the 3-business-day period beginning on the date the contract is signed.

c) The contract must contain the following terms and conditions.

(1) The terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) A full and detailed description of the services to be performed by the credit repair organization for the consumer, including--

(a) all guarantees of performance; and

(b) an estimate of--

(i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or

(ii) the length of the period necessary to perform such services;

(3) The credit repair organization's name and principal business address; and

(4) A conspicuous statement:

(a) In bold face type,

(b) In immediate proximity to the space reserved for the consumer's signature on the contract,

(c) Which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right."

2. Right to cancel contract (15 U.S.C.A. § 1679e).

a) Any consumer may cancel any contract with any credit repair organization –

(1) Without penalty or obligation,

(2) By notifying the credit repair organization of the consumer's intention to do so at any time before midnight of the 3rd business day after the date the contract is signed.

(3) oral or written notice, although written notice by certified or registered mail is encouraged.

b) Cancellation form. Each contract shall be accompanied by a form, **in duplicate**,

(1) Which has the heading "Notice of Cancellation", and

(2) Contains **in bold face type** the following statement:

"You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

"To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to [name of credit repair

organization] at [address of credit repair organization] before midnight on [date]

"I hereby cancel this transaction,

[date]

[purchaser's signature].

c) At the time the contract or other documents are signed, the Consumer must get a copy of:

(1) the completed contract,

(2) the disclosure statement required under section 1679c; and

(3) a copy of any other document the credit repair organization requires the consumer to sign.

C. Prohibited Practices (15 U.S.C.A. § 1679b).

1. Untrue and Misleading Statements.

a) No person may make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading.

b) **OR** which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading.

c) **WITH RESPECT TO** any consumer's credit worthiness, credit standing, or credit capacity to--

(1) any consumer reporting agency; or

(2) any person--

(a) who has extended credit to the consumer; or

(b) to whom the consumer has applied or is applying for an extension of credit;

2. Hiding the Consumer's Accurate Credit History.

a) No person may make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete.

b) The information may not be hidden from:

(1) any consumer reporting agency;

(2) any person--

(a) who has extended credit to the consumer; or

(b) to whom the consumer has applied or is applying for an extension of credit;

3. Misconduct in the Provision of Credit Repair Services.

   a) Cannot make or use any untrue or misleading representation of the services of the credit repair organization; **OR**

   b) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

   c) No payment in advance! No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

I. EFFECT OF NONCOMPLIANCE (15 U.S.C.A. § 1679f).

A. Waiver of Protections.

1. Consumer waivers are invalid. Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter--

   a) shall be treated as void; and

   b) may not be enforced by any Federal or State court or any other person.

2. Attempts to obtain waivers. Any attempt by any person to obtain a waiver from any consumer of any protection provided by the Act is treated as a violation of the Act.

B. Contracts not in compliance. Any contract for services which does not comply with the Act—

1. Shall be treated as void; and

2. May not be enforced by any Federal or State court or any other person.

I. REMEDIES.

A. Civil liability (§ 1679g).

Any person who fails to comply with any provision of this Act with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

1. Actual damages. The greater of--

   a) the amount of any actual damage sustained by such person as a result of such failure; or

   b) any amount paid by the person to the credit repair organization.

2. Punitive damages.

   a) Individual actions. Any additional amount the court may allow.

   b) Class actions. The sum of--

      (1) the aggregate of the amount which the court may allow for each named plaintiff; and

      (2) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

c) Factors to be considered in awarding punitive damages:

(1) the frequency and persistence of noncompliance by the credit repair organization;

(2) the nature of the noncompliance;

(3) the extent to which such noncompliance was intentional; and

(4) in the case of any class action, the number of consumers adversely affected.

3. Attorneys' fees. In any successful action to enforce any liability, the person may recover the costs of the action, together with reasonable attorneys' fees.

B. Administrative enforcement (15 U.S.C.A. § 1679h).

1. Federal Trade Commission.

a) Enforced under the Federal Trade Commission Act [15 U.S.C.A. § 41 et seq.] by the Federal Trade Commission.

b) Violation of any requirement or prohibition imposed under the Act with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce.

c) All functions and powers of the Federal Trade Commission shall be available to the Commission to enforce compliance with the Act without regard to whether the credit repair organization--

(1) is engaged in commerce; or

(2) meets any other jurisdictional tests in the Federal Trade Commission Act.

2. State action for violations.

a) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating the Act, the State--

(1) may bring an action to enjoin such violation;

(2) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents; and

(3) in the case of any successful action shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

b) The State shall serve prior written notice of any civil action upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

c) The Commission shall have the right--

(1) to intervene in any action referred to in subparagraph (A);

(2) upon so intervening, to be heard on all matters arising in the action; and

(3) to file petitions for appeal.

d) Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

C. Statute of limitations. (15 U.S.C.A. § 1679i.)

1. 5 years beginning on:

a) the date of the occurrence of the violation involved; or

b) the date of the discovery by the consumer of the misrepresentation in any case in which any credit repair organization has materially and willfully misrepresented any information which--

(1) the credit repair organization is required, by any provision of the Act, to disclose to any consumer; and

(2) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter.

D. Interrelationship with Other Protections.

1. FTC Telemarketing Rule. There is no private cause of action unless damages exceed $50,000, but a violation of the rule may be a *per se* violation of State UDAP statutes.

2. Mail or Telephone Order Merchandise Rule. There is no private cause of action under this rule, but state law may allow.

3. State UDAP Statutes. These statutes typically provide for actual damages, statutory damages, costs, and attorney's fees.

APPENDIX A TO CHAPTER 7
MANDATORY DISCLOSURE LANGUAGE
15 U.S.C.A. § 1679c.

Consumer Credit File Rights Under State and Federal Law

You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any 'credit repair' company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

The Public Reference Branch, Federal Trade Commission
Washington, D.C. 20580.

CHAPTER 8

CREDIT DISCRIMINATION

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OUTLINE OF INSTRUCTION

I. REFERENCES.

A. 15 U.S.C.A. §§ 1691 – 1679j (West 1999).

B. 12 Code of Federal Regulations, Part 202 (Regulation B).

C. National Consumer Law Center, Credit Discrimination (2d Ed. 1998 and Supp.) [hereinafter "NCLC Discrimination"].

II. INTRODUCTION.

A. The approach to discrimination can take a number of tacks using a variety of civil rights statutes at the state and federal level. This outline will only deal with the Equal Credit Opportunity Act – a critical consumer protection statute dealing with access to credit. Credit discrimination permeates society. Possible situations where the ECOA may be useful include:

1. Creditors redlining (not giving credit) certain neighborhoods because of poor payment experience.
2. Banks discouraging minority applications by not having branches in minority communities.
3. Car dealers or brokers steering minorities to different creditors or charging high prices and fees.
4. Reverse relining by charging higher interest rates in certain minority neighborhoods.
5. Merchants using differing standards for when cash up front is required.
6. Merchants using differing standards for when collateral, cosigners or down payments are required.

III. APPLICABILITY.

Has there been an extension of "credit" covered by the ECOA?
15 U.S.C.A. § 1691a(d). The term "credit" means the right granted by a creditor to a debtor --
to defer payment of debt, or
to incur debt and defer its payment, or
to purchase property or services and defer payment.
The ECOA definition is intentionally broader than the definition under the TILA because TILA requires a finance charge or at least 5 installment payments. See 15 U.S.C.A. § 1602; Official Staff Commentary to 12 C.F.R. § 202.1(a)-1. The ECOA applies whenever a payment is deferred.
Specific Types of Transactions. See NCLC DISCRIMINATION § 2.2.2. Does the ECOA apply to:

Leases?
Residential – Probably not, but the Fair Housing Act might apply.
Personal Property Leases covered by the Consumer Leasing Act – Probably Yes. *See Brothers v. First Leasing*, 724 F.2d 789 (9th Cir. 1984).
Rent-To-Own & Terminable Leases – No, if they are terminable at will without penalty. If you can argue it is really a disguised credit sale then the ECOA applies.
Utility Service? Yes. Official Staff Commentary § 202.3(a)-2.
Check Cashing or ATM Cards? – No, because there is no extension of credit.
Is the client an "Applicant" under the ECOA?
15 U.S.C.A. § 1691a(b). "Applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.
12 C.F.R. § 202.2(e). Applicant means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit.
To be an applicant, a person does NOT have to submit an application. Be aware, however, that certain protections under the ECOA only apply to someone who has submitted an application.
Is the party who allegedly violated the Act a "creditor?"
15 U.S.C.A. 1691a(e). The term "creditor" means:
any person who "regularly" extends, renews, or continues credit;
any person who regularly arranges for the extension, renewal, or continuation of credit;
or any assignee of an original creditor who *participates* in the decision to extend, renew, or continue credit.
"Regularly" is NOT defined under the ECOA or the CFR provisions based upon it. NCLC suggests looking to the old Regulation Z (Truth in Lending Act) that existed at the time the ECOA was originally passed. Cases interpreting this provision said that "regularly" means more than "isolated" or "incidental" occurences. *See* NCLC DISCRIMINATION § 2.2.5.2.
Exclusions from the Definition of Creditor.
The term does not include a person whose only participation in a credit transaction involves honoring a credit card. 12 C.F.R. § 202.2(l).
A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. *Id.*
The Government as a Creditor. The ECOA applies to the government, except that governmental creditors are not subject to punitive damages. *See* 15 U.S.C.A. § 1691e(b).
Some transactions are partially exempted by the Federal Reserve Board.

> However, the rule against discrimination against applicants on a prohibited basis still applies. *See* NCLC DISCRIMINATION § 2.2.6; 12 C.F.R. § 202.3(a).

Public Utilities Credit.
Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission, if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit. Utilities are not exempt if the extension of credit is for something other than the utility.
Rural electric cooperatives and other unregulated utilities are NOT included in this exception.

The credit must relate to the delivery of utility services as well. If the credit relates to another transaction (such as for equipment), the exemption would not apply.
Public utilities must comply with the majority of ECOA provisions. There are, however, the following exceptions:
Public utilities may ask the marital status of applicants.
Public utilities may report credit reporting information in the names of both spouses.
Public utilities are not required to maintain copies of credit applications.
Incidental Consumer Credit.
Incidental credit refers to extensions of credit
Primarily for personal, family, and household use;
That is NOT Public Utilities or Securities Credit;
That are not made pursuant to the terms of a credit card account;
That are not subject to a finance charge or interest; and
That are not payable by agreement in more than four installments.
Exceptions. The following provisions of 12 C.F.R. do not apply to incidental credit transactions:
Section 202.5(c) concerning information about a spouse or former spouse;
Section 202.5(d)(1) concerning information about marital status;
Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;
Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;
Section 202.7(d) relating to the signature of a spouse or other person;
Section 202.9 relating to notifications;
Section 202.10 relating to furnishing of credit information; and
Section 202.12(b) relating to record retention.
Securities Credit.
Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78eee) or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934. 15 U.S.C.A. § 78c contains definitions and applicability information for this Act.
Exceptions. The following provisions of 12 CFR do not apply to securities credit:
Section 202.5(c) concerning information about a spouse or former spouse;
Section 202.5(d)(1) concerning information about marital status;
Section 202.5(d)(3) concerning information about the sex of an applicant;
Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;
Section 202.7(c) relating to action concerning open-end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;
Section 202.7(d) relating to the signature of a spouse or other person;
Section 202.10 relating to furnishing of credit information; and
Section 202.12(b) relating to record retention.
Credit Extended to the Government.
Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

Except for section 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation **DO NOT** apply to government credit.

IV. PROHIBITED ACTIVITIES (15 U.S.C.A. § 1691).

What is prohibited?

Discrimination is prohibited if there is a linkage between the discrimination and the prohibited basis, so that the creditors decision-making process results in individuals being treated differently because of a prohibited basis (disparate treatment). For example:

1. Requiring a minority applicant to produce more documentation than a white applicant.

2. Relaxing the credit standards for a non-minority applicant.

Activities constituting discrimination.

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

1. on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

2. because all or part of the applicant's income derives from any public assistance program; or

3. because the applicant has in good faith exercised any right under the ECOA.

Activities **NOT** constituting discrimination.

It shall not constitute discrimination for purposes of this subchapter for a creditor—

1. to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

2. to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;

3. to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

4. to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

Refusals of Credit that are **NOT** considered discriminatory.

It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

1. any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

2. any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

3. any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

Non-discriminatory Activities Specifically described in the ECOA (15 U.S.C.A. § 1691d)
Requests for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination. NOTE: This does NOT permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.
Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.
Credit to husband and wife.

1. State laws prohibiting separate extension of consumer credit to husband and wife are specifically preempted by the ECOA. (15 U.S.C.A. § 1691d)

2. Creditors may NOT combine credit accounts of a husband and wife with the same creditor to determine permissible finance charges or loan ceilings under Federal or State laws where each party to a marriage separately and voluntarily applies for and obtains separate credit accounts. (15 U.S.C.A. § 1691d)

V. PROTECTIONS.

Adverse Action Procedures (15 U.S.C.A. § 1691)
Definition.
"Adverse Action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.
The term does **NOT** include a refusal to extend additional credit under an existing credit arrangement;
where the applicant is delinquent or otherwise in default, or
where such additional credit would exceed a previously established credit limit.
Procedures.
Creditors must notify applicants of the action taken on their application within 30 days.
The creditor must provide the applicant a written statement detailing the specific reasons why adverse action was taken. A creditor satisfies this obligation by--
providing statements of action taken,
Creditor's name and address,
giving written notification of adverse action which discloses:
the applicant's right to a statement of specific reasons within thirty days after request,
Request must be made within sixty days after notification of adverse action,
the identity of the person or office from which such statement may be obtained.

(d) Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(i) If the application was made through a third party, the notice of adverse action may be made through the third party or directly to the applicant.

(ii) Creditors who act on no more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken may make the notices verbally.

Appraisals for Loans Secured by Real Property (15 U.S.C.A. § 1691(e)).
Creditors must furnish applicants with notice of their right to receive a copy of appraisals upon request within a reasonable time unless the credit automatically provides the report to all applicants.
Request for the appraisal must be in writing.
The loan must be (or would have been) secured by a lien on residential real property.
The creditor **MAY** require the applicant to reimburse the creditor for the cost of the appraisal.
If requested, the creditor must promptly provide the appraisal report within 30 days of request.

VI. INCENTIVES FOR SELF-TESTING AND SELF-CORRECTION (15 U.S.C.A. § 1691C-1; 12 C.F.R. § 202.15).

A. Creditors can conduct "self-tests" to determine their compliance with the ECOA. A self-test is any program, practice, or study that:

1. Is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the act or this regulation; and

2. Creates data or factual information that is not available and cannot be derived from loan or application files or other records related to credit transactions.

B. IF a creditor—

1. conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a credit transaction by a creditor, in order to determine the level or effectiveness of compliance with this subchapter by the creditor; and

2. has identified any possible violation of the ECOA by the creditor and has taken, or is taking, appropriate corrective action to address any such possible violation.

C. THEN, any report or results of that self-test-

1. is privileged; and

2. may not be obtained or used by any applicant, department, or agency in any-

a) proceeding or civil action in which one or more violations of the ECOA are alleged; or

b) examination or investigation relating to compliance with the ECOA.

D. Self-Test Results MAY be used in any proceeding IF:

1. the creditor or any person with lawful access to the report or results-

a) voluntarily releases or discloses all, or any part of, the report or results to the applicant, department, or agency, or to the general public; or

b) refers to or describes the report or results as a defense to charges of violations of the ECOA against the creditor to whom the self-test relates; or

2. the report or results are sought in conjunction with an adjudication or admission of a violation of the ECOA for the sole purpose of determining an appropriate penalty or remedy.

VII. ENFORCEMENT.

Administrative enforcement. (15 U.S.C.A. § 1691c.)
Enforcing agencies. Compliance with the requirements imposed under this subchapter shall be enforced under:
section 8 of the Federal Deposit Insurance Act [12 U.S.C.A. § 1818], in the case of-
national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks; and
banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation.
Section 8 of the Federal Deposit Insurance Act [12 U.S.C.A. § 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.
The Federal Credit Union Act [12 U.S.C.A. § 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.
Several other agencies including the Secretaries of Transportation and Agriculture, the Securities and Exchange Commission, and the Small Business Administration.
Violations of the ECOA that also violate other statutory requirements. Agencies may enforce both the ECOA provision as well as the other statutory provision.
Overall enforcement authority of Federal Trade Commission.
Except where enforcement is specifically given to another agency above, the Federal Trade Commission enforces the ECOA.
A violation of any requirement imposed under the ECOA is also a violation of the Federal Trade Commission Act.
Civil liability (15 U.S.C.A. § 1691e).
Individual or class action.
Creditor liable for actual damages.
Punitive damages.
Any creditor, other than a government or governmental subdivision or agency, is liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000.
In the case of a class action, the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor.

In determining the amount of punitive damages in any action, the court shall consider, among other relevant factors:
the amount of any actual damages awarded,
the frequency and persistence of failures of compliance by the creditor,
the resources of the creditor, the number of persons adversely affected, and
the extent to which the creditor's failure of compliance was intentional.
U.S. District Courts may give **equitable and declaratory relief** as is necessary to enforce the requirements imposed by the ECOA.
If successful, may recover
costs of the action, and
reasonable attorney's fee as determined by the court.
Jurisdiction and Statute of Limitations
ECOA actions may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction.
Statute of Limitations as a General Rule is two years from the date of the violation, except that--whenever any agency having responsibility for administrative enforcement commences an enforcement proceeding within two years from the date of the occurrence of the violation, or whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,
then any applicant who has been a victim of the discrimination which is the subject of the agency's proceeding or civil action may bring an action not later than **one year after the commencement of the Agency's proceeding or action.**
Discovery. Nothing in the ECOA shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures.

VIII. CONCLUSION

CHAPTER 9

THE
DOWNSTREAM CONSEQUENCES
OF USING CONSUMER CREDIT

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IX. FAIR DEBT COLLECTION PRACTICES ACT.

References.
Fair Debt Collection Practices Act, 15 U.S.C. § 1692.
State Debt Collection Statutes. See Appendix B.
Federal Trade Commission Staff Commentary to FDCPA (non-binding).
NATIONAL CONSUMER LAW CENTER, FAIR DEBT COLLECTION, (3d ed. 1996 and 1999 Cumulative Supplement.)
Introduction.
Overview of the Debt Collection Process.
Creditors (those to whom the debt is owed) start collection efforts with series of form letters, graduate to phone calls or personal visits, then to repossession or referral to collection agency or lawyer for suit.
Initial contacts usually friendly "reminder" letters.
Followed by letters requesting consumer phone to discuss problem and suggesting nonpayment is serious.
Phone calls may serve the legitimate purposes of determining why payments are late and resolving misunderstandings and disputes.
Calls may be used illegally to harass consumer in attempts to collect debt from distressed consumer.
When payments 30 to 60 days late, creditor generally threatens to repossess collateral or foreclose on a mortgage.
At any stage of process, creditor may write off debt, either because debt obviously not collectible or because creditor has internal rule that obligations unpaid for certain period of time will be charged off for tax purposes.
Creditor may turn account over to lawyer or debt collector (one in the business of collecting debts for others).
Lawyer may simply send or furnish creditor with dunning letter or series of letters for flat fee or pursuant to retainer. Lawyer may also be retained to initiate legal action, usually contingency fee, retaining portion of amount collected (i.e., 30-50%).
Collection Agency may be retained for flat fee or retainer.
Many times, 50% contingency.
Seldom do collection agencies bother to get all documents related to debt from creditor -rather, they get name, address of consumer, and amount of debt.
Must comply with federal Fair Debt Collection Practices Act.
Fair Debt Collection Practices Act
Purpose - Passed by Congress in 1982 in response to the abusive practices of debt collectors.
The purposes of the statute are:
To eliminate abusive debt collection practices.
To ensure that those collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.
To promote consistent state action to protect consumers against debt collection abuses.
FDCPA is found in Title VIII of the Consumer Credit Protection Act and FTC interprets via non-binding interpretive commentaries.

Definitions.
A "debt collector" is a person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects debts owed to others.
Includes a party based in U.S. who collects debts owed by consumers residing outside U.S. The residence of consumers is irrelevant.
Attorneys may meet the definition of "debt collector." 15 U.S.C. § 1692(a)(6)(F) (Supp. V 1987).
U.S. Supreme Court resolved all debate about whether attorneys are covered under the Act in *Heintz v. Jenkins*, 115 S.Ct. 1489 (1995)(The FDCPA applies "to attorneys who 'regularly' engage in consumer-debt-collection activity, even when that activity consists of litigation.")
See also *Crossley v. Lieberman*, 868 F.2d 566 (3rd Cir. 1989) (attorney who wrote demand letters to debtor on behalf of a lending bank and engaged in debt collection activities for other banks was a debt collector for purposes of the FDCPA). But see *Porter v. Hill*, 838 P.2d 45 (Or. 1992) (attorney who brought action against former client to collect fees for legal services rendered was acting as a "debt collector" under **state** Unlawful Debt Collection Practices Act as a person who was attempting to enforce obligation that was alleged owed to him as commercial creditor by consumer as result of consumer transaction).
Not included in the definition are, among others (there are 6 categories of excepted persons):
Officers or employees of a creditor collecting debts for that creditor unless the creditor is using another name implying that a third party is the collector.
Any officer or employee of the U.S. or any state to the extent collecting or attempting to collect is in performance of his/her duty. This means that a LAA would not be considered a debt collector when contacting others re: bad debts owed a client. Also means that PX system (AAFES) is not a debt collector when trying to collect from soldiers.
Non-profit credit counseling services.
Check guarantee services. Any person collecting any debt owed another to the extent such activity...
concerns a debt which was originated by such person, or
concerns a debt that **is not yet in default** at the time that the person obtained it. *See Barber v. National Bank*, 815 P.2d 857 (Alaska 1991) - mortgage service co. that obtained debt before default exempted from FDCPA coverage (not a debt collector).
FTC Commentary: This exemption **does not apply** to a party that takes assignment of retail installment contracts from the original creditor and then reassigns them to another creditor but continues to collect the debt arising from the contracts, because the debt was not "originated by" the collector/first assignee. *Commercial Service of Perry, Inc. v Fitzgerald*, 856 P.2d 58 (Colo. Ct. App. 1993) - Company (principal business was purchasing loans and collecting on them) that purchased borrower's loan note **already in default** from FDIC and then filed suit to collect amount due on note was a collection agency under Colorado FDCPA. (Colorado Act patterned after federal FDCPA). Court cites *Kimber* (below)
See also, *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 (M.D. Ala. 1987) - The excluding factors in the exception are that the debts are the result of an assignment or transfer and that the debts were already in default at the time of assignment or transfer. In other words, if the debt is already in default, then the purchaser of the debt may indeed be a debt collector.
Recent Cases on Who is a Debt Collector:

Repossessors are usually not debt collectors under the FDCPA. *Nadalin v. Automobile Recovery Bureau, Inc.*, 1999 WL 130194 (7th Cir. 1999).
The FDCPA regulates "debt collectors," a term that is defined as excluding repossessors and other enforcers of security interests. 15 U.S.C. § 1692a(6).
A repossessor may not take or threaten to take, however, nonjudicial action to dispossess a person of property if "there is no present right to possession of the property claimed as collateral through an enforceable security interest." 15 U.S.C. § 1692f(6)(A).
Repossessors withheld personal property from owner of repossessed vehicle in order to collect their $25 bailment fee. These repossessors "did not seize the plaintiff's personal property for the purpose or with the likely effect of using it to satisfy the plaintiff's debt to [the repossessor]'s principal. The seizure was not a method of enforcing a debt owed to the lender. It was not an effort to claim and seize additional collateral for the loan. We can find no evidence that Congress in the debt collection statute meant to extinguish repossessors' common law rights and remedies, whatever they may be, as bailees, provided the repossessor is not seizing property as collateral for the lender's loan to the owner."
Delivery services CAN be indirect debt collectors subject to FDCPA liability. *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1142 (9th Cir. 1998).

> We conclude, however that Western Union's activities go beyond mere information gathering or message delivery, and are of the type that the FDCPA was designed to deter. The purpose of the FDCPA is to limit harassing, misleading, and fraudulent contacts and communications with or about consumer debtors. The stated purpose of the Act is to "protect consumers from a host of unfair, harassing, and deceptive debt collection practices...." Most of the "collection abuses" outlined in the legislative history involve improper contacts with consumer debtors. In conjunction with its role in contacting debtors and obtaining and forwarding telephone numbers, another significant element is Western Union's advertised role in catalyzing debt collection by conveying a sense of urgency through the use of Western Union telegrams.

Mortgage servicer who is collecting under a forbearance agreement that was not in default when acquired, is NOT a debt collector under the FDCPA. *Bailey v. Security National Servicing Corporation*, 154 F.3d 384 (7th Cir. 1998).

> [D]ebtors [in these situations] end up with two agreements (the original one and the superseding forbearance agreement), making it important which one a creditor or his mortgage servicer seeks to collect. If he seeks to collect on the original note technically remaining in default -- meaning it's revived because the debtor defaulted again under the new agreement -- then he is a "debt collector" under the Act so long as the debt was in default at the time he obtained or purchased it. If on the other hand he seeks to collect on payments currently due under the new superseding agreement then he is not a "debt collector" under the Act (but more akin to a credit card company sending out monthly statements to its customers) because the debtor is not in default under that agreement.

A "creditor" is a person or organization to whom or to which a debt is owed. Generally, a creditor is not included within the definition of "debt collector" when collecting its own debts using its own name. (States may have statutes which limit conduct of creditors as well as debt collectors)

A **"debt"** is any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily used for personal, family, or household purposes, whether or not the obligation has been reduced to judgment (i.e., overdue obligations on bills, dishonored checks used to pay for goods or services intended for personal, family, or household purposes, student loans).

Ultimatums about unpaid rent fall under the Fair Debt Collection Practices Act. *Romea v. Heiberger & Associates*, 988 F.Supp. 712 (S.D.N.Y. 1997), *permission for interlocutory appeal granted Romea v. Heiberger & Associates*, 988 F.Supp. 715 (S.D.N.Y. 1998).

Bad checks are debts under the FDCPA. *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C*, 111 F.3d 1322 (7th Cir. 1997); *Charles v. Lundgren & Associates, P.C.*, 119 F.3d 739 (9th Cir. 1997).

Requirements imposed by the FDCPA:

Requires validation of debts (a debt collector must notify the debtor of the nature of the debt, the identity of the creditor, and must cease collection efforts until verification of the debt is completed if the consumer chooses to verify the debt).

Debt Collector must include in its initial notification, notice to the consumer that they can request verification of the debt.

Debt collectors are only required to show that they SENT a validation notice to consumers. Once they do, consumers have 30 days to request verification of the debt. *Mahon v. Credit Bureau Of Placer County Incorporated*, 1999 WL 123725 (9th Cir. 1999) ("We hold that section 1692g(a) requires only that a Notice be "sent" by a debt collector. A debt collector need not establish actual receipt by the debtor.")

"[A] debt collector must provide verification of the debt to the debtor, upon written request made by the debtor within 30 days after receipt of the initial Notice. 15 U.S.C. § 1692g(b). If no written demand is made, 'the collector may assume the debt to be valid.' *Avila v. Rubin*, 84 F.3d 222, 226 (7th Cir.1996); 15 U.S.C. § 1692g(a)(3)."

Thirty days from the date of receipt of the notification. Practice tip: The time for verification has often passed but request verification anyway.

A tardy request for verification does NOT trigger the debt collector's obligation to verify the debt.

Adequate verification varies depending on the reason for the dispute. Debt collector must cease collection from the date verification is requested until the verification is provided.

"'When a notice contains language that 'overshadows or contradicts' other language informing a consumer of her rights, it violates the Act.' . . .'[T]he juxtaposition of two inconsistent statements renders the notice invalid under § 1692g.' . . . A debt collection notice is overshadowing or contradictory if it fails to convey the validation information clearly and effectively and thereby makes the least sophisticated consumer uncertain as to her rights." *Savino v. Computer Credit, Inc.*, 164 F.3d 81 (2d Cir. 1998).

When an independent debt collector solicits payment from a consumer, it must -- within five days of the initial communication -- provide the consumer with a detailed validation notice . . .

When determining whether Section 1962g has been violated, courts use "an objective standard, measured by how the 'least sophisticated consumer' would interpret the notice received from the debt collector."
Requires that a debt collector's letter disclose that any information provided by recipient will be used to collect debts. See Emanuel v. American Credit Exchange, 870 F.2d 805 (2nd Cir. 1989) (disclosure required even when letter did not request information from debtor).
Effective 30 December 1996, debt collectors must inform the consumer **in the first contact with that consumer** (oral or written) that they are a debt collector AND that any information gained will be used in the process of collecting a debt.
Any subsequent communications must disclose only that the communication is from a debt collector.
Formal pleadings made in connection with legal proceedings need not contain the disclosure.
Provides a means by which a consumer can stop the attempts of a debt collector to communicate with the consumer.
Consumer notifies the debt collector in writing
Refuse to pay, or
Wish no further contact
Represented by an attorney with respect to all debts
Debt collector must cease contact, unless to notify debtor that the debt collector intends to invoke specific remedies.
Protections under the Fair Debt Collection Practices Act. 15 U.S.C. § 1692 (1982).
Restricts contacts by debt collectors with third parties.
Debt collectors may contact third parties seeking debt collection assistance only if:
The debtor has given prior consent directly to the debt collector, or
The debt collector has obtained a court order permitting such contact, or
Contact is reasonably necessary to effectuate a post-judgment judicial remedy.
Debt collectors may contact third parties to acquire information about consumer's location, but must
Identify self, state he/she is trying to confirm or correct location information about consumer, and only if expressly asked, identify his/her employer,
Refrain from referring to the debt,
Usually make only a single contact with each third party,
Not communicate by postcard,
Not indicate the collection nature of his/her business purpose in any written communication.
Check state law. Some states prohibit any contact with the employer. In these states the Army will not assist either the debt collector or the creditor.
Limit communications to the consumer's attorney, where collector knows of the attorney, unless the attorney fails to respond.
They may contact a credit reporting agency if otherwise permitted by law.
Without prior consent of the consumer given directly to the debt collector or a court order, a debt collector may not communicate with a consumer (this includes consumer's spouse, parent if consumer is a minor, guardian, executor, or administrator) (15 U.S.C. § 1692c):
At unusual or inconvenient times or places (8:00 A.M. - 9:00 P.M. at consumer's location is presumed convenient).
If the debt collector knows the consumer is represented by an attorney and knows or can readily ascertain the attorney's name and address. The attorney MUST notify the debt collector that they

represent the individual for the subject debt and any future debts that come into collection. See *Graziano v. Harrison*, 763 F.Supp. 1269 (D.N.J. 1991) (Collector did not violate Act by continuing communication with debtor once notified debtor represented by counsel where subsequent notices pertained to different debts and collector not informed attorney represented debtor on all subsequent debts.)

At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits consumer from receiving such communication. Include language regarding this prohibition in your letter to the debt collector.

After the consumer notifies the debt collector in writing that the consumer refuses to pay the debt or that the consumer wishes the debt collector to cease further communication with the consumer, except that the debt collector may notify the consumer that the debt collector intends to invoke a specific remedy.

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with a debt. 15 U.S.C. § 1692d.

A debt collector may not use any false, deceptive, or misleading representations in connection with the collection of any debt. 15 U.S.C. § 1692e.

See Crossley v. Lieberman, 868 F.2d 566 (3rd Cir. 1989) (debt collector who falsely implied that a mortgage foreclosure case against debtor was in litigation violated the Fair Debt Collection Practices Act).

15 U.S.C. § 1692e(8) defines the failure of a debt collector to disclose the disputed status of a debt as a "false, deceptive, or misleading representation." Debt collectors must report debts as disputed, whether or not the consumer disputes the debt in writing. *Brady v. The Credit Recovery Company*, 160 F.3d 64 (1st Cir. 1998).

Falsely implying government affiliation.

A debt collector may not use unfair or unconscionable means to collect any debt. 15 U.S.C. § 1692f.

A debt collector may not solicit post-dated checks in lieu of pursing a lawsuit and may not deposit any post-dated checks accepted prior to the date written on the check.

Legal Actions by Debt Collectors.

Debt collector must sue consumer only in the judicial district where the consumer resides or signed the contract sued upon, (*See Shapiro & Meinhold v. Zartman*, 823 P.2d 120 (Colo. 1992) (Attorney collector who brought foreclosure action in county other than that where real estate was situated, violated FDCPA, even though state statute allowed such venue); *see also, Action Professional Service v. Kiggins*, 458 N.W.2d 365 (S.D. 1990) (interprets "judicial district" as meaning in the appropriate state (vice federal) court "judicial district.")).

Except that an action to enforce a security interest in real property must be brought where property is located.

Contradictory notices as to the timing of a law suit were misleading, even when one of the options were the statutorily mandated notices. *Bartlett v. Heibl*, 128 F.3d 497 (7th Cir. 1997).

Remedies.

Violation of FDCPA is deemed an unfair and deceptive act or practice in violation of the Federal Trade Commission Act. Consequently, the FTC could pursue action.

The Act also allows private cause of action for the consumer. Consumer could also assert violations of the FDCPA as a counter-claim in a suit to collect the debt.

Standing to sue.

"Any debt collector who fails to comply with any provision ... with respect **to any person** is liable to such person..." Act does not define terms "with respect to any person."
Wright v. Finance Service of Norwalk, Inc., 22 F.3d 647 (6th Cir., 1994)("the phrase 'with respect to any person' [in 15 U.S.C. § 1692e] includes more than just the addressee of the offending letters. We conclude that the phrase, at a minimum, includes those persons, such as Wright, who 'stand in the shoes' of the debtor or have the same authority as the debtor to open and read the letters of the debtor." Plaintiff Wright, was the executrix of the debtor.).
Civil liability for failure to comply with FDCPA includes (15 U.S.C. § 1692k):
Actual damages (FTC Commentary: includes damages for personal humiliation, embarrassment, mental anguish, or emotional distress).
Additional statutory damages allowed by the court up to $1,000 (no actual damages required). Divided 6th Circuit holds $1,000 for each violation of statute rather than $1,000 per suit. (*Wright v. Finance Service of Norwalk, Inc.* discussed above - executrix sued for FDCPA violations in collection notices sent to her deceased mother).
To collect statutory damages, a consumer need only prove the statute was violated, they do not have to prove they suffered any actual impact. *Bartlett v. Heibl*, 128 F.3d 497 (7th Cir. 1997).
In determining the amount of damages, the court shall consider, among other factors:
frequency and persistence of noncompliance by the debt collector
nature of the noncompliance
the extent to which the noncompliance was intentional
Attorney's fees and court costs if the consumer prevails. "Where a plaintiff prevails, whether or not he is entitled to an award of actual or statutory damages, he should be awarded costs and **reasonable attorney's fees** in amounts to be fixed in the discretion of the court." *Bartlett v. Heibl*, 128 F.3d 497 (7th Cir. 1997).
Generally, this is a strict liability statute; however, a debt collector may not be held liable if the debt collector can show by a preponderance of evidence that the violation was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.
Action to enforce FDCPA may be brought in any appropriate U.S. District Court without regard to amount in controversy, or in any other court of competent jurisdiction, within one year from date on which violation occurs. (FTC Commentary: 1 year limitations period applies only to private lawsuits, not those initiated by government).
Processing Requests for Debt Collection Assistance by the Military.
Additional References.
32 C.F.R. Part 112, Indebtedness of Military Personnel (1999).
DOD Directive 1344.9.
AR 600-15, Indebtedness of Military Personnel (14 March 1986), available at *www.usapa.army.mil.*
AFI 36-2906, Personal Financial Responsibility (1 January 1998).
MILPERSMAN 7000020 (current through January 2000), available at *www.bupers.navy.mil.*
MCO P5800.16A, Marine Corps Manual for Legal Administration, (31 Aug 1999).
United States Coast Guard Personnel Manual, COMDTINST M1000.6A, Ch. 8, Sect. F (8 January 1988).
STEP 1: Determine whether the requester can contact third parties directly. Is this person a "debt collector" subject to the FDCPA or a "creditor" who may be limited by state law?

Requests from Debt Collectors. Debt collectors may contact third parties seeking debt collection assistance only if:
The debtor has consented to such contact,
The debt collector has obtained a court order permitting such contact, or
Communication necessary to effectuate post-judgment judicial remedy.
Requests from Creditors.
A "creditor" is a person or organization to whom or to which a debt is owed.
Creditors are entitled to contact third parties for assistance unless state law precludes such contact. If the state forbids contact, the creditor will not be assisted.
Credit Unions and Banks:
Marine Corps: Commanders will provide debt processing assistance to credit unions serving DOD personnel even if the host state prohibits third party contact by creditors. Credit unions may bring delinquent loans or dishonored checks to the attention of the commander.
Army: Those serving DOD must conform to Standards of Fairness. Commanders will answer all check complaints. No mention that they are exempt from state law prohibiting third party contact.
Navy: Those serving DOD must conform to Standards of Fairness. No mention that they are exempt from state law regarding third party contact.
Air Force: Comply with state law prohibiting creditor third party contact.
STEP 2: Know Service Policy on Debts.
Department of Defense Directive 1344.9.
DOD Definitions.
Just Financial Obligations. A legal debt acknowledged by the military member in which **there is no reasonable dispute as to the facts or the law**, or one reduced to judgment which conforms to 50 U.S.C. App. § 501 (SSCRA), if applicable. (32 C.F.R. § 112.3).
A Proper and Timely Manner. A manner which under the circumstances does not reflect discredit on the military service. (32 C.F.R. § 112.3).
Debt Collector. An agency or agent regularly engaged in the collection of debts described under Pub. L. 95-109 (FDCPA). (32 C.F.R. § 112.3).
General Policies.
Members are expected to pay just financial obligations in proper and timely manner.
Services have no legal authority, except in the case of court ordered alimony or child support, to require members to pay a private debt or to divert any part of their pay for its satisfaction.
Enforcement of private obligations of a military member is a matter for civil authorities.
Processing debt complaints will NOT be extended to those:
Who have not made a bona fide effort to collect the debt directly from the military member;
Whose claims are patently false and misleading;
Whose claims are obviously exorbitant.
Service regulations implement DOD Directive.
STEP 3: Follow Processing Procedures.
Requirements for Creditors.
Creditors subject to Regulation Z (12 C.F.R. 226; Truth in Lending Act) must submit with their requests for assistance:
Certificate of Compliance, and
Copy of disclosures provided the military member as required by Truth in Lending Act 15 U.S.C. § 1601.

Copy of any signed contract or judgment.
Creditors not subject to Regulation Z, such as public utility companies, must submit with their requests for assistance - Certification that no interest, finance charge, or other fee is in excess of that permitted by law of state where obligation was incurred.
Foreign owned companies must submit with their requests for assistance:
Copy of terms of the debt (English translation), and
Certification it has subscribed to DOD Standards of Fairness.
Indebtedness Complaints Meeting DOD Requirements will be Processed.
Commanders shall:
Review facts surrounding transaction forming basis of complaint, to include:
Member's legal rights and obligations,
Member's defenses or counterclaims.
Advise member that:
Just financial obligations are expected to be paid in proper and timely manner, and
Financial and legal counseling services are available.
Notify claimant that soldier told of complaint, summarizing soldier's intentions if soldier gave permission to release that information.
Consider administrative or punitive action, if proper.
Commanders will not:
arbitrate disputed debts, or
admit or deny the validity of the claim.
All services: Do not try to judge or settle disputed claims or admit or deny validity. If soldier denies debt, notify creditor that civil authorities must handle disputed debts.
Commanders' responses will not indicate whether any action has been taken against a member as a result of the complaint.
Indebtedness Complaints Not Meeting Service Requirements - All services: Return complaint, explaining no action until comply with regulation.
Services May Deny Assistance to Creditors.
When the claimant, having been notified of the DOD requirements, refuses or repeatedly fails to comply;
When the claimant, regardless of the merits of the claim, clearly shows an attempt to unreasonably use the processing privilege.
STEP 4: Discipline, if appropriate. - **All services**: Commanders may take administrative or disciplinary action against members who fail to meet their just financial obligations in a proper and timely manner.
Army:
Put in permanent record,
Deny reenlistment,
Administrative separation,
Punitive action under UCMJ, articles 92,123,133, or 134.
Marine Corps:
Put in fitness reports and pro/cons,
Take appropriate administrative, non-punitive, or punitive action.
Navy:
For officers, action should be governed by MILPERSMAN 1611-010, Officer Performance. For enlisted, take appropriate administrative, non-punitive, or punitive action.

Require member to submit a statement of monthly finance to DON, Central Adjudication Facility.
Counseling,
Administrative discharge for misconduct,
Report all bankruptcies to Chief of Naval Personnel.
Air Force: Unit commanders will consider and, if appropriate, initiate administrative or disciplinary action against members who continue to demonstrate financial irresponsibility.
Coast Guard:
Put in officer fitness reports and take other corrective action,
Submit adverse special fitness report,
Counseling,
Put in enlisted records
Administrative separation,
Recommend against reenlistment,
Adverse security clearance,
Punitive action.
Bankruptcy.
Army: Care must be taken not to infringe on the rights of soldiers under bankruptcy law.
Navy:
A discharge in bankruptcy does not give a member immunity from prosecution for offenses of dishonorable failure to pay just debts committed prior to a petition of bankruptcy.
Commanding officers must submit to Chief of Naval Personnel a full report of circumstances of any petitions and discharges in bankruptcy, and any wage earner plans.
Coast Guard: If dishonorable failure to pay just debts has occurred prior to discharge of the indebtedness through bankruptcy, the subsequent discharge will not preclude action under the UCMJ.
Conclusion.

X. FAIR CREDIT REPORTING ACT (FCRA).

REFERENCES.
15 U.S.C. §§ 1681-1681t.
Consumer Credit Reporting Reform Act of 1996, contained in the Omnibus Consolidated Appropriations Bill, 110 Stat. 3009; 104 Pub. Law 208 (Sept. 30, 1996).
National Consumer Law Center, Fair Credit Reporting Act (4th ed. 1998. and Supp.)
INTRODUCTION.

The Omnibus Appropriations Act referenced above contained, among other consumer protection legislation, the Consumer Credit Reporting Act of 1996, which made changes to the Fair Credit Reporting Act. In general, the changes took effect on **September 30, 1997**.

PURPOSE AND SCOPE OF FCRA.
FCRA applies to **Credit Reporting Agencies (CRAs) and Users of Credit Reports (Users)**. It **does not** apply to those furnishing information from their own dealings with the consumer (creditors).
Purpose of FCRA: Requires CRAs to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information. The information must be:
Accurate, up-to-date, and
Furnished only for certain permissible purposes.
CRAs must use procedures that:
Are fair and equitable to the consumer, with regard to confidentiality, accuracy, relevancy, and proper use of the information, and,
Place various obligations on persons who use or disseminate credit information about consumers.
DEFINITIONS:
Credit Reporting Agencies are:
Those "who for monetary fees, dues, or on a cooperative nonprofit basis, regularly engage in ... the practice of assembling or evaluating consumer credit information on consumers **for the purpose of furnishing consumer reports to third parties,** and [who use] any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." 15 U.S.C. § 1681a(f). (e.g., Experian, Trans Union Credit Corporation, Equifax).
Agencies or persons may become credit reporting agencies if they regularly furnish information beyond their own transactions to others for use in consumer transactions. (FTC Commentary, 16 C.F.R. Part 600, May 4, 1991).
NOTE: Creditors that report information about their own experiences with consumers are not credit reporting agencies, nor are they issuing a "consumer report." **BUT**, if the creditor reports any information other than that obtained in its own dealings with consumer, then it may meet definition of "consumer reporting agency."
CRA "that compiles and maintains files on consumers on a nationwide basis." That term includes any CRA that regularly engages in the practice of assembling, evaluating, and maintaining, for the purpose of issuing consumer reports, EACH of the following things regarding consumers nationwide:
Public record information

Credit account information from persons who furnish that info regularly and in the ordinary course of business.
Users: Not defined separately in the statute, but means those receiving the "consumer report" information and applying it to a consumer. (Refer to definition of consumer report).
Consumer Credit Reports are:
Any written, oral or other communication of information
Collected by a CRA bearing on:
The consumer's credit worthiness,
Credit standing, or,
General reputation, personal characteristics, or mode of living,
Which is used or expected to be used in establishing the consumer's eligibility for:
Credit or insurance to be used primarily for personal, family, or household purposes,
Employment purposes, or
Other purposes authorized by the Act. *See* § 0 below.
The Term does NOT include:
The reporting of information based solely on the experiences between the consumer and the person making the report.
Communication of the information above between persons related by common ownership or corporate control.
Communication of any other information between persons related by common ownership or corporate control, PROVIDED that the consumer is given clear and conspicuous notice that this may happen and given the opportunity before it does happen to direct that the information not be shared.
Any authorization or approval of a specific extension of credit by the issuer of a credit card or similar device.
Courts have also limited the applicability in the way they apply the definition to products issued by CRAs.
Arcidiacono v. American Express, 1993 WL 94327 (D.N.J. 1993) - Lists sold by American Express were not consumer reports even though they categorized consumers with descriptive labels such as "low-end, value-oriented, fashion conscious, Fifth Avenue sophisticated, Rodeo Drive chic."
Trans Union Corp. v. FTC, 81 F.3d 228 (D.C. Cir. 1996). Mailing lists were not consumer reports even though placement on the list required having two credit accounts. This "implicit" credit info did not have anything to do with PERFORMANCE and therefore did not satisfy the definition.
An Inquiry Activity Report is a consumer report for purposes of the FCRA. *Yang v. Government Employees Insurance Company (GEICO)*, 146 F.3d 1320 (11th Cir. 1998).
A Check Cashing list is a consumer report for purposes of the FCRA. *Greenway v. Information Dynamics, Ltd.*, 524 F.2d. 1145 (9th Cir. 1975). List including previous issuance of an unpayable check bears directly on a consumer's credit worthiness and credit standing.
Investigative Consumer Reports:
Consumer report or portion thereof which contains information on consumer's character, living style, and reputation obtained through personal interviews (subjective evaluations).
Some consumer reporting agencies specialize in investigative reports (Equifax) which are a subcategory of consumer reports.
CRAs must verify information, and reverify information over 3 months old.

Users of investigative reports must:
Within 3 days, give notice to consumer that investigative report was requested,
That the report will concern the consumer's character, reputation, mode of living, and personal characteristics, or whichever are applicable and may include interviews with acquaintances, and
That consumer has the right to request within a reasonable time, a complete and accurate description of the nature and scope of investigation being conducted.
Adverse Action[12] means:
The same as the term means under the Equal Credit Opportunity Act, 15 U.S.C. § 1691(d)(6). That section provides that:

> *For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.*

The term is also given specific additional meaning within the definition section of the FCRA. It also means:
a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for . . . ;
a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
a denial or cancellation of an increase in any charge for, or any other adverse or unfavorable change in the terms of, any [government] license or benefit . . .; and
an action taken or determination that is--
made in connection with an application that was made by, or a transaction that was initiated by, any consumer, . . .; and
adverse to the interests of the consumer.
Pre-screening Services:
Mailing lists compiled by consumer reporting agencies using criteria specified by the user. User must certify it is considering and will offer to enter into a credit relationship with each consumer on the pre-screened list, if not the release of the report is impermissible.
PERMISSIBLE PURPOSES FOR RELEASING REPORTS. (15 U.S.C. § 1681b).
In response to a **court order or subpoena** issued in connection with proceedings before **federal grand jury**, or
With the **consent of the consumer** to whom the report relates, or
To a person who the CRA "has reason to believe" intends to use the report:
in connection with a credit transaction involving the consumer,
for employment purposes, or
in connection with the consumer's insurance, or

[12] Note that the term "adverse action" was not defined in the original version of the statute. However, there were requirements imposed by the statute for taking "adverse action." Having the definition should put consumers in a better position to assert their statutory rights when a User takes "adverse action."

in connection with the consumer's eligibility for a license or other benefit conferred by the government, or
as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
Otherwise has a legitimate business need for the information--
The legitimate business need must be in connection with a business transaction that is initiated by the consumer; or
To review an account to determine whether the consumer continues to meet the terms of the account..
Houghton v. New Jersey Manufacturers Ins. Co., 795 F.2d 1144 (3rd Cir. 1986) - The business transaction must relate back to one of the other specifically enumerated transactions, i.e., credit insurance eligibility, employment, or licensing.
What constitutes a "legitimate business need" has gotten more restrictive, both in the statute and the courts.
Litigation is NOT a "legitimate business need" under the FCRA. *Duncan v. Handmaker*, 149 F.3d 424 (6th Cir. 1998); *Bakker v. McKinnon*, 152 F3d 1007 (8th Cir. 1998).
The mere existence of the landlord-tenant relationship does NOT justify accessing a tenant's credit report. *Ali v. Vikar Management Ltd.*, 994 F.Supp. 492 (S.D.N.Y. 1998).
The FTC's interpretation of the new restrictions on legitimate business need releases is very strict. *See* Consumer Law Note, *Federal Trade Commission Staff Issues Informal Interpretation of FCRA Changes*, ARMY LAW., June 1998, at 9.
Preconditions of Release. Must be met before a Consumer Credit Report may be issued for the following permissible purposes:
EMPLOYMENT PURPOSES:
The User must certify to the CRA that they have:
Given a clear and conspicuous written disclosure to the consumer, in a document that consisted solely of the disclosure, that a consumer report may be obtained for employment purposes and the consumer has given the User written authorization to procure the report; AND
That they will comply with the obligations of a User who takes adverse action based upon a consumer credit report; AND
Information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation.
The CRA must provide with the report a summary of the consumer's rights under the FCRA.
CREDIT OR INSURANCE TRANSACTIONS NOT INITIATED BY THE CONSUMER.- The CRA may issue the report only if:
The consumer authorizes the agency to provide the report to such person; OR
The transaction consists of a "firm offer of credit or insurance" (defined in the statute) and
The CRA has complied with any election made by the consumer regarding exclusion from lists, and
The information consists solely of
The name and address of a consumer;
An identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and
Other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.

REPORTS CONTAINING MEDICAL INFORMATION: A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction or a direct marketing transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report.

OBLIGATIONS of CRAs

DUTIES WHEN THE CONSUMER DISPUTES THE ACCURACY OF THE REPORT.

If the consumer disputes the completeness or accuracy of the report, the CRA must investigate (within a reasonable time) and record the current status of the disputed information **unless the CRA has reason to believe that the dispute is frivolous or irrelevant**. 15 U.S.C. § 1681i.

Entries on credit report must be "maximally accurate." *Wilson v. Rental Research Services, Inc.*, 165 F.3d 642 (8th Cir, 1999).

West Headnote: "Technical accuracy of consumer report may be insufficient to satisfy requirement of Fair Credit Reporting Act (FCRA) that report be maximally accurate with respect to individual who is subject of report." 15 U.S.C. § 1681e(b).

"[I]n determining the meaning of 'maximum possible accuracy' under § 1681e(b), the statutory language requires that reports be 'accurate' specifically with respect to the individual who is the subject of the report. . . . [R]eports containing factually correct information that nonetheless mislead their readers are neither maximally accurate nor fair to the consumer who is the subject of the report and thus may violate § 1681."

An entry on a credit report that is incomplete, but not misleading satisfies the "maximally accurate" requirement. *Sepulvado v. CSC Credit Services, Inc.*, 158 F.3d 890 (5th Cir. 1998).

If the investigation does not resolve the dispute,

The consumer may file a statement of not more than 100 words, and

In future reports, the CRA must note that the consumer disputes the entry and provide the consumer's statement.

If the investigation reveals that the disputed entry is inaccurate or can no longer be verified, the CRA must delete the information.

Following either correction of the report or receipt of a consumer's statement in rebuttal, the CRA must furnish a copy of the annotated report (and consumer's statement, where appropriate) to "any person specifically designated by the consumer" who has received the report:

Within the past 2 years for employment purposes.

Within the past 6 months for other purposes.

PROCEDURES FOR HANDLING DISPUTED INFORMATION.

REINVESTIGATION: If the completeness or accuracy of any item of information contained in a consumer's file at a CRA is disputed by the consumer and the consumer notifies the agency directly of such dispute, the CRA SHALL

Reinvestigate free of charge and record the current status of the disputed information, OR

Delete the item from the file within 30-days of the CRA receiving notice of the dispute from the consumer. (This period may be extended not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation. However, NO extension may be used if the CRA finds during the 30 days that the information is inaccurate, incomplete, or cannot be verified.

DETERMINATION THAT DISPUTE IS FRIVOLOUS OR IRRELEVANT.

A CRA may terminate a reinvestigation of information disputed by a consumer if it reasonably determines that the dispute by the consumer is frivolous or irrelevant. This includes a failure by the consumer to provide sufficient information to investigate the disputed information.

Upon making this determination, the CRA shall notify the consumer of their determination not later than 5 **business** days after making the determination, by mail or, if authorized by the consumer for that purpose, by any other means.
The notice shall include:
The reasons for the determination; AND
Identification of any information required to investigate the disputed information.
NOTICE TO PROVIDER OF INFORMATION.
Within 5 **business** days of receipt of the consumer's notice, the CRA SHALL
Provide notification of the dispute to any person who provided any item of information that is disputed.
The notice shall include all relevant information regarding the dispute that the agency has received from the consumer.
Promptly after the initial 5 business day notice, but before the end of the 30 day period for investigation, the CRA must provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer.
RESULTS OF THE REINVESTIGATION
Inaccurate or unverifiable information. Any item of the information found to be inaccurate or incomplete or which cannot be verified SHALL be promptly deleted from the consumer's file or modified, as appropriate, based on the results of the reinvestigation.
NOTICE OF RESULTS.
The CRA must provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.
The notice must contain:
A statement that the reinvestigation is completed;
A consumer report that is based upon the information in the consumer's file reflecting any changes made as a result of the reinvestigation;
If requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information, including the business name and address of any furnisher of information contacted and the telephone number if reasonably available;
A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and
A notice that the consumer has the right to request that the CRA notify the following persons of any notation regarding disputed information provided that the consumer specifically designate this person to receive notice.
A user who received a consumer report for employment purposes within the prior two years.
A user who received a consumer report for any other purpose within the last six months.
AUTOMATED REINVESTIGATION SYSTEM. Any **CRA that compiles and maintains files on consumers on a nationwide basis** (See definitions above.) shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.
REINSERTION OF PREVIOUSLY DELETED MATERIAL. Before reinserting material, the following must occur:
The person who furnishes the information must certify that the information is complete and accurate.

The CRA must notify the consumer of the reinsertion in writing not later than 5 **business** days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.
The CRA must provide with the notice above (in writing not later than 5 business days after the date of the reinsertion) the following:
A statement that the disputed information has been reinserted;
The business name and address of:
Any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or
Any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and
A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.
PROCEDURES TO PREVENT REAPPEARANCE.--A CRA shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to the dispute procedure (other than information that is reinserted in accordance with the above rules).
EXPEDITED DISPUTE RESOLUTION. If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved by the deletion of the disputed information by not later than 3 **business** days after the date on which the agency receives notice of the dispute from the consumer, then the CRA does not have to:
Notify the furnisher of the information;
Formally notify the consumer of the results; or
Provide a description of the reinvestigation procedure.
However, it MUST still provide:
Prompt notice of the deletion to the consumer by telephone;
In the notice a statement of the consumer's right to request that the CRA notify the following persons of any notation regarding disputed information provided that the consumer specifically designate this person to receive notice.
A user who received a consumer report for employment purposes within the prior two years.
A user who received a consumer report for any other purpose within the last six months.
Written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 **business** days after making the deletion.
DUTIES REGARDING OBSOLETE INFORMATION.
Unless otherwise specified, the following information is considered "obsolete" and cannot be included in a CRAs consumer report (Note: this is adverse information; favorable information that is old may be included in the report):
Bankruptcy adjudications more than 10 years old.
Other categories for 7 years. Included are:
Paid tax liens,
Accounts placed for collection or charged to profit and loss,
Records of criminal **arrest**, indictment, or conviction which, from the date of disposition, release, or parole, antedate the consumer report by more than 7 years,
Suits and judgments which, from date of entry, antedate the consumer report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period,

Any other adverse item of information that antedates the consumer report by more than 7 years. The 10 year time period for bankruptcies begins to run on the date of filing. On other transactions it is the date of the occurrence of the event, not the date acquired by the credit reporting agency.
Items of Info added on or after Dec. 31 1997: The 7-year period shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency.
Inclusion of "adverse" obsolete information. "Obsolete" information **CAN** be included in the consumer report IF the report is intended for use involving (15 U.S.C. § 1681c):
The consumer's participation in a credit transaction of $150,000 or more. (e.g. home mortgage!)
Issuance of life insurance coverage on the consumer of $150,000 or more.
Employment of the consumer at an annual salary of $75,000 or more.
OBLIGATIONS OF USERS.

ADVERSE ACTIONS. If the user takes "adverse action" based upon a consumer credit report, the following requirements apply.
The User MUST:
Provide oral, written, or electronic notice of the adverse action to the consumer; AND
Provide to the consumer orally, in writing, or electronically--
The name, address, and telephone number of the CRA (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; AND
A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; AND
Provide to the consumer an oral, written, or electronic notice of the consumer's right--
To obtain a FREE copy of a consumer report from the CRA, including notice that the request must be made with 60 days; AND
To dispute the accuracy or completeness of any information in the consumer report.
Special Rule for Adverse Action in EMPLOYMENT Situations. **Before taking any adverse action** based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates--
A copy of the report; AND
A description in writing of the rights of the consumer under the FCRA.
OBLIGATIONS OF SUPPLIERS OF INFORMATION TO CRAs
Requirements to provide accurate information.
Prohibitions
Persons shall not report information if they know *or consciously avoid knowing* that the information is inaccurate.
However, they can avoid this requirement by providing an address for consumers to notify them of errors.
They are NOT required to provide such address, but if they do, they fall under paragraph 2 below.
A person shall not report information if

the consumer has notified him (at the address the person has specified for this purpose) that specific information is not accurate; AND
The information is *in fact* not accurate.
May not make adverse reports relating to creditworthiness resulting from a consumer's application to reduce financial obligations as permitted by the SSCRA (e.g. reduce interests rate or delay repossessions, foreclosures, or lawsuits).
Duties to correct and update information
Applies ONLY to persons who "regularly and in the ordinary course of business" furnish information to CRAs AND who have reported information that they determine is not complete or accurate.
Such persons MUST
Notify the CRA.
Provide the CRA with necessary corrections or additional information.
NOT provide the inaccurate information thereafter.
Duties to provide CRAs with certain notices.
Any person who provided information to CRAs must provide notice that the accuracy of the information is disputed if the person providing the information is notified of the dispute.
Any person who regularly and in the ordinary course of business notifies CRAs of information regarding a consumer who has a credit account with that person SHALL notify the CRA if the consumer voluntarily closes the account.
Any person who notifies a CRA that a delinquent account is being placed in collection MUST, with 90 days, notify the CRA of the month and year of the delinquency that immediately preceded the action.
Duties When Notified of a Dispute. After receiving proper notice of a dispute, the person providing the information SHALL:
Conduct an investigation with respect to the disputed information;
Review all relevant information provided by the CRA pursuant to the dispute procedure in the FCRA;
Report the results of the investigation to the CRA; and
If the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.
The person MUST complete all investigations, reviews, and reports required within 30 days from the receipt of notice of the dispute.
CONSUMER RIGHTS.
Access to Credit File
Upon request, consumers can obtain (15 U.S.C. § 1681g):
ALL information in their file, except for credit scores or other risk scores or predictors.
The Source of the information.
The identities of those who have received the report:
Within the past 2 years for employment purposes.
Within the past 6 months for other purposes.
FEES
A CRA may charge a reasonable fee for the disclosures to the consumer. However, if adverse action has been taken, the consumer is entitled to a free copy of the credit report.
The reasonable fee cannot exceed $8. (Adjusted by the FTC each January 1 based upon the CPI).

The fee shall be disclosed to the consumer prior to issuing the information.
Free reports will be given during any 12 month period to anyone:
Who is unemployed and intends to apply for employment within the next 60 day period (certified by consumer)
Is receiving welfare;
Has reason to believe the inaccurate information in the file is the result of fraud.
Dispute/Correct the Information
Statement of dispute (100-WORD STATEMENT.) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute. The CRA must include the statement in every report that contains the disputed entry.
REMEDIES.
Civil liability for willful noncompliance (15 U.S.C. § 1681n) - actual damages, **punitive** damages, and court costs and reasonable attorney's fees if the consumer prevails.
Civil liability for negligent noncompliance (15 U.S.C. § 1681o) -actual damages plus court costs and reasonable attorney's fees if the consumer prevails.
No strict liability for all inaccuracies.
Defenses:
Agencies escape liability by proving an inaccurate report was generated following reasonable procedures designed to preclude errors.
Two Approaches:
"Technical Accuracy" - an agency satisfies its duty if it produces a report containing factually correct information about a consumer that might nonetheless be misleading or incomplete in some respects. See *Cahlin v. General Motors Acceptance Corp.*, 936 F.2d 1151 (11th Cir. 1991)
"Maximum Accuracy" - CRA must show it generated a report containing information of "maximum accuracy". See *Koropoulos v. Credit Bureau, Inc.*, 734 F.2d 37 (D.C. Cir. 1984).
Statute of Limitations (15 U.S.C. § 1681p). 2 years from date liability arises (with limited exceptions).
Limitations period for FCRA suit alleging negligence commences when report issued to user causes injury to consumer; *Hyde v. Hibernia Nat. Bank*, 861 F.2d 446 (5th Cir 1988), *cert. Denied*, 109 S.Ct. 3199 (1989).
Limitations period for suit asserting intentional violation of Act also begins when the report causes injury or, if consumer is not aware of issuance of report, when consumer later discover it. *Id.*
Consumer has burden to prove inaccurate credit report has causal connection to denial of credit or employment or other consumer benefit. *Cahlin v. General Motors Acceptance Corp.*, 936 F.2d 1151 (11th Cir. 1991).
Criminal penalties - obtaining information under false pretenses (15 U.S.C. § 1681q) - fine of not more than $5,000 or imprisonment for not more than 1 year, or both.
CHILD SUPPORT ENFORCEMENT.

CRAs will include in consumer reports furnished by the agency any information on the failure of consumer to pay overdue support which is provided:
To the CRA by a state or local child support enforcement agency, or
To the CRA and verified by any local, state, or federal government agency, and

Antedates the report by 7 years or less.

XI. IDENTITY THEFT.

Growing trend:

Impostor's use of key items of another person's identity, such as name, social security number, credit card number, or PIN to obtain funds, credit, goods, services, or benefits.

Coping actions for victims of identity theft:
Cancel all credit cards, bank cards,
Close all accounts,
Contact fraud units of the Credit Reporting Agencies (Experian, Equifax, Trans Union).
Add victim's statement to Credit Report. For example: Fraud victim: Do not extend credit without first contacting me personally. My briefcase was stolen. My work and home numbers are ----.
File report with law enforcement,
Ask CRA for names/numbers of fraudulent accounts,
Ask CRA to remove inquiries generated due to fraudulent access,
Contact all creditors who have granted credit and notify of fraud and close those accounts,
Periodically monitor credit report.

XII. CONCLUSION.

CHAPTER 10

MILITARY UNIQUE CONSUMER LAW ISSUES

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I. INVOLUNTARY ALLOTMENTS FOR CREDITOR JUDGMENTS

A. Background to DoD Dir. 1344.9; DoD INST. 1344.12.

1. Congress required DoD to promulgate these regulations in the Hatch Act.

2. The Act waives sovereign immunity for the collection of creditor judgments from federal employees.

3. The Act directed DOD to promulgate regulations providing for involuntary allotment of military pay to account for "the procedural requirements of the Soldiers and Sailors Civil Relief Act...and in consideration for the absence of a member of the uniformed services from an appearance in a judicial proceeding resulting from the exigencies of military duty."

B. Military Procedure For Involuntary Allotments.

1. Initiation Procedure for Creditors.

a) Final order of court with specific money award, and DD Form 2653. Either no appeal or the time for an appeal has expired.

b) Served on designated agent - DFAS - Cleveland.

c) Certifications [DD Form 2653]:

(1) Judgment not modified, set aside or satisfied. If partially satisfied, the amount unpaid.

(2) Not issued while service member was on active duty. If the service member was on active duty, then either the service member was present or represented by an attorney or the SSCRA was followed fully.

(3) State law allows garnishment of a similarly situated civilian.

(4) Debt has not been discharged in bankruptcy or barred by other legal impediment.

(5) Creditor agrees to repay service member within 30 days if payment to creditor is erroneous.

2. Amounts Available.

   a) Pay includes - Disposable (generally taxable) pay (only).

   b) Maximum amount of allotment - 25% of disposable pay or lower if state law provides for lower amount. The states of PA and TX do not allow garnishment of wages for commercial debts, thereby precluding involuntary allotment actions from debt actions in those states. The states of NH, NC, FL, SC exempt such a high percentage of earnings that the practical effect precludes involuntary allotment actions for commercial debts.

3. DFAS action.

   a) Facial review.

   b) Mail notice [DA Form 2653] to service member [90 day clock starts].- No time limit for DFAS to issue notice. Mail two additional copies to the "immediate commander" with DD Form 2654.

4. Command action ("Immediate Commander").

   a) Serve service member with copy of notice and DD Form 2654 (Rights Warning Form) [5 day req].

   b) Inform service member of right to contest the involuntary allotment [15 days to respond].

   c) Grant 30 day extension to respond if necessary.

5. Service member's actions.

   a) Consent.

   b) Seek legal assistance.

6. Service member defenses per 32 CFR Part 113, § 113.6(b)(2)(iii)(d):

   a) SSCRA was not followed in the underlying judgment.

   b) Military exigency caused the absence of the service member from appearance in the judicial proceeding, which forms the basis of the judgment.

   c) Application for allotment is false or erroneous in material part.

   d) Judgment has been satisfied, set-aside, or modified.

   e) Legal impediment (e.g. bankruptcy) prevents processing the allotment.

   f) "Other appropriate reasons..." Violation of consumer law-underlying the judgment.

7. Immediate Commander Response.

   a) Rule on military exigency defense only.

      (1) Standard of review - preponderance.

      (2) Definition - "[M]ilitary assignment or mission essential duty that, because of its urgency, importance, duration, location or isolation, necessitates the absence of a member of the military service from appearance at a judicial proceeding. Absence from an appearance in a judicial proceeding is normally to be presumed to be caused by exigencies of military duty during periods of war, national emergency, or when the member is deployed."

b) Forward the debtor response to DFAS. Debtor failure to timely respond results in automatic initiation of involuntary allotment.

8. DFAS decides all other defenses.

9. No appeal of DFAS determinations.

I. PUTTING AREAS OFF-LIMITS – ARMED FORCES DISCIPLINARY CONTROL BOARDS.

A. References.

1. AR 190-24, *Armed Forces Disciplinary Control Boards and Off-installation Liaison and Operations* (30 June 1993). This is a joint regulation that is numbered for other services: OPNAVINST 1620.2A , AFI 31-213, MCO 1620.2C, COMDTINST 1620.1D

2. AR 600-20, *Army Command Policy* (15 July 1999).

B. Off-Limits Establishments and Areas.

1. Purposes.

a) Maintain good discipline, health, morals, safety, and welfare of service members.

b) Prevent service members from being exposed to or victimized by crime-conducive conditions, or unfair commercial or consumer practices.

c) Prevent service members from discrimination based on race, color, sex, religion, age or national origin. See AR 600-20, para 6-7.

2. Effect of Off-limits Designation.

a) Service members are prohibited from entering establishments or areas declared off-limits according to AR 190-24.

b) Violations subject the service member to discipline under appropriate regulations or the UCMJ.

c) Family members should be made aware of the off-limits areas but can not be ordered to discontinue patronizing them.

C. Procedure – The Armed Forces Disciplinary Control Board (AFDCB).

1. The Role of Commanders:

a) Establishment of off-limits areas is a function of command.

b) Commanders retain substantial discretion to declare establishments or areas temporarily off-limits for their commands. These areas are given first priority for review at the AFDCB.

c) Prior to initiating AFDCB action, installation commanders will attempt to correct adverse conditions or situations through the assistance of civic leaders or officials.

2. The Armed Forces Disciplinary Control Board:

a) Composition.

(1) Established at the installation, base or station level.

(2) Structured according to the needs of the command, but consider representative from the following functional areas:

(a) Law Enforcement

(b) Legal Counsel

(c) Medical, Health, and Environmental Protections

(d) Public Affairs

(e) Equal Opportunity

(f) Fire and Safety

(g) Chaplain

(h) Alcohol and Drug Abuse

(i) Personnel and Community Activities

(j) Consumer Affairs

(3) Commanders designate a board president and voting members in the written agreement establishing the board. At most installations, the president is the Provost Marshal.

b) Function.

(1) Advise and make recommendations to commanders concerning eliminating conditions which adversely affect the health, safety, morals, welfare, morale, and discipline of the Armed Forces.

(2) Meet as designated by the forming commander. Most meet at some predesignated interval (quarterly, monthly).

(3) The Board makes recommendations as to the following conditions:

(a) Disorders and Lack of Discipline.

(b) Prostitution.

(c) Sexually Transmitted Disease.

(d) Liquor Violations.

(e) Racial and other discriminatory practices.

(f) Alcohol and Drug Abuse.

(g) Criminal or illegal activities involving cults or hate .groups

(h) Illicit Gambling.

(i) Areas susceptible to terrorist activities.

(j) Unfair commercial or consumer activities.

(k) Other undesirable conditions that may adversely affect members of the military or their families.

(4) The Board coordinates with local and civil authorities regarding these conditions.

c) Procedure.

(1) The Board receives and considers reports of the conditions cited above.

(2) The board may investigate or visit an establishment, and if they do so, the President must submit a report of the findings and recommendations from the visit at the next meeting.

(3) DUE PROCESS: When the board concludes that conditions adverse to Armed Forces personnel exist, they must do the following before placing the establishment off-limits:

(a) Notify the individual responsible (owner or manager) for the conditions advising them to raise the standards in their establishment by a specified date or off-limits proceedings will be initiated. This notification letter must be sent by certified mail.

(b) The proprietor should be afforded an opportunity to appear before the board.

(c) Conduct further investigation to determine whether improvements have been made.

(4) Make a recommendation to the sponsoring commander. The commander will approve or disapprove the recommendations and notify the president.

(5) The president will notify the proprietor of the outcome.

(6) Commanders will publish a list of off-limits establishments.

(7) In emergency situations, commanders may temporarily declare establishments or areas off-limits to service members subject to their jurisdiction. The circumstances for the action will be reported as soon as possible to the commander sponsoring the board to allow for formal board action.

d) Limitations.

(1) Commanders may not post signs on private property (saying "off-limits.")

(2) OCONUS procedures must be consistent with the SOFA for that country.

(3) Off-limits should only be imposed where there is substantive information supporting the action. The board must not act arbitrarily.

e) Removal.

(1) The proprietor may petition for removal at any time. Removal action must be taken by the AFDCB. Appeal is to the next higher commander.

(2) A change in ownership, management, or name does NOT in and of itself revoke the off-limits order.

(3) Additionally, the Board should inspect off-limits establishments at least quarterly to ensure that continued limitations are justified.

(4) Once the board is convinced that adequate corrective measures have been taken, they should forward a recommendation for removal to the commander.

I. REPOSSESSION.

A. References.

1. AR 27-40, Litigation (19 Sep 1994).

2. NATO SOFA Supplementary Agreement available at http://www.aeaim.hqusareur.army.mil/library/MIS/F-PUB-MIS.htm.

3. NATIONAL CONSUMER LAW CENTER, REPOSSESSIONS AND FORECLOSURES (4^{th} Ed. 1999).

4. Uniform Commercial Code, Article 9, *Secured Transactions*.

B. Repossession on the Installation.

1. Seizure of personal property. (AR 27-40, para. 2-3f.) State and Federal courts issue orders (for example, writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid State or Federal court orders commanding or authorizing the seizure of private property to the same extent that State or Federal process is served.

2. Service of Civil Process.

   a) Policy. (AR 27-40, para. 2-3a.)

      (1) DA officials will not prevent or evade the service of process in legal actions brought against the United States or against themselves in their official capacities.

      (2) If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service.

b) Service on Soldiers in their Individual Capacity.

(1) DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(2) Process of Federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be permitted to serve Federal process. (See Federal Rules of Civil Procedure 4, 45). (AR 27-40, para. 2-3c.)

(3) Process of State courts. (AR 27-40, para. 2-3d.)

(a) In areas of exclusive Federal jurisdiction that are not subject to the right to serve State process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive Federal jurisdiction precludes service by State authorities on the military installation.

(b) On Federal property where the right to serve process is reserved by or granted to the State, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will proceed initially as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process per applicable State law, subject to reasonable restrictions imposed by the commander.

(4) Process in Germany.[13]

(a) German process servers generally have access to our installations. Art. 32, SA NATO SOFA.

(b) The service is either accomplished through a liaison agency designated by the U.S. or with notice to that agency.

[13] TJAGSA would like to thank Mr. P.J. Conderman, International Law Division, OJA, USAREUR for providing invaluable support in the preparation of this section.

(c) *The liaison agency for process is normally within OJA USAREUR.*

(d) *Repossession in Germany.*

(i) The German Civil Code generally allows self-help repossession. Court orders are only required if there will be resistance or the agent that is doing the repossessing has to enter private property.

(ii) The "bailiff" (similar to a sheriff or deputy) does both service of process and execution of judgments in Germany. Thus, we will grant access to our installations in accordance with the SA to the NATO SOFA. (Through liaison or notice to liaison.)

(iii) Art. 34, SA NATO SOFA, however, places additional restrictions on execution of judgments. The enforcement must be "effected . . . in the presence of a representative of the force." Thus, an U.S. representative would have to be present during the repossession.

(iv) Note that U.S. creditors seeking to enforce their judgments must obtain a domestic (German) basis for the repossession prior to proceeding. OJA, USAREUR is unaware of any recent cases where U.S. concerns have had to enforce their security interest in this way. Without a valid German order, however, the German authorities may view the action as theft.

3. Practical Advice.

a) Know your state law.

(1) Is self-help allowed or is a court order required?

(2) Most states do not allow a "breach of the peace" during the repossession.

(a) Physical force is a breach of the peace.

(b) If the debtor objects at the time of the taking, that may be a "breach of the peace." See, e.g., *Hester* v. Bandy, *627 So.2d 833 (Miss. 1993);* State v. Trackwell, *458 N.W.2d 181 (Neb. 1990);* but see *Chrysler Credit Corp. v. Kootnz, 661 N.E.2d 1171 (Ill. App. 1996).*

(c) The repo man may have a defense to breach of the peace if he gains possession of the collateral prior to the breach. See Clark v. Auto Recovery Bureau, Inc., 889 F.Supp. 543 (D.Conn. 1994).

b) Know Your Installation. Where are the spots of exclusive jurisdiction? Did the state reserve the right to serve process?

c) Have A Policy!

(1) Person reports to MP station or SJA office with court order or documentation (contract, evidence of default, evidence of ownership, authorization from creditor if agent, etc.).

(2) JA Review of court order/documents for validity.

(3) MP escorts the repossession agent to unit area to prevent breaches of the peace.

(4) Beware of conflicts – LAOs should not be reviewing documents – they will have to advise the soldier!

C. Assisting the soldier.

1. Repossession Threatened, But Not Accomplished.

a) Is the security interest valid?

b) Voluntary Surrender?

(1) May save expenses and result in a larger value at the collateral sale (avoiding or minimizing the deficiency judgment).

(2) Know your state law – about half of the states have anti-deficiency statutes that prohibit or limit the seeking of a deficiency. In this case, voluntary surrender is almost never a good idea. For example, in Georgia the creditor must send notice of intention to seek a deficiency judgment is required within 10 days of the repossession. Failure to comply with the notice provision, precludes a deficiency judgment.

(3) Negotiate favorable concessions in return for voluntary repossession. For example, they may waive the right to a deficiency.

c) Resisting the Repossession.

(1) Notify the creditor in writing that:

(a) The client objects to the repossession,

(b) Creditor may not trespass on consumer's property,

(c) Creditor may not use force, threats, or intimidation,

(d) Debt is disputed and any information provided to a credit reporting agency must reflect the dispute.

(2) Alert family members not to consent to the repossession agent entering onto the property.

(3) Alert neighbors so they can watch for and witness violations by repossession agent.

(4) DO NOT resort to violence to resist the repossession agent – call the police.

(5) DO NOT resist sheriff/government official. Simply verify identification.

(6) Advise client of the possible adverse credit consequences of resisting repossession.

d) SSCRA Interface. The SSCRA prohibits the self-help repossession of collateral where the debt arose prior to entry into military service even if the debtor's military status in no way affects the default. 50 U.S.C. App. § 531(1), 532. The creditor is limited to a judicial action to recover the collateral, and the court, even on its own motion, can stay the proceedings or take other equitable action if the debtor's entry into the military service affects the debtor's ability to repay the debt. Remember to check state law as well. Many states have laws extending the coverage of the SSCRA to National Guard members on active duty.

2. Repossession has occurred, but collateral not sold.

a) Reinstate the Contract.

(1) Know your state: A number of states statutorily require the creditors to permit the consumer to reinstate the contract after default and repossession.

(2) This may be labeled redemption or right to cure, but it is not the same as the Article 9, UCC redemption.

(3) The consumer only has to pay the amounts in default PRIOR TO acceleration in order to reinstate the K. Thus the consumer would only have to pay:

(a) The amount in default, plus

(b) Repossession charges.

(4) Note that this right is normally limited to a very short period of time, like 15 days after repossession.

b) Redemption.

(1) Article 9 gives the consumer an absolute right to redeem prior to disposition of the collateral. The collateral is considered "disposed of" when a contract disposing of the collateral is entered into.

(2) Here, however, the consumer must satisfy all obligations secured by the collateral. Thus, if the contract has been accelerated, the consumer would have to pay the entire remaining amount due, not just the delinquent installments.

(3) Waiver.

(a) May NOT be waived prior to default.

(b) MAY be waived after default by signing a written waiver. Waiver should be knowing and voluntary.

(4) Who may redeem? Only the "debtor." This term is broad and should include:

(a) The collateral owner and primary obligor on the debt.

(b) Sureties like guarantors and cosigners.

(5) Tender.

(a) Debtor should determine from creditor the exact amount due – get it in writing!

(b) Tender must be made physically – Show me the money!

(c) Tender must be unconditional.

c) Minimizing the Potential Deficiency.

(1) Strict Foreclosure.

(a) Creditors may propose that they simply keep the collateral as full satisfaction of the debt.

(b) They also get to keep all prior payments and do NOT have to return any surplus.

(c) Buyer can object within 21 days of creditor's notice.

(d) Where consumer has paid 60% of the debt, strict foreclosure is not allowed.

(2) Object to unreasonable delays in sale (that might impact value of car). Sale must be made in a commercially reasonable manner.

(3) Encourage others to attend sale.

3. Use of Warranty Law to Combat Repossession (See Chapter 5 for more detail).

a) Revocation of acceptance. If the car has not been repossessed and there are substantial nonconformities with provisions of an express or implied warranty, revoke acceptance prior to the repossession.

(1) Protects the consumer from deficiencies.

(2) Requires return of moneys already paid.

b) Deducting Damages from Balance Due. Article 2 (§ 2-717) of the UCC allows the consumer to deduct damages caused by the dealer's breach from the amount owed. This may cure the default.

(1) Warn clients that repossession will probably still occur and they'll be fighting this out in court.

(2) A strong letter to creditors, however, may prevent the repossession and bring them to the bargaining table.

CHAPTER 11

CONSUMER BANKRUPTCY PRACTICE

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I. I. REFERENCES:

A. Bankruptcy Code, Title 11 United States Code.

B. Federal Rules of Bankruptcy Procedure (Fed. R. Bankr. P.).

C. NATIONAL CONSUMER LAW CENTER, CONSUMER BANKRUPTCY LAW AND PRACTICE, (5th ed. 1996 and Supplement).

I. II. OVERVIEW.

A. Voluntary bankruptcy is a legal proceeding, brought by a debtor, seeking relief specifically provided for by the Bankruptcy Code.

B. Purpose.

1. Fresh financial start for the honest debtor.

2. Equality of distribution of a debtor's assets among his creditors.

I. III. TYPES OF RELIEF AVAILABLE FOR INDIVIDUALS.

A. Chapter 7 – liquidation:

1. All non-exempt assets are converted to cash and distributed to creditors according to statutory rules. No payments made to the court.

2. Eligible to file

   a.) Individual, residing or domiciled in United States, unless

   b.) within the preceding 180 days

      (1) the debtor filed a bankruptcy case that was dismissed for willful failure to abide by orders of the court, or

      (2) the debtor requested and obtained voluntary dismissal of bankruptcy following filing a request for relief from automatic stay,

      (3) has filed Chapter 7 within preceeding 6 years.

3. Automatic Stay.

   a) Filing of petition effectuates the automatic stay.

   b) Stay prevents further proceedings or acts against the debtor or the debtor's property by anyone, with respect to any claims arising before commencement of the case.

4. Creditors' meeting – typically within 30 days the debtor will be examined under oath by the bankruptcy trustee. Typically, this will be the only appearance by the debtor. Although it is called a creditors' meeting, generally, creditors do not attend.

5. Property claimed as exempt is retained by the debtor, absent objection. Exemptions will be discussed in Section V.

6. Discharge.

a) Effective as to all debts except:

(1) debts not listed on the schedule,

(2) alimony, spousal support, child support,

(3) most fines and penalties owed to governmental units,

(4) student loans,

(5) debts denied discharge in previous bankruptcy,

(6) debts incurred through driving under the influence of alcohol or drugs or willful and malicious torts.

b) Objections to Discharge.

(1) Burden of proof is on the person objecting to the discharge,

(2) Grounds.

(a) intentional concealment, transfer, or destruction of property,

(b) concealed, destroyed, mutilated, falsified, or failed to keep information concerning finances,

(c) dishonesty in connection with the case:

(i) false oath,

(ii) false claims.

(d) failure to explain loss or deficiency of assets or reckless spending immediately prior to bankruptcy filing,

(e) refusal to obey court orders or testify,

B. Chapter 13.

The Debtor proposes a plan for payment of some or all of his debts, within certain statutory guidelines. Plan is carried out under court supervision with the court protecting the debtor, and usually all of the debtor's property from creditors. The provisions of Chapter 13 of the Bankruptcy Code contemplate that only the debtor shall have the right to file a plan. Chapter 13 is considered to be a totally voluntary proceeding, and as a result Congress did not believe it appropriate to permit the debtor's creditors to file a plan which would often not fully contemplate the debtor's normal living expenses. **WATCH**! There is a proposal in Congress that would allow creditor's to force debtor's to file a Chapter 13 instead of a Chapter 7.

1. Eligibility.

a) Individual with regular income – sufficiently stable and regular to enable the individual to make payments under the plan.

b) reside or domiciled in the United States.

c) Debts must be less than $269,250 unsecured and $807,750 secured.

d) Plan must provide for creditors to get at least as much as they would have received under Chapter 7.

2. Mechanics.

a) Bankruptcy Code Section 1325(a)(5) provides that the debtor's plan shall be confirmed by the Court if the secured claims provided for by the plan have (1) accepted the plan; or (2) the plan provides that the secured creditor retain its lien and be paid the value of its claim as of the effective date of the plan, or (3) alternatively that the debtor surrender the collateral to the secured creditor.

b) Bankruptcy Code Section 1325(b)(1) provides that if the trustee or the holder of an allowed, unsecured claim objects to confirmation of the plan, the Bankruptcy Court may not approve the plan unless, as of the effective date of the plan, the value of the property distributed under the plan on account of the claim is not less than the amount of the claim; or the plan provides that all of the debtor's projected, disposable income to be received in the three year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

c) Thus, if the unsecured creditor is paid in full, or if the debtor is paying to his creditors all of his projected net disposable income, the plan is deemed to have been filed in good faith and is representative of the debtor's best efforts.

d) "Net Disposable Income" as established by the Bankruptcy Code means income received by the debtor which is not reasonably necessary to be expended for the maintenance or support of the debtor or his family; or if the debtor is engaged in business, for the payment of expenditures necessary for the operation of the business.

e) This provision seems to tie in with Bankruptcy Code Section 707(b) which permits the Court, on its own motion, to refuse to grant relief to the debtor under Chapter 7 if it appears that the debtor is a consumer debtor and could qualify under Chapter 13 of the Bankruptcy Code.

f) Bankruptcy Code Section 1326 requires that payment under the plan shall begin within 30 days after the plan is filed. No payments will be distributed by the trustee until confirmation. If the plan is not confirmed, then any payments received by the trustee shall be returned to the debtor.

g) The trustee is responsible for receiving all payments to be made as provided under the plan. If payments are not timely begun, or

continued under the plan after confirmation, any party in interest may bring this to the Court's attention and request that the case be dismissed.

h) If the case is dismissed, then the debtor may be prohibited from filing any other petition under any chapter of the Bankruptcy Code for a period of 180 days as a result of the prohibition against multiple filings contained in Bankruptcy Code Section 109(f).

3. Automatic Stay.

a) Filing of petition effectuates the automatic stay.

b) Stay prevents further proceedings or acts against the debtor or the debtor's property by anyone, with respect to any claims arising before commencement of the case.

c) Automatic Stay also applies to co-debtors. But if the plan does not provide for the debt to be paid in full, the creditor can go after the co-debtor for the deficiency.

4. Failure to complete the Plan.

a) Hardship discharge – if caused by circumstances for which the debtor is not justly accountable (death, serious deterioration of financial circumstances).

b) Modify the plan to accommodate the new problems (reduce payments).

c) Convert to a Chapter 7.

d) Dismiss the petition placing debtor and creditor where they were before the bankruptcy.

5. Discharge Hearing.

a) The discharge does not extinguish the debts, void any liens, or void any judgments which became liens before the petition was filed that were not set aside in the bankruptcy proceeding. The discharge only releases the debtor from his personal liability for payment of his debts and permanently enjoins any creditor from attempting to collect their debt from the debtor.

b) If a debtor receives his discharge, and is subsequently harassed or sued by a creditor whose debt has been discharged, contempt proceedings can be filed against the creditor.

(1) All debts provided for by the plan will be discharged, except:

(i) alimony, spousal support, child support,

(ii) student loans,

(iii) restitution ordered by criminal court,

(iv) long term debts with final payments due after completion of plan (mortgage),

(v) malicious and willful torts anddebts incurred through drunk driving or under the influence of drugs,

(vi) income taxes owed within three years preceding the date of filing.

I. IV. DETERMINATION OF EXEMPTIONS AND PERFECTION OF CLAIMS.

A. Be sure to properly claim the exemptions available to the debtor either under state law, or federal bankruptcy law.

B. Note that the claim of exemptions generally must be made and perfected prior to the filing of the petition.

C. No definition for exemption is provided in the Bankruptcy Code.

D. Purpose. To allow debtors to keep those items of property deemed essential to daily life.

E. Federal Exemptions and State Exemptions. States may opt out of the Federal Exemptions. State exemptions may be more favorable than Federal Exemptions. **NOTE: State of debtor's domicile, not the state of residence, is the proper source for State exemptions.**

F. Federal Exemptions.

1. Homestead - $16,150.

a) Real or personal property, if

b) Residence of debtor or dependent.

2. Motor Vehicle - $2,575.

3. Household goods - $425 per item, $8,625 per debtor.

4. Jewelry - $1,075.

5. Any property - $850, plus any unused amount of the homestead exemption up to $8,075 per debtor.

6. Tools of the trade - $1,625.

I. V. INITIAL MEETING WITH DEBTOR.

A. Thorough knowledge of facts is imperative. The client is your principal source of information. See supplementary materials to this outline for a sample questionnaire.

1. Determine if suit, garnishment, or other legal action is imminent or pending.

2. Determine what types of debt are causing the most trouble?

   a) Secured.

   b) Unsecured.

3. Review with debtor in detail current financial problems and attempt to determine cause - ex: illness, inability to manage money, fraudulent activity, reckless spending, etc.

4. Review debtor's list of assets.

   a) Find out what the debtor has to lose if he files bankruptcy.

   b) Consider exemptions, redemption, lien avoidance and reaffirmation possibilities. See Section VI.

   c) Determine what assets the debtor <u>wants</u> to keep and what assets the debtor <u>needs</u> to keep.

   d) Are there any prebankruptcy transfers of collateral that may cause problems?

5. In reviewing assets determine what assets are subject to liens.

   a) Determine if there is any equity in the asset.

   b) Consider return of asset and replacement with similar but less expensive asset.

6. Review with debtor his budget information reflecting all sources of income and present living expenses.

a) Determine what expenses are necessary and what are extravagant.

b) Determine whether or not the debtor would have any excess income after the payment of normal reasonable living expenses to pay to creditors.

c) Are there any payroll deductions that can be terminated?

7. Determine if secured claims can be paid on contract terms or if adjustments need to be made in order to keep the collateral. If so, consider use of redemption, lien avoidance, or cram-down.

8. Determine if the debtor will become employed if not currently employed (perhaps not relevant in advising military personnel).

9. Determine the likelihood of increase in income for debtor.

10. Determine whether debtor expects any inheritance in the near future or is entitled to any tax refunds or has any claims against anyone else, since such claims may be or become assets of bankruptcy estate.

11. Determine if debtor has any cash value in life insurance available to him.

B. Determine whether bankruptcy is the only means to afford the debtor relief and how permanent relief will be.

1. What is the result of doing nothing?

2. Is it possible for the debtor to obtain a loan in order to consolidate debts?

3. Is debtor likely to find himself in a similar situation shortly after filing bankruptcy because of inability to meet basic living expenses?

4. What effect will bankruptcy have on debtor's credit now and in the future?

5. Is it possible to work out an agreement directly with the debtor's creditors and avoid the necessity of bankruptcy?

6. If debtor's personal residence is subject to lien, determine if Chapter 13 cram-down is available.

7. Advantages of Bankruptcy.

a) Discharge of unsecured debts.

b) Protect property from execution by unsecured creditors.

c) Prevent garnishment of wages after petition.

d) May be able to eliminate liens on secured debt.

e) May be able to lower payments or get a reasonable time to cure default on a secured debt under Chapter 13.

f) Automatic stay upon filing petition halts most creditor actions.

8. Disadvantages of Bankruptcy.

a) Loss of non-exempt property or equivalent cash value under Chapter 7.

b) Effect on credit history (10 years).

c) Inability to refile a Chapter 7 for 6 years .

d) Possible loss of security clearance based on bankruptcy filing.

9. Situations in which bankruptcy is unavailable or will not help the debtor.

a) All debts are fully secured by security interest which will not be impaired through use of bankruptcy.

b) Client holds property in trust for their children.

c) Barred from filing a bankruptcy altogether or for some period of time.

I. VI. CHOOSING THE TYPE OF BANKRUPTCY.

A. Factors favoring Chapter 7.

1. Low income with little or no non-exempt property.

2. No excess income over necessary expenses.

3. Chapter 13 is not available because of debt ceilings.

B. Factors favoring Chapter 13.

1. one or more secured creditors who can't be dealt with any other way (bank about to repossess),

2. non-exempt property to protect,

3. Chapter 7 has been filed within the previous 6 years,

4. Broader discharge available than under Chapter 7.

5. Debtor wants to pay his debts.

6. Debtor can voluntarily dismiss the bankruptcy without leave of court.

I. VII. REDEMPTION, LIEN AVOIDANCE, AND REAFFIRMATION.

A. ***Redemption:***

Bankruptcy Code Section 722 permits an individual debtor, not a partnership or corporation, to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, if the property is exempt under Bankruptcy Code Section 522, or has been abandoned by the trustee.

1. If the debtor wishes to exercise this option, and the property is exempt or has been abandoned, and is intended primarily for personal, family or household use, the debtor must pay the holder of the lien, in cash, the amount of the allowed secured portion of the claim.

2. The debtor does not have the right to redeem in installments.

3. The amount of the allowed secured claim is determined pursuant to Bankruptcy Code Section 506(a), and, simply stated, is defined to be the fair market value of the collateral.

4. This provision permits the debtor to keep property which is subject to a lien and only pay the creditor what the property is worth.

B. ***Lien Avoidance:***

Bankruptcy Code Section 522(f) permits the debtor to avoid the fixing of a lien on an interest of the debtor in property to the extent that the lien impairs an exemption to which the debtor would have been entitled under the Bankruptcy Code if the lien is either (l) a judicial lien; or (2) a non-possessory, non-purchase money security interest in household goods and furnishings; or (3) implements, professional goods, or tools of the trade of the debtor, or the trade of a dependent of the debtor, or professionally prescribed health aids of the debtor or dependent of the debtor.

1. This provision is enforceable even if the debtor may have previously waived any claim to exemptions, such as a homestead waiver.

2. If the debtor elects to avoid a lien, the creditor will receive no payment from the debtor and must release its lien on the exempt property.

3. This is different from redemption in that under redemption, the creditor's lien is not avoidable and the creditor receives payment to the extent of the fair market value of the property.

4. Judicial liens for spousal or child support, or alimony, which have not been assigned to another entity, ie. such as a state department of Support and Collection, are not avoidable.

5. The lien can be avoided only to the extent that the sum of the lien, plus the amount of all other liens on the property, plus the amount of the statutorily allowed exemption, exceeds the value of the debtor's interest in the property if there were no liens. (For example, if a $3,000 judgment lien encumbers property worth $9,000 in which $7,500 is exempt, only $1,500 of the lien could be avoided. The avoided portion is considered unsecured debt).

A. Reaffirmation:

Prior to the Bankruptcy Amendments and Federal Judgeship Act of 1984, the Bankruptcy Court was required to consider all motions for reaffirmation and to approve or disapprove them, in view of the best interests of the debtor and the debtor's dependents. As a result of recent legislation the Bankruptcy Court is no longer involved in reaffirmation agreements between the debtor and his creditors if the debtor is represented by counsel. If the debtor is not represented by counsel, the Court must consider and approve any reaffirmation agreement.

1. The reaffirmation agreement is enforceable only if (1) the agreement was made before the granting of the discharge, and (2) the agreement contains a clear and conspicuous statement advising the debtor that the agreement may be rescinded at any time prior to discharge or within 60 days after the agreement is filed with the Court whichever occurs later, by giving notice of rescission to the holder of the claim, and (3) the agreement has been filed with the Court accompanied by the declaration or affidavit of the attorney.

2. If the debtor is not represented by an attorney, then the Court must approve the agreement as not imposing an undue hardship on the debtor or a dependent of the debtor, and be in the best interest of the debtor.

3. The Bankruptcy Court is not required to approve reaffirmation agreements relating to debts which are consumer debts secured by real property of the debtor.

4. All reaffirmation agreements, even those concerning debts secured by real property of the debtor, must be filed with the Bankruptcy Court and must contain the affidavit of the attorney and the statement advising the debtor that the agreement may be rescinded at the later of any time prior to discharge or within 60 days after the agreement is filed with the Bankruptcy Court.

I. VIII. EFFECT OF SECTION 362 - AUTOMATIC STAY.

A. Upon the filing of the petition an automatic injunction granted by 11 U.S.C. Section 362 becomes effective, and stays all actions by creditors against the debtor.

B. Note that his does not affect criminal prosecutions where the intent and main purpose is not the recovery of an indebtedness (ex: bad check prosecutions).

C. The filing of the petition stays repossession or other liquidation of collateral held by a secured creditor.

D. The automatic stay continues in effect until an order lifting the stay is entered by the Court, or the earlier of when the discharge is granted, or the time the case is closed or dismissed.

E. If a motion to lift the stay is filed, a hearing on the motion must be concluded within 30 days after the motion is filed or the stay will automatically dissolve, unless the parties agree to an extension of the period.

F. The automatic stay must still be lifted in order for the creditor to recover its collateral.

I. IX. SECTION 341 - MEETING OF CREDITORS.

A. The Court will set a meeting of creditors pursuant to Section 341 of the Bankruptcy Code to be held between 20 and 40 days after the filing of the petition.

B. The Court will appoint an interim Trustee to serve as Trustee until the meeting of the creditors at which time the creditors may elect their own trustee - this is rarely done.

C. At the meeting of creditors the Trustee will examine the debtor regarding his assets, liabilities and income in order to determine what property the Trustee has to administer.

D. The Trustee is required to ask the Debtor if he is aware of (1) the consequences of seeking a discharge in bankruptcy and the effect on his credit history, (2) his ability to file a petition under Chapter 13, (3) the effect of receiving a discharge under Chapter 7, and (4) the effect of reaffirming a debt.

E. In many jurisdictions Trustees will declare cases as "no asset" cases if the value of the property subject to their administration is less than $1,000.

F. The debtor must attend the Section 341 meeting or the case may be dismissed.

G. The Trustee has the authority, generally separately approved by a court order, to sell non-exempt assets of the debtor free of lien and to apply the net proceeds to the payment of any liens, with any balance to be paid prorata to the claims of creditors.

I. X. DISCHARGE HEARING.

A. Debtor is required to attend the discharge hearing or case may be dismissed.

B. Hearing is held approximately 75 days after Section 341 meeting.

C. If "objection to discharge" or "objection to dischargeability of a debt" (note the distinction) is filed within 60 days after Section 341 meeting, a separate hearing will be held on the creditor's compliant.

D. At the discharge hearing, the Bankruptcy Judge will advise the debtor of the effect of the debtor's bankruptcy and the effect of the Order of Discharge, which is then provided to the debtor.

E. If a debtor receives his discharge, and is subsequently harassed or sued by a creditor whose debt has been discharged, contempt proceedings can be filed against the creditor.

SUPPLEMENTARY MATERIALS

CLIENT HANDOUT ANSWERING COMMON BANKRUPTCY QUESTIONS*

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This brochure cannot explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy or a paralegal working for an attorney.

WHAT IS BANKRUPTCY?

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

WHAT CAN BANKRUPTCY DO FOR ME?

Bankruptcy may make it possible for you to:

- Eliminate the legal obligation to pay most or all of your debts. This is called a "discharge" of debts. It is designed to give you a fresh financial start.
- Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

WHAT BANKRUPTCY CANNOT DO!

Bankruptcy cannot, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually not possible to:

- Eliminate certain rights of "secured" creditors. A "secured" creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. You *can* force secured creditors to take payments over time in the bankruptcy process and bankruptcy *can* eliminate your

obligation to pay any additional money if your property is taken. Nevertheless, you generally cannot keep the collateral unless you continue to pay the debt.

- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and some taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.
- Discharge debts that arise after bankruptcy has been filed.

WHAT DIFFERENT TYPES OF BANKRUPTCY CASES SHOULD I CONSIDER?

There are four types of bankruptcy cases provided under the law:

- *Chapter 7* is known as "straight" bankruptcy or "liquidation." It requires a debtor to give up property which exceeds certain limits call "exemptions," so the property can be sold to pay creditors.
- *Chapter 11*, known as "reorganization," is used by businesses and a few individual debtors whose debts are very large.
- *Chapter 12* is reserved for family farmers.
- *Chapter 13* is called "debt adjustment." It requires a debtor to file a plan to pay debts (or parts of debts) from current income.

Most people filing bankruptcy will want to file under either chapter 7 or chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

CHAPTER 7 (STRAIGHT BANKRUPTCY)

In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up property, except for "exempt" property which the law allows you to keep. In most cases, all of your property will be exempt. But property which is not exempt is sold, with the money distributed to creditors.

If you want to keep property like a home or a car and are behind on the payments on a mortgage or car loan, a chapter 7 case probably will not be the right choice for you. That is because chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

CHAPTER 13 (REORGANIZATION)

In a chapter 13 case you file a "plan" showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property – especially your home and car – which might

otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind.

You should consider filing a chapter 13 plan if you:

(1) own your home and are in danger of losing it because of money problems;
(2) are behind on debt payments, but can catch up if given some time;
(3) have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

You will need to have enough income in chapter 13 to pay for your necessities and to keep up with the required payments as they come due.

WHAT DOES IT COST TO FILE FOR BANKRUPTCY?

It now costs $175 to file for bankruptcy under chapter 7 and $160 to file for bankruptcy under chapter 13, whether for one person or a married couple. The court may allow you to pay this filing fee in installments if you cannot pay all at once. If you hire an attorney you will also have to pay the attorney's fees you agree to.

WHAT PROPERTY CAN I KEEP?

[Note to the Attorney: This answer is accurate for states that permit the federal exemptions. For states which have opted out of federal exemptions, the answer must be adapted to indicate that the debtor's exemptions are those specified by state law.]

In a chapter 7 case, you can keep all property which the law says is "exempt" from the claims of creditors. You can choose between your exemptions under your state law or under federal law. In many cases, the federal exemptions are better.

Federal Exemptions include:

- $16,150 in equity in your home;
- $2,575 in equity in your car;
- $425 per item in any household goods up to a total of $8,625;
- $1,625 in things you need for your job (tools, books, etc.);
- $850 in any property, plus part of the unused exemption in your home, up to $8075;
- Your right to receive certain benefits such as social security, unemployment compensation, veteran's benefits, public assistance, and pensions – regardless of the amount.

The amounts of the exemptions are doubled when a married couple files together.

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth now. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a $50,000 house with a $40,000 mortgage, you count your exemptions against the $10,000 which is your equity if you sell it.

While our exemptions allow you to keep property even in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy.

WHAT WILL HAPPEN TO MY HOME AND CAR IF I FILE BANKRUPTCY?

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

CAN I OWN ANYTHING AFTER BANKRUPTCY?

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

WILL BANKRUPTCY WIPE OUT ALL MY DEBTS?

Yes, with some exceptions. Bankruptcy will not normally wipe out:

(1) money owed for child support or alimony, fines, and some taxes;
(2) debts not listed on your bankruptcy petition;
(3) loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;

(4) debts resulting from "willful and malicious" harm;

(5) student loans owed to a school or government body, except if the court decides that payment would be an undue hardship;

(6) mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor).

WILL I HAVE TO GO TO COURT?

In most bankruptcy cases, you only have to go to a proceeding called the "meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

WILL BANKRUPTCY AFFECT MY CREDIT?

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse.

The fact that you've filed a bankruptcy can appear on your credit record for ten years. But since bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

WHAT ELSE SHOULD I KNOW:

Utility services – Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills which arise after bankruptcy is filed.

Discrimination – An employer or government agency cannot discriminate against you because you have filed for bankruptcy.

Driver's license – If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

Co-Signers – If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. If you file a chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

HOW DO I FIND A BANKRUPTCY ATTORNEY?

As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from

family, friends, or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate Is not necessarily the best. Many of the best bankruptcy lawyers do not advertise at all.

Paying for debt counseling is almost never a good idea. There is almost nothing that a paid debt counselor can offer other than a recommendation about whether bankruptcy is appropriate and a list of highly priced debt consolidation lenders. There is no good reason to pay someone for their service. A reputable attorney will generally provide counseling on whether bankruptcy is the best option. This avoids the double charge of having to pay a counselor and then an attorney. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions.

Document preparation services also know as "typing services" or "paralegal services" involve non-lawyers who offer to prepare bankruptcy forms for a fee. Problems with these services often arise because non-lawyers cannot offer advice on difficult bankruptcy cases and they offer no services once a bankruptcy case has begun. There are also many shady operators in this field, who give bad advice and defraud consumers.

When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:

- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?
  - Is any action about to occur to foreclose or repossess property or to shut off utility service?
- What are your goals in filing the case?

CAN I FILE BANKRUPTCY WITHOUT AN ATTORNEY?

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 (straight bankruptcy) cases are easier. Very few people have been able to successfully file chapter 13 (debt adjustment) cases on their own.

Remember: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.

CHAPTER 12

Adapted from National Consumer Law Center, *Consumer Bankruptcy Law and Practice*, 5th edition and supplement, available from: NCLC, 18 Tremont Street, Boston, MA 02108

LANDLORD-TENANT LAW

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OUTLINE OF INSTRUCTION

I. REFERENCES.

A. Schoshinski, Robert S., AMERICAN LAW OF LANDLORD AND TENANT, 1980 with 1993 Supplement.
B. AR 27-3, The Army Legal Assistance Program (10 September 1995).
C. Air Force Instruction 51-504, Legal Assistance, Notary, And Preventive Law Programs (1 May 1996).
D. JAGINST 5801.2, Navy-Marine Corps Legal Assistance Program, promulgating *The Legal Assistance Manual.*
E. Uniform Residential Landlord and Tenant Act (URLTA).
F. NATIONAL CONSUMER LAW CENTER, ACCESS TO UTILITY SERVICE (1996 and Supp.). [Hereinafter, "NCLC ACCESS"]

I. ELIGIBLE CLIENTS.

A. Army.

1. Legal Assistance Attorneys (LAA) will provide legal assistance and advice on consumer affairs and landlord-tenant matters. (AR 27-3, Paras. 3-6c., d., and e.).

2. LAA may draft leases, but may not help clients with issues involved in income producing business activities. (AR 27-3, Para. 3-6c., 3-8a.(2)).

3. Tenants - military members who rent from either civilian or individual military landlords. (AR 27-3, Para. 3-6c.).

a) Assistance WILL be provided on:

(1) Leases, issues, and disputes involving the military member's *principal residence.*

(2) Termination of pre-service leases under the SSCRA.

b) Legal Assistance MAY be provided:

(1) On matters relating to the purchase, sale, or rental of a client's principal residence or other real property.

(2) That is not prohibited by the limitation on private business activities. (AR 27-3, Para. 3-8a(2)).

c) Remember ethical considerations.

d) LAA shouldn't review a lease on behalf of a tenant when another attorney in the office drafted it on behalf of the landlord.

4. Landlords - military members renting out property in the hopes of returning to the home, as an investment, or renting out property due to an inability to sell the property in conjunction with transfer. (*See* definition of "Private business activities in AR 27-3, Glossary.)

B. Air Force.

1. The Air Force considers Landlord-Tenant issues mission-related legal assistance.

2. Assistance must be provided to "active duty members, including reservists and guardsmen on federal active duty under Title 10 U.S.C., and their family members entitled to an identification card, and for civilian employees stationed overseas and their family members entitled to an identification card, and for civilian employees stationed overseas and their family members residing with them who are entitled to an identification card, . . ." Para. 1.3.1, AFI 51-504 (1 May 1996).

C. Navy.

1.. Tenant Services.

a) Review leases, provide language and suggested modifications, and advise clients on rights and remedies.

b) Attorneys may contact landlords on behalf of clients and negotiate or participate in ADR.

2. Landlord Services.

a) May advise landlords on the renting of a former principal residence including lease preparation.

b) LAAs may assist the landlord in negotiating with prospective tenants and use of ADR.

c) Properties held primarily for investment or production of income are considered businesses and landlords of these properties are not eligible for legal assistance services.

I. CONSUMER LAW CAN HELP IN LANDLORD TENANT CASES.

A. Ultimatums about rent may fall within the Fair Debt Collections Practices Act. *Romea v. Heiberger & Associates*, 988 F.Supp. 712 (S.D.N.Y. 1997).

B. Absent consent landlord access to credit reports when making rental decisions is limited. *Ali v. Vikar Management Ltd.*, 994 F.Supp. 715 (S.D.N.Y. 1998).

I. LANDLORD'S OBLIGATIONS.

A. Covenant of Quiet Enjoyment.

Generally ensures that the tenant's enjoyment and use of the premises is protected against the landlord or some other taking through the landlord.

1. Actual Eviction.

a) Is a BREACH of the lease if:

(1) The tenant is actually physically evicted; AND

(2) That action was wrongful.

b) Can be caused by actions of the landlord or by third persons for whom the landlord is responsible.

c) Relieves the Tenant of any further obligation to pay rent, even in jurisdictions who view tenant's rent obligation as separate and distinct from landlord's breach generally!

d) May be partial! *See, e.g., Washburn v. 166th East 96th Street Owners Corp.*, 166 A.D.2d 272, 564 N.Y.S.2d 115 (1990)(Transfer of roof area adjacent to penthouse from exclusive tenant use to common use was a partial actual eviction.)

(1) The expulsion of the tenant is from a significant part of the premises.

(2) Tenant may remain in possession of the part she is not expelled from.

(3) Tenant does NOT have to pay ANY of the RENT!!!

2. Constructive Eviction. *See, e.g., Home Rentals Corporation c. Curtis*, 236 Ill.App.3d 994, 602 N.E.2d 859 (1992); *Manhattan Mansions v. Moe's Pizza*, 149 Misc.2d 43, 561 N.Y.S.2d 331 (1990).

a) Covers actions of the landlord that fall short of actual physical expulsion.

b) To be actionable the landlords action must

(1) Be injurious to the tenant's use and enjoyment of the premises.

(2) Be so severe that they justify abandonment by the tenant. Tenant must:

(a) Establish that the interference is substantial and not just incidental.

(b) Show that the landlord intended to evict tenant. NOTE: The landlord is PRESUMED to intend the natural consequences of his actions.

(c) Abandon the premises within a reasonable time after the landlord's interference begins.

(d) Give the landlord an opportunity to correct the situation.

c) Constructive eviction is a question of fact for the trier of fact.

d) Some states allow a PARTIAL constructive eviction. *See Moe's Pizza* above.

e) Examples.

(1) Successful

(a) Interference with access to the leased premises (e.g. obstructions in walkways or hallways).

(b) Lost use of rights or an easement.

(c) Loss of light, air, or ventilation.

(d) Persistent, harmful, and offensive odor.

(e) Water Leaks.

(2) Not Successful.

(a) Actions of neighbors.

(i) But may be responsible if he allows extensive remodeling.

(ii) May be responsible if he fails to take sufficient action to abate a nuisance.

3. Remedies for Actual & Construction Eviction.

   a) Treat the tenancy & rent obligation as terminated.

   b) Action for recovery of possession (Actual Eviction).

   c) Seek Injunctive Relief (Constructive Eviction).

   d) Action for Damages. (There is a split about whether you can get these without vacating the premises).

      (1) Usually measured by the difference between the reserved rent and the fair rental value for the remainder of the term.

      (2) May be able to get special damages (such as relocation expenses) for wrongful evictions.

B. Responsibility for Condition of the Premises.

1. Traditional Rule - *Caveat Emptor.*

2. Latent Defects.

   a) Defects which tenant could not reasonably have made herself aware.

   b) Landlord must disclose.

   c) If not, Tenant may:

      (1) Vacate the premises.

      (2) Sue for Damages.

      (3) If he vacates, avoid any further obligation for rent.

      (4) Recover special damages, such as damage to his property.

3. Duties to Repair.

a) Common Law.

(1) No obligation, EXCEPT

(2) Areas he still controls (like common areas).

(3) Relief limited.

(a) Obligation to pay rent continues.

(b) Tenant may NOT abandon the premises.

b) Express Covenants may modify this.

c) Many states have modified this with statute.

C. Implied Warranty Of Habitability.

1. Formerly, provisions like the following were indicative of the doctrine of *caveat emptor* in leasing:

"Tenant has inspected the premises and finds them to be in good and habitable condition. At all times and at the Tenant's own expense, Tenant shall maintain the premises in a good and habitable condition, including all appliances and equipment. Tenant shall make all repairs required for exposed plumbing and electrical wiring."

2. Implied warranty of habitability is result of judicial frustration with the impotence of the tenant.

a) See Javins v. First National Realty Corp, 428 F.2d 1071 (D Cir.), cert. denied, 400 U.S. 925 (1970). The warranty, which is normally implied with respect to residential (v. commercial), multiple-family dwellings, constitutes an obligation by the landlord to:

(1) Deliver and,

(2) Maintain a habitable dwelling.

b) States adopting implied warranty of habitability differ regarding remedies, measure of damages, precise standards of habitability. Some states consider the following in addition to compliance with housing code:

(1) Nature of defect.

(2) Effect on safety or sanitation.

(3) Length of time it persisted.

(4) Age of structure.

(5) Amount of rent.

(6) Tenant's intelligent waiver of defect.

(7) Attribution of defect to tenant's own abuse.

3. Some states have codified implied warranty of habitability(Hawaii, Maine, Michigan, Minnesota, Washington, and West Virginia), imposing a wide range of contractual duties on the landlord and affording the tenant a broad range of remedies unknown at common law.

   a) See, Aspon v. Loomis, 816 P.2d 751 (Wash. App. 1991). Court disapproved standard jury instruction that "a landlord has a duty to use ordinary care to keep the premises fit for human habitation at all times during a tenancy." A landlord's duty to tenant is restricted to those duties enumerated by statute.

   b) Application of the implied warranty is contingent on tenant's notice to landlord of defective conditions plus reasonable time to repair.

   c) Courts generally find breach only when premises rendered truly unsafe, unsanitary, or uninhabitable.

4. Waiver of Implied Warranty.

   a) Tenant's continued occupancy of uninhabitable premises generally not a waiver.

   b) "No waiver rule."

      (1) Private agreements to shift duties fixed by warranty illegal and unenforceable.

      (2) Rule has been adopted in some states (i.e. WA.; DC; MA; PA).

      (3) Uniform Residential Landlord and Tenant Act prohibits lease provisions waiving warranty.

      (4) Restatement (Second) of Property allows waivers if not unconscionable.

5. Remedies.

      (1) Common Law/Contractual.

      (2) Rescission.

(3) Withhold part or all of rent.

(4) Pay rent and sue for damages.

(a) Wade v. Jobe, *818 P.2d 1006 (UT. 1991). Once landlord breaches duty to provide habitable conditions, tenant may withhold rent or continue to pay rent to landlord and then bring action for reimbursement for excess rent paid. Special damages also recoverable.*

(b) Action for specific performance.

b) Statutory Remedies.

(1) Rent abatement.

(2) Repair and deduct. The states which have such statutes include AZ, CA, MT, ND, LA, SD, and WA.

(3) Rent escrow until repairs made. The states which have such statutes include: MD, MA, MI, MO, NJ, NY, OH, PA, TN, and VT.

(4) Appoint receiver to apply rent to repairs. The states which have such statutes include: CT, IL, IN, MA, MI, MN, MO, NJ, and NY.

(5) Suits for damages and specific performance.

(a) Example: Idaho § 6-320 - A tenant may file suit for failure to provide reasonable weatherproofing and weather protection of the premises; failure to maintain in good working order electrical, plumbing, heating, ... or sanitary facilities supplied by landlord; maintaining premises in manner hazardous to health or safety of tenant...

(b) King v. Brace, *552 A.2d 398 (Vt. 1989). Punitive damages against lessor of mobile home park rendered uninhabitable when lessor failed to remedy problems despite repeated requests by lessee and notices from health authorities.*

I. TENANT'S OBLIGATIONS.

A. Rent.

1. Existence of a Tenancy is a Prerequisite to Paying Rent.

2. Normally contractual - a specific covenant in the lease specifies the amount of the rent.

   a) If no amount is stated, the tenant would be liable for the reasonable value.

   b) May include collateral payments (e.g. tax payments, utility payments, etc.) as part of the rent.

3. Promises to change the rent (up or down) must be supported by fresh consideration.

4. Place & Mode of Rent Payment.

   a) Generally, AT the premises unless the parties agree otherwise. Therefore, the landlord is supposed to come and pick up the rent.

   b) Changes to the location can be established by the parties' practice with regard to past rent payments.

   c) Rent is normally payable in money, which may be paid in the form of check.

   d) Can be made by mail if the parties so agree.

5. When is the Rent Due? (Time of Payment).

   a) Generally accrues on the day it is payable, NOT day to day.

b) Unless the parties agree otherwise, the rent does not accrue until the period which that rent covers is complete. Provisions in the lease regarding this are construed strictly.

6. Other charges.

a) Rent Acceleration.

(1) Makes all rent under the lease due and payable upon the default of the tenant on any installment.

(2) Some states allow these provisions to take effect.

(3) Others view this as an unenforceable penalty.

b) Late Payment Charges.

(1) Specific Dollar or a percentage fee if the rent is late.

(2) Most states allow. There are two approaches:

(a) The charge is considered interest in which case it must comply with usury laws.

(b) The charge is considered liquidated damages. In that instance it must:

(i) be a good faith estimate of the loss likely to incur.

(ii) bear a reasonable relationship to the loss likely to occur.

(c) Look to case law in you jurisdiction. Particularly where the lease is residential, courts have sometimes struck these down if they are excessive.

B. Duty to Repair

1. Common Law: Absent an express provision, tenant was required to make minor repairs to preserve the premises.

2. Modern Statutory Schemes.

   a) Largely relieves tenant of obligations to repair.

   b) However, must notify landlord and give landlord opportunity to repair. If not, and damage occurs because of situation of which landlord was not aware, tenant may be liable.

   c) Many place obligations on tenants to maintain the dwelling in "clean and sanitary" condition.

3. Express covenants to repair may be enforceable, but this is unclear in jurisdictions with statutory schemes.

C. Landlord's Remedies For Tenant's Breach.

1. Self-help repossession.

2. Many states limit or disallow self-help.

3. Trend - make legal process the landlord's exclusive remedy. In many jurisdictions, landlord liable for punitive damages if uses self help.

4. The Restatement (Second) of Property takes the position that the availability of summary eviction bars the use of self-help by the landlord "unless the controlling law preserves the right of self-help."

5. Summary eviction.

   a) Statutory summary eviction procedures in all states.

(1) Avoids protracted process required for writs of ejectment.

(2) Avoids potential for violence and physical injury inherent in a landlord's attempt to recover possession personally.

b) Available when the tenancy term expires and tenant refuses to leave the premises or upon certain statutorily enumerated conditions, such as the tenant's failure to pay the rent.

6. Soldiers' and Sailors' Civil Relief Act - 50 U.S.C. app. § 530.

a) Prevents eviction of service member or dependent for nonpayment of rent without court order.

b) Military service affects ability to pay.

c) Rent does not exceed $1200.00.

d) Court shall upon application, or *sua sponte* stay the proceeding up to 3 months or make any other just order.

e) Criminal sanctions are possible for self-help repossessions.

7. Landlord's liens.

a) Statutory liens.

b) Contractual liens.

c) Retention of security deposit.

8. Landlord's Duty To Mitigate.

a) Common Law - No duty to mitigate.

b) Contract based doctrine.

(1) Recoverable losses limited to damages unavoidable through reasonable effort.

(2) Not all states require mitigation.

c) Uniform Residential Landlord Tenant Act, 78 U.L.A. 427 (1974).

(1) Contains statutory language imposing obligation to mitigate damages on landlord.

(2) Under the Act, if landlord fails to use reasonable efforts to relet at fair market rental, lease is deemed terminated as of date landlord has notice of abandonment.

(3) Adopted by at least 15 states.

I. SELECTED MILITARY TENANT ISSUES.

A. Early Lease Termination Due To Military Exigencies.

1. Termination of Pre-service Leases of Premises (Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 534). See SSCRA Outline.

a) Purpose - to permit lawful termination of a pre-service lease of premises by a service member entering active duty [or by his or her dependent in their own right (see § 536)].

(1) Criteria for relief.

(a) The service member need NOT show material effect.

(b) The service member need only show:

(i) The lease was entered into prior to entry into military service,

(ii) The lease was executed by or on behalf of the service member,

(iii) The leased premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the service member or the service member and his or her dependents, and

(iv) The service member is currently in military service.

b) Question: If a pre-service lease was signed only by non-military spouse, could he or she terminate the lease?

Yes. Dependents have protection in their own right even though § 534 says the lease must be executed by or on behalf of the service member.... (use § 536 to insert "by or on behalf of the dependent.")

c) Question: What if the non-military person signed the lease before marrying a person who enters military service..... could the non-military spouse terminate the lease?

Arguably, yes. See, Tuscon Telco Federal Credit Union v. Bowser, 451 P.2d 322 (Ariz. Ct. App. 1969) (single woman entered chattel mortgage on car, was subsequently married to civilian who was later drafted; car registered solely in her name and she alone made payments before repossession; court held that repossession without court order violated § 532, SSCRA. SSCRA applied because her ability to pay was impaired by husband's subsequent induction.

d) Question: If the service member or dependent enters a lease for premises after entering active service, may he or she terminate under provisions of § 534?

No. To terminate, the lease must provide for such termination or there must be a governing state statute containing a "military clause" (or negotiate with the landlord).

2. Termination of Leases Entered After Coming on Active Duty.

a) Statutory or contractual provisions for early residential lease termination are designed to meet the exigencies of military service - when a service member (either as a tenant or a landlord) must move unexpectedly due to military orders.

(1) The soldier tenant who receives orders out of the area may wish to terminate the lease.

(2) The soldier landlord who receives orders back into the area may wish to terminate his/her tenant's lease to allow him/her to reoccupy the residence.

(a) Provisions allow service member who is either landlord or tenant to terminate residential lease under certain circumstances.

(b) Generally, military clauses (either contractual or statutory) require:

(i) The move to be a distance in excess of a specified number of miles from the residence (i.e. 35-50 miles or farther from the present residence) and

(ii) Result from permanent change of station (PCS) military orders. NOTE: some statutes allow termination for TDY orders in excess of a specified number of days and a specified distance from the dwelling; some also allow termination when service member is ordered to occupy government quarters and forfeit BAQ.

b) Question: If a soldier simply wanted to break an apartment lease to move into a house in the same location, would a "typical" military clause allow lease termination? No. (Of course, other contract terms could be negotiated).

c. Some states allow termination when the service member is released from active duty (see VA Code Ann. § 55-248.21:1), others are silent on that issue - leaving it unclear whether receipt of "PCS orders" is synonymous with orders to leave active duty. For example, the Maryland early lease termination statute failed to address this point. On September 15, 1992, the Md. Attorney General issued an opinion that allows military personnel who are released from active duty and ordered to report to their home of record to terminate their residential leases.

3. Military clauses may be part of a contract or statutory.

a) Attorneys should be careful not to "contract away" statutory protections by drafting inconsistent "military clause" language into a lease.

b) States having military clause protection by statute:

State	*Cite*	*Limitations*
Arizona	ARIZ. REV. STAT. ANN. § 33-1413 (1995)	Mobile Homes Only
Connecticut	CONN. GEN. STAT. § 21-82(11) (1994)	Mobile Homes Only
Delaware	DEL. CODE ANN. tit. 25, §§ 5314(b), 7007, 7012 (1996)	
Georgia	GA. CODE ANN. § 44-7-37 (1996)	
Idaho	IDAHO CODE § 55-2010 (1996)	
Kansas	KAN. STAT. ANN. §§ 58-2504, 58-2570 (1995)	

State	*Cite*	*Limitations*
Maryland	MD. CODE ANN., REAL PROP. § 8-212.1 (1995)	
Missouri	MO. REV. STAT. § 41.944 (1995)	
North Carolina	N.C. GEN. STAT. § 42-45 (1995)	
Rhode Island	R.I. GEN. LAWS § 31-44-7 (1995)	Mobile Homes Only
Virginia	VA. CODE ANN. § 55-248.21:1 (1996)	
Washington	WASH. REV. CODE § 59.20.090 (1995)	Mobile Homes Only

4. SAMPLE CONTRACTUAL MILITARY CLAUSE.

MILITARY LANDLORD: In the event LANDLORD is or hereafter becomes a member of the United States Armed Forces, then LANDLORD may terminate this lease on thirty days written notice to TENANT in any of the following events:

If LANDLORD receives permanent change-of-station orders to return to the area in which the premises are located.
If LANDLORD is released from active duty.
Other: _____

MILITARY TENANT: In the event TENANT is or hereafter becomes a member of the United States Armed Forces, TENANT may terminate the lease on thirty days written notice in any of the following events:

If TENANT receives permanent change-of-station orders to depart from the area in which the premises are located.
If TENANT is released from active duty.
If TENANT has leased the property prior to arrival in the area and TENANT is ordered to a different area before occupying the property.

Other: _____

MILITARY NOTICE AND RENT ADJUSTMENT: Notice furnished under the provisions of this paragraph shall include a copy of official orders or a letter signed by the party's commander reflecting the circumstances warranting termination under this paragraph. If LANDLORD terminates the lease under this paragraph, a credit shall be allowed toward the rental otherwise due, and if TENANT terminates the lease under this paragraph, TENANT shall pay an amount in addition to the rental otherwise due. Such adjustment (credit or addition) shall constitute a liquidation of the damages caused by such termination, but shall be in addition to a proration of the rental to the actual termination date and shall not reflect any actual physical damages to the property for which TENANT is otherwise liable under this lease. Said adjustment amounts shall be computed as follows:

If termination occurs before expiration of one-half of the original term, without extension, _____ percent of one month's rent.
If termination occurs on or after the period stated above but before the end of the original term, without extension, _____ percent of one month's rent.

If termination occurs on or after the end of the original term of the lease, without extension, there shall be no adjustment of rent under this paragraph.

5. SAMPLE STATUTORY MILITARY CLAUSE.

Va. Code Ann. § 55-248.21:1 (1996) (excerpt):

> Any member of the armed forces of the United States or a member of the Virginia National Guard serving on full-time duty or ... may... terminate his rental agreement with the landlord if the member
>
> has received permanent change of station orders to depart thirty-five miles or more (radius) from the location of the dwelling unit;

has received temporary duty orders in excess of three months' duration to depart thirty-five miles or more (radius) from the location of the dwelling unit;

> is discharged or released from active duty with the armed forces of the United States or from his full-time duty ... with the Virginia National Guard; or
>
> is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Security Deposits.

1. Common Law. (Now modified by statute)

   a) No ceiling on the size of the tenant's security deposit.

   b) Landlord not obliged to pay interest on the deposit or to avoid commingling deposit with the landlord's own funds.

   c) Ordinarily, tenant cannot compel landlord to return deposit or to apply deposit to rent or damages while the tenancy or tenant's obligations continue.

   d) See also, Burgess v. Stroud, 17 Kan. App. 2d 560, 840 P.2d 1206 (1992). A Kansas statute stating that a tenant forfeits the security deposit if the tenant applies or deducts any portion of the deposit from the last month's rent requires affirmative action on the part of the tenant, and not simply inaction or silence such as delivering notice to vacate without any payment for rent.

   e) If the landlord's deductions are challenged, burden of proving the absence of damages sustained was on the tenant.

2. State Statutes.

   a) Limit the size of the deposit that a landlord can demand (usually limiting this to 1 to 2 months' rent).

      (1) Regulate the landlord's use of the deposit during the tenancy.

         (a) Require that interest be paid on the deposit.

         (b) Require that the deposit be refunded within a specified period of termination, often 30 to 60 days.

      (2) Require that landlords furnish tenants an itemized list of deductions from the deposit. *See, e.g., Duchon v. Ross*, 599 N.E, 2d 621 (Ind. App. 1992). Even if cost of repair is in dispute, landlord must comply with statute requiring accounting within 45

days of itemized costs to repair and refund of difference between repair costs and security deposit.

(3) Provide for return of the entire deposit, punitive damages, and attorneys' fees for the tenant if the landlord fails to comply with the statute.

(a) *Burden on the landlord to prove damages caused by the tenant in order to retain deposit.* See, e.g., Battis v. Hofman, *832 S 2d 937 (Mo. App. 1992). If landlord fails to return security deposit within 30 days and it is later discovered tenant is entitled to it, then landlord has wrongfully withheld under the Missouri statute providing for penalty, regardless of landlord's intent. Court may consider reasons money withheld in determining penalty to impose.*

(b) See, Love v. Monarch Apartments, *771 P.2d 79 (Kan. App. 1989). Statutory damages mandatory under Kansas law for wrongfully withholding security deposit , even if landlord acted in good faith and tenant suffered no damages.*

C. Discrimination.

1. Additional References.

   a) Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended. 42 U.S.C. §§ 3601-3631.

   b) DoD Instruction 1100.16, Equal Opportunity in Off-Base Housing (14 August 1989).

   c) Chapter 2, DoD 4165.63-M, DoD Housing Management (September 1993).

   d) AR 210-50, Housing Management (1 Sep 1997).

   e) AR 190-24, Armed Forces Disciplinary Control Boards and Off Installation Liaison and Operations (30 June 1993).

   f) AR 600-20, Army Command Policy (15 July 1999), para. 6-9.

2. Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended. 42 U.S.C. §§ 3601-3631.

   a) Equal opportunity for all citizens in obtaining housing regardless of race, color, religion, sex, national origin, age, handicap or familial status. (See Fair Housing Amendments Act of 1988; see also, state statutes).

   b) Applicable within the U.S.

   c) OCONUS, intent carried out to extent possible within laws and customs of foreign country.

3. DOD Instruction 1100.16, Equal Opportunity in Off-Base Housing (14 August 1989) - eliminate discrimination in off-base housing to include familial status discrimination.

   a) Army Implementation: AR 210-50, Housing Management (1 Sept 1997), Chapter 6, Community Homefinding, Relocation, and Referral Office (CHRRO).

   b) Navy/Marine Corps: SECNAVINST 5350.14 (2 February 1993).

c) Air Force: Section 1.30, AF HB 32-6009, Housing Handbook (1 June 1996).

4. Provisions of DoD Program.

a) Intent of Program: To eliminate discrimination in housing against DoD Personnel on the basis of race, color, religion, gender, national origin, age, physical disability, or familial status.

b) An agent's refusal to show, rent, lease, or sell otherwise suitable housing may be basis for housing discrimination complaint, as well as agent's words or statements.

c) Legal assistance must be provided to complainants to the extent that they are eligible under the program. DoD Inst. 1100.16, pg. 4-2.

d) Housing Referral Services (HRS) or CHRRO.

(1) Maintains listings of adequate off-post rental and sales units reflecting full range of prices, sizes, and locations. Also lists property and agents against whom restrictive sanctions have been imposed for founded discrimination complaints.

(2) Processes Off-post housing discrimination complaints concerning DoD personnel.

e) Processing complaints.

(1) Refer complaint to HRS or CHRRO which makes a preliminary inquiry.

(2) Time limits:

(a) All complaints must begin within 3 working days of receiving the complaint. DoD Inst. 1100.16, pg. 4-2.

(b) ARMY: Each allegation processed within 30 days of complaint with provision for 10-day extension. (AR 210-50, para. 6-12c.)

(3) Use of "verifiers" is authorized. (DoD 1100.16, pg. 4-3; AR 210-50, para. 6-14). The purpose of verification is to isolate the

attribute of race, color, religion, sex, national origin, age, handicap, or familial status that is the suspected basis for the alleged discrimination against the complainant.

(a) Verification of the vacancy shall be made expediently after alleged act of discrimination.

(b) Verifiers may be volunteers. (The equal opportunity office is a possible source for identifying individuals to be used as verifiers.)

(c) Except for those attributes that are considered to be the source of the discrimination complaint, the verifier should possess attributes that are similar to the complainant. If two verifiers are used, one may possess similar attributes to the complainant. Ideally, two verifiers should be used.

(d) Instructions provided to the verifiers by HRS personnel should include the following:

(i) Explanation of the equal opportunity in off-base housing and off-base housing referral programs.

(ii) Verifiers are to obtain information only on agent and/or facility operating policies, practices, and procedures for subsequent determination of complaint validity.

(iii) Verifiers are not to make a verbal or written contract for the housing unit, pay any money, or say they want the housing unit.

(iv) Verifiers shall be knowledgeable concerning family composition, pets, and housing requirements of the complainant; they shall ask for identical housing requirements.

(e) The following information shall be obtained by the verifier, if possible:

(i) Concerning the Facility.

(a) What is available?

(b) Does it meet the requirements of the complainant?

(c) Amount of rent or cost of facility? Deposit required?

(d) Is an application required?

(e) What is the time between filing an application and permission to move in?

(f) Are there minority families and/or singles in the facility?

(g) Make a note of the presence or absence of a vacancy sign, and any other information deemed appropriate.

(ii) Concerning the Prospective Tenants/Purchasers.

(a) If possible, ascertain criteria and qualifications that must be met (credit rating, salary, marital status, deposit, written application, etc.) and obtain a complete description of all procedures for becoming a tenant/purchaser including all steps from initial inquiry to moving in.

(b) Does the agent's subjective impression of the applicant appear to play any part in the decision to rent the unit?

(f) The verifier's statement shall be completed immediately after the verification if possible. It shall be accurate, objective, and factual. Include the following in the statement:

(i) Date, time of visit, persons contacted, positions of persons contacted.

(ii) When reconstructing a conversation, write in the first person and try to use direct quotes. Do not use pronouns such as "he," "she," or

"they." Clearly identify who said what to whom.

(iii) Sign and date statement. Give full name, address, telephone number (duty or home), race, color, religion, sex, natural origin, age, handicap or familial status, as relevant to the complaint.

(4) Informal hearing. Conducted when basic facts of the preliminary inquiry appear to confirm the complaint.

(a) Written Notice. DoD Inst. 1100.16, pg. 4-4.

(i) Explain the nature of the complaint and the agent's right to request an informal hearing with the commander.

(ii) State specifically the nature of the discrimination complaint and the right of the agent to appear personally at the hearing, to be represented by an attorney, to present evidence, and to call witnesses.

(iii) State that the agent has 5 days after receipt of the written notice to request a hearing. If no request is received within 5 days, the lack of response shall be considered as a waiver of the right to such hearing.

(iv) The written notification either shall be delivered to the agent personally by a representative of the commander, or shall be sent to the agent by certified mail with return receipt requested.

(b) Conducting the hearing. (AR 210-50, para. 6-16.)

(i) Deputy installation commander is the hearing officer.

(ii) Attendees may include complainant, alleged discriminator, JA, EO adviser, and HRO specialist.

(iii) A summary of the hearing will be prepared and placed in the complaint file.

(5) Legal review. DoD 1100.16, pg. 4-4 – 4-5; AR 210-50, para. 6-17.

(6) Commander's actions. DoD 1100.16, pg. 4-5 – 4-8; AR 210-50, paras. 6-18 and 6-19.

(a) If complaint not supported by evidence --

(i) Advise complainant of action and rights.

(ii) Advise alleged discriminator.

(iii) Send file to Department of Justice or Department of Housing & Urban Development if complainant requests.

(b) If complaint supported by the evidence --

(i) Impose restrictive sanctions for minimum of 180 days.

(a) All DoD personnel reporting to HRO given restrictive sanction list.

(b) DoD personnel may not rent, purchase, or reside in discriminator's facilities during imposition of sanctions.

(c) Restrictive sanctions not applicable to:

(i) DOD personnel residing in facility at time sanction imposed,

(ii) The extension or renewal of lease originally entered into before sanctions

imposed. However, the military member may NOT move within the facility without the authorization of the commander.

(d) Inform discriminator and complainant of action.

(i) Forward file to:

(ii) HQDA.

(iii) HUD, if the act of discrimination falls within existing laws and complainant concurs.

(ii) Service members renting BEFORE the imposition of sanctions MAY continue to rent and MAY renew. NEW rentals, however, are prohibited. DoD Inst. 1100.16, pg. 4-8.

(c) Removal of sanctions. DoD Inst. 1100.16, pg. 4-8; AR 210-50, para. 6-22.

(i) Before 180 days:

(a) ARMY: Only HQDA may remove and then only if unusual circumstances are shown.

(b) DoD-Wide: Approved waiver request must go to service department from Senior Installation Commander.

(ii) After 180 days: Local commander may remove upon receipt of written assurance of nondiscrimination in the future.

f) Housing Discrimination Overseas. DoD Inst. 1100.16; AR 210-50, para. 6-23.

(1) Civil Rights Act of 1866 and Fair Housing Act inapplicable.

(2) Process complaint as if in the United States, but do not forward case to HUD or DOJ.

(a) Consider local laws,

(b) Determine if any civil redress can be pursued. Many nations have laws prohibiting discrimination. Your OSJA may have access to, or employ, a local attorney.

(c) Consider Status of Forces Agreement.

I. ACCESS TO UTILITY SERVICE.

A. Types of Utilities.

1. Regulated - Public Utilities.

a) Definition: "A business whose services are sufficiently important so as to warrant government regulation; . . . . The public interest is implicated because the commodity which the utility provides -- whether electric, gas, water, or telephone service -- is viewed as being of great economic consequence." NCLC ACCESS at 27.

b) Characteristics:

(1) The nature of the industry is such that the market would not produce many competitors.

(2) Facilities must be constructed with "excess capacity" because the commodity they deliver (e.g. electricity) cannot be stored indefinitely, yet consumers expect the service to be available whenever they need to use it.

(3) Consumer demand for the services is inelastic. That is, the service is viewed as indispensable so there is little if any fluctuation in demand when prices increase.

(4) Consumers have little choice in who they buy from.

c) Duties & Obligations.

(1) Provide service on reasonable terms to all who request it.

(a) Whether or not it is profitable.

(b) Can be limited to a particular service area; to persons willing to comply with the utilities rules & regulations; and to the amount that they have the technical capacity to support.

(2) Must provide safe and adequate service to all of its customers.

(3) Must serve all members of the public on equal terms.

(4) Must charge "just and reasonable" prices for their services.

d) Types of Regulated Utilities.

(1) Natural Gas.

(2) Electric Power.

(3) Water.

(4) Telephone.

2. Unregulated Utilities.

a) Municipal Utilities.

(1) Most common in electric & water industries.

(2) Key distinction is that these are publicly owned, government run utilities, NOT private.

(3) Will usually meet the duties of a public utility, even though they do not answer to any public utility commission.

b) Rural Electric Cooperatives.

(1) Authorized by Congress in 1936.

(2) Some courts will make them comply with public utility duties.

(3) Many view them for what they are today - large scale public utilities.

c) Deliverable Fuels.

(1) Propane, oil, kerosene, & wood.

(2) Almost totally unregulated.

(3) Dangerous because they are usually *de facto* monopolies.

B. Payment Issues.

1. Late Charges.

a) Authorized since 1915. Generally, 1-2 percent per month.

b) Purposes.

(1) To compensate the utility for expenses incurred as a result of the lateness.

(2) To provide an incentive for consumers to make timely payments.

(3) Prevent subsidization of late payers by timely payers.

c) Some states now regulate late charges.

(1) Prohibit All Late Charges: AL, CO, VT.

(2) Prohibit Late Charges (Residential Customers): KY, MA, NJ, RI, TX.

(3) Limit Late Charges: DC, HI, IL, IN, IA, KS, ME, MD, MI, MN, NY, NC, OK, OR, SC, TN, VA, WA, WI.

d) Courts tend to use the "penalty" v. interest distinction discussed with late charges for rent above.

e) Challenging Late Fees.

(1) Regulatory Challenges - Use Public Utility Commission (PUC) procedures for states where late charges are regulated.

(2) Late Receipt of Bill/Late payment by others. If the utility bill is late or some other party (like the Army) doesn't issue pay on time, courts will usually not enforce late fees.

(3) Consumer Protection Statutes.

(a) Equal Credit Opportunity Act - If late fees are assessed in a discriminatory fashion.

(b) UDAP Statutes (if utilities are not exempted).

(c) Fair Credit Billing Act (at least for unregulated utilities).

(4) Improper Pyramiding - Applying the utility payments to the late fee first, then to the bill causing the consumer to continually underpay and have continual late charges. FTC Rule Prohibits this. 12 C.F.R. § 226.13.

(5) Challenges Based Upon Regulatory Principles.

(a) Late charge should only cover reasonable & legitimate expenses.

(b) Late charges should not begin to accrue until a reasonable time (20-30 days) after mailing of the bill.

(c) Late payment charges to induce prompt payment.

(i) Does this rationale apply if the consumer cannot pay?

(ii) Is the amount excessive for this purpose?

(iii) Some states have a general "residential hardship category" against whom late charges are banned.

2. Budget Billing Plans.

a) Allowed everywhere except Hawaii and Nebraska.

b) "Level Payment Plans." Allows customer to pay the same amount each month based on estimate of annual usage.

3. Deferred Payment Plans.

a) Required in 36 states as an alternative to utility shut-off.

b) Utility must essentially offer credit to the consumer who has failed to pay their bill prior to turning off the service. If the consumer agrees to

make all future payments, plus an amount toward the arrearages in installments, the utility must continue to provide service.

C. Fighting Terminations.

1. Grounds for Termination:

   a) Nonpayment of the bill.

   b) Meter Tampering or Fraud

   c) Misrepresenting Identity to Evade Payment.

2. Protections from Disconnection:

   a) Special Protections for Elderly, Low-income, & Disabled Consumers.

      (1) Winter Moratorium: Prohibition against disconnection during certain periods likely to have extreme weather.

      (2) Special Payment Plans: See Above.

   b) Disputed Bills.

      (1) Rule found in both common law and regulatory jurisdictions.

      (2) Must be a "bona fide" dispute.

      (3) Cannot disconnect until the dispute is resolved.

      (4) Cannot threaten to disconnect.

      (5) Utility may be subject to claims for damages if they violate this rule.

c) Collateral Matters. A utility cannot disconnect a customer based on collateral matters. It must be based on the current contract.

(1) Unrelated contracts/Debts from another time or place.

(2) Separate Business of Utility. Generally, you cannot disconnect a customer from a service simply because they have not paid on a different service provided by the same utility. There are several exceptions:

(a) Water & Sewer. Since use of water necessarily results in waste water, these are not considered collateral. Thus, water utilities CAN disconnect the water for failure to pay the sewer charges.

(b) Local & Long Distance Telephone. Another set of intertwined services. PUCs have long allowed one to be disconnected for failure to pay the other.

(3) Third Party Debts.

(a) Arrearages of Prior Occupant.

(b) Landlord in arrears.

(c) Roommate/Family member in arrears.

d) Mistaken Undercharge. After months or years of undercharging, the consumer is presented with a lump sum payment required by the utility. Several theories may help.

(1) Mistake. Basic K doctrine that places the burden of an error on the party most capable of preventing it and most capable of bearing the risk.

(2) Equitable Estoppel.

(3) Past undercharges as a collateral matter.

(4) Regulatory Rules.

e) Proper Notice Before Disconnection.

(1) Required at Both common law and regulatory jurisdictions.

(2) General Requirements:

(a) Notice of the disconnection & the reason therefore.

(b) Hearing or other procedure to protest the disconnection.

(c) Timing of the notice must be sufficient to allow consumer to prepare for and be present at any procedure for objecting to the disconnection.

(d) Except Meter Tampering.

D. Erroneous Billing & Unauthorized Use.

1. Reverse Metering:

   a) Due to improper wiring or connection of meters in multi-family dwellings, Consumer A pays Consumer B's bills and vice versa. When the situation is finally rectified, one's bills will probably go up and the other down. Additionally, the electric company may try to collect arrearages from the person who underpaid before, particularly if they have had to credit the other consumer's account. This can result in a large lump sum payment.

   b) Generally, the utility MAY collect for the undercharge! Even if the mistake is simply in reading the meter!

   c) May be able to use equitable limitations on COLLECTIONS to prevent disconnection of service as a means to force the consumer to pay. *See* the alternate payment methods above.

   d) May be able to argue the undercharge amount is "collateral" to the current service.

2. Non-exclusive Use:

   a) In multiple unit dwellings, through mistake or intention, more than one tenant's service may run from a particular meter.

   b) The general rule is that the tenant is on the hook for all metered service and must go after the third party who is tapped into the meter for relief.

   c) Some courts, however, have held that one tenant cannot be denied service because another has not paid.

   d) Moreover, some jurisdictions are shifting away from the general rule and placing the burden on others more suited to bear it.

      (1) IL prohibits billing of a consumer who is the innocent victim of an *illegal* tap. The utility must go against the third party to collect.

Jones v. Peoples Gas Light & Coke Co., 97 P.U.R.4th 178 (Ill. 1988).

(2) MA and MD shift the burden to the landlord to either collect from tenants routinely if there is non-exclusive use and pay the bill themselves (MA) or be held liable after the fact for any tenant who does not pay (MD). *See* 105 Mass. Regs. Code §§ 410.354(A) (electric & gas) & 410.180 (water) (1986); *Legg v. Castruccio*, 100 Md. App. 748 (1994).

3. Alleged Unauthorized Use by the Consumer.

a) Meter Tampering & Meter Bypass - changing the meter so that it will record less use than what actually occurs.

(1) Disconnection of service:

(a) Ordinarily, the utility must still give the consumer notice and an opportunity to dispute the allegation of tampering before disconnection. (Bona Fide Dispute). See Memphis Light, Gas and Water Division v. Craft, *436 U.S. 1 (1978) (Supreme Court found a property interest in continued electrical service and held that this interest could not be taken by a government utility without due process (notice & a pretermination hearing));* Sowell v. Douglas County Electric Membership Corporation, *258 S.E.2d 149 (Ga. App. 1979)(While the consumer was liable to pay for the service, the utility must still meet its procedural obligations).*

(b) However, some utilities have succeeded in terminating without notice by citing safety concerns. See Hendrickson v. Philadelphia Gas Works, *672 F.Supp. 823 (E.D.Pa. 1987)(distinguishing* Myers *based on safety concerns because of the particular tampering done).*

(c) Generally, If the consumer obtains service through a meter and that meter has been tampered with, there is a presumption that the consumer did the tampering! This is not a universal presumption so check state law.

b) Reconnection - Use mandamus or injunctive actions to force restoring of service.

c) Liability for Unmetered Use.

(1) Generally, the utility MAY estimate the use and charge the person who's meter was tampered with or bypassed!

(2) Utility must show two things:

(a) It is entitled to be paid (i.e. the meter was tampered with); AND

(b) The appropriate amount to bill the consumer.

(i) Some courts allow "billing analysis" to suffice.

(ii) Others require more evidence.

4. High Bills - Claims of the fast meter.

a) Some jurisdictions force testing of the meter by the utility if the consumer complains that it is reading too high. These jurisdictions require that this be done free of charge once in certain period.

b) Normally if the test is within a certain tolerance, the meter is deemed accurate.

c) If the meter is running fast, the utility must refund the overcharge. Commissions differ on how many months back the utility must go with this refund.

d) Burden of proof is generally on the customer. Some jurisdictions will accept evidence of usage patterns, even in the face of a tested meter, to establish a claim of overcharging.

I. CONCLUSION

SUPPLEMENTARY MATERIAL

Appendix D

NOTE: This Appendix is reproduced electronically from NCLC, ACCESS TO UTILITY SERVICE (1996) under the permission granted in the introductory paragraph to the right. **It may only be reproduced for the purpose of making it available to consumers.** Copies of the entire publication may be ordered from the National Consumer Law Center, 18 Tremont Street, Boston, MA 02108 (617) 523-8089

Consumer's Guide To Maintaining Utility Service (Appropriate for Distribution to Clients)

It is essential to maintain utility service, such as water, heat, electricity and telephone. But since consumers generally do not have a choice of utility providers, and utility providers are generally allowed by law the drastic remedy of cutting off service to force payment of back bills, consumers are often feel like they are between a rock and a hard place when faced with a large utility bill—pay an unaffordable bill or lose essential service. This guide to maintaining utility service summarizes for consumers their basic rights when they are facing termination of utility service. It also provides many self-help steps which a consumer may take to lower utility bills and to reestablish service.

The guide is adapted from Chapter 14 on utility service in National Consumer Law Center, Surviving Debt (2d ed. 1996). Permission is granted to duplicate this Consumer's Guide To Maintaining Utility Service for the purpose of making it available to consumers who are faced with high utility bills and/or terminations.

Consumer's Guide To Maintaining Utility Service

Ways to Reduce Your Utility Bills

Even if your most pressing concern at the moment is getting *present* utility bills paid to maintain service, you should still be interested in reducing your bills in the coming months, to avoid repeating the problems of this moment. Here are ideas on how to reduce your bills.

You May Be Eligible for a Discount Utility Service Plan

Some utilities have special programs which will allow you to reduce the *charges* for the utility service that you receive. It only takes some investigation to see what the different utilities have to offer and whether you are eligible for the program.

Discounted Rates for Financially Distressed Households. Many utilities around the nation have special programs for low-income households to help them pay their utility bills. Some of these programs reduce the bills by a set amount each month; others provide discounts based on the amount of the bill. Check with your utility to see what is available.

PIPS or Energy Assurance Programs. A growing number of utilities have plans by which families pay only a certain percentage of their income instead of the amount called for by their normal utility bills. This results in lower bills. Typically, a low-income family's consistent payment of the lower amount is rewarded by gradual forgiveness of old unpaid bills. So you get two benefits in one.

These plans are sometimes called Percentage of Income Plans (PIPs) or Energy Assurance Plans (EAPs), but each utility seems to have its own unique name for the program. The best way to determine if a utility has such a program is to contact that particular utility or the public utility commission in your state capitol.

Telephone Discounts. In most states, households in financial distress can obtain a significant discount on telephone monthly charges under the "Lifeline" program run by your local phone company. Contact the public utility commission or the local telephone company for details.

Eligibility. Eligibility for each of these programs vary considerably. Some look at household income, others look for receipt of, or eligibility for, governmental benefits such as Social Security. SSI, Aid to Families with Dependent Children (AFDC), Food Stamps, or the Low Income Home Energy Assistance Program (LIHEAP). Check with your utility company to see if you are eligible.

Changing the type of Service Can Reduce Your Bill

You may be receiving some utility services which you can fairly easily do without. While the charges for each of these individual services may not seem a lot, together they can add up to quite a few dollars each month. A careful review of your bills and a discussion with each utility company may yield some real savings.

Local Telephone Service. Examine your telephone bill. Are you paying for call waiting, call forwarding, call answering and other high tech services? Can you do without these services? Are you paying for extended area service (local rates for calls to an area which otherwise would be long distance)? How much is this costing you, and do you really call to the extended area enough to justify the extra cost each month? Another question is whether you are you paying a lot for local measured service—which is when you are billed separately for each local call. Contact the telephone company and see if they have different programs which might save you money.

Long Distance Telephone Calls. How much does your long distance service cost? Shop around with the different long distance carriers. Their various deals are often complicated, but can result in significant savings depending upon your calling patterns. Some programs have less expensive calls during the day, others at night. Look for the long distance service which best fits your actual calling patterns.

Long Distance Telephone Charges For Calls You Did Not Make. If you are billed for calls that you did not make, or do not feel you owe the full long distance bill, you may not have to pay the bill. While some states *prohibit* the local telephone company from terminating your service for nonpayment of long distance service, the majority of states do not yet have these protections. Check with your public utility commission to find out the rules for this.

Also, to prevent bills for unauthorized calls from occurring in the future, you may want to investigate a blocking service. Every local telephone company must provide a service to its customers which will block long distance calls from being made unless a password is used, or some other device. The local telephone company can charge for these blocking services, yet they are not foolproof. A creative and sneaky friend or relative can figure out a way around the long distance blocking, and you will still be charged for the calls. So be careful who you let use your telephone.

Other Telephone Charges. Are you being billed high amounts for 900 calls or other "audio text services" that you didn't make or didn't authorize? Every local telephone company is prohibited from terminating your *local* telephone service for nonpayment of these "pay per call" services. Further, you can put a block on your telephone so that these calls can no longer be billed to your telephone. Unlike the block for long distance service, this block should be free, and should be foolproof.

Cable TV Service. Are there cable TV services that you can drop? Can you return to using an antenna for your television, and save yourself the whole bill?

Electric Service. Sometimes you can save considerably by going to a "time of use" type of service with your electric supplier. Whether you actually save money is entirely dependent on the type of program that your electric supplier has and your household's actual electric use patterns. A "time of use" type of service means that you are charged less for using electricity at some times of the day—generally during the evening and night hours and the weekend, and more for electricity used during the daytime. These programs often work well for households where no one is home during most of the work day. Check with your electric company to see if this program is available and would be of benefit to your family.

Reducing Your Bill by Changing the Billing Patterns

Level Payment Plans. If you are able to pay your *average* utility bill without a problem, but have difficulty meeting the high level months (the coldest months of winter for heating bills and the hottest months of summer for electric bills), try a level payment plan. A level payment plan allows you to average your expected bills so that you pay the same amount each month. Your projected yearly bill is divided into equal monthly installments; monthly bills reflect this amount rather than each month's actual use. For example, a customer whose total gas bill for a year is $1200, would pay $100 each month instead of $200 to $300 a month in the winter, and $30 to $40 a month in the summer. At some point during the year, the average bill and the actual usage are reconciled. Many states require their regulated utilities to provide these plans.

Dealing with Quarterly or Bi-Monthly Bills. If you find it difficult to deal with quarterly or bi-monthly bills, particularly when they represent a significant portion of your monthly income, contact your local utility company. Explain the difficulty and see if they will bill you on a monthly basis. In the alternative, ask them to accept monthly payments from you, even if they won't send you a separate bill each month. If you make this choice, ask about "service charges" or "finance charges." This is the cost of paying over time. If the cost is too high, this type of payment plan is a bad idea.

Avoiding Late Payment Charges by Changing the Date Your Bill Is Due. If you receive your main source of income on the 5th of the month, but your utility bill is due on the 4th, obviously it is difficult to pay your utility bill on time. Thus not only do you have the high utility bill to contend with, but you also have late charges added to your bill. Generally, utility companies will help you deal with this, if you explain the situation. Although they may insist that you pay the late charges that have already been billed to your account, they should agree to change the date your bill is due each month so that late charges don't keep accruing. By avoiding the late charges, you may reduce your bill by $5 to $15 each month.

Reducing Your Bill by Reducing Usage of Utility Service

Utility Sponsored Weatherization or Conservation Programs. Many utilities have programs that provide free, or low cost weatherization or conservation services. The programs have varying eligibility requirements. Some are limited to the elderly, or homes with disabled persons and/or children; some are based on the household's income or eligibility for a government programs such as Energy Assistance or the Weatherization Assistance Program; some are available to all households.

These programs run the gamut. In the best programs, the utility sends someone into your home who conducts a full energy audit and provides extensive weatherization services. Other programs simply provide hints on how you can reduce usage, or they supply conservation products such as special energy efficient light bulbs, insulating hot water tanks, and "low flow" efficient faucets, or other conservation products. Even the less ambitious programs which provide only some conservation advice should be helpful to you. Investigate by calling your local energy and water providers and finding out what programs they have available.

You should be very cautious before investing more than a few dollars in any weatherization or conservation efforts with a contractor, however. While it might make sense in the long run for households with extra cash, it is often not the wisest use of funds for households which are strapped to pay for necessities.

Government Sponsored Weatherization Programs. Several programs are designed to provide weatherization assistance for owner-occupied housing as well as rental units. The primary program is the Weatherization Assistance Program. Households that qualify generally receive over $1000 in actual weatherization benefits which are

provided at no cost to the beneficiaries. Although there may be a long waiting list, it is worthwhile looking into these programs. Additionally, many states have state weatherization programs. Cities also have Community Development Block Grant money which is often used to help low-income households weatherize their homes.

Self-Help Weatherization. If you are unable to find or qualify for any of programs through your utility or the government, there are still a number of practices which you can employ which may help reduce your usage. (Note, these procedures are unlikely to reduce your bills significantly, but even a 3 or 5So reduction means some added dollars for you.) Some examples include:

- Check for leaks of air or water. If you are a tenant, try to get the landlord to fix these leaks. If you own your own home, and it is possible, try a number of homespun fix ups. For example, for air leaks around windows use tape. For leaks around doors, leave a rolled up towel next to the bottom of the door. If necessary to stop leaks around the top and sides of doors, tack up a blanket or large towel. You will be surprised how much warmer a house or apartment can be without the heat loss from cracks between openings and walls. As the home warms up, you can consider turning down the heat.

- Remember that your sewer bill is generally determined by how much water you consume. So that by saving water you are saving twice. Putting a brick in your toilet tank may seem silly, but it will actually cut down on the amount of water consumed each time you flush.

- Turn off lights and heat or cooling when not at home. Also close the door for any rooms you are not using, and don't try to heat or cool them.

Your Rights When Faced with Possible Termination of Utility Service

The threat of immediate termination of utility service, as well as the need to restore service that has already been terminated, are the two most urgent problems faced by utility customers. In most states there are laws which

provide a variety of significant protections when utility companies threaten termination of service. Many of the larger utilities are regulated by commissions called public utility commissions, or public service commissions. The protections provided by these commissions generally include substantial requirements which must be followed before the utility can shut off your service. A **utility company's failure to comply with these requirements will generally make the termination illegal**—which means you should be able to stop the termination for no other reason than the utility has failed to follow the rules. These rules generally have the following basic requirements:

Notice. Prior to termination, a utility customer must be given notice a) that the service is subject to termination, and b) of the various rights that the customer has to prevent termination. Often this requirement includes a repeat written notice. Face-to-face notice may also be required in certain parts of the country.

Limit on Circumstances Warranting Termination. Regulations typically permit disconnection for nonpayment, but often prohibit disconnections for very small amounts, or which have been owed for less than a certain number of months. Further, if you dispute that you owe the bill which the utility says must be paid, the utility is generally prohibited from terminating service over a disputed bill. If you dispute that you owe part of the bill, you must pay the undisputed amount to preserve your rights.

Right To A Hearing. Before or after termination, you have a right to appeal to both the utility and to an independent third party such as the Public Utility Commis sion. In many states, informal appeals can be made by telephone prior to termination and often utility service will be maintained or reconnected during the appeals process.

A utility commission's consumer division responds to phone calls, letters, and visits by residential customers. Many of these complaints are resolved informally, by consultation between the consumer division and the utility. Consumer divisions also hold hearings on complaints that cannot be resolved informally. In large states, several hundred of these hearings are held each year.

Consumers generally have a legal right to a hearing whenever they have grounds to contest a utility termination. Simply request the utility commission to provide a hearing before service is terminated. (If you dispute only part of a back bill, you will usually have to pay the undisputed part to keep your service on while the dispute is being decided). While city owned utilities are generally not regulated by the utility commission, customers of municipal utilities have a constitutional right to a hearing before termination.

Consumers need not retain the services of a lawyer to represent them at the hearing. However, it may be helpful to have a paralegal or experienced utility counselor assist with the hearing. To support the claim, it is important for consumers to bring all relevant documentary evidence, such as a physician's affidavit or past bills. It may also be helpful to have witnesses such as friends and neighbors present.

Right to A Deferred Payment Plan. Before utility service is cut off, most states require that a customer must be informed about the option to pay all overdue bills over a period of some months through a reasonable installment plan. Often this payment plan has a six month or a one year limit for bringing the account up-to-date. To make a successful payment plan, the customer must develop a simple budget that the household can reasonably meet, and should be assertive with the utility company employee who negotiates the agreement. Payment plans need not be level. For example, seasonal workers may want to pay less toward arrears in the winter and more in the summer.

The utility company may want a payment plan that requires larger payments than you can afford. However, unrealistic plans harm both you and the utility company in the long run. You may not be able to make the payments, and may lose the service, and the company does not collect its debt. In some states, utilities are not required to enter into a second payment plan with consumers who have defaulted on a first payment plan. It is better to explain your financial circumstances and push for an affordable agreement from the beginning.

Winter Moratorium on Terminations. In most northern states there is a total prohibition on termination of heat related utilities between November 1 and March 31st to residential consumers. In other states, there is usually a limited moratorium to prevent utility terminations for households with elderly or disabled residents, and occasionally for households with infants. Generally, financial hardship must be shown. Some of these rules require that before a household be considered for the moratorium, all efforts to obtain state energy assistance must have been pursued. It is important to note that a moratorium only prevents disconnection of service. Your bill will still be charged and you will be responsible to pay for service used during the moratorium period. For this reason you should pay, if you can, even if your service is not subject to being disconnected.

No Termination If There Is Serious Illness. Similarly, state law or public utility commission regulations often restrict termination of service for households whose members face a serious illness, are threatened with serious illness, or depend upon life support systems. Often, the illness must be certified by a doctor. A family with very young children may also be able to use the health risk to the children as grounds to stop utility termination.

Information about Sources of Assistance. Utility companies often must provide consumers with information about the existence of energy assistance programs, such as LIHEAP or local crisis intervention programs. (Places to go for assistance in paying your utility bills are listed later in this handout.)

Protections for Tenants from Termination of Service By Landlords. If your landlord is responsible for paying utilities and is delinquent, you risk losing your utility service. In some states, tenants must receive a special shut-off notice if the landlord is delinquent. Then, tenants make utility payments directly to the utility, and deduct those payments from their rent.

It is illegal in almost every state for a landlord to cut off your utility service as a way of making you move. Landlords must go through the courts to evict tenants; they cannot make the place uninhabitable by terminating the heat or water service so that the tenant moves. Generally, a tenant not only can stop a "self-help" eviction when the landlord tries this, but also the tenant is entitled to recover damages for the landlord's wrongful actions.

No Termination of Local Telephone Service for Bills for other Services. Some states prohibit the local telephone company from terminating your service for nonpayment of long distance service, but the majority of states do not yet have these protections. Also, every local telephone company is prohibited from terminating your local telephone service for nonpayment of 900 calls or "audio text" services.

A Moratorium Linked to a Plant Closing. A utility or utility commission may impose a temporary prohibition against termination of utility service for customers or neighborhoods particularly hard hit by a recent plant closing. If such a moratorium is not in effect, it may be possible for a counselor for families affected by a plant closing to negotiate one. The moratorium only prevents the utility company from terminating service if bills incurred during the moratorium period are not paid. When the moratorium period expires, the utility can then start the termination process for amounts not paid during the moratorium or owed before the moratorium. Most utilities encourage their customers to pay what they can afford during a moratorium.

The Utility Does Not Follow Required Termination Procedures. The utility's failure to follow the termination rules typically provides grounds to demand that the termination process start all over, and utility service must be maintained throughout the process. Wrongful termination of utility service generally will give the customer a claim for damages. An attorney can often get a special court order (an injunction) to stop termination or to have service restored when the utility has failed to follow the rules on termination procedures. You should not hesitate to contact a local legal services attorney or the consumer services division of the state public utilities commission to find out whether the utility has complied with the rules on termination.

Public Utility Commissions generally have dispute resolution authority, and a call to the appropriate person can often stall or prevent a termination altogether.

Bankruptcy Protections. The filing of a bankruptcy petition automatically requires the utility to restore service or stop a threatened termination. The bankruptcy filing starts a twenty day period during which you are entitled to service from all applicable utilities. The utility can only terminate service after that twenty day period if you fail to pay bills arising after the bankruptcy is filed, even if you never pay another penny on past due arrears. The utility, though, can also require that you provide adequate assurance that future bills will be paid, such as providing a new security deposit. Bankruptcy can be complicated. Professional advice is a good idea.

Sources of Assistance for Payment of Your Utility Bills

If you have a low income and high utility bills, you are probably eligible for some assistance with your utility bills. All programs have eligibility requirements, but they differ considerably in their specific terms.

Federal Energy Assistance. The Federal Low Income Home Energy Assistance Program (LIHEAP), which is run by the states, helps low-income families pay their utility bills. Most states provide this assistance for winter heating bills; although some states also use LIHEAP funds to assist families with summer cooling expenses. LIHEAP benefits can even go to some renters and public and subsidized housing tenants, with the energy assistance payments going directly to the landlord's fuel supplier and the amount being credited against the family's rent.

Most states require that family income over the past three or twelve months he below 150 % of the federal poverty guidelines. The size of a family's LIHEAP benefits generally depends on the family's income, the number of household members, and may also depend on housing type, fuel type, fuel prices, weather conditions, or actual energy consumption.

To apply for LIHEAP benefits, you should contact the **local agency** in the community administering the program. This is usually a nonprofit agency, such as the local community action program (CAP), or a county department of social services office.

- **Emergency Assistance.** If you need immediate assistance paying a utility bill to prevent termination, the following sources should be pursued:
- **LIHEAP Crisis Assistance.** Contact your local CAP agency (community action program) or the county department of social services to find out who provides these funds in your area.
- **AFDC Emergency Assistance.** If you have children and you are about to lose essential utility services (water, heat in the winter months, etc.) contact your county department of social services to see if special emergency funds are available to help you.
- **State Emergency Assistance.** Some states have special funds to help prevent utility terminations. Also many counties have "homeless prevention" funds which can be used to prevent utility terminations. Contact your local CAP agency or the county department of social services.
- **Utility Fuel Funds.** Many utilities collect money from their customers or their shareholders to go into a special fund to help people pay their utility bills. Contact the utility which is threatening to shut off the service to see if they have a fund which might be of some assistance to you. You should not assume that because they haven't told you about it that they don't have such a fund, or that you are not eligible.
- **Salvation Army, Local Churches.** The Salvation Army and other local religious and charitable organizations often have money that is available to help needy people in the community with emergency bills such as utilities. Check around, ask the utility company, the public utility commission, or the department of social services. Some churches that have these funds do not limit them to their own members

Ways to Get Your Utility Service Turned Back On

Everyone has the right to receive utility service from the provider in their area. Establishing new service after a move or after previous service has been terminated can be difficult and expensive. However, there are a number of things you can try to reduce the amount of money you have to come up with to establish new utility service. Utilities are prohibited against discriminating in service, and are required to establish *reasonable* rules for customers to follow.

Dealing With an Old Bill. If the bill is *very* old, such as more than three or four years, it is possible that the utility can not legally require you to pay it before providing you with new service. Check with a local attorney if you have a very old bill.

The best method to deal with old bills which must be paid may be to request the utility to allow you to pay the old bill off in installments over a period of six to twelve months or longer. So long as you maintain your payments on the new service you will be receiving, there is no reason for the utility to refuse to provide you service under this arrangement. If you are ready and willing to pay for future service as it is provided, and to pay for the old service,

over time the utility does not have reasonable grounds to deny you this new service.

Late Charges. Generally a utility will charge late fees for paying a utility bill after it is due. There should be specific rules on how much these late charges are, and state law and regulations generally limit the late charges to reasonable amounts.

If the late charges are so high as to be unreasonable, try contacting the consumer services division of your state public utility commission to challenge the amount. Otherwise, try to negotiate with the local utility about the amount. If you lost your job, went through a separation or divorce, or suffered an illness in the family which caused you to be late on your payments before, you can show that this was a temporary difficulty which has now passed. Bargain with the utility; especially if you had a good reason for missing payments.

Reconnection Fee. This is a fee which may be imposed on a household after it has its service terminated for nonpayment. The purpose of this fee is similar to late charges. Try the same type of arguments and negotiation.

Deposits. Before establishing new or renewed service, many utility companies ask households with poor payment histories to pay a deposit, usually equal to an average monthly bill. Utilities are prohibited from discriminating against certain types of customers in setting the deposit requirements. Customers who believe that a deposit is being requested unreasonably, or that a requested deposit is too large, should not hesitate to complain to the public utility commission's consumer division.

If you cannot afford the deposit, some of the sources of assistance listed earlier may help pay deposits. Later, when you have established a good payment record, or when you decide to terminate service, request that the utility return the deposit, with interest. This should always happen if you did not fall behind again after the deposit was made.

Instead of a deposit, some utilities accept the signature of a cosigner or guarantor, who agrees to be responsible for payments you fail to make.

Failure to Pay Prior Bills as Grounds for Denying Service. Utility companies often require customers to pay outstanding bills from a previous address before connecting service at a new address. Check with a local legal services attorney or the public service commission to see if it is legal in your state for a utility to do this. If you must pay the bill from the previous address to obtain new service, you should be able to pay for the old service under an installment agreement.

It is generally prohibited for a utility to insist upon one customer's payment of another customer's bill. For example, you are not obligated to pay the delinquent bills of the prior tenant of your new residence, or bills that your old landlord was obligated to pay. Similarly, you may not have to pay an old bill where the old service was in someone else's name (for example, an old roommate or former spouse), or where service is now in your name, and one of your current roommates has an old delinquent bill.

When you are obligated to pay an old bill before service will be connected, one option is to file for bankruptcy. The old obligation will likely be discharged in the bankruptcy. The utility will have to provide new service as long as you provide a reasonable assurance, such as a deposit, of the ability to make *future* payment. The filing of the bankruptcy will immediately entitle you to service at the new address.

Failure to Provide Information as Grounds for Denying Service. Sometimes companies refuse to hook up service because you have not provided requested forms of identification or proof of residence. The company will use this information for various reasons, including to make sure that you do not owe money for service received at a previous address. This is generally not an unreasonable request unless the company carries it to extremes, such as demanding a birth certificate, or information about all previous residences.

Avoiding Utility Company Restrictions on New Service. When you cannot pay a prior bill with the utility or afford the security deposit, there are still ways to obtain utility service. Look for a house or apartment that includes utilities in the rent. Another option is to establish utility service in the name of someone else with a good payment history. However, since that individual becomes responsible for any unpaid bills, this approach must be considered carefully, with full disclosure of the risks to the individual assuming responsibility for the bills.

Special Telephone Link Up Program. In most states, households in financial distress can obtain steep dis counts on new service installation charges under the link-up program run by the local phone company. You may also be eligible for a significant discount on telephone monthly charges under the "Lifeline" program. Contact the pub lic utility commission or telephone company for details.

Adapted from National Consumer Law Center, *Surviving Debt* (2d ed. 1996), available from: NCLC, 18 Tremont Street, Boston, MA 02108

APPENDIX A

INTERNET RESOURCES[14]

The purpose of this list is to provide useful information to DoD and Coast Guard legal assistance practitioners. Inclusion of any site on this list does not constitute endorsement by The Judge Advocate General's School, The Department of the Army, The Department of Defense, or any other agency of the United States Government.

Web Sites with Useful Consumer Law & Legal Assistance Information	
SITE	**SUMMARY**
General Applicability	
www.va.gov	The Department of Veterans Affairs web page. Lots of useful information about VA benefits ranging from guaranteed home loans to survivor benefits, to dependency and indemnity compensation. The place to start for many of the casualty assistance/survivor benefits issues.
www.jagcnet.army.mil	The Army JAGC Web Site. The place to go if you need any products put out by the Army JAGC, like TJAGSA publications. Some sections require a password which attorneys can request online.
http://www.usmc.mil/info.nsf/info	Official information site for the Marine Corps. Contains links to a variety of information about the Marines including links to digital publications and Marine Messages.
http://neds.nebt.daps.mil/usndirs.htm	The official site for Navy directives and forms.
www.usapa.army.mil	Official site for Army regulations in electronic format.

[14] Remember that there are no controls right now for internet information – anyone with a computer can put stuff out there. So, use your judgement in using information off of the net. Anything that references law should be verified by your own independent research. We've tried to stick with government agencies or reputable private organizations in the pages below. Still, your professional obligation to your clients requires ***you*** to ensure that the information you get is accurate.

Web Sites with Useful Consumer Law & Legal Assistance Information	
SITE	**SUMMARY**
www.defenselink.mil/pubs	The DoD Pubs page. Links to DoD directives, the MCM and UCMJ.
http://www.uscg.mil/hq/g-s/g-si/g-sii/sii-3/sii-3.htm	The official directives and publication site for the U.S. Coast Guard.
http://afpubs.hq.af.mil/	The official site for Air Force publications and forms.
www.dfas.mil	Defense Finance and Accounting Service Site. Lots of useful information about pay rates, involuntary allotments, etc. Applicable to many types of legal assistance cases.
General Consumer Law	
www.ftc.gov	Summaries and documents from FTC actions. Plain language summaries of federal consumer protections suitable for issue directly to consumers – great for preventive law.
www.pueblo.gsa.gov	The government's Consumer Information Center. Consumer Resource Handbook online and available for download. All free pubs and info in Consumer Resource Catalog available for download. Comprehensive links on a variety of subjects. **GREAT SITE!**
http://www.consumer.gov	The ***U.S. Consumer Gateway*** -- **"consumer.gov"** -- is a "one-stop" link to a broad range of federal information resources available online. It is designed so that you can locate information by category -- such as ***Food***, ***Health***, ***Product Safety***, ***Your Money***, and ***Transportation***. Each category has subcategories to direct you to areas within individual federal web sites containing related information.

Web Sites with Useful Consumer Law & Legal Assistance Information	
SITE	**SUMMARY**
www.notice.com	CENTRAL NOTICE -- A service of **The Notice Company**, brings you important consumer and legal announcements including class actions and product recalls.
www.cpsc.gov/cpscpub/prerel/category/topic.html	Consumer Product Safety Commission lists recalls from 1995 to the present, categorized by topics/types of products.
www.consumerlaw.org	National Consumer Law Center Home Page. Order NCLC publications. Links to other sites. Some consumer news.
www.bbb.org	Online Business reports – right now only for NYC & Mass., Maine, & Vermont. Plans for a national database. Information, phone numbers, etc. for all state offices. Links to reports on charitable institutions. Buying Guide Pamphlets. Links to domestic and international agencies (including Europe & Korea).
www.emich.edu/public/coe/nice/nice.html	National Institute for Consumer Education at Eastern Michigan University. Good collection of fact sheets, mini-lesson outlines. Lists of Articles categorized by subject. Some links to other sites.
www.consumerworld.org	Comprehensive set of links to consumer information resources on the internet. Site has menu links plus it is searchable Includes available links to state AG offices under the "agencies" link. A great place to start your internet searching.
www.bog.frb.fed.us	Federal Reserve Board Home Page. Some good info on enforcement actions and FRB news releases. Some stats on consumer issues.

Web Sites with Useful Consumer Law & Legal Assistance Information	
SITE	**SUMMARY**
www.fraud.org	National Fraud Information Center run by the National Consumers League a longstanding private consumer group. Good information telemarketing fraud. You can report fraud on-line or though a listed 800 number. Scam alerts sorted by subject. Site is searchable.
www.nsclc.org	National Senior Citizens Law Center. A very helpful web site for the latest information on issues of particular interest to seniors. The focus is on Social Security, Medicare and other health issues.
www.naca.net	National Association of Consumer Advocates. Provides a listing of consumer attorney members throughout the country, divided by practice area. Also includes updated information on hot consumer topics and other events.
www.abi.org	American Bankruptcy Institute. This website provides bankruptcy information for consumers and lawyers.
www.nvla.org	National Vehicle Leasing Association. Good consumer information on vehicle leasing.
Credit Reporting Agencies	
http://www.experian.com/consumer/credit.html	Experian Corporation bought TRW's consumer credit reporting business several years ago. They have a very nice site with lots of useful information as well as the ability to order client credit reports online. Of course these reports are not free, so you have to enter a credit card number. There is also valuable information on this site about risk scores and how they are calculated.

Web Sites with Useful Consumer Law & Legal Assistance Information	
SITE	**SUMMARY**
http://www.tuc.com/	Another nice site that allows you to order credit information online. The ordering site is secure and you have to charge the order to your credit card. This also contains some useful consumer information including info on credit card fraud.
http://www.equifax.com/consumers/consumers.html	Another quality site with features similar to the others. The nicest feature, however, is an available sample credit profile that you can view and print for consumer education.

APPENDIX B

TABLES OF STATE STATUTES

1. Lemon Laws and Unfair & Deceptive Acts and Practices Statutes.
2. Lemon Buyback Laws and Salvage Vehicle Laws.
3. Telemarketing and Debt Collection Statutes.

State Consumer Protection Laws Quick Reference		
STATE	**LEMON LAW**	**UDAP STATUTE**
Alabama	Ala. Code § 8-20A-1	Ala. Code § 8-19-1
Alaska	Alaska Stat. § 45.45.300	Alaska Stat. § 45.50.471
Arizona	Ariz. Rev. Stat. Ann § 44-1261	Ariz. Rev. Stat. Ann. § 44-1521
Arkansas	Ark. Code Ann. § 4-90-401	Ark. Code Ann. § 4-88-101
California	Cal. Civ. Code § 1793.22	Cal. Civ. Code § 1750 (West) Cal. Bus. & Prof. Code §§ 17200 & 17500 (West)
Colorado	Colo. Rev. Stat. § 42-10-101	Colo. Rev. Stat. § 6-1-101
Connecticut	Conn. Gen. Stat. Ann. § 42-179	Conn. Gen. Stat. § 42-110a
Delaware	Del. Code Ann. tit. 6 § 5001	Del. Code Ann. tit. 6 § 2511 & 2531
District of Columbia	D.C. Code Ann. § 40-1301	D.C. Code Ann. § 28-3901
Florida	Fla. Stat. Ann. § 681.102 (West)	Fla. Stat. Ann. § 501.201 (West)
Georgia	Ga. Code Ann. § 10-1-780	Ga. Code Ann. § 10-1-370 & 10-1-390
Hawaii	Haw. Rev. Stat. § 481I-2	Haw. Rev. Stat. § 480 & 481A
Idaho	Idaho Code § 48-901	Idaho Code § 48-601
Illinois	815 Ill. Comp. Stat. § 380/1	815 Ill. Comp. Stat. Ann. §§ 505
Indiana	Ind. Code § 24-5-13-1	Ind. Code Ann. § 24-5-0.5-1 (Burns)
Iowa	Iowa Code Ann. § 322G.1	Iowa Code Ann. § 714.16 (West)
Kansas	Kan. Code Ann. § 50-645	Kan. Stat. Ann. § 50-623
Kentucky	Ky. Rev. Stat. Ann. § 367.840	Ky. Rev. Stat. § 367.110

State Consumer Protection Laws Quick Reference		
STATE	**LEMON LAW**	**UDAP STATUTE**
Louisiana	La. Rev. Stat. Ann. § 51:1941 (West)	La. Rev. Stat. Ann. § 51:1401 (West)
Maine	Me. Rev. Stat. Ann. tit. 10 § 1161	Me. Rev. Stat. Ann. tit. 5 § 206 & tit. 10 § 1211
Maryland	Md. Code Ann. Com. Law § 14-1501	Md. Code Ann. Com. Law §§ 13-101/14-101
Massachusetts	Mass. Gen. Laws Ann. ch. 90 § 7N 1/2	Mass. Gen. Laws Ann. ch. 93A
Michigan	Mich. Comp. Laws § 257.1401	Mich. Comp. Laws § 445.901
Minnesota	Minn. Stat. Ann. § 325F.665	Minn. Stat. Ann. §§ 8.31, 325D.44, 325F.67, & 325F.69 (West)
Mississippi	Miss. Code Ann. § 63-17-151	Miss. Code Ann. § 75-24-1
Missouri	Mo. Stat. Ann. § 407.560 (Vernon)	Mo. Rev. Stat. § 407.010
Montana	Mont. Code Ann. § 61-4-501	Mont. Code Ann. § 30-14-101
Nebraska	Neb. Rev. Stat. § 60-2701	Neb. Rev. Stat. § 59-1601 & 87-301
Nevada	Nev. Rev. Stat. § 597.600	Nev. Rev. Stat. §§ 41.600, 598.360
New Hampshire	N.H. Rev. Stat. Ann. § 357-D	N.H. Rev. Stat. Ann. § 358-A:1
New Jersey	N.J. Stat. Ann. § 56:12-30	N.J. Stat. Ann. § 56:8-1 (West)
New Mexico	N.M. Stat. Ann. § 57-16A-1	N.M. Stat. Ann. § 57-12-1
New York	N.Y. Gen. Bus. Law § 198-a; N.Y. Veh. & Traf. Law § 417-a.	N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349 & 350 (Consol.)
North Carolina	N.C. Gen. Stat. § 20-351	N.C. Gen. Stat. § 75-1.1
North Dakota	N.D. Cent. Code § 51-07-16	N.D. Gen. Stat. § 51-15-01
Ohio	Ohio Rev. Code Ann. § 1345.71	Ohio Rev. Code Ann. §§ 1345.01 &

State Consumer Protection Laws Quick Reference		
STATE	**LEMON LAW**	**UDAP STATUTE**
		4165 (Baldwin)
Oklahoma	Okla. Stat. Ann. tit. 15 § 901	Okla. Stat. Ann. tit. 15 § 751 & tit. 78 § 51 (West)
Oregon	Or. Rev. Stat. § 646.315	Or. Rev. Stat. § 646.605
Pennsylvania	Pa. Stat. Ann. tit. 73 § 1951 (Purdon)	Pa. Stat. Ann. tit. 73 § 201-1 (Purdon)
Rhode Island	R.I. Gen. Laws § 31-5.2-1	R.I. Gen. Laws § 6-13.1-1
South Carolina	S.C. Code Ann. § 56-28-10 (Law. Co-op)	S.C. Code Ann. § 39-5-10 (Law. Co-op)
South Dakota	S.D. Codified Laws Ann § 32-6D-1	S.D. Codified Laws Ann. § 37-24-1
Tennessee	Tenn. Code Ann. § 55-24-201	Tenn. Code Ann. § 47-18-101
Texas	Tex. Rev. Civ. Stat. Ann. § 4413(36) (Vernon)	Tex. Bus. & Com. Code Ann. § 17.41 (Vernon)
Utah	Utah Code Ann. §§ 13-20-1, 41-3-406	Utah Code Ann. §§ 13-2-1, 13-5-1, & 13-11-1
Vermont	Vt. Stat. Ann. tit. 9 § 4170	Vt. Stat. Ann. tit. 9 § 2451
Virginia	Va. Code § 59.1-207.9 to 207.16	Va. Code § 59.1-196
Washington	Wash. Rev. Code § 19.118.021	Wash. Rev. Code Ann. § 19.86
West Virginia	W. Va. Code § 46A-6A-1	W.Va. Code Ann. § 46A-6-101
Wisconsin	Wis. Stat. Ann. § 218.015	Wis. Stat. Ann. § 100.18 & 100.20
Wyoming	Wyo. Stat. Ann. § 40-17-101	Wyo Stat. § 40-12-101

State Consumer Protection Laws Quick Reference II		
STATE	**LEMON BUYBACK LAW**	**SALVAGE VEHICLE STATUTE**
Alabama	Ala. Code § 8-20A-3, 8-20A-4, 8-20A-5	Ala. Code § 32-8-87
Alaska	Alaska Stat. § 45.45.335 & .340	Alaska Stat. § 28-10-211
Arizona	Ariz. Rev. Stat. § 44-1266	Ariz. Rev. Stat. Ann. §§ 28-1411, 28-321, 321.02
Arkansas	Ark. Code Ann. § 4-90-412	Ark. Code Ann. § 27-14-2301 to 2307
California	Cal. Civ. Code § 1793.23 & .24	Cal. Veh. Code §§ 6050, 111515.1, 111515.2, 24007 (West)
Colorado	Colo. Rev. Stat. § 42-10-101 to 107	Col. Rev. Stat. § 42-6-136
Connecticut	Conn. Gen. Stat. Ann. § 42-179(g), 42-179(i)	Conn. Gen. Stat. § 14-16c
Delaware	Not Applicable	Del. Code Ann. tit. 6 §§ 1412, 6717
District of Columbia	D.C. Code § 40-1302(g)(3)	D.C. Code Ann. § 40-1305
Florida	Fla. Stat. Ann. § 681.111; 681.112; 681.114(2), 319.14 (West)	Fla. Stat. Ann. § 319.14 (West)
Georgia	Ga. Code Ann. § 10-1-784 & 785	Ga. Code Ann. § 40-3-37
Hawaii	Haw. Rev. Stat. § 481I-3, -4, & -7	Haw. Rev. Stat. § 286-48
Idaho	Idaho Code § 48-901	Idaho Code § 49-524 & 525
Illinois	625 Ill. Comp. Stat. § 5/5-104.2 (West)	625 Ill. Comp. Stat. §§ 5/3-117.1, -118.1, 5/3-301 *et. seq.*
Indiana	Ind. Code Ann. § 24-5-13.5-10, -11, & -13	Ind. Code Ann. § 9-22-3-3
Iowa	Iowa Code Ann. § 322G.11 & .12	Iowa Code Ann. § 321.52

State Consumer Protection Laws Quick Reference II		
STATE	**LEMON BUYBACK LAW**	**SALVAGE VEHICLE STATUTE**
Kansas	Kan. Stat. Ann. § 50-645, 50-659	Kan. Stat. Ann. § 8-1,136; 8-1,137; 8-2408
Kentucky	Not Applicable.	Ky. Rev. Stat. § 186A.525, 186A.530
Louisiana	La. Rev. Stat. Ann. § 51:1945.1 & 1946	La. Rev. Stat. Ann. § 32:707
Maine	Me. Rev. Stat. Ann. tit. 10 § 1167 & 1168	Me. Rev. Stat. Ann. tit. 29-A, § 667
Maryland	Md. Code Ann. Com. Law. § 14-1502	Md. Code Ann. Com. Law § 13-506(b)
Massachusetts	Mass. Gen. Laws ch. 90 § 7N l/2(5)	Mass. Gen. Laws ch. 90D, §§ 20D & 20F
Michigan	Not Applicable	Mich. Comp. Laws Ann. § 257.217c
Minnesota	Minn. Stat. Ann. § 325F.655(5)(a); 325F.665(5); 325.225(9)	Minn. Stat. Ann. §§ 168A.151, 168A.15
Mississippi	Not Applicable	Miss. Code Ann. § 63-21-39
Missouri	Not Applicable	Mo. Rev. Stat. § 301-227, 301-573
Montana	Mont. Code Ann. § 61-4-525	Mont. Code Ann. § 61-3-212
Nebraska	Not Applicable	Neb. Rev. Stat. § 60-129, 60-130
Nevada	Not Applicable	Nev. Rev. Stat. §§ 482.245, 487.110
New Hampshire	Not Applicable	N.H. Rev. Stat. Ann. § 261.22
New Jersey	N.J. Stat. Ann. § 56:12-35	N.J. Stat. Ann. § 39-10-31 (West) N.J. Admin Code 13:21-22.15
New Mexico	N.M. Stat. Ann. § 57-16A-7	N.M. Stat. Ann. § 66-3-10.1

State Consumer Protection Laws Quick Reference II		
STATE	**LEMON BUYBACK LAW**	**SALVAGE VEHICLE STATUTE**
New York	N.Y. Veh. & Traf. Law § 417-a(2)	N.Y. Veh. & Traf. Law §§ 429, 430
North Carolina	N.C. Gen. Stat. § 20-351.3(d)	N.C. Gen. Stat. § 20-71.3
North Dakota	N.D. Cent. Code § 51-07-22	N.D. Gen. Stat. § 39-05-20.1, 39-05-20.2
Ohio	Ohio Rev. Code Ann. § 1345.76(1)	Ohio Rev. Code Ann. §§ 4505.11 & 4505.181 (Baldwin)
Oklahoma	Not Applicable	Okla. Stat. Ann. tit. 47 § 591.8, 1111 (West)
Oregon	Not Applicable	Or. Rev. Stat. § 803.015, 801.405
Pennsylvania	Pa. Stat. Ann. tit. 73 § 1960, 1961, 1962 (Purdon)	Pa. Stat. Ann. tit. 75 § 1117 (Purdon)
Rhode Island	R.I. Gen. Laws § 31-5.2-9; -10, & -11	R.I. Gen. Laws § 31-46-4
South Carolina	S.C. Code Ann. § 56-28-50, -100, -110 (Law. Co-op)	S.C. Code Ann. § 56-19-480 (Law. Co-op)
South Dakota	S.D. Codified Laws Ann § 32-6D-9	S.D. Codified Laws Ann. §§ 32-3-51.8, 32-3-51.12, 32-3-53
Tennessee	Not Applicable	Tenn. Code Ann. § 55-3-212
Texas	Tex. Rev. Civ. Stat. Ann. § 4413(36) § 6.07 (Vernon)	Tex. Code Ann. Trans. § 501.091 to 501.094 (West)
Utah	Utah Code Ann. §§ 41-3-406 to -414, 41-1a-522	Utah Code Ann. § 41-1a-1000
Vermont	Vt. Stat. Ann. tit. 9 § 4179, 4181	Vt. Stat. Ann. tit. 23 § 2093
Virginia	Va. Code § 59.1-207.15, 59.1-207.16:1, 18.2-11	Va. Code § 46.2-1605
Washington	Wash. Rev. Code § 19.118.061	Wash. Rev. Code Ann. § 42.12.075

State Consumer Protection Laws Quick Reference II		
STATE	**LEMON BUYBACK LAW**	**SALVAGE VEHICLE STATUTE**
West Virginia	W. Va. Code § 46A-6A-7 & -9	W.Va. Code Ann. § 17A-4-10(e)
Wisconsin	Wis. Stat. Ann. § 218.015(2)(d)	Wis. Stat. Ann. § 342.07 & 342.34
Wyoming	Not Applicable	Wyo Stat. § 31-2-104

State Consumer Protection Laws Quick Reference II		
STATE	**TELEMARKETING**	**DEBT COLLECTION STATUTES**
Alabama	Ala. Code § 8-19A	Ala. Code § 40-12-80
Alaska	Alaska Stat. § 45.63	Alaska Stat. §§ 8.24.041-380, 45.50.471-561
Arizona	Ariz. Rev. Stat. Ann. § 44-1271 *et. seq.*	Ariz. Rev. Stat. Ann. §§ 32-1001-57
Arkansas	Ark. Stat. Ann. § 4-99-101 *et. seq.*	Ark. Stat. Ann. § 17-24-101 to 404
California	Cal. Bus. & Prof. Code § § 17511,17538 *et. seq.*	Cal. Civ. Code §§ 1788-1788.32
Colorado	Colo. Rev. Stat. § 6-1-301	Colo. Rev. Stat. § 5-1-101 to 12-105; 12-14-101 to 137
Connecticut	Conn. Gen. Stat. § 42-284	Conn. Gen. Stat. § 36a-645 to 647, 36a-800 to 810
Delaware	Not Applicable	Del. Code Ann. tit. 30 §§ 2301
District of Columbia	Not Applicable	D.C. Code Ann. § 22-3423 to 25, 28-3814 to 3816
Florida	Fla. Stat. Ann. § 501.059 *et. seq.*	Fla. Stat. Ann. § 559.55 to 78
Georgia	Ga. Code Ann. § 10-5B-1 *et. seq.*	Ga. Code Ann. § 7-3-1 to 26
Hawaii	Not Applicable	Haw. Rev. Stat. § 443B-1 to 20
Idaho	Idaho Code § 48-1001 *et. seq.*	Idaho Code § 26-2222 to 2252
Illinois	815 Ill. Comp. Stat. Ann. § 413/1 *et. seq.*	Not Applicable
Indiana	Ind. Code Ann. § 24-5-12-5	Ind. Code Ann. § 25-11-1-1 tp 13
Iowa	Not Applicable	Iowa Code Ann. § 537.7101 to 7103
Kansas	Kan. Stat. Ann. § 50-670 *et. seq.*	Kan. Stat. Ann. § 16a-5-107

State Consumer Protection Laws Quick Reference II		
STATE	**TELEMARKETING**	**DEBT COLLECTION STATUTES**
Kentucky	Ky. Rev. Stat. § 367.46951 *et. seq.*	Not Applicable
Louisiana	La. Rev. Stat. Ann. § 45:821	La. Rev. Stat. Ann. § 9:3576.1 *et. seq.*, 9:3510 to 3571
Maine	Not Applicable	Me. Rev. Stat. Ann. tit. 32 § 11000 to 11054, 9A § 1-101 to 6-301
Maryland	Md. Comm. Law Code § 14-2201 *et. seq.*	Md. Ann. Code Bus. Reg. 7-101 to 7-502, Md. Comm. Law Code § 14-201 to 204
Massachusetts	Mass. Gen. Laws Ann. ch. 159, 19E	Mass. Gen. Laws Ann. ch. 93 §§ 24 to 26 & 49
Michigan	Not Applicable	Mich. Comp. Laws Ann. § 339.901 to 920 & 445.251 to 258
Minnesota	Not Applicable	Minn. Stat. Ann. §§ 332.31 to 45
Mississippi	Miss. Code Ann. § 77-3-601 *et. seq.*	Not Applicable
Missouri	Not Applicable	Not Applicable
Montana	Mont. Code Ann. § 30-14-502	Not Applicable
Nebraska	Neb. Rev. Stat. § 86-1201	Neb. Rev. Stat. § 45-601 to 620
Nevada	Nev. Rev. Stat. Ch. 599B	Nev. Rev. Stat. §§ 649.005 to .435
New Hampshire	N.H. Rev. Stat. Ann. § 359-E:1	N.H. Rev. Stat. Ann. § 358-c:1 to c:4
New Jersey	Not Applicable	N.J. Stat. Ann. § 45:18-1 to 6.1
New Mexico	N.M. Stat. Ann. § 57-12-22	N.M. Stat. Ann. § 61-18A-1 to 33
New York	N.Y. Gen. Bus. Law § 399-P	N.Y. Gen. Bus. Law § 600 to 603
North Carolina	N.C. Gen. Stat. § 66-260 *et. seq.*	N.C. Gen. Stat. § 58-70.90 to .130 & 75-50 to 56

State Consumer Protection Laws Quick Reference II		
STATE	**TELEMARKETING**	**DEBT COLLECTION STATUTES**
North Dakota	N.D. Cent. Code Ch. 51-18	N.D. Cent. Code § 13-05-01 to 10
Ohio	Not Applicable	Not Applicable
Oklahoma	Okla. Stat. Ann. Tit. 15 § 775A	Not Applicable
Oregon	Or. Rev. Stat. §§ 83-710, 646.551	Or. Rev. Stat. § 646.639 to 656 & 697.005 to .095
Pennsylvania	Pa. Stat. § 2241 *et. seq.*	Pa. Cons. Stat. Ann. 18 § 7311 & 73 § 201-1 to 9.2
Rhode Island	R.I. Gen. Laws § 5-61-1 *et. seq.*	Not Applicable
South Carolina	S.C. Code Ann. § 16-17-445	S.C. Code Ann. § 37-5-108
South Dakota	S.D. Codified Laws Ann § 37-30A-1 *et. seq.*	Not Applicable
Tennessee	Tenn. Code Ann. § 47-18-1526	Tenn. Code Ann. § 62-20-101 to 126
Texas	Tex. Bus. & Com. Code Ann. § 38.001 *et. seq.*	Tex. Rev. Civ. Stat. Ann. § 5069.11.01 to 11 & Tex. Fin. Code § 92.001 to 404
Utah	Utah Code Ann. §§ 13-26-1 *et. seq.*	Utah Code Ann. §12-1-1 to 9
Vermont	9 VT. Stat. Ann. § 2464	Vt. Stat. Ann. tit. 9 § 2451a to 2462
Virginia	Va. Code § 59.1-21.1	Va. Code § 18.2-213
Washington	Wash. Rev. Code § 13-26-1 *et. seq.*	Wash. Rev. Code Ann. § 19.16.100 to .950
West Virginia	W. Va. Code § 46A-6F-101	W.Va. Code Ann. § 47-16-1 to 5 & 46a-2-122 to 129a
Wisconsin	Not Applicable	Wis. Stat. Ann. § 218.04 & 427.101 to .105

State Consumer Protection Laws Quick Reference II		
STATE	**TELEMARKETING**	**DEBT COLLECTION STATUTES**
Wyoming	Not Applicable	Wyo Stat. § 33-11-101 to 116

APPENDIX C

FEDERAL TRADE COMMISSION CONSUMER INFORMATION SHEETS

All publications in this appendix are available on the Internet at www.ftc.gov. *Attorneys should check that site frequently for updated versions of these information sheets.*

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18. FTC CONSUMER ALERT: CREDIT REPAIR: HELP YOURSELF FIRST (March 1998)

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20. "FILE SEGREGATION:" NEW ID IS A BAD IDEA (January 1999)

The Cooling-Off Rule

May 1996

If you buy something at a store and later change your mind, you may not be able to return the merchandise. But if you buy an item in your home or at a location that is not the seller's permanent place of business, you may have the option. The Federal Trade Commission's (FTC's) Cooling-Off Rule gives you three days to cancel purchases of $25 or more. Under the Cooling-Off Rule, your right to cancel for a full refund extends until midnight of the third business day after the sale.

The Cooling-Off Rule applies to sales at the buyer's home, workplace or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants. The Cooling-Off Rule applies even when you invite the salesperson to make a presentation in your home.

Under the Cooling-Off Rule, the salesperson must tell you about your cancellation rights at the time of sale. The salesperson also must give you two copies of a cancellation form (one to keep and one to send) and a copy of your contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain your right to cancel. The contract or receipt must be in the same language that's used in the sales presentation.

Some Exceptions

Some types of sales cannot be canceled even if they do occur in locations normally covered by the Rule. The Cooling-Off Rule **does not** cover sales that:

- are under $25;
- are for goods or services not primarily intended for personal, family or household purposes. (The Rule applies to courses of instruction or training.);
- are made entirely by mail or telephone;
- are the result of prior negotiations at the sellers permanent business location where the goods are sold regularly;
- are needed to meet an emergency. Suppose insects suddenly appear in your home, and you waive your right to cancel;
- are made as part of your request for the seller to do repairs or maintenance on your personal property (purchases made beyond the maintenance or repair request are covered).

Also exempt from the Cooling-Off Rule are sales that involve:

- real estate, insurance, or securities;
- automobiles, vans, trucks, or other motor vehicles sold at temporary locations, provided the seller has at least one permanent place of business;
- arts or crafts sold at fairs or locations such as shopping malls, civic centers, and schools.

How to Cancel

To cancel a sale, sign and date one copy of the cancellation form. Mail it to the address given for cancellation, making sure the envelope is post-marked before midnight of the third business day after the contract date. (Saturday is considered a business day; Sundays and federal holidays are not). Because proof of the mailing date and proof of receipt are important, consider sending the cancellation form by certified mail so you can get a return receipt. Or, consider hand delivering the cancellation notice before midnight of the third business day. Keep the other copy of the cancellation form for your records.

If the seller did not give cancellaion forms, you can write your own cancellation letter. It must be post-marked within three business days of the sale.

You do not have to give a reason for canceling your purchase. You have a right to change your mind.

If You Cancel

If you cancel your purchase, the seller has 10 days to:

- cancel and return any promissory note or other negotiable instrument you signed;
- refund all your money and tell you whether any product you still have will be picked up; and
- return any trade-in.

Within 20 days, the seller must either pick up the items left with you, or reimburse you for mailing expenses, if you agree to send back the items.

If you received any goods from the seller, you must make them available to the seller in as good condition as when you received them. If you do not make the items available to the seller -- or if you agree to return the items but fail to -- you remain obligated under the contract.

Problems

If you have a complaint about sales practices that involve the Cooling-Off Rule, write:

Consumer Response Center
Federal Trade Commission
Washington, D.C. 20580

The Rules' complete name and citation are: Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations; 16 CFR Part 429.

You also may wish to contact a consumer protection office in your city, county, or state. Some state laws give you even more rights than the FTCs Cooling-Off Rule, and some local consumer offices can help you resolve your complaint.

In addition, if you paid for your purchase with a credit card and a billing dispute arises about the purchase (for example, if the merchandise shipped was not what you ordered), you can notify the credit card company that you want to dispute the purchase. Under the Fair Credit Billing Act, the credit card company must acknowledge your dispute in writing and conduct a

reasonable investigation of your problem. You may withhold payment of the amount in dispute, until the dispute is resolved. (You are still required to pay any part of your bill that is not in dispute.) To protect your rights under the Fair Credit Billing Act, you must send a written notice about the problem to the credit card company at the address for billing disputes specified on your billing statement within 60 days after the first bill containing the disputed amount is mailed to you.

If the 60-day period has expired or if your dispute concerns the quality of the merchandise purchased, you may have other rights under the Act. If you have questions about the Fair Credit Billing Act, write for the free brochure entitled Fair Credit Billing. Write:

Consumer Response Center
Federal Trade Commission
Washington, D.C. 20580

For More Information

For a free copy of Best Sellers, a complete list of consumer and business publications, contact:
Consumer Response Center
Federal Trade Commission
Washington, DC 20580
(202) 326-2222
TDD: (202) 326-2502

Straight Talk About Telemarketing

September 1996

You know the routine: you sit down to dinner and the phone rings. You answer it. There's a pleasant voice trying to sell you something. If you're tempted by the offer, you'd better get the facts before a potential fraud gets you.

Although most phone sales pitches are made on behalf of legitimate organizations offering bona fide products and services, many sales calls are frauds. Consumers lose more than $40 billion a year to telemarketing fraud. That's why the Federal Trade Commission (FTC) encourages you to be skeptical when you hear a phone solicitation and to be aware of a new law--the Telemarketing Sales Rule--that can help you protect yourself from abusive and deceptive telemarketers.

After you read this brochure, you'll know:

- how fraudulent telemarketing operations work;
- how you can use the new Telemarketing Sales Rule to recognize a fraud and stop unwanted calls;
- how to protect yourself; and
- what to do if you've been scammed or want to file a complaint.

How Telemarketing Scams Work

The heart of a fraudulent telemarketing operation is usually a "boiler room," a rented space with desks, telephones, and experienced sales people who talk to hundreds of people across the country every day. Telephone fraud knows no race, ethnic, gender, age, education or income barriers. Anyone with a phone can be victimized by telemarketing scam artists.

Fraudulent telemarketers and sellers may reach you in several ways, but the telephone always plays an important role.

Cold Calls. You may get a call from a stranger who got your number from a telephone directory, mailing list, or "sucker list." The latter refers to lists of consumers who have lost money through fraudulent prize promotions or merchandise sales. These lists contain names, addresses, phone numbers, and other information, such as how much money was spent by people who have responded to telemarketing solicitations. "Sucker lists" are bought and sold by unscrupulous promoters. They are invaluable to scam artists who know that consumers who have been deceived once are vulnerable to additional scams.

Direct Mail. You may get a letter or postcard saying youve won a prize or a contest. This often is a front for a scam. Instructions tell you to respond to the promoter with certain information. If you do, you'll be called by a salesperson who may use persuasive sales pitches, scare tactics, and exaggerated claims to deceive you and take your money.

Broadcast and Print Advertisements. In some cases, you may make the telephone call in response to a television, newspaper or magazine advertisement, or a direct mail solicitation. The fact that you make the call doesn't mean the business is legitimate or that you should be less cautious about buying or investing on the phone.

The Telemarketing Sales Rule

The FTC's Telemarketing Sales Rule requires certain disclosures and prohibits misrepresentations. It gives you the power to stop unwanted telemarketing calls and gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines.

The Rule covers most types of telemarketing calls to consumers, including calls to pitch goods, services, "sweepstakes," and prize promotion and investment opportunities. It also applies to calls consumers make in response to postcards or other materials received in the mail.

Keep this information near your telephone. It can help you determine if youre talking with a legitimate telemarketer or a scam artist.

- Its illegal for a telemarketer to call you if you've asked not to be called. If they call back, hang up and report them to your state Attorney General.
- Calling times are restricted to the hours between 8 a.m. and 9 p.m.
- Telemarketers must tell you it's a sales call and who's doing the selling **before** they make their pitch. If it's a prize promotion, they must tell you that no purchase or payment is necessary to enter or win. If you're asked to pay for a prize, hang up. Free is free.
- It's illegal for telemarketers to misrepresent any information, including facts about their goods or services, earnings potential, profitability, risk or liquidity of an investment, or the nature of a prize in a prize-promotion scheme.
- Telemarketers must tell you the total cost of the products or services offered and any restrictions on getting or using them, or that a sale is final or non-refundable, before you pay. In a prize promotion, they must tell you the odds of winning, that no purchase or payment is necessary to win, and any restrictions or conditions of receiving the prize.
- Its illegal for a telemarketer to withdraw money from your checking account without your express, verifiable authorization.
- Telemarketers cannot lie to get you to pay, no matter what method of payment you use.
- You do not have to pay for credit repair, recovery room, or advance-fee loan/credit services until these services have been delivered. (*Credit repair* companies claim that, for a fee, they can change or erase accurate negative information from your credit report. Only time can erase such information. *Recovery room* operators contact people who have lost money to a previous telemarketing scam and promise that, for a fee or donation to a specified charity, they will recover your lost money, or the product or prize never received from a telemarketer. *Advance-fee* loans are offered by companies who claim they can guarantee you a loan for a fee paid in advance. The fee may range from $100 to several hundred dollars.)
- If you have the slightest doubt about a telephone offer, wait until you can get information in writing and check it out!

Exceptions to the Rule

Although most types of telemarketing calls are covered by the Rule, there are several exceptions. The Rule **does not** cover the following situations:

- Calls placed by consumers in response to general media advertising (except calls responding to ads for investment opportunities, credit repair services, recovery room services, or advance-fee loans).
- Calls placed by consumers in response to direct mail advertising that discloses all the material information required by the Rule (except calls responding to ads for investment opportunities, prize promotions, credit repair services, recovery room services, or advance-fee loans).
- Catalog sales.
- Calls that are initiated by the consumer that are not made in response to any solicitation.
- Sales that are not completed, and payment or authorization for payment is not required, until there is a face-to-face sales presentation.
- Calls from one business to another unless nondurable office or cleaning supplies are being offered.
- Sales of pay-per-call services and sales of franchises. These are covered by other FTC rules.

Defensive Moves

In addition to knowing about the Telemarketing Sales Rule, its a good idea to keep the following tips in mind whenever you hear a phone solicitation:

- Resist high pressure sales tactics. Legitimate businesses respect the fact that you're not interested.
- Take your time. Ask for written information about the product, service, investment opportunity, or charity thats the subject of the call.
- Before you respond to a phone solicitation, talk to a friend, family member, or financial advisor. Your financial investments may have consequences for people you care about.
- Check out testimonials to make sure they're genuine -- not statements that have been bought or paid for.
- Don't send money -- cash, check, or money order -- by courier, overnight delivery, or wire to anyone who insists on immediate payment.
- Keep information about your bank accounts and credit cards to yourself -- unless you know who youre dealing with.
- Before you pay, check out the company with your state or local consumer protection office.

To Report a Scam

Fight telephone fraud. Report telephone scam artists to your state Attorney General. The Telemarketing Sales Rule gives these local law enforcement officers the power to prosecute fraudulent tele-marketers who operate across state lines. You also may call the National Fraud Information Center (NFIC) at 1-800-876-7060, 9 a.m. - 5:30 p.m. EST, Monday - Friday. NFIC is a private, non-profit organization that operates a consumer hotline to provide services and assistance in filing complaints. NFIC also forwards appropriate complaints to the Federal Trade Commission for entry on its telemarketing fraud database.

In addition, you may want to file a complaint with the FTC by writing to:
Consumer Response Center
Federal Trade Commission
Washington, D.C. 20580
Although the FTC generally does not intervene in individual disputes, the information you provide may help indicate a pattern of possible law violations requiring action by the Commission.

Shopping by Phone or Mail

Produced in cooperation with the Direct Marketing Association and the American Association of Retired Persons

December 1996

Shopping by phone or mail is a convenient alternative to shopping at a store. The Federal Trade Commission's Mail or Telephone Order Rule covers merchandise your order by mail, telephone, computer, and fax machine.

Mail or Telephone Order Rule

By law, a company should ship your order within the time stated in its ads. If no time is promised, the company should ship your order within 30 days after receiving it.

If the company is unable to ship within the promised time, they must give you an "option notice." This notice gives you the choice of agreeing to the delay or canceling your order and receiving a prompt refund.

There is one exception to the 30-day Rule: if a company doesn't promise a shipping time, and you are applying for credit to pay for your purchase, the company has 50 days to ship after receiving your order.

Fair Credit Billing Act (FCBA)

You're protected by the FCBA when you use your credit card to pay for purchases.

Billing Errors

If you find an error on your credit or charge card statement, you may dispute the charge and withhold payment on the disputed amount while the charge is in dispute. The error might be a charge for the wrong amount, for something you did not accept, or for an item that was not delivered as agreed. Of course, you still must pay any part of the bill that is not in dispute, including finance charges on the undisputed amount.

If you decide to dispute a charge:

- Write to the creditor at the address indicated on the monthly statement for "billing inquiries." Include your name, address, credit card number, and a description of the billing error.
- Send your letter in a timely fashion. It must reach the creditor within 60 days after the first bill containing the error was mailed to you.

The creditor must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has been resolved. The creditor must resolve the dispute within two billing cycles (but not more than 90 days) after receiving your letter.

Unsatisfactory goods or services

You also may dispute charges for unsatisfactory goods or services. To take advantage of this protection regarding the quality of goods or services, you must:

- have made the purchase in your home state or within 100 miles of your current billing address. The charge must be for more than $50;
- make a good faith effort first to resolve the dispute with the seller. However, you are not required to use any special procedure to do so.

Note that the dollar and distance limitations don't apply if the seller also is the card issuer or if a special business relationship exists between the seller and the card issuer.

Precautions

Before ordering by phone or mail, consider your experience with the company or its general reputation. Determine the company's refund and return policies, the product's availability, and the total cost of your order.

Contacts for Resolving Problems

If you have problems with mail or phone order purchases, try to resolve your dispute with the company. If that doesn't work, the following resources may be helpful:

- State and local consumer protection offices. Contact the offices in your home state and where the company is located.
- The Direct Marketing Association (DMA). Write:
  DMA Mail Order Action Line
  1101 17th Street, NW
  Washington, DC 20036
- Postal Inspectors. Call your local post office and ask for the Inspector-in-Charge.

You may want to have your name removed from direct mail or phone lists. Be aware, however, that if you purchase goods by mail after your name is removed, it may be added again. You may want to make a new request to have your name removed every few years. You also may want to ask mail or telephone order companies to retain your name on in-house lists only.
To remove your name from many national direct mail lists, write:

DMA Mail Preference Service

P.O. Box 9008
Farmingdale, NY 11735-9008 To avoid unwanted phone calls from many national marketers, send your name, address, and telephone number to:

DMA Telephone Preference Service

P.O. Box 9014
Farmingdale, NY 11735-9014

Warranties

May 1998

When you make a major purchase, the manufacturer or seller makes an important promise to stand behind the product. It's called a warranty. Federal law requires that warranties be available for you to read before you buy. Coverage varies, so you can compare the extent of warranty coverage just as you compare the style, price, and other characteristics of products.

Written Warranties

Although not required by law, written warranties come with most major purchases. When comparing written warranties, keep the following in mind:

- **How long does the warranty last?** Check the warranty to see when it begins and when it expires, as well as any conditions that may void coverage.
- **Who do you contact to get warranty service?** It may be the seller or the manufacturer who provides you with service.
- **What will the company do if the product fails?** Read to see whether the company will repair the item, replace it, or refund your money.
- **What parts and repair problems are covered?** Check to see if any parts of the product or types of repair problems are excluded from coverage. For example, some warranties require you to pay for labor charges. Also, look for conditions that could prove expensive or inconvenient, such as a requirement that you ship a heavy object to a factory for service, or that you return the item in the original carton.
- **Does the warranty cover "consequential damages?"** Many warranties do not cover damages caused by the product, or your time and expense in getting the damage repaired. For example, if your freezer breaks and the food spoils, the company will not pay for the lost food.
- **Are there any conditions or limitations on the warranty?** Some warranties provide coverage only if you maintain or use the product as directed. For example, a warranty may cover only personal uses—as opposed to business uses—of the product. Make sure the warranty will meet your needs.

Spoken Warranties

If a salesperson makes a promise orally, such as that the company will provide free repairs, get it in writing. Otherwise, you may not be able to get the service that was promised.

Service Contracts

When you buy a car, home, or major appliance, you may be offered a service contract. Although often called "extended warranties," service contracts are not warranties. Service contracts, like warranties, provide repair and/or maintenance for a specific time. Warranties, however, are

included in the price of the product; service contracts costs extra and are sold separately. To determine whether you need a service contract, consider:

- whether the warranty already covers the repairs and the time period of coverage that you would get under the service contract;
- whether the product is likely to need repairs and the potential costs of such repairs;
- the duration of the service contract;
- the reputation of the company offering the service contract.

Implied Warranties

Implied warranties are created by state law, and all states have them. Almost every purchase you make is covered by an implied warranty.

The most common type of implied warranty—a "warranty of merchantability," means that the seller promises that the product will do what it is supposed to do. For example, a car will run and a toaster will toast.

Another type of implied warranty is the "warranty of fitness for a particular purpose." This applies when you buy a product on the seller's advice that it is suitable for a particular use. For example, a person who suggests that you buy a certain sleeping bag for zero-degree weather warrants that the sleeping bag will be suitable for zero degrees.

If your purchase does not come with a written warranty, it is still covered by implied warranties unless the product is marked "as is," or the seller otherwise indicates in writing that no warranty is given. Several states, including Kansas, Maine, Maryland,

Massachusetts, Mississippi, Vermont, West Virginia, and the District of Columbia, do not permit "as is" sales.

If problems arise that are not covered by the written warranty, you should investigate the protection given by your implied warranty.

Implied warranty coverage can last as long as four years, although the length of the coverage varies from state to state. A lawyer or a state consumer protection office can provide more information about implied warranty coverage in your state.

Preventing Problems

To minimize problems:

- **Read the warranty before you buy.** Understand exactly what protection the warranty gives you.
- **Consider the reputation of the company offering the warranty.** If you're not familiar with the company, ask your local or state consumer protection office or Better Business Bureau if they have any complaints against the company. A warranty is only as good as the company that stands behind it.

- **Save your receipt and file it with the warranty.** You may need it to document the date of your purchase or prove that you're the original owner in the case of a nontransferable warranty.
- **Perform required maintenance and inspections.**
- **Use the product according to the manufacturer's instructions.** Abuse or misuse may void your warranty coverage.

Resolving Disputes

If you have problems with a product or with getting warranty service:

- **Read your product instructions and warranty carefully.** Don't expect features or performance that your product wasn't designed for, or assume warranty coverage that was never promised in writing. A warranty doesn't mean that you'll automatically get a refund if the product is defective—the company may be entitled to try to fix it first. On the other hand, if you reported a defect to the company during the warranty period and the product wasn't fixed properly, the company must correct the problem, even if your warranty expires before the product is fixed.
- **Try to resolve the problem with the retailer.** If you can't, write to the manufacturer. Your warranty should list the company's mailing address. Send all letters by certified mail, return receipt requested, and keep copies (see the sample complaint letter on page 7).
- **Contact your state or local consumer protection office.** They can help you if you can't resolve the situation with the seller or manufacturer.
- **Research dispute resolution programs that try to informally settle any disagreements between you and the company.** Your local consumer protection office can suggest organizations to contact. Also, check your warranty; it may require dispute resolution procedures before going to court.
- **Consider small claims court.** If your dispute involves less than $750, you can usually file a lawsuit in small claims court. The costs are relatively low, procedures are simple, and lawyers usually aren't needed. The clerk of the small claims court can tell you how to file your lawsuit and your state's dollar limits.
- **If all else fails, you may want to consider a lawsuit.** You can sue for damages or any other type of relief the court awards, including legal fees. A lawyer can advise you how to proceed.

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual

problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

Sample Complaint Letter

(Your Address)
(Your City, State, Zip)
(Date)

(Name of Contact Person)
(Title)
(Company Name)
(Street Address)
(City, State, Zip Code)

Dear (Contact Person):

On (date), I purchased (or had repaired) a (name of the product with the serial or model number or service performed). I made this purchase at (location, date, and other important details of the transaction).

Unfortunately, your product (or service) has not performed well (or the service was inadequate) because (state the problem).

Therefore, to resolve the problem, I would appreciate your (state the specific action you want). Enclosed are copies (copies, not originals) of my records (receipts, guarantees, warranties, cancelled checks, contracts, model and serial numbers, and any other documents).

I look forward to your reply and a resolution to my problem and will wait (set a time limit) before seeking third-party assistance. Please contact me at the above address or by phone (home or office numbers with area codes).

Sincerely,

Your Name
Account Number

Auto Service Contracts

May 1997

Buying a car? You also may be encouraged to buy an auto service contract to help protect against unexpected, costly repairs. While it may sound like a good idea, don't buy in until you understand both the terms of the contract and who is responsible for providing the coverage.

The Auto Service Contract

A service contract is a promise to perform (or pay for) certain repairs or services. Sometimes called an "extended warranty," a service contract is not a warranty as defined by federal law. A service contract may be arranged at any time and always costs extra; a warranty comes with a new car and is included in the original price.
The separate and additional cost distinguishes a service contract from a warranty.

The Terms

Before deciding whether to buy an auto service contract, ask these questions:

Does the service contract duplicate any warranty coverage?

Compare service contracts with the manufacturer's warranty before you buy. New cars come with a manufacturer's warranty, which usually offers coverage for at least one year or 12,000 miles, whichever comes first. Even used cars may come with some type of coverage (see table below).

You may decide to buy a "demonstrator" model — a car that has never been sold to a retail customer but has been driven for purposes other than test drives. If so, ask when warranty coverage begins and ends. Does it date from when you purchase the car or when the dealer first put the car into service?

Who backs the service contract?

Ask who performs or pays for repairs under the terms of the service contract. It may be the manufacturer, the dealer, or an independent company.

Many service contracts sold by dealers are handled by independent companies called administrators. Administrators act as claims adjusters, authorizing the payment of claims to any dealers under the contract. If you have a dispute over whether a claim should be paid, deal with the administrator.

If the administrator goes out of business, the dealership still may be obligated to perform under the contract. The reverse also may be true. If the dealer goes out of business, the administrator may be required to fulfill the terms of the contract. Whether you have recourse depends on your contract's terms and/or your state's laws.

Learn about the reputation of the dealer and the administrator. Ask for references and check them out. You also can contact your local or state consumer protection office, state Department of Motor Vehicles, local Better Business Bureau, or local automobile dealers

association to find out if they have public information on the firms. Look for the phone numbers and addresses in your telephone directory.

Find out how long the dealer or administrator has been in business, and try to determine whether they have the financial resources to meet their contractual obligations. Individual car dealers or dealer associations may set aside funds or buy insurance to cover future claims. Some independent companies are insured against a sudden rush of claims.

Find out if the auto service contract is underwritten by an insurance company. In some states, this is required. If the contract is backed by an insurance company, contact your State Insurance Commission to ask about the solvency of the company and whether any complaints have been filed.

How much does the auto service contract cost?

Usually, the price of the service contract is based on the car make, model, condition (new or used), coverage, and length of contract. The upfront cost can range from several hundred dollars to more than $1,000.

In addition to the initial charge, you may need to pay a deductible each time your car is serviced or repaired. Under some service contracts, you pay one charge per visit for repairs — no matter how many. Other contracts require a deductible for each unrelated repair.

You also may need to pay transfer or cancellation fees if you sell your car or end the contract. Often, contracts limit the amount paid for towing or related rental car expenses.

What is covered and not covered?

Few auto service contracts cover all repairs. Indeed, common repairs for parts like brakes and clutches generally are not included in service contracts. If an item isn't listed, assume it's not covered.

Watch out for absolute exclusions that deny coverage for any reason. For example:

- If a covered part is damaged by a non-covered component, the claim may be denied.
- If the contract specifies that only "mechanical breakdowns" will be covered, problems caused by "normal wear and tear" may be excluded.

If the engine must be taken apart to diagnose a problem and it is discovered that non-covered parts need to be repaired or replaced, you may have to pay for the labor involved in the tear-down and re-assembling of the engine.

You may not have full protection even for parts that are covered in the contract. Some companies use a "depreciation factor" in calculating coverage: the company may pay only partial repair or replacement costs if they consider your car's mileage.

How are claims handled?

When your car needs to be repaired or serviced, you may be able to choose among several service dealers or authorized repair centers. Or, you may be required to return the vehicle to the selling dealer for service. That could be inconvenient if you bought the car from a dealership in another town.

Find out if your car will be covered if it breaks down while you're using it on a trip or if you take it when you move out of town. Some auto service contract companies and dealers offer service only in specific geographical areas.

Find out if you need prior authorization from the contract provider for any repair work or towing services. Be sure to ask:

- how long it takes to get authorization.
- whether you can get authorization outside of normal business hours.
- whether the company has a toll-free number for authorization. Test the toll-free number before you buy the contract to see if you can get through easily.

You may have to pay for covered repairs and then wait for the service company to reimburse you. If the auto service contract doesn't specify how long reimbursement usually takes, ask. Find out who settles claims in case you have a dispute with the service contract provider and need to use a dispute resolution program.

Are new or reconditioned ("like") parts authorized for use in covered repairs?

If this concerns you, ask. Some consumers are disappointed when they find out "reconditioned" engines are being used as replacement parts under some service contracts. Also ask whether the authorized repair facility maintains an adequate stock of parts. Repair delays may occur if authorized parts are not readily available and must be ordered.

What are your responsibilities?

Under the contract, you may have to follow all the manufacturer's recommendations for routine maintenance, such as oil and spark plug changes. Failure to do so could void the contract. To prove you have maintained the car properly, keep detailed records, including receipts.

Find out if the contract prohibits you from taking the car to an independent station for routine maintenance or performing the work yourself. The contract may specify that the selling dealer is the only authorized facility for servicing the car.

What is the length of the service contract?

If the service contract lasts longer than you expect to own the car, find out if it can be transferred when you sell the car, whether there's a fee, or if a shorter contract is available.

Used Cars: Warranty Protection

When shopping for a used car, look for a Buyer's Guide sticker posted on the car's side window. This sticker is required by the FTC on all used cars sold by dealers. It tells whether a service contract is available. It also indicates whether the vehicle is being sold with a warranty, with implied warranties only, or "as is."

- *Warranty.* If the manufacturer's warranty is still in effect on the used car, you may have to pay a fee to obtain coverage, making it a service contract. However, if the dealer absorbs the cost of the manufacturer's fee, the coverage is considered a warranty.
- *Implied Warranties Only.* There are two common types of implied warranties. Both are unspoken and unwritten and based on the principle that the seller stands behind the

product. Under a "warranty of merchantability," the seller promises the product will do what it is supposed to do. For example, a toaster will toast, a car will run. If the car doesn't run, implied-warranties law says that the dealer must fix it (unless it was sold "as is") so that the buyer gets a working car. A "warranty of fitness for a particular purpose" applies when you buy a vehicle on a dealer's advice that it is suitable for a certain use, like hauling a trailer. Used cars usually are covered by implied warranties under state law.

- *As Is - No Warranty.* If you buy a car "as is," you must pay for all repairs, even if the car breaks down on the way home from the dealership. However, if you buy a dealer-service contract within 90 days of buying the used car, state law "implied warranties" may give you additional rights.

Some states prohibit "as is" sales on most or all used cars. Other states require the use of specific words to disclaim implied warranties. In addition, some states have used car "lemon laws" under which a consumer can receive a refund or replacement if the vehicle is seriously defective. To find out about your state laws, check with your local or state consumer protection office or attorney general.

Other Tips

If you're told you must purchase an auto service contract to qualify for financing, contact the lender yourself to find out if this is true. Some consumers have had trouble canceling their service contract after discovering the lender didn't require one.

If you decide to buy a service contract through a car dealership — and the contract is backed by an administrator and/or a third party — make sure the dealer forwards your payment and gives you written confirmation. Some consumers have discovered too late that the dealer failed to forward their payment, leaving them with no coverage months after they signed a contract. Contact your local or state consumer protection office if you have reason to believe that your contract wasn't put into effect as agreed.

In some states, service contract providers are subject to insurance regulations. Find out if this is true in your state. Insurance regulations generally require companies to:

- maintain an adequate financial reserve to pay claims.
- base their contract fees on expected claims. Some service providers have been known to make huge profits because the cost of their contracts far exceeds the cost of repairs or services they provide.
- seek approval from the state insurance office for premiums or contract fees.

Complaints

To report contract problems with a service provider, contact your local and state consumer protection agencies, including the state insurance commissioner and state attorney general.

If you need help resolving a dispute, contact the Better Business Bureau, the state attorney general, or the consumer protection office in your area. Also, contact law schools in your area and ask if they have dispute resolution programs.

You also can contact the Federal Trade Commission. Write: Consumer Response Center, Federal Trade Commission, Washington, DC 20580. Although the FTC generally does not intervene in individual disputes, the information you provide may indicate a pattern of possible law violations requiring action by the Commission.

More Information

The FTC publishes a number of brochures on buying and leasing cars. For a complete list, contact: **Best Sellers**, Consumer Response Center, Federal Trade Commission, Washington, DC 20580; 202-326-2222.

Buying A New Car

March 1999

A new car is second only to a home as the most expensive purchase many consumers make. According to the National Automobile Dealers Association, the average price of a new car sold in the United States as of June 1998 was $23,480. That's why it's important to know how to make a smart deal.

Buying Your New Car

Think about what car model and options you want and how much you're willing to spend. Do some research. You'll be less likely to feel pressured into making a hasty or expensive decision at the showroom and more likely to get a better deal.

Consider these suggestions:

- Check publications at a library or bookstore, or on the Internet, that discuss new car features and prices. These may provide information on the dealer's costs for specific models and options.
- Shop around to get the best possible price by comparing models and prices in ads and at dealer showrooms. You also may want to contact car-buying services and broker-buying services to make comparisons.
- Plan to negotiate on price. Dealers may be willing to bargain on their profit margin, often between 10 and 20 percent. Usually, this is the difference between the manufacturer's suggested retail price (MSRP) and the invoice price.

Because the price is a factor in the dealer's calculations regardless of whether you pay cash or finance your car — and also affects your monthly payments — negotiating the price can save you money.

- Consider ordering your new car if you don't see what you want on the dealer's lot. This may involve a delay, but cars on the lot may have options you don't want — and that can raise the price. However, dealers often want to sell their current inventory quickly, so you may be able to negotiate a good deal if an in-stock car meets your needs.

Learning the Terms

Negotiations often have a vocabulary of their own. Here are some terms you may hear when you're talking price.

- **Invoice Price** is the manufacturer's initial charge to the dealer. This usually is higher than the dealer's final cost because dealers receive rebates, allowances, discounts, and incentive awards. Generally, the invoice price *should* include freight (also known as destination and delivery). If you're buying a car based on the invoice price (for example, "at invoice," "$100 below invoice," "two percent above invoice"), and if freight is already included, make sure freight isn't added again to the sales contract.

- **Base Price** is the cost of the car without options, but includes standard equipment and factory warranty. This price is printed on the Monroney sticker.
- **Monroney Sticker Price (MSRP)** shows the base price, the manufacturer's installed options with the manufacturer's suggested retail price, the manufacturer's transportation charge, and the fuel economy (mileage). Affixed to the car window, this label is required by federal law, and may be removed only by the purchaser.
- **Dealer Sticker Price**, usually on a supplemental sticker, is the Monroney sticker price plus the suggested retail price of dealer-installed options, such as additional dealer markup (ADM) or additional dealer profit (ADP), dealer preparation, and undercoating.

Financing Your New Car

If you decide to finance your car, be aware that the financing obtained by the dealer, even if the dealer contacts lenders on your behalf, may not be the best deal you can get. Contact lenders directly. Compare the financing they offer you with the financing the dealer offers you. Because offers vary, shop around for the best deal, comparing the annual percentage rate (APR) and the length of the loan. When negotiating to finance a car, be wary of focusing only on the monthly payment. The total amount you will pay depends on the price of the car you negotiate, the APR, and the length of the loan.

Sometimes, dealers offer very low financing rates for specific cars or models, but may not be willing to negotiate on the price of these cars. To qualify for the special rates, you may be required to make a large down payment. With these conditions, you may find that it's sometimes more affordable to pay higher financing charges on a car that is lower in price or to buy a car that requires a smaller down payment.

Before you sign a contract to purchase or finance the car, consider the terms of the financing and evaluate whether it is affordable. Before you drive off the lot, be sure to have a copy of the contract that both you and the dealer have signed and be sure that all blanks are filled in.

Some dealers and lenders may ask you to buy credit insurance to pay off your loan if you should die or become disabled. Before you buy credit insurance, consider the cost, and whether it's worthwhile. Check your existing policies to avoid duplicating benefits. Credit insurance is not required by federal law. If your dealer requires you to buy credit insurance for car financing, it must be included in the cost of credit. That is, it must be reflected in the APR. Your state Attorney General also may have requirements about credit insurance. Check with your state Insurance Commissioner or state consumer protection agency.

Trading in Your Old Car

Discuss the possibility of a trade-in only after you've negotiated the best possible price for your new car and after you've researched the value of your old car. Check the library for reference books or magazines that can tell you how much it is worth. This information may help you get a better price from the dealer. Though it may take longer to sell your car yourself, you generally will get more money than if you trade it in.

Considering a Service Contract

Service contracts that you may buy with a new car provide for the repair of certain parts or problems. These contracts are offered by manufacturers, dealers, or independent companies and may or may not provide coverage beyond the manufacturer's warranty. Remember that a warranty is included in the price of the car while a service contract costs extra.

Before deciding to purchase a service contract, read it carefully and consider these questions:

- What's the difference between the coverage under the warranty and the coverage under the service contract?
- What repairs are covered?
- Is routine maintenance covered?
- Who pays for the labor? The parts?
- Who performs the repairs? Can repairs be made elsewhere?
- How long does the service contract last?
- What are the cancellation and refund policies?

Worksheet for Buying a New Car

Before you negotiate the price of your next new car,
use this worksheet to establish the bargaining room.

Model _____ Base Price_____ .

Option:	Invoice Price	Retail Price
Transmission: Automatic___Manual___		
Engine: Size_____		
Brakes: Antilock___ Power-assisted___		
Rear Window: Wiper___ Defroster___		
Wheels and Tires: Alloy Wheels All Season Tires		
Power Locks		
Air Conditioning		
Audio System: AM-FM___ w/cassette___ w/CD___		
Seats: Power___ Heated___ Leather___		
Mirrors and Lights: Illuminated Dual Vanity Mirrors Exterior Power Mirrors Map Lights		
Cellular Telephone		
Alarm System		
Remote Keyless Entry		
Sunroof		
Other: _____ _____ _____ _____		

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

*You can get the invoice price by looking at the dealer's invoice or reviewing car publications.

Buying a Used Car

March 1998

Before you start shopping for a car, you'll need to do some homework. Spending time now may save you serious money later. Think about your driving habits, your needs, and your budget. You can learn about car models, options, and prices by reading newspaper ads, both display and classified. There is a wealth of information about used cars on the Internet: enter "used car" as the key words and you'll find additional information on how to buy a used car, detailed instructions for conducting a pre-purchase inspection, and ads for cars available for sale, among other information. Libraries and book stores also have publications that compare car models, options, and costs, and offer information about frequency-of-repair records, safety tests, and mileage. Many of these publications have details on the do's and don'ts of buying a used car.

Once you've narrowed your car choices, research the frequency of repair and maintenance costs on the models in auto-related consumer magazines. The U.S. Department of Transportation's Auto Safety Hotline (1-800-424-9393) gives information on recalls.

You have two choices: pay in full or finance over time. If you finance, the total cost of the car increases. That's because you're also paying for the cost of credit, which includes interest and other loan costs. You'll also have to consider how much you can put down, your monthly payment, the length of the loan, and the annual percentage rate (APR). Keep in mind that annual percentage rates usually are higher and loan periods generally are shorter on used cars than on new ones.

Dealers and lenders offer a variety of loan terms and payment schedules. Shop around, compare offers, and negotiate the best deal you can. Be cautious about advertisements offering financing to first-time buyers or people with bad credit. These offers often require a big down payment and a high APR. If you agree to financing that carries a high APR, you may be taking a big risk. If you decide to sell the car before the loan expires, the amount you receive from the sale may be far less than the amount you need to pay off the loan. If the car is repossessed or declared a total loss because of an accident, you may be obligated to pay a considerable amount to repay the loan even after the proceeds from the sale of the car or the insurance payment have been deducted. If your budget is tight, you may want to consider paying cash for a less expensive car than you first had in mind.

If you decide to finance, make sure you understand the following aspects of the loan agreement before you sign any documents:

- the exact price you're paying for the vehicle
- the amount you're financing
- the finance charge (the dollar amount the credit will cost you)
- the APR (a measure of the cost of credit, expressed as a yearly rate)
- the number and amount of payments

- the total sales price (the sum of the monthly payments plus the down payment) Used cars are sold through a variety of outlets: franchise and independent dealers, rental car companies, leasing companies, and used car superstores. You can even buy a used car on the Internet. Ask friends, relatives and co-workers for recommendations. You may want to call your local consumer protection agency, state Attorney General (AG), and the Better Business Bureau (BBB) to find out if any unresolved complaints are on file about a particular dealer.

Some dealers are attracting customers with "no-haggle prices," "factory certified" used cars, and better warranties. Consider the dealer's reputation when you evaluate these ads.

Dealers are not required by law to give used car buyers a three-day right to cancel. The right to return the car in a few days for a refund exists only if the dealer grants this privilege to buyers. Dealers may describe the right to cancel as a "cooling-off" period, a money-back guarantee, or a "no questions asked" return policy. Before you purchase from a dealer, ask about the dealer's return policy, get it in writing and read it carefully.

The Federal Trade Commission's Used Car Rule requires dealers to post a Buyers Guide in every used car they offer for sale. This includes light-duty vans, light-duty trucks, demonstrators, and program cars. Demonstrators are new cars that have not been owned, leased, or used as rentals, but have been driven by dealer staff. Program cars are low-mileage, current-model-year vehicles returned from short-term leases or rentals. Buyers Guides do not have to be posted on motorcycles and most recreational vehicles. Anyone who sells less than six cars a year doesn't have to post a Buyers Guide.

The Buyers Guide must tell you:

- whether the vehicle is being sold "as is" or with a warranty
- what percentage of the repair costs a dealer will pay under the warranty
- that spoken promises are difficult to enforce
- to get all promises in writing
- to keep the Buyers Guide for reference after the sale
- the major mechanical and electrical systems on the car, including some of the major problems you should look out for
- to ask to have the car inspected by an independent mechanic before you buy.

When you buy a used car from a dealer, get the original Buyers Guide that was posted in the vehicle, or a copy. The Guide must reflect any negotiated changes in warranty coverage. It also becomes part of your sales contract and overrides any contrary provisions. For example, if the Buyers Guide says the car comes with a warranty and the contract says the car is sold "as is," the dealer must give you the warranty described in the Guide.When the dealer offers a vehicle "as is," the box next to the "As Is - No Warranty" disclosure on the Buyers Guide must be checked. If the box is checked but the dealer promises to repair the vehicle or cancel the sale if you're not satisfied, make sure the promise is written on the Buyers Guide. Otherwise, you may have a hard time getting the dealer to make good on his word. Some states, including

Connecticut, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New York, Rhode Island, Vermont, West Virginia and the District of Columbia, don't allow "as is" sales for many used vehicles.

Three states—Louisiana, New Hampshire, and Washington—require different disclosures than those on the Buyers Guide. If the dealer fails to provide proper state disclosures, the sale is not "as is." To find out what disclosures are required for "as is" sales in your state, contact your state Attorney General.

State laws hold dealers responsible if cars they sell don't meet reasonable quality standards. These obligations are called implied warranties—unspoken, unwritten promises from the seller to the buyer. However, dealers in most states can use the words "as is" or "with all faults" in a written notice to buyers to eliminate implied warranties. There is no specified time period for implied warranties.

Warranty of Merchantability

The most common type of implied warranty is the warranty of merchantability: The seller promises that the product offered for sale will do what it's supposed to. That a car will run is an example of a warranty of merchantability. This promise applies to the basic functions of a car. It does not cover everything that could go wrong.

Breakdowns and other problems after the sale don't prove the seller breached the warranty of merchantability. A breach occurs only if the buyer can prove that a defect existed at the time of sale. A problem that occurs after the sale may be the result of a defect that existed at the time of sale or not. As a result, a dealer's liability is judged case-by-case.

Warranty of Fitness for a Particular Purpose

A warranty of fitness for a particular purpose applies when you buy a vehicle based on the dealer's advice that it is suitable for a particular use. For example, a dealer who suggests you buy a specific vehicle for hauling a trailer in effect is promising that the vehicle will be suitable for that purpose.

If you have a written warranty that doesn't cover your problems, you still may have coverage through implied warranties. That's because when a dealer sells a vehicle with a written warranty or service contract, implied warranties are included automatically. The dealer can't delete this protection. Any limit on an implied warranty's time must be included on the written warranty.

In states that don't allow "as is" sales, an "Implied Warranties Only" disclosure is printed on the Buyers Guide in place of the "As Is" disclosure. The box beside this disclosure will be checked if the dealer decides to sell the car with no written warranty.

In states that do allow "as is" sales, the "Implied Warranties Only" disclosure should appear on the Buyers Guide if the dealer decides to sell a vehicle with implied warranties and no

written warranty. A copy of the Buyers Guide with the "Implied Warranties Only" disclosure is available here.

Dealers who offer a written warranty must complete the warranty section of the Buyers Guide. Because terms and conditions vary, it may be useful to compare and negotiate coverage.

Dealers may offer a full or limited warranty on all or some of a vehicle's systems or components. Most used car warranties are limited and their coverage varies. A full warranty includes the following terms and conditions.

- Anyone who owns the vehicle during the warranty period is entitled to warranty service.
- Warranty service will be provided free of charge, including such costs as removing and reinstalling a covered system.
- You have the choice of a replacement or a full refund if, after a reasonable number of tries, the dealer cannot repair the vehicle or a covered system.
- You only have to tell the dealer that warranty service is needed in order to get it, unless the dealer can prove that it is reasonable to require you to do more.
- Implied warranties have no time limits.

If any of these statements doesn't apply, the warranty is limited.

A full or limited warranty doesn't have to cover the entire vehicle. The dealer may specify that only certain systems are covered. Some parts or systems may be covered by a full warranty; others by a limited warranty.

The dealer must check the appropriate box on the Buyers Guide to indicate whether the warranty is full or limited and the dealer must include the following information in the "Warranty" section:

- the percentage of the repair cost that the dealer will pay. For example, "the dealer will pay 100 percent of the labor and 100 percent of the parts . . .";
- the specific parts and systems—such as the frame, body, or brake system—that are covered by the warranty. The back of the Buyers Guide lists the major systems where problems may occur;
- the warranty term for each covered system. For example, "30 days or 1,000 miles, whichever comes first"; and
- whether there's a deductible and, if so, how much.

You have the right to see a copy of the dealer's warranty before you buy. Review it carefully to determine what is covered. The warranty gives detailed information, such as how to get repairs for a covered system or part. It also tells who is legally responsible for fulfilling the terms of the warranty. If it's a third party, investigate their reputation and whether they're insured. Find out the name of the insurer, and call to verify the information. Then check out the third-party company with your local Better Business Bureau. That's not foolproof, but it is

prudent. Make sure you receive a copy of the dealer's warranty document if you buy a car that is offered with a warranty.

If the manufacturer's warranty still is in effect, the dealer may include it in the "systems covered/duration" section of the Buyers Guide. To make sure you can take advantage of the coverage, ask the dealer for the car's warranty documents. Verify the information (what's covered, expiration date/miles, necessary paperwork) by calling the manufacturer's zone office. Make sure you have the Vehicle Identification Number (VIN) when you call.

Like a warranty, a service contract provides repair and/or maintenance for a specific period. But warranties are included in the price of a product, while service contracts cost extra and are sold separately. To decide if you need a service contract, consider whether:

- the service contract duplicates warranty coverage or offers protection that begins after the warranty runs out. Does the service contract extend beyond the time you expect to own the car? If so, is the service contract transferable or is a shorter contract available?
- the vehicle is likely to need repairs and their potential costs. You can determine the value of a service contract by figuring whether the cost of repairs is likely to exceed the price of the contract.
- the service contract covers all parts and systems. Check out all claims carefully. For example, "bumper to bumper" coverage may not mean what you think.
- a deductible is required and, if so, the amount and terms.
- the contract covers incidental expenses, such as towing and rental car charges while your car is being serviced.
- repairs and routine maintenance, such as oil changes, have to be done at the dealer.
- there's a cancellation and refund policy for the service contract and, whether there are cancellation fees.
- the dealer or company offering the service contract is reputable. Read the contract carefully to determine who is legally responsible for fulfilling the terms of the contract. Some dealers sell third-party service contracts.

The dealer must check the appropriate box on the Buyers Guide if a service contract is offered, except in states where service contracts are regulated by insurance laws. If the Guide doesn't include a service contract reference and you're interested in buying one, ask the salesperson for more information.

If you buy a service contract from the dealer within 90 days of buying a used vehicle, federal law prohibits the dealer from eliminating implied warranties on the systems covered in the contract. For example, if you buy a car "as is," the car normally is not covered by implied warranties. But if you buy a service contract covering the engine, you automatically get implied warranties on the engine. These may give you protection beyond the scope of the service contract. Make sure you get *written* confirmation that your service contract is in effect.

The Buyers Guide cautions you not to rely on spoken promises. They are difficult to enforce because there may not be any way for a court to determine with any confidence what was said. Get all promises written into the Guide.

Pre-Purchase Independent Inspection

It's best to have any used car inspected by an independent mechanic before you buy it. For about $100 or less, you'll get a general indication of the mechanical condition of the vehicle. An inspection is a good idea even if the car has been "certified" and inspected by the dealer and is being sold with a warranty or service contract. A mechanical inspection is different from a safety inspection. Safety inspections usually focus on conditions that make a car unsafe to drive. They are not designed to determine the overall reliability or mechanical condition of a vehicle.

To find a pre-purchase inspection facility, check your Yellow Pages under "Automotive Diagnostic Service" or ask friends, relatives and co-workers for referrals. Look for facilities that display certifications like an Automotive Service Excellence (ASE) seal. Certification indicates that some or all of the technicians meet basic standards of knowledge and competence in specific technical areas. Make sure the certifications are current, but remember that certification alone is no guarantee of good or honest work. Also ask to see current licenses if state or local law requires such facilities to be licensed or registered. Check with your state Attorney General's office or local consumer protection agency to find out whether there's a record of complaints about particular facilities.

There are no standard operating procedures for pre-purchase inspections. Ask what the inspection includes, how long it takes, and the price. Get this information in writing.

If the dealer won't let you take the car off the lot, perhaps because of insurance restrictions, you may be able to find a mobile inspection service that will go to the dealer. If that's not an option, ask the dealer to have the car inspected at a facility you designate. You will have to pay the inspection fee.

Once the vehicle has been inspected, ask the mechanic for a written report with a cost estimate for all necessary repairs. Be sure the report includes the vehicle's make, model and VIN. Make sure you understand every item. If you decide to make a purchase offer to the dealer after considering the inspection's results, you can use the estimated repair costs to negotiate the price of the vehicle.

The Buyers Guide lists an auto's 14 major systems and some serious problems that may occur in each. This list may help you and your mechanic evaluate the mechanical condition of the vehicle. The list also may help you compare warranties offered on different cars or by different dealers.

The back of the Buyers Guide lists the name and address of the dealership. It also gives the name and telephone number of the person you should contact at the dealership if you have problems or complaints after the sale.

The dealer may include a buyer's signature line at the bottom of the Buyers Guide. If the line is included, the following statement must be written or printed close to it: "I hereby acknowledge receipt of the Buyers Guide at the closing of this sale." Your signature means you received the Buyers Guide at closing. It does not mean that the dealer complied with the Rule's other requirements, such as posting a Buyers Guide in all the vehicles offered for sale.

If you buy a used car and the sales discussion is conducted in Spanish, you are entitled to see and keep a Spanish-language version of the Buyers Guide.

An alternative to buying from a dealer is buying from an individual. You may see ads in newspapers, on bulletin boards, or on a car. Buying a car from a private party is very different from buying a car from a dealer.

- Private sellers generally are not covered by the Used Car Rule and don't have to use the Buyers Guide. However, you can use the Guide's list of an auto's major systems as a shopping tool. You also can ask the seller if you can have the vehicle inspected by your mechanic.
- Private sales usually are not covered by the "implied warranties" of state law. That means a private sale probably will be on an "as is" basis, unless your purchase agreement with the seller specifically states otherwise. If you have a written contract, the seller must live up to the promises stated in the contract. The car also may be covered by a manufacturer's warranty or a separately purchased service contract. However, warranties and service contracts may not be transferable, and other limits or costs may apply. Before you buy the car, ask to review its warranty or service contract.
- Many states do not require individuals to ensure that their vehicles will pass state inspection or carry a minimum warranty before they offer them for sale. Ask your state Attorney General's office or local consumer protection agency about the requirements in your state.

Whether you buy a used car from a dealer, a co-worker, or a neighbor, follow these tips to learn as much as you can about the car:

- Examine the car yourself using an inspection checklist. You can find a checklist in many of the magazine articles, books and Internet sites that deal with buying a used car.
- Test drive the car under varied road conditions—on hills, highways, and in stop-and-go traffic.
- Ask for the car's maintenance record. If the owner doesn't have copies, contact the dealership or repair shop where most of the work was done. They may share their files with you.
- Talk to the previous owner, especially if the present owner is unfamiliar with the car's history.
- Have the car inspected by a mechanic you hire.

If you have a problem that you think is covered by a warranty or service contract, follow the instructions to get service. If a dispute arises, there are several steps you can take:

- Try to work it out with the dealer. Talk with the salesperson or, if necessary, the owner of the dealership. Many problems can be resolved at this level. However, if you believe you're entitled to service, but the dealer disagrees, you can take other steps.
- If your warranty is backed by a car manufacturer, contact the local representative of the manufacturer. The local or zone representative is authorized to adjust and decide about warranty service and repairs to satisfy customers. Some manufacturers also are willing to repair certain problems in specific models for free, even if the manufacturer's warranty does not cover the problem. Ask the manufacturer's zone representative or the service department of a franchised dealership that sells your car model whether there is such a policy.
- Contact your local Better Business Bureau, state Attorney General, or the Department of Motor Vehicles. You also might consider using a dispute resolution organization to arbitrate your disagreement if you and the dealer are willing. Under the terms of many warranties, this may be a required first step before you can sue the dealer or manufacturer. Check your warranty to see if this is the case. If you bought your car from a franchised dealer, you may be able to seek mediation through the Automotive Consumer Action Program (AUTOCAP), a dispute resolution program coordinated nationally by the National Automobile Dealers Association and sponsored through state and local dealer associations in many cities. Check with the dealer association in your area to see if they operate a mediation program.
- If none of these steps is successful, small claims court is an option. Here, you can resolve disputes involving small amounts of money, often without an attorney. The clerk of your local small claims court can tell you how to file a suit and what the dollar limit is in your state.
- The Magnuson-Moss Warranty Act also may be helpful. Under this federal law, you can sue based on breach of express warranties, implied warranties, or a service contract. If successful, consumers can recover reasonable attorneys' fees and other court costs. A lawyer can advise you if this law applies.

To learn more contact: Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580; (202) 326-2222; TDD (202) 326-2502.

FTC Consumer Alert!

Look Before You Lease

December 1997

To lease or to buy? That's the choice you face when mulling over makes and models and deciding which car deal best meets your needs. Leasing a car is not the same as buying one. When you buy, you own the car. When you lease, you pay to drive someone else's vehicle. Although leasing can involve lower monthly payments than a loan, at lease end, you will have no ownership or equity in the car.

The number of new car leases is skyrocketing. Before you decide whether to lease or buy, the Federal Trade Commission reminds you: don't be dazzled by so-called deals. Ask questions, nail down the details, read the fine print, and shop around.

If you're thinking of leasing, the FTC offers these shopping tips:

1. Shop as if you're buying a car. Negotiate all the lease terms, including the price of the vehicle. Lowering the lease price will help reduce your monthly payments. Get all the terms in writing.

2. Learn the language of leasing:

In a ***closed-end lease,*** you return the car at the end of the lease and "walk away," but you're still usually responsible for certain end-of-lease charges, such as excess mileage, wear and tear, and disposition.

In an ***open-end lease,*** you pay the difference between the value stated in your contract and the lessor's appraised value at the end of the lease.

Lease inception fees are payments you must make when the lease starts, and may include a down payment, security deposit, acquisition fee, first month's payment, taxes and title fees. Ask for a list of all charges due at lease inception. You may be able to negotiate some or all of the terms.

The ***capitalized cost*** is the price of the car for leasing purposes plus taxes and extra charges like service contracts and registration fees.

The ***capitalized cost reduction*** is similar to a down payment. If you're trading in a car, make sure the dealer applies the trade-in value to the price your lease is based on. The trade-in credit may reduce your down payment or monthly payments.

3. Ask whether extra charges will be assessed for excessive mileage, wear and tear, disposition and early termination, and find out the amount of these charges. Most leases allow you to drive 12,000 to 15,000 a year; if you put on more miles, expect a charge of 10 to 25 cents

for each additional mile. You may think the ding in the door is normal wear and tear; to the lessor it may be significant damage. Check out penalties for an early return; expect to pay a substantial charge if you give the car up before the end of your lease.

4. Make sure the manufacturer's warranty covers the entire lease term and the number of miles you're likely to drive.

5. Consider "gap insurance" to cover the difference -- sometimes thousands of dollars -- between what you owe on the lease and what the car is worth if it's stolen or totaled in an accident.

6. Before you sign the deal, take a copy of the contract home and review it carefully away from any dealer pressure. Be alert for any charges that were not disclosed at the dealership, like conveyance, disposition, and preparation fees.

7. Federal law requires lessors to provide lease cost information before you sign the lease. Take a copy of the attached form to the dealer and ask them to complete it. Although these specific disclosures are not mandatory until January 1, 1998, dealers may be willing to provide the information now. If the dealer declines, consider shopping elsewhere.

Federal Reserve Board: ***"Keys to Vehicle Leasing"***

For more information about buying or leasing a car, visit the FTC's web site at www.ftc.gov.

Vehicle Repossession

February 1998

When you finance or lease a car, truck or other vehicle, your creditor or lessor holds important rights on the vehicle until you've made the last loan payment or fully paid off your leasing obligation. These rights are established by the signed contract and by state law. For example, if your payments are late or you default on your contract in any way, your creditor or lessor may have the right to repossess your car. In many states, creditors or lessors can do this legally without going to court or warning you in advance, as long as they do not breach the peace. In addition, your creditor or lessor may be able to sell your contract to a third party, called an assignee, who may have the same rights and responsibilities as the original creditor or lessor.

However, some state laws limit the ways a creditor or lessor can repossess and sell a vehicle to reduce or eliminate your debt. If any rules are violated, the creditor or lessor may be required to pay you damages.

Seizing the Car

In many states, your creditor or lessor has legal authority to seize your vehicle as soon as you default on your loan or lease. Because state laws differ, read your contract to find out what constitutes a default. In some states, failure to make a payment on time or to meet your other contractual responsibilities are considered defaults.

If your creditor or lessor has agreed to change your payment date or any other contractual obligations, it's possible that the terms of your original contract may no longer apply. Such a change may be made orally or in writing. It's best to get any changes in writing because oral agreements are difficult to prove.

If you default on your loan, the law in most states allows the creditor or lessor to repossess your car. In some states, creditors or lessors are allowed on your property to seize your car without letting you know in advance.

At the same time, the law usually doesn't allow your creditor or lessor to commit a breach of the peace in connection with repossession. In some states, removing your car from a closed garage without your permission may constitute a breach of the peace.

Creditors or lessors who breach the peace in seizing your car may be required to compensate you if they harm you or your property.

Selling the Car

Once your car has been repossessed, your creditor or lessor may decide to keep the car as compensation for your debt or sell it in either a public or private sale. In some states, your creditor or lessor must let you know what will happen to the car. For example, if a creditor or

lessor chooses to sell the car at public auction, state law may require that the creditor or lessor tell you the date of the sale so that you can attend and participate in the bidding. If the vehicle is to be sold privately, you may have a right to know the date it will be sold.

In either of these circumstances, you may be entitled to buy back the vehicle by paying the full amount you owe, plus any expenses connected with its repossession, such as storage and preparation for sale. In some states, the law allows you to reinstate your contract—reclaim your car by paying the amount you owe, as well as repossession and related expenses (such as attorney fees). If you reclaim your car, you must make your payments on time and meet the terms of your reinstated or renegotiated contract to avoid another repossession.

The sale of a repossessed car must be conducted in a commercially reasonable manner—according to standard custom in a particular business or an established market. For example, the sale price might not be the highest possible price—or even what you may consider a good price—but a sale price far below fair market value may indicate that the sale was not commercially reasonable. Depending on state law, failure to sell the car in a commercially reasonable manner may give you either a claim against your creditor or lessor for damages or a defense against a deficiency judgment—a court order mandating you to pay the debt you owe.

Regardless of the method used to dispose of a repossessed car, a creditor or lessor usually may not keep or sell any personal property found inside. Since state laws vary, check to see if this applies in your state. State laws also may require your creditor or lessor to use reasonable care to prevent others from removing your property from the repossessed car. If you find that your creditor or lessor cannot account for articles left in your car, talk to an attorney about whether your state offers a right to compensation.

Paying the Deficiency

A deficiency is any amount you still owe on your contract after your creditor or lessor sells the vehicle and applies the amount received to your unpaid obligation. For example, if you owe $2,500 on the car and your creditor or lessor sells the car for $1,500, the deficiency is $1,000 plus any other fees you owe under the contract, such as those related to the repossession and early termination of your lease or early payoff of your financing. In most states, a creditor or lessor who has followed the proper procedures for repossession and sale is allowed to sue you for a deficiency judgment to collect the remaining amount owed on your credit or lease contract.

Depending on your state's law and other factors, if you are sued for a deficiency judgment, you should be notified of the date of the court hearing. This may be your only opportunity to present any legal defense. If your creditor or lessor breached the peace when seizing the vehicle or failed to sell the car in a commercially reasonable manner, you may have a legal defense against a deficiency judgment. An attorney will be able to tell you whether you have grounds to contest a deficiency judgment.

Talking with Your Creditor or Lessor

It's easier to try to prevent a vehicle repossession from taking place than to dispute it afterward. Contact your creditor or lessor when you realize you will be late with a payment. Many creditors or lessors will work with you if they believe you will be able to pay soon, even if slightly late.

Sometimes you may be able to negotiate a delay in your payment or a revised schedule of payments. If you reach an agreement to modify your original contract, get it in writing to avoid questions later.

Still, your creditor or lessor may refuse to accept late payments or make other changes in your contract and may demand that you return the car. By voluntarily agreeing to a repossession, you may reduce your creditor or lessor's expenses, which you would be responsible for paying. Remember that even if you return the car voluntarily, you are responsible for paying any deficiency on your credit or lease contract, and your creditor or lessor still may enter the late payments and/or repossession on your credit report.

If you need help in dealing with your credit or lease contract, consider using a credit counseling service. There are nonprofit organizations in every state that advise consumers on debt management. Counselors often try to arrange a repayment plan that is acceptable to you and your creditors. They also can help you set up a realistic budget and plan expenditures. These counseling services are offered at little or no cost to consumers. Check your telephone directory for the office nearest you.

In addition, universities, military bases, credit unions, and housing authorities often operate nonprofit counseling programs. They also are likely to charge little or nothing for their assistance. Or check with your local bank or consumer protection office to see if it has a list of reputable, low-cost financial counseling services.

Where to Find More Information

The Federal Trade Commission does not resolve individual problems between creditors or lessors and consumers, but it can act against a company if it sees a pattern of possible federal law violations. If you have a complaint that may involve a violation of consumer protection laws administered by the Commission, write to: Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580.

The FTC publishes other materials on credit and leasing, including:

- *Credit and Your Consumer Rights*
- *Credit Practices Rule*
- *Fair Credit Reporting*
- *Keys to Vehicle Leasing*
- *Truth in Leasing*

- *Look Before You Lease*

For free copies, contact the Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580; (202) 326-2222. For a complete list of FTC consumer publications, ask for a copy of **Best Sellers**.

Credit and Your Consumer Rights

December 1997

A good credit rating is very important. Businesses inspect your credit history when they evaluate your applications for credit, insurance, employment, and even leases. Based on your credit payment history, businesses can choose to grant or deny you credit provided you receive fair and equal treatment. Sometimes, things happen that can cause credit problems: a temporary loss of income, an illness, even a computer error. Solving credit problems may take time and patience, but it doesn't have to be an ordeal.

The Federal Trade Commission (FTC) enforces credit laws that protect your right to obtain, use, and maintain credit. These laws do not guarantee that everyone will receive credit. Instead, the credit laws protect your rights by requiring businesses to give all consumers a fair and equal opportunity to receive credit and to resolve disputes over credit errors. This brochure explains your rights under these laws and offers practical tips to help you solve credit problems.

Your Credit Report

Your credit payment history is recorded in a file or report. These files or reports are maintained and sold by "consumer reporting agencies" (CRAs). One type of CRA is commonly known as a credit bureau. You have a credit record on file at a credit bureau if you have ever applied for a credit or charge account, a personal loan, insurance, or a job. Your credit record contains information about your income, debts, and credit payment history. It also indicates whether you have been sued, arrested, or have filed for bankruptcy.

The Fair Credit Reporting Act (FCRA) is designed to help ensure that CRAs furnish correct and complete information to businesses to use when evaluating your application.

Your rights under the Fair Credit Reporting Act:

- You have the right to receive a copy of your credit report. The copy of your report must contain all of the information in your file at the time of your request.
- You have the right to know the name of anyone who received your credit report in the last year for most purposes or in the last two years for employment purposes.
- Any company that denies your application must supply the name and address of the CRA they contacted, provided the denial was based on information given by the CRA.
- You have the right to a free copy of your credit report when your application is denied because of information supplied by the CRA. Your request must be made within 60 days of receiving your denial notice.
- If you contest the completeness or accuracy of information in your report, you should file a dispute with the CRA and with the company that furnished the information to the CRA. Both the CRA and the furnisher of information are legally obligated to reinvestigate your dispute.

You have a right to add a summary explanation to your credit report if your dispute is not resolved to your satisfaction.

Your Credit Application

When creditors evaluate a credit application, they cannot lawfully engage in discriminatory practices.

The Equal Credit Opportunity Act (ECOA) prohibits credit discrimination on the basis of sex, race, marital status, religion, national origin, age, or receipt of public assistance. Creditors may ask for this information (except religion) in certain situations, but may not use it to discriminate when deciding whether to grant you credit.

The ECOA protects consumers who deal with companies that regularly extend credit, including banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Everyone who participates in the decision to grant credit, including real estate brokers who arrange financing, must follow this law. Businesses applying for credit also are protected by this law.

Your rights under the Equal Credit Opportunity Act:

- You cannot be denied credit based on your race, sex, marital status, religion, age, national origin, or receipt of public assistance.
- You have the right to have reliable public assistance considered in the same manner as other income.
- If you are denied credit, you have a legal right to know why.

Your Credit Billing and Electronic Fund Transfer Statements

It is important to check credit billing and electronic fund transfer account statements regularly. These documents may contain mistakes that could damage your credit status or reflect improper charges or transfers. If you find an error or discrepancy, notify the company and contest the error immediately. **The Fair Credit Billing Act (FCBA)** and **Electronic Fund Transfer Act (EFTA)** establish procedures for resolving mistakes on credit billing and electronic fund transfer account statements, including:

- charges or electronic fund transfers that you — or anyone you have authorized to use your account — have not made;
- charges or electronic fund transfers that are incorrectly identified or show the wrong amount or date;
- computation or similar errors;
- failure to reflect payments, credits, or electronic fund transfers properly;
- not mailing or delivering credit billing statements to your current address, as long as that address was received by the creditor in writing at least 20 days before the billing period ended;

- charges or electronic fund transfers for which you request an explanation or documentation, due to a possible error.

The FCBA generally applies only to "open end" credit accounts — credit cards, revolving charge accounts (such as department store accounts), and overdraft checking accounts. It does not apply to loans or credit sales that are paid according to a fixed schedule until the entire amount is paid back, such as an automobile loan. The EFTA applies to electronic fund transfers, such as those involving automatic teller machines (ATMs), point-of-sale debit transactions, and other electronic banking transactions.

Your Debts and Debt Collectors

You are responsible for your debts. If you fall behind in paying your creditors or an error is made on your account, you may be contacted by a "debt collector." A debt collector is any person, other than the creditor, who regularly collects debts owed to others. This includes lawyers who collect debts on a regular basis. You have the right to be treated fairly by debt collectors.

The Fair Debt Collection Practices Act (FDCPA) applies to personal, family, and household debts. This includes money owed for the purchase of a car, for medical care, or for charge accounts. The FDCPA prohibits debt collectors from engaging in unfair, deceptive, or abusive practices while collecting these debts.

Your rights under the Fair Debt Collection Practices Act:

- Debt collectors may contact you only between 8 a.m. and 9 p.m.
- Debt collectors may not contact you at work if they know your employer disapproves.
- Debt collectors may not harass, oppress, or abuse you.
- Debt collectors may not lie when collecting debts, such as falsely implying that you have committed a crime.
- Debt collectors must identify themselves to you on the phone.
- Debt collectors must stop contacting you if you ask them to in writing.

Solving Your Credit Problems

Your credit report influences your purchasing power, as well as your chances to get a job, rent or buy an apartment or a house, and buy insurance. A history of timely credit payments helps you get additional credit. Accurate negative information can stay on your report for seven years. A bankruptcy can stay on your report for 10 years. If you are having problems paying your bills, contact your creditors at once. Try to work out a modified payment plan with them that reduces your payments to a more manageable level. Don't wait until your account has been turned over to a debt collector.

Here are some additional tips for solving credit problems:

- If you want to contest a credit report, bill or credit denial, contact the appropriate company in writing and send it "return receipt requested."
- When you contest a billing error, include your name, account number, the dollar amount in question, and the reason you believe the bill is wrong.
- If in doubt, request written verification of a debt.
- Keep all your original documents, especially receipts, sales slips, and billing statements. You will need them if you dispute a credit bill or report. Send copies only. It may take more than one letter to correct problems.
- Be skeptical of businesses that offer instant solutions to credit problems.
- Be persistent. Resolving credit problems can take time and effort.
- There is nothing that a credit repair company can do for you — for a fee — that you cannot do for yourself for little or no cost.

If you can't resolve your credit problems yourself or if you need help, you may want to contact a credit counseling service. Nonprofit organizations in every state counsel consumers in debt. Counselors try to arrange repayment plans that are acceptable to you and your creditors. They also can help you set up a realistic budget. These services usually are offered at little or no cost.

Universities, military bases, credit unions, and housing authorities also may offer low- or no-cost credit counseling programs. Check the white pages of your telephone directory for a service near you.

The FTC cannot represent individuals in private disputes. You can take a legitimate grievance to your state attorney general or local consumer protection office. You also may take your case to a private attorney.

The Federal Trade Commission publishes free brochures on credit-related issues. For a complete list of publications, write for Best Sellers, Consumer Response Center, Federal Trade Commission, Washington, DC 20580; or call (202) 326-2222, TDD (202) 326-2502.

Equal Credit Opportunity

March 1998

Credit is used by millions of consumers to finance an education or a house, remodel a home, or get a small business loan.

The Equal Credit Opportunity Act (ECOA) ensures that all consumers are given an equal chance to obtain credit. This doesn't mean all consumers who apply for credit get it: Factors such as income, expenses, debt, and credit history are considerations for creditworthiness.

The law protects you when you deal with any creditor who regularly extends credit, including banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Anyone involved in granting credit, such as real estate brokers who arrange financing, is covered by the law. Businesses applying for credit also are protected by the law.

When You Apply For Credit, A Creditor May Not...

- Discourage you from applying because of your sex, marital status, age, race, national origin, or because you receive public assistance income.
- Ask you to reveal your sex, race, national origin, or religion. A creditor may ask you to voluntarily disclose this information (except for religion) if you're applying for a real estate loan. This information helps federal agencies enforce anti-discrimination laws. You may be asked about your residence or immigration status.
- Ask if you're widowed or divorced. When permitted to ask marital status, a creditor may only use the terms: married, unmarried, or separated.
- Ask about your marital status if you're applying for a separate, unsecured account. A creditor may ask you to provide this information if you live in "community property" states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. A creditor in any state may ask for this information if you apply for a joint account or one secured by property.
- Request information about your spouse, except when your spouse is applying with you; your spouse will be allowed to use the account; you are relying on your spouse's income or on alimony or child support income from a former spouse; or if you reside in a community property state.
- Inquire about your plans for having or raising children.
- Ask if you receive alimony, child support, or separate maintenance payments, *unless* you're first told that you don't have to provide this information if you won't rely on these payments to get credit. A creditor may ask if you have to pay alimony, child support, or separate maintenance payments.

When Deciding To Give You Credit, A Creditor May Not...

- Consider your sex, marital status, race, national origin, or religion.
- Consider whether you have a telephone listing in your name. A creditor *may* consider whether you have a phone.
- Consider the race of people in the neighborhood where you want to buy, refinance or improve a house with borrowed money.
- Consider your age, unless:
    - you're too young to sign contracts, generally younger than 18 years of age;
    - you're 62 or older, and the creditor will favor you because of your age;
    - it's used to determine the meaning of other factors important to creditworthiness. For example, a creditor could use your age to determine if your income might drop because you're about to retire;
    - it's used in a valid scoring system that favors applicants age 62 and older. A credit-scoring system assigns points to answers you provide to credit application questions. For example, your length of employment might be scored differently depending on your age.

When Evaluating Your Income, A Creditor May Not...

- Refuse to consider public assistance income the same way as other income.
- Discount income because of your sex or marital status. For example, a creditor cannot count a man's salary at 100 percent and a woman's at 75 percent. A creditor may not assume a woman of childbearing age will stop working to raise children.
- Discount or refuse to consider income because it comes from part-time employment or pension, annuity, or retirement benefits programs.
- Refuse to consider regular alimony, child support, or separate maintenance payments. A creditor may ask you to prove you have received this income consistently.

You Also Have The Right To...

- Have credit in your birth name (Mary Smith), your first and your spouse's last name (Mary Jones), or your first name and a combined last name (Mary Smith-Jones).
- Get credit without a cosigner, if you meet the creditor's standards.
- Have a cosigner other than your husband or wife, if one is necessary.
- Keep your own accounts after you change your name, marital status, reach a certain age, or retire, unless the creditor has evidence that you're not willing or able to pay.
- Know whether your application was accepted or rejected within 30 days of filing a complete application.

- Know why your application was rejected. The creditor must give you a notice that tells you either the specific reasons for your rejection or your right to learn the reasons if you ask within 60 days.
- Acceptable reasons include: "Your income was low," or "You haven't been employed long enough." Unacceptable reasons are: "You didn't meet our minimum standards," or "You didn't receive enough points on our credit-scoring system." Indefinite and vague reasons are illegal, so ask the creditor to be specific.
- Find out why you were offered less favorable terms than you applied for—unless you accept the terms. Ask for details. Examples of less favorable terms include higher finance charges or less money than you requested.
- Find out why your account was closed or why the terms of the account were made less favorable unless the account was inactive or delinquent.

A Special Note To Women

A good credit history—a record of how you paid past bills—often is necessary to get credit. Unfortunately, this hurts many married, separated, divorced, and widowed women. There are two common reasons women don't have credit histories in their own names: they lost their credit histories when they married and changed their names; or creditors reported accounts shared by married couples in the husband's name only.

If you're married, divorced, separated, or widowed, contact your local credit bureau(s) to make sure all relevant information is in a file under your own name.

If You Suspect Discrimination...

- Complain to the creditor. Make it known you're aware of the law. The creditor may find an error or reverse the decision.
- Check with your state Attorney General to see if the creditor violated state equal credit opportunity laws. Your state may decide to prosecute the creditor.
- Bring a case in federal district court. If you win, you can recover damages, including punative damages. You also can obtain compensation for attorney's fees and court costs. An attorney can advise you on how to proceed.
- Join with others and file a class action suit. You may recover punitive damages for the group of up to $500,000 or one percent of the creditor's net worth, whichever is less.
- Report violations to the appropriate government agency. If you're denied credit, the creditor must give you the name and address of the agency to contact. While some of these agencies don't resolve individual complaints, the information you provide helps them decide which companies to investigate. A list of agencies follows.

If a retail store, department store, small loan and finance company, mortgage company, oil company, public utility, state credit union, government lending program, or travel and expense

credit card company is involved, contact:
Consumer Response Center
Federal Trade Commission
Washington, DC 20580.

The FTC cannot intervene in individual disputes, but the information you provide may indicate a pattern of possible law violations that require action by the Commission.

If your complaint concerns a nationally-chartered bank (National or N.A. will be part of the name), write to:

Comptroller of the Currency
Compliance Management
Mail Stop 7-5
Washington, DC 20219.

If your complaint concerns a state-chartered bank that is insured by the Federal Deposit Insurance Corporation but is not a member of the Federal Reserve System, write to:

Federal Deposit Insurance Corporation
Consumer Affairs Division
Washington, DC 20429.

If your complaint concerns a federally-chartered or federally-insured savings and loan association, write to:

Office of Thrift Supervision
Consumer Affairs Program
Washington, DC 20552.

If your complaint concerns a federally-chartered credit union, write to:

National Credit Union Administration
Consumer Affairs Division
Washington, DC 20456.

Complaints against all kinds of creditors can be referred to:

Department of Justice
Civil Rights Division
Washington, DC 20530.

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

Easy Credit? Not So Fast

The Truth About Advance-Fee Loan Scams

August 1999

The vast majority of lenders are owned and managed by legitimate professionals. But fraudulent loan brokers and other individuals misrepresenting the availability of credit and credit terms definitely are in business. One of their favorite strategies is the "advance-fee" loan. That's when they guarantee you'll get a loan or other type of credit – but you must pay before you apply.

Recognizing An Advance-Fee Loan Scam

Advertisements that promise loans generally appear in the classified section of local and national newspapers, magazines and on the Internet. They also may appear in radio advertisements, on local cable stations, and in flyers circulated in neighborhoods, shopping centers and at military bases. Often, these ads feature "900" numbers, which result in charges on your phone bill, or toll-free "800" numbers. Unfortunately, advertising in recognized media outlets or on the Internet does not guarantee the legitimacy of the company behind the ad. In addition, these companies often use delivery systems other than the U.S. Postal Service, such as overnight or courier services, to avoid detection and prosecution by postal authorities.

Some companies claim they can guarantee you a loan for a fee paid in advance. The fee may range from $100 to several hundred dollars. Indeed, small businesses have been charged as much as several thousand dollars as an advance fee for a loan. Whether you are an individual consumer or an owner of a small business, the result is the same: you don't get your money; the con artist does. And once con artists get your money, they disappear.

Don't confuse a legitimate pre-approved credit offer with a legitimate pre-qualified offer from mortgage brokers, banks, savings and loans, and credit unions. A pre-approved offer requires only your verbal or written acceptance. A pre-qualified offer means you've been selected to apply. However, you still must go through the normal application process, and you still can be turned down.

Protecting Yourself

According to the Telemarketing Sales Rule, if someone guarantees or suggests that there is a strong chance they can get or arrange for a loan or other form of credit for you, it's against the law to ask you to pay — or accept payment — for their service until you get your loan or credit.

Here are some points to keep in mind before you respond to ads that promise easy credit, regardless of your credit history:

- Legitimate lenders never "guarantee" or say that you are likely to get a loan or a credit card **before** you apply, especially if you have bad credit, no credit, or a bankruptcy.

- If you apply for a real estate loan, it is accepted and common practice for lenders to request payment for a credit report or appraisal. However, legitimate lenders never ask you to pay for processing your application.
- Never give your credit card account number, bank account information, or Social Security Number over the telephone or Internet unless you are familiar with the company and know why the information is necessary.
- If you don't have the offer in hand or confirmed in writing and you are asked to pay, don't do it. It's fraud and it's against the law.

If You Are A Victim

If you think you've been a victim of an advance-fee loan scam, contact your local consumer protection agency, state Attorney General or local Better Business Bureau (BBB) to report the company.

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: toll-free 1-877-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for Best Sellers, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580; or call toll-free 1-877-FTC-HELP (382-4357), TDD 202-326-2502.

Finding Low-Cost Help for Credit Problems

It's a good idea to try to solve your debt problems with your creditors as soon as you realize you won't be able to make your payments. If you can't resolve your credit problems yourself or need additional help, you may want to contact a credit counseling service. There are nonprofit organizations in every state that counsel and educate individuals and families on debt problems, budgeting and using credit wisely. These organizations work directly with your creditors to help resolve your debt problems by negotiating a repayment schedule that is affordable for you and acceptable to the creditor. There is little or no cost for these services.

Universities, military bases, credit unions, and housing authorities also may offer low- or no-cost credit counseling programs. Check the white pages of your telephone directory for a service near you.

For More Information

To learn about your rights under the Telemarketing Sales Rule and how to protect yourself from fraudulent telephone sales practices, request a free copy of Straight Talk About Telemarketing. Contact: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington DC 20580; toll free, at 1-877-FTC-HELP (382-4357); TDD: 202-326-2502.

The following organizations have additional information.

American Financial Services Association
Education Foundation
919 Eighteenth Street, NW
Washington, DC 20006
www.afsaef.org

National Association of Consumer Agency Administrators
1010 Vermont Avenue, NW, Suite 514
Washington, DC 20005

Navy Personnel Command
Personnel and Family Readiness (PES-662C3)
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Federal Trade Commission - February 1992

Getting a Loan: Your Home as Security

fast facts

- The right of rescission gives you three extra days to reconsider whether you want to use your home to guarantee repayment for a personal loan.
- Rescinding a credit transaction means you are canceling the deal.
- If you decide to exercise your right of rescission, you must notify the creditor **in writing** that you are canceling the contract.
- Within 20 days after a creditor receives your notice of rescission, all money or property you paid as part of the credit transaction must be returned to you.
- The law allows you to waive your right of rescission if you have a "bona fide personal financial emergency." However, if you waive your right to rescind, you must go ahead with the credit transaction.

Bureau of Consumer Protection
Office of Consumer & Business Education
(202) 326-3650

If you need a personal loan and are thinking about using your home as security, you should know about a credit law that gives you extra time to reconsider the loan agreement. When you use your home as collateral for a loan, you generally have the right to cancel the credit transaction within three business days. This is called your "right of rescission," and it is guaranteed by the Federal Truth in Lending Act.

The right of rescission gives you three extra days to reconsider whether you want to use your home to guarantee repayment for a personal loan. The right applies even if your home is a condominium, mobile home, or house boat, as long as it is your principal residence. The right applies to **certain installment loans** -- where you borrow a fixed amount and repay the debt on an agreed payment schedule -- as well as to home equity credit lines -- a form of revolving credit in which your home serves as collateral.

What Rescinding a Credit Transaction Means

Rescinding a credit transaction means you are canceling the deal. In other words, you decide that you do not want the loan or the service being financed.

You can rescind the credit transaction within three days for any reason. For example, you may find better credit terms, such as a loan that offers a lower interest rate or does not require the use of your home as collateral.

How to Rescind a Credit Transaction

Unless you waive your right of rescission, you have until midnight of the third business day after the transaction to cancel the contract. The first day after all three of the following events occurs counts as Day One:

1. You sign the credit contract.

2. You receive a Truth in Lending disclosure form containing certain important disclosures about the credit contract. These disclosures explain the key terms of the credit being offered: the annual percentage rate; the finance charge; the amount financed; the total of payments; and the payment schedule.

3. You receive two copies of a notice explaining your right to rescind.

You should be aware that for rescission purposes, business days **include Saturdays**, but not Sundays or legal public holidays. For example, if the last of the above three events occurs on a Friday, you have until midnight on the following Tuesday to rescind.

During this waiting period, your creditor should not take any action on your transaction. For example, the creditor should not give you the money from the loan or, if your are dealing with a home improvement loan, the contractor should not deliver any materials or start work.

If you decide to exercise your right of rescission, you must notify the creditor in writing that you are canceling the contract. You may use the form provided to you by the creditor, a letter, or a telegram. Whatever form of written notice you use, make sure it is delivered, mailed, or filed for telegraphic transmission before midnight of the third business day. Remember: You cannot

rescind just by telephoning or visiting the creditor.

If you never receive the disclosures or the notice of rescission from the creditor (see numbers 2 and 3 above), you can cancel at any time during the first three years after you sign the credit contract, or before you sell your home -- whichever occurs first.

What Happens When You Rescind

Within 20 days after a creditor receives your notice of rescission, all money or property you paid as part of the credit transaction must be returned to you. The creditor also must release any security interest in your home.

If you have received money or property (such as building materials) from the creditor, keep it until the creditor proves that your home is no longer being held as collateral and returns any money you already have paid. For example, the creditor may show you a release of a lien previously filed with your city or county clerk's office to prove your house is no longer collateral. You must then offer to return the creditor's money or property. If the creditor does not claim the money or property within 20 days, you may keep it.

Waiving Your Right to Rescind

Sometimes you may have a financial emergency and not be able to wait for the creditor to slow the loan process by suspending action for three business days. For example, you may need to borrow money quickly to have a damaged roof or house foundation repaired.

The law allows you to waive your right of rescission if you have a "bona fide personal financial emergency." This enables you to have the loan process speeded up to meet the emergency situation. To avail yourself of this right, you must give the creditor your own written statement (pre-printed forms are not allowed) describing the emergency and clearly stating that you are waiving your right to rescind. The statement must be dated and signed by you and anyone else who shares in the ownership of the home.

Consider your decisions carefully: If you waive your right to rescind, you must go ahead with the credit transaction.

Typical Situations With No Right of Rescission

The right of rescission does not apply in all cases where your home is used as collateral for the loan. You do not have the right of rescission when:

* you apply for a loan to purchase or build your principal home;

* you consolidate or refinance with the same creditor a loan that is already secured by your

home, and no additional funds are borrowed; or

* a state agency is the creditor for the loan.

Even in these cases, however, you may have cancellation or "cooling-off" rights under state or local law.

For More Information

If you want to know more about your right of rescission, write to: Correspondence Branch, Federal Trade Commission, Washington, D.C. 20580.

The Federal Trade Commission publishes a number of brochures containing information on mortgages. To receive a copy of *Mortgage Money Guide, Home Equity Credit Lines, Second Mortgage Financing, Refinancing Your Home, and Home Financing Primer*, write to: Public Reference, Federal Trade Commission, Washington, D.C. 20580.

7/81; 2/84; 3/85; 3/86

Knee-Deep In Debt

March 1997

Having trouble paying your bills? Getting dunning notices from creditors? Are your accounts being turned over to debt collectors? Are you worried about losing your home or your car?

You're not alone. Many people face financial crises at some time in their lives. Whether the crisis is caused by personal or family illness, the loss of a job, or simple overspending, it can seem overwhelming, but often can be overcome. The fact of the matter is that your financial situation doesn't have to go from bad to worse.

If you or someone you know is in financial hot water, consider these options: realistic budgeting, credit counseling from a reputable organization, debt consolidation, or bankruptcy. How do you know which will work best for you? It depends on your level of debt, your level of discipline, and your prospects for the future.

Self Help

Developing a Budget: The first step toward taking control of your financial situation is to do a realistic assessment of how much money comes in and how much money you spend. Start by listing your income from all sources. Then, list your "fixed" expenses — those that are the same each month — such as your mortgage payments or your rent, car payments, or insurance premiums. Next, list the expenses that vary, such as entertainment, recreation, or clothing. Writing down all your expenses — even those that seem insignificant — is a helpful way to track your spending patterns, identify the expenses that are necessary, and prioritize the rest. The goal is to make sure you can make ends meet on the basics: housing, food, health care, insurance, and education.

Your public library has information about budgeting and money management techniques. Low cost budget counseling services that can help you analyze your income and expenses and develop budget and spending plans also are available in most communities. Check your Yellow Pages or contact your local bank or consumer protection office for information about them. In addition, many universities, military bases, credit unions, and housing authorities operate nonprofit counseling programs.

Contacting Your Creditors: Contact your creditors immediately if you are having trouble making ends meet. Tell them why it's difficult for you, and try to work out a modified payment plan that reduces your payments to a more manageable level. Don't wait until your accounts have been turned over to a debt collector. At that point, the creditors have given up on you.

Dealing with Debt Collectors: The Fair Debt Collection Practices Act is the federal law that dictates how and when a debt collector may contact you. A debt collector may not call you before 8 a.m., after 9 p.m., or at work if the collector knows that your employer doesn't approve

of the calls. Collectors may not harass you, make false statements, or use unfair practices when they try to collect a debt. Debt collectors must honor a written request from you to cease further contact.

Credit Counseling

If you aren't disciplined enough to create a workable budget and stick to it, can't work out a repayment plan with your creditors, or can't keep track of mounting bills, consider contacting a credit counseling service. Your creditors may be willing to accept reduced payments if you enter a debt repayment plan with a reputable organization. In these plans, you deposit money each month with the credit counseling service. Your deposits are used to pay your creditors according to a payment schedule developed by the counselor. As part of the repayment plan, you may have to agree not to apply for — or use — any additional credit while you're participating in the program.

A successful repayment plan requires you to make regular, timely payments, and could take 48 months or longer to complete. Ask the credit counseling service for an estimate of the time it will take to complete the plan. Some credit counseling services charge little or nothing for managing the plan; others charge a monthly fee that could add up to a significant charge over time. Some credit counseling services are funded, in part, by contributions from creditors.

While a debt repayment plan can eliminate much of the stress that comes from dealing with creditors and overdue bills, it does not mean you can forget about your debts. You still are responsible for paying any creditors whose debts are not included in the plan. You are responsible for reviewing monthly statements from your creditors to make sure your payments have been received. If your repayment plan depends on your creditors agreeing to lower or eliminate interest and finance charges, or waive late fees, you are responsible for making sure these concessions are reflected on your statements.

A debt repayment plan does not erase your credit history. Under the Fair Credit Reporting Act, accurate information about your accounts can stay on your credit report for up to seven years. In addition, your creditors will continue to report information about accounts that are handled through a debt repayment plan. For example, creditors may report that an account is in financial counseling, that payments may have been late or missed altogether, or that there are write-offs or other concessions. A demonstrated pattern of timely payments will help you obtain credit in the future.

Auto and Home Loans: Debt repayment plans usually cover unsecured debt. Your auto and home loan, which are considered secured debt, may not be included. You must continue to make payments to these creditors directly.

Most automobile financing agreements allow a creditor to repossess your car any time you're in default. No notice is required. If your car is repossessed, you may have to pay the full balance due on the loan, as well as towing and storage costs, to get it back. If you can't do this, the creditor may sell the car. If you see default approaching, you may be better off selling the car yourself and paying off the debt: You would avoid the added costs of repossession and a negative entry on your credit report.

If you fall behind on your mortgage, contact your lender immediately to avoid foreclosure. Most lenders are willing to work with you if they believe you're acting in good faith and the situation is temporary. Some lenders may reduce or suspend your payments for a short time. When you resume regular payments, though, you may have to pay an additional amount toward the past due total. Other lenders may agree to change the terms of the mortgage by extending the repayment period to reduce the monthly debt. Ask whether additional fees would be assessed for these changes, and calculate how much they total in the long term.

If you and your lender cannot work out a plan, contact a housing counseling agency. Some agencies limit their counseling services to homeowners with FHA mortgages, but many offer free help to any homeowner who's having trouble making mortgage payments. Call the local office of the Department of Housing and Urban Development or the housing authority in your state, city, or county for help in finding a housing counseling agency near you.

Debt Consolidation

You may be able to lower your cost of credit by consolidating your debt through a second mortgage or a home equity line of credit. Think carefully before taking this on. These loans require your home as collateral. If you can't make the payments — or if the payments are late — you could lose your home.

The costs of these consolidation loans can add up. In addition to interest on the loan, you pay "points." Typically, one point is equal to one percent of the amount you borrow. Still, these loans may provide certain tax advantages that are not available with other kinds of credit.

Bankruptcy

Personal bankruptcy generally is considered the debt management option of last resort because the results are long-lasting and far-reaching. A bankruptcy stays on your credit report for 10 years, making it difficult to acquire credit, buy a home, get life insurance, or sometimes, get a job. However, it is a legal procedure that offers a fresh start for people who can't satisfy their debts.

There are two kinds of personal bankruptcy: Chapter 13 and Chapter 7. Each must be filed in federal court. The current filing fee is $160. Attorney fees are additional.

Chapter 13: Also known as reorganization, Chapter 13 allows debtors to keep property, like a mortgaged house or a car, that they otherwise might lose. Reorganization may allow you to pay off a default during a three-to-five-year period, rather than surrender any property.

Chapter 7: Known as straight bankruptcy, Chapter 7 involves liquidation of all assets that are not exempt in your state. Exempt property may include work-related tools and basic household furnishings. Some of your property may be sold by a court-appointed official or turned over to your creditors. You can file for Chapter 7 only once every six years.

Both types of bankruptcy may get rid of unsecured debts and stop foreclosures, repossessions, garnishments, utility shut-offs, and debt collection activities. Both also provide exemptions that allow people to keep certain assets, although exemption amounts vary among

states. Note that personal bankruptcy usually does not erase child support, alimony, fines, taxes, and some student loan obligations. And unless you have an acceptable plan to catch up on your debt under Chapter 13, bankruptcy usually does not allow you to keep property when your creditor has an unpaid mortgage or lien on it.

Damage Control

Turning to a business that offers help in solving debt problems may seem like a reasonable solution when your bills become unmanageable. Be cautious. Before you do business with any company, check it out with your local consumer protection agency or the Better Business Bureau in the company's location.

Some businesses that offer debt counseling and reorganization plans may charge high fees and fail to follow through on the services they sell. Others may misrepresent the terms of a debt consolidation loan, failing either to explain certain costs or to mention that you're signing over your home as collateral. Businesses advertising voluntary debt reorganization plans may not explain that the plan is a Chapter 13 bankruptcy, tell you everything that's involved, or help you through what can be a complex and lengthy legal process.

In addition, some companies guarantee you a loan if you pay a fee in advance. The fee may range from $100 to several hundred dollars. Resist the temptation to follow up on advance-fee loan guarantees. They may be illegal. Many legitimate creditors offer extensions of credit through telemarketing and require an application or appraisal fee in advance. But legitimate creditors **never** guarantee that the consumer will get the loan — or even represent that it is likely. Under the federal Telemarketing Sales Rule, a seller or telemarketer who guarantees or represents a high likelihood of your getting a loan or some other extension of credit **may not** ask for or receive payment until you've received the loan.

You should also avoid credit repair clinics. Companies coast to coast appeal to consumers with poor credit histories, promising to clean up credit reports for a fee. They don't deliver. What's more, they **can't** deliver: They can't do anything for you that you can't do for yourself. After you pay them hundreds — or even thousands — of dollars in up-front fees, they can do nothing to improve your credit report. Indeed, many simply vanish with your money. Only time and a conscientious effort to repay your debts will improve your credit report.

If you're thinking about getting help to stabilize your financial situation, be cautious.

- Find out what services the business provides and what it costs.
- Don't rely on oral promises. Get everything in writing.
- Check out any company with your local consumer protection office and the Better Business Bureau in the company's location. They may be able to tell you whether other consumers have registered complaints about the business.

For More Information

For a free copy of **Best Sellers**, a complete list of FTC publications, contact: Public Reference, Federal Trade Commission, Washington, D.C. 20580. (202) 326-2222; TDD: (202) 326-2502

Fair Debt Collection

March 1999

If you use credit cards, owe money on a personal loan, or are paying on a home mortgage, you are a "debtor." If you fall behind in repaying your creditors, or an error is made on your accounts, you may be contacted by a "debt collector."

You should know that in either situation, the Fair Debt Collection Practices Act requires that debt collectors treat you fairly and prohibits certain methods of debt collection. Of course, the law does not erase any legitimate debt you owe.

This brochure answers commonly asked questions about your rights under the Fair Debt Collection Practices Act.

What debts are covered?

Personal, family, and household debts are covered under the Act. This includes money owed for the purchase of an automobile, for medical care, or for charge accounts.

Who is a debt collector?

A debt collector is any person who regularly collects debts owed to others. This includes attorneys who collect debts on a regular basis.

How may a debt collector contact you?

A collector may contact you in person, by mail, telephone, telegram, or fax. However, a debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer disapproves of such contacts.

Can you stop a debt collector from contacting you?

You can stop a collector from contacting you by writing a letter to the collection agency telling them to stop. Once the collector receives your letter, they may not contact you again except to say there will be no further contact or to notify you that the debt collector or the creditor intends to take some specific action.

May a debt collector contact anyone else about your debt?

If you have an attorney, the debt collector must contact the attorney, rather than you. If you do not have an attorney, a collector may contact other people, but only to find out where you live, what your phone number is, and where you work. Collectors usually are prohibited from contacting such third parties more than once. In most cases, the collector may not tell anyone other than you and your attorney that you owe money.

What must the debt collector tell you about the debt?

Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe; the name of the creditor to whom you owe the money; and what action to take if you believe you do not owe the money.

May a debt collector continue to contact you if you believe you do not owe money?

A collector may not contact you if, within 30 days after you receive the written notice, you send the collection agency a letter stating you do not owe money. However, a collector can renew collection activities if you are sent proof of the debt, such as a copy of a bill for the amount owed.

What types of debt collection practices are prohibited?

Harassment.

Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, debt collectors may not:

- use threats of violence or harm;
- publish a list of consumers who refuse to pay their debts (except to a credit bureau);
- use obscene or profane language; or
- repeatedly use the telephone to annoy someone.

False statements.

Debt collectors may not use any false or misleading statements when collecting a debt. For example, debt collectors may not:

- falsely imply that they are attorneys or government representatives;
- falsely imply that you have committed a crime;
- falsely represent that they operate or work for a credit bureau;
- misrepresent the amount of your debt; l indicate that papers being sent to you are legal forms when they are not; or
- indicate that papers being sent to you are not legal forms when they are.

Debt collectors also may not state that:

- you will be arrested if you do not pay your debt;
- they will seize, garnish, attach, or sell your property or wages, unless the collection agency or creditor intends to do so, and it is legal to do so; or
- actions, such as a lawsuit, will be taken against you, when such action legally may not be taken, or when they do not intend to take such action.

Debt collectors may not:

- give false credit information about you to anyone, including a credit bureau;
- send you anything that looks like an official document from a court or government agency when it is not; or
- use a false name.

Unfair practices.
Debt collectors may not engage in unfair practices when they try to collect a debt. For example, collectors may not:

- collect any amount greater than your debt, unless your state law permits such a charge;
- deposit a post-dated check prematurely;
- use deception to make you accept collect calls or pay for telegrams;
- take or threaten to take your property unless this can be done legally; or
- contact you by postcard.

What control do you have over payment of debts?

If you owe more than one debt, any payment you make must be applied to the debt you indicate. A debt collector may not apply a payment to any debt you believe you do not owe.

What can you do if you believe a debt collector violated the law?

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, you may recover money for the damages you suffered plus an additional amount up to $1,000. Court costs and attorney's fees also can be recovered. A group of people also may sue a debt collector and recover money for damages up to $500,000, or one percent of the collector's net worth, whichever is less.

Where can you report a debt collector for an alleged violation?

Report any problems you have with a debt collector to your state Attorney General's office and the Federal Trade Commission. Many states have their own debt collection laws, and your Attorney General's office can help you determine your rights.

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

Fair Credit Reporting

March 1999

If you've ever applied for a charge account, a personal loan, insurance, or a job, there's a file about you. This file contains information on where you work and live, how you pay your bills, and whether you've been sued, arrested, or filed for bankruptcy.

Companies that gather and sell this information are called Consumer Reporting Agencies (CRAs). The most common type of CRA is the credit bureau. The information CRAs sell about you to creditors, employers, insurers, and other businesses is called a consumer report.

The Fair Credit Reporting Act (FCRA), enforced by the Federal Trade Commission, is designed to promote accuracy and ensure the privacy of the information used in consumer reports. Recent amendments to the Act expand your rights and place additional requirements on CRAs. Businesses that supply information about you to CRAs and those that use consumer reports also have new responsibilities under the law.

Here are some questions consumers commonly ask about consumer reports and CRAs -- and the answers. **Note that you may have additional rights under state laws. Contact your state Attorney General or local consumer protection agency for more information.**

Q. How do I find the CRA that has my report?

A. Contact the CRAs listed in the Yellow Pages under "credit" or "credit rating and reporting." Because more than one CRA may have a file on you, call each until you locate all the agencies maintaining your file. The three major national credit bureaus are:

- **Equifax**, P.O. Box 740241, Atlanta, GA 30374-0241; (800) 685-1111.
- **Experian** (formerly TRW), P.O. Box 949, Allen, TX 75013; (888) EXPERIAN (397-3742).
- **Trans Union**, 760 West Sproul Road, P.O. Box 390, Springfield, PA 19064-0390; (800) 916-8800.

In addition, anyone who takes action against you in response to a report supplied by a CRA -- such as denying your application for credit, insurance, or employment -- must give you the name, address, and telephone number of the CRA that provided the report.

Q. Do I have a right to know what's in my report?

A. Yes, if you ask for it. The CRA must tell you everything in your report, including medical information, and in most cases, the sources of the information. The CRA also must give you a list of everyone who has requested your report within the past year -- two years for employment related requests.

Q. Is there a charge for my report?

A. Sometimes. There's no charge if a company takes adverse action against you, such as

denying your application for credit, insurance or employment, and you request your report within 60 days of receiving the notice of the action. The notice will give you the name, address, and phone number of the CRA. In addition, you're entitled to one free report a year (1) you're unemployed and plan to look for a job within 60 days, (2) you're on welfare, or (3) your report is inaccurate because of fraud. Otherwise, a CRA may charge you up to $8 for a copy of your report.

Q. What can I do about inaccurate or incomplete information?

A. Under the new law, both the CRA and the information provider have responsibilities for correcting inaccurate or incomplete information in your report. To protect all your rights under this law, contact both the CRA and the information provider.

First, tell the CRA in writing what information you believe is inaccurate. CRAs must reinvestigate the items in question - usually within 30 days -- unless they consider your dispute frivolous. They also must forward all relevant data you provide about the dispute to the information provider. After the information provider receives notice of a dispute from the CRA, it must investigate, review all relevant information provided by the CRA, and report the results to the CRA. If the information provider finds the disputed information to be inaccurate, it must notify all nationwide CRAs so that they can correct this information in your file.
When the reinvestigation is complete, the CRA must give you the written results and a free copy of your report if the dispute results in a change. If an item is changed or removed, the CRA cannot put the disputed information back in your file unless the information provider verifies its accuracy and completeness, and the CRA gives you a written notice that includes the name, address, and phone number of the provider.
Second, tell the creditor or other information provider in writing that you dispute an item. Many providers specify an address for disputes. If the provider then reports the item to any CRA, it must include a notice of your dispute. In addition, if you are correct -- that is, if the information is inaccurate -- the information provider may not use it again.

Q. What can I do if the CRA or information provider won't correct the information I dispute?

A. A reinvestigation may not resolve your dispute with the CRA. If that's the case, ask the CRA to include your statement of the dispute in your file and in future reports. If you request, the CRA also will provide your statement to anyone who received a copy of the old report in the recent past. There usually is a fee for this service.

If you tell the information provider that you dispute an item, a notice of your dispute must be included anytime the information provider reports the item to a CRA.

Q. Can my employer get my report?

A. Only if you say it's okay. A CRA may not supply information about you to your employer, or to a prospective employer, without your consent.

Q. Can creditors, employers, or insurers get a report that contains medical

information about me?

A. Not without your approval.

Q. What should I know about "investigative consumer reports"?

A. "Investigative consumer reports" are detailed reports that involve interviews with your neighbors or acquaintances about your lifestyle, character, and reputation. They may be used in connection with insurance and employment applications. You'll be notified in writing when a company orders such a report. The notice will explain your right to request certain information about the report from the company you applied to. If your application is rejected, you may get additional information from the CRA. However, the CRA does not have to reveal the sources of the information.

Q. How long can a CRA report negative information?

A. Seven years. There are certain exceptions:

- Information about criminal convictions may be reported without any time limitation.
- Bankruptcy information may be reported for 10 years.
- Information reported in response to an application for a job with a salary of more than $75,000 has no time limit.
- Information reported because of an application for more than $150,000 worth of credit or life insurance has no time limit.
- Information about a lawsuit or an unpaid judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Q. Can anyone get a copy of my report?

A. No. Only people with a legitimate business need, as recognized by the FCRA. For example, a company is allowed to get your report if you apply for credit, insurance, employment, or to rent an apartment.

Q. How can I stop a CRA from including me on lists for unsolicited credit and insurance offers?

A. Creditors and insurers may use CRA file information as a basis for sending you unsolicited offers. These offers must include a toll-free number for you to call if you want to remove your name and address from lists for two years; completing a form that the CRA provides for this purpose will keep your name off the lists permanently.

Q. Do I have the right to sue for damages?

A. You may sue a CRA, a user or -- in some cases -- a provider of CRA data, in state or federal court for most violations of the FCRA. If you win, the defendant will have to pay damages and reimburse you for attorney fees to the extent ordered by the court.

Q. Are there other laws I should know about?

A. Yes. If your credit application was denied, the Equal Credit Opportunity Act requires creditors to specify why -- if you ask. For example, the creditor must tell you whether you were denied because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." The ECOA also requires creditors to consider additional information you might supply about your credit history. You may want to find out why the creditor denied your application before you contact the CRA.

Q. Where should I report violations of the law?

A. Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Send your questions or complaints to: Consumer Response Center -- FCRA, Federal Trade Commission, Washington, D.C. 20580.

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

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How to Dispute Credit Report Errors

March 1999

Your credit report--a type of consumer report--contains information about where you work and live and how you pay your bills. It also may show whether you've been sued or arrested or have filed for bankruptcy. Companies called consumer reporting agencies (CRAs) or credit bureaus compile and sell your credit report to businesses. Because businesses use this information to evaluate your applications for credit, insurance, employment, and other purposes allowed by the Fair Credit Reporting Act (FCRA), it's important that the information in your report is complete and accurate.

Some financial advisors suggest that you periodically review your credit report for inaccuracies or omissions. This could be especially important if you're considering making a major purchase, such as buying a home. Checking in advance on the accuracy of information in your credit file could speed the credit-granting process.

Getting Your Credit Report

If you've been denied credit, insurance, or employment because of information supplied by a CRA, the FCRA says the company you applied to must give you the CRA's name, address, and telephone number. If you contact the agency for a copy of your report within 60 days of receiving a denial notice, the report is free. In addition, you're entitled to one free copy of your report a year if you certify in writing that (1) you're unemployed and plan to look for a job within 60 days, (2) you're on welfare, or (3) your report is inaccurate because of fraud. Otherwise, a CRA may charge you up to $8 for a copy of your report.

If you simply want a copy of your report, call the CRAs listed in the Yellow Pages under "credit" or "credit rating and reporting." Call each credit bureau listed since more than one agency may have a file on you, some with different information. The three major national credit bureaus are:

- **Equifax**, P.O. Box 740241, Atlanta, GA 30374-0241; (800) 685-1111.
- **Experian** (formerly TRW), P.O. Box 949, Allen, TX 75013; (888) EXPERIAN (397-3742).
- **Trans Union**, 760 West Sproul Road, P.O. Box 390, Springfield, PA 19064-0390; (800) 916-8800.

Correcting Errors

Under the FCRA, both the CRA and the organization that provided the information to the CRA, such as a bank or credit card company, have responsibilities for correcting inaccurate or incomplete information in your report. To protect all your rights under the law, contact both the CRA and the information provider.

First, tell the CRA in writing what information you believe is inaccurate. Include copies (NOT originals) of documents that support your position. In addition to providing your complete name

and address, your letter should clearly identify each item in your report you dispute, state the facts and explain why you dispute the information, and request deletion or correction. You may want to enclose a copy of your report with the items in question circled. Your letter may look something like the sample below. Send your letter by certified mail, return receipt requested, so you can document what the CRA received. Keep copies of your dispute letter and enclosures.

CRAs must reinvestigate the items in question--usually within 30 days--unless they consider your dispute frivolous. They also must forward all relevant data you provide about the dispute to the information provider. After the information provider receives notice of a dispute from the CRA, it must investigate, review all relevant information provided by the CRA, and report the results to the CRA. If the information provider finds the disputed information to be inaccurate, it must notify all nationwide CRAs so they can correct this information in your file. 1 Disputed information that cannot be verified must be deleted from your file.

- If your report contains erroneous information, the CRA must correct it.
- If an item is incomplete, the CRA must complete it. For example, if your file showed that you were late making payments, but failed to show that you were no longer delinquent, the CRA must show that you're current.
- If your file shows an account that belongs only to another person, the CRA must delete it.

When the reinvestigation is complete, the CRA must give you the written results and a free copy of your report if the dispute results in a change. If an item is changed or removed, the CRA cannot put the disputed information back in your file unless the information provider verifies its accuracy and completeness, and the CRA gives you a written notice that includes the name, address, and phone number of the provider.

Also, if you request, the CRA must send notices of corrections to anyone who received your report in the past six months. Job applicants can have a corrected copy of their report sent to anyone who received a copy during the past two years for employment purposes. If a reinvestigation does not resolve your dispute, ask the CRA to include your statement of the dispute in your file and in future reports.

Second, in addition to writing to the CRA, tell the creditor or other information provider in writing that you dispute an item. Again, include copies (NOT originals) of documents that support your position. Many providers specify an address for disputes. If the provider then reports the item to any CRA, it must include a notice of your dispute. In addition, if you are correct-that is, if the disputed information is not accurate-the information provider may not use it again. Accurate Negative Information When negative information in your report is accurate, only the passage of time can assure its removal. Accurate negative information can generally stay on your report for 7 years. There are certain exceptions:

- Information about criminal convictions may be reported without any time limitation.
- Bankruptcy information may be reported for 10 years.

- Credit information reported in response to an application for a job with a salary of more than $75,000 has no time limit.
- Credit information reported because of an application for more than $150,000 worth of credit or life insurance has no time limit.
- Information about a lawsuit or an unpaid judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer. Criminal convictions can be reported without any time limit.

Adding Accounts to Your File

Your credit file may not reflect all your credit accounts. Although most national department store and all-purpose bank credit card accounts will be included in your file, not all creditors supply information to CRAs: Some travel, entertainment, gasoline card companies, local retailers, and credit unions are among those creditors that don't. If you've been told you were denied credit because of an "insufficient credit file" or "no credit file" and you have accounts with creditors that don't appear in your credit file, ask the CRA to add this information to future reports. Although they are not required to do so, many CRAs will add verifiable accounts for a fee. You should, however, understand that if these creditors do not report to the CRA on a regular basis, these added items will not be updated in your file.

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

Sample Dispute Letter

Date

Your Name
Your Address
Your City, State, Zip Code

Complaint Department
Name of Credit Reporting Agency
Address
City, State, Zip Code

Dear Sir or Madam:

I am writing to dispute the following information in my file. The items I dispute are also encircled on the attached copy of the report I received. (Identify item(s) disputed by name of source, such as creditors or tax court, and identify type of item, such as credit account, judgment, etc.)

This item is (inaccurate or incomplete) because (describe what is inaccurate or incomplete and why). I am requesting that the item be deleted (or request another specific change) to correct the information.

Enclosed are copies of (use this sentence if applicable and describe any enclosed documentation, such as payment records, court documents) supporting my position. Please reinvestigate this (these) matter(s) and (delete or correct) the disputed item(s) as soon as possible.

Sincerely,
Your name

Enclosures: (List what you are enclosing)

FTC Consumer Alert!

Credit Repair: Help Yourself First

March 1998

"Credit Problems? NO problem ..."

"We can erase your bad credit—100% guaranteed."

"We can remove bankruptcies, judgments, liens, and bad loans from your credit file, FOREVER!"

"Create a new credit identity—legally."

Do yourself a favor and save some money, too. Don't believe these statements. Newspapers, radio, TV, and the Internet are filled with ads that offer—for a fee—to erase accurate negative information in your credit file so you can get a credit card, auto loan, home mortgage, or even a job. The scam artists who run these ads can't deliver. Only time, a deliberate effort, and a personal debt repayment plan will improve your credit.

The companies that advertise credit repair services appeal to consumers with poor credit histories. Not only *can't* they provide you with a clean credit record, they may be encouraging you to violate federal law. If they ask you to make false statements on a loan or credit application, misrepresent your Social Security number, or advise you to get an Employer Identification Number from the Internal Revenue Service under false pretenses, you will be committing fraud.

The truth is you can help yourself to re-build a better credit record. Start by contacting your creditors when you realize that you are unable to make payments. If you need help working out a payment plan and a budget, contact your local credit counseling service. There are non-profit groups in every state that offer credit guidance to consumers. These services are available at little or no cost. Also, check with your employer, credit union, or housing authority for no-cost credit counseling programs.

In addition, you have specific rights under the Fair Credit Reporting Act:

- You are entitled to a free copy of your credit report if you've been denied credit, insurance or employment and request the report within 60 days of notice, or if you can prove that (1) you're unemployed and plan to look for a job within 60 days, (2) you're on welfare, or (3) your report is inaccurate because of fraud.
- If your application for credit, insurance, or employment is denied because of inaccurate or incomplete credit information, the company to which you applied must give you the name and address of the reporting credit bureau.

- There is no charge to dispute mistakes or outdated information on your credit record. Ask the credit bureau for a dispute form and submit it with any supporting documentation.

Other facts you should know:

- Bankruptcy information can be reported for 10 years.
- Information about a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.
- Information reported because of an application for a job with a salary of more than $75,000 has no time limit.
- Information reported because of an application for more than $150,000 worth of credit or life insurance has no time limit.

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

Credit Repair: Self-Help May Be Best

February 1998

You see the advertisements in newspapers, on TV, and on the Internet. You hear them on the radio. You get fliers in the mail. You may even get calls from telemarketers offering credit repair services. They all make the same claims:

- "Credit problems? No problem!"
- "We can erase your bad credit—100% guaranteed."
- "Create a new credit identity—legally."
- "We can remove bankruptcies, judgments, liens, and bad loans from your credit file forever!"

Do yourself a favor and save some money, too. Don't believe these statements. Only time, a conscious effort, and a personal debt repayment plan will improve your credit report.

This brochure explains how you can improve your credit worthiness and lists legitimate resources for low or no-cost help.

The Scam

Everyday, companies nationwide appeal to consumers with poor credit histories. They promise, for a fee, to clean up your credit report so you can get a car loan, a home mortgage, insurance, or even a job. The truth is, they can't deliver. After you pay them hundreds or thousands of dollars in up-front fees, these companies do nothing to improve your credit report; many simply vanish with your money.

The Warning Signs

If you decide to respond to a credit repair offer, beware of companies that:

- Want you to pay for credit repair services before any services are provided,
- Do not tell you your legal rights and what you can do—yourself—for free;
- Recommend that you not contact a credit bureau directly;
- Suggest that you try to invent a "new" credit report by applying for an Employer Identification Number to use instead of your Social Security Number; or
- Advise you to dispute all information in your credit report or take any action that seems illegal, such as creating a new credit identity. If you follow illegal advice and commit fraud, you may be subject to prosecution.

You could be charged and prosecuted for mail or wire fraud if you use the mail or telephone to apply for credit and provide false information. It's a federal crime to make false statements on a

loan or credit application, to misrepresent your Social Security Number, and to obtain an Employer Identification Number from the Internal Revenue Service under false pretenses.

Under the Credit Repair Organizations Act, credit repair companies cannot require you to pay until they have completed the promised services.

The Truth

No one can legally remove accurate and timely negative information from a credit report. But the law does allow you to request a reinvestigation of information in your file that you dispute as inaccurate or incomplete. There is no charge for this. Everything a credit repair clinic can do for you legally, you can do for yourself at little or no cost. According to the Fair Credit Reporting Act:

- You are entitled to a free copy of your credit report if you've been denied credit, insurance or employment within the last 60 days. If your application for credit, insurance, or employment is denied because of information supplied by a credit bureau, the company you applied to must provide you with that credit bureau's name, address, and telephone number.
- You can dispute mistakes or outdated items for free. Ask the credit reporting agency for a dispute form or submit your dispute in writing, along with any supporting documentation. Do not send them original documents.

Clearly identify each item in your report that you dispute, explain why you dispute the information, and request a reinvestigation. If the new investigation reveals an error, you may ask that a corrected version of the report be sent to anyone who received your report within the past six months. Job applicants can have corrected reports sent to anyone who received a report for employment purposes during the past two years.

When the reinvestigation is complete, the credit bureau must give you the written results and a free copy of your report if the dispute results in a change. If an item is changed or removed, the credit bureau cannot put the disputed information back in your file unless the information provider verifies its accuracy and completeness, and the credit bureau gives you a written notice that includes the name, address, and phone number of the provider.

You also should tell the creditor or other information provider **in writing** that you dispute an item. Many providers specify an address for disputes. If the provider then reports the item to any credit bureau, it must include a notice of your dispute. In addition, if you are correct—that is, if the information *is* inaccurate—the information provider may not use it again.

If the reinvestigation does not resolve your dispute, have the credit bureau include your version of the dispute in your file and in future reports. Remember, there is no charge for a reinvestigation.

Reporting Negative Information

Accurate negative information generally can be reported for seven years, but there are exceptions:

- Bankruptcy information can be reported for 10 years;
- Information reported because of an application for a job with a salary of more than $75,000 has no time limitation;
- Information reported because of an application for more than $150,000 worth of credit or life insurance has no time limitation;
- Information concerning a lawsuit or a judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer; and
- Default information concerning U.S. Government insured or guaranteed student loans can be reported for seven years after certain guarantor actions.

The Credit Repair Organizations Act

By law, credit repair organizations must give you a copy of the "Consumer Credit File Rights Under State and Federal Law" before you sign a contract. They also must give you a written contract that spells out your rights and obligations. Read these documents before signing the contract. The law contains specific protections for you. For example, a credit repair company cannot:

- make false claims about their services;
- charge you until they have completed the promised services; or
- perform any services until they have your signature on a written contract and have completed a three-day waiting period. During this time, you can cancel the contract without paying any fees.

Your contract must specify:

- the payment terms for services, including their total cost;
- a detailed description of the services to be performed;
- how long it will take to achieve the results;
- any guarantees they offer; and
- the company's name and business address.

Have You Been Victimized?

Many states have laws strictly regulating credit repair companies. States may be helpful if you've lost money to credit repair scams.

If you've had a problem with a credit repair company, don't be embarrassed to report them. While you may fear that contacting the government will only make your problems worse, that's not true. Laws are in place to protect you. Contact your local consumer affairs office or your state attorney general (AG). Many AGs have toll-free consumer hotlines. Check with your local directory assistance.

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

Need Help? Don't Despair

Just because you have a poor credit report doesn't mean you won't be able to get credit. Creditors set their own credit-granting standards and not all of them look at your credit history the same way. Some may look only at more recent years to evaluate you for credit, and they may grant credit if your bill-paying history has improved. It may be worthwhile to contact creditors informally to discuss their credit standards.

If you can't resolve your credit problems yourself or you need additional help, you may want to contact a credit counseling service. There are non-profit organizations in every state that counsel consumers in debt. Counselors try to arrange repayment plans that are acceptable to you and your creditors. They also can help you set up a realistic budget. These counseling services are offered at little or no cost to consumers. You can find the office nearest you by checking the white pages of your telephone directory.

In addition, nonprofit counseling programs sometimes are operated by universities, military bases, credit unions, and housing authorities. They're also likely to charge little or nothing for their services. Or, you can check with your local bank or consumer protection office to see if it has a list of reputable, low-cost financial counseling services.

Do-It-Yourself Check-Up

Even if you don't have a poor credit history, it's a good idea to conduct your own credit check-up, especially if you're planning a major purchase, such as a home or car. Checking in advance on the accuracy of the information in your credit report could speed the credit-granting process.

You're entitled to one free report a year if you can prove that:

1. you're unemployed and plan to look for a job with 60 days;
2. you're on welfare; or
3. your report is inaccurate because of fraud.

Otherwise, a credit bureau may charge you up to $8 for a copy of your report.

Credit bureaus usually are listed in the yellow pages of your telephone book under "credit reporting agencies." Three large national credit bureaus supply most credit reports: TRW, Equifax, and Trans Union. You may want to contact each of them for a copy of your report.

Experian (formerly TRW)
P.O. Box 949
Allen, TX 75013
(888) EXPERIAN (397-3742)

Equifax
P.O. Box 740241
Atlanta, GA 30374-0241
(800) 685-1111

Trans Union
760 West Sproul Road
P.O. Box 390
Springfield, PA 19064-0390
(800) 916-8800

'File Segregation':

New ID Is a Bad IDea

January 1999

If you have filed for bankruptcy, you may be the target of a credit repair scheme called "file segregation." In this scheme, you are promised a chance to hide unfavorable credit information by establishing a new credit identity. That may sound perfect, especially if you're afraid that you won't get any credit as long as bankruptcy appears on your credit record.

The problem: "File segregation" is illegal. If you use it, you could face fines or even a prison sentence.

The Pitch: A New Credit Identity

If you have filed for bankruptcy, you may receive a letter from a credit repair company that warns you about your inability to get credit cards, personal loans, or any other types of credit for 10 years. For a fee, the company promises to help you hide your bankruptcy and establish a new credit identity to use when you apply for credit. These companies also make pitches in classified ads, on radio and TV, and even over the Internet.

If you pay the fee and sign up for the service, you may be directed to apply for an Employer Identification Number (EIN) from the Internal Revenue Service (IRS). Typically, EINs — which resemble Social Security numbers — are used by businesses to report financial information to the IRS and the Social Security Administration.

After you receive your EIN, the credit repair service will tell you to use it in place of your Social Security number when you apply for credit. They'll also tell you to use a new mailing address and some credit references.

The Catch: False Claims

To convince you to establish a new credit identity, the credit repair service is likely to make a variety of false claims. Listen carefully; these false claims, along with the pitch for getting a new credit identity, should alert you to the possibility of fraud. You'll probably hear:

Claim 1: You will not be able to get credit for 10 years (the period of time bankruptcy information may stay on your credit record).
Each creditor has its own criteria for granting credit. While one may reject your application because of a bankruptcy, another may grant you credit shortly after you filed for bankruptcy. And, given a new reliable payment record, your chances of getting credit will probably increase as time passes.

Claim 2: The company or "file segregation" program is affiliated with the federal government.
The federal government does not support or work with companies that offer such programs.

Claim 3: The "file segregation" program is legal.
It is a federal crime to make any false statements on a loan or credit application. The credit repair company may advise you to do just that. It is a federal crime to misrepresent your Social Security

number. It also is a federal crime to obtain an EIN from the IRS under false pretenses. Further, you could be charged with mail or wire fraud if you use the mail or the telephone to apply for credit and provide false information. Worse yet, file segregation likely would constitute civil fraud under many state laws.

Rights Under The Credit Repair Organizations Act

This law prohibits false claims about credit repair and makes it illegal for these operations to charge you until they have performed their services. It requires these companies to tell you about your legal rights. Credit repair companies must provide this in a written contract that also spells out just what services are to be performed, how long it will take to achieve results, the total cost, and any guarantees that are offered. Under the law, these contracts also must explain that consumers have three days to cancel at no charge.

Under the law, you also have the right to sue in federal court. The law allows you to seek either your actual losses or the amount you paid the company — whichever is more. You also can seek "punitive" damages: sums of money to punish the company for violating the law. The law also allows class actions in federal court: cases where groups of consumers join together in one lawsuit. If you win, the other side has to pay your attorney's fees.

Many states have laws regulating credit repair companies, and may be helpful if you've lost money to credit repair scams.

If you've had a problem with a credit repair company, report the company. Contact your local consumer affairs office or your state attorney general (AG). Many AGs have toll-free consumer hotlines. Check with your local directory assistance.

You also may wish to contact the FTC. Although the Commission cannot resolve individual credit problems for consumers, it can act against a company if it sees a pattern of possible law violations. If you believe a company has engaged in credit fraud, you can file a complaint online, or send your complaint to: Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580.

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: 202-FTC-HELP (382-4357); TDD: 202-326-2502; by mail: Consumer Response Center, Federal Trade Commission, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.

APPENDIX D

BETTER BUSINESS BUREAUS

This information was downloaded from the 1998-99 CONSUMER'S RESOURCE HANDBOOK available on the internet at www.pueblo.gsa.gov. The Handbook also has other helpful information such as corporate consumer complaint contacts.

Better Business Bureaus (BBBs) are nonprofit organizations supported primarily by local business members. The focus of BBB activities is to promote an ethical marketplace by encouraging honest advertising and selling practices, and by providing alternative dispute resolution. BBBs offer a variety of consumer services. For example, they provide consumer education materials; answer consumer questions; provide information about a business, particularly whether or not there are unanswered or unsettled complaints or other marketplace problems; help resolve buyer/seller complaints against a business; including mediation and arbitration services; and provide information about charities and other organizations that are seeking public donations.

BBBs usually request that a complaint be submitted in writing so that an accurate record exists of the dispute. The BBB will then take up the complaint with the company involved. If the complaint cannot be satisfactorily resolved through communication with the business, the BBB may offer an alternative dispute settlement process, such as mediation or arbitration. BBBs do not judge or rate individual products or brands, handle employer/employee wage disputes or give legal advice.

If you need help with a consumer question or complaint, call your local BBB to ask about its services.

Those bureaus that provide information via 1-900 telephone numbers charge $3.80 for the first 4 minutes, $.95 per minute thereafter, with a maximum charge of $9.50. Some numbers require a major credit card to access information and charge a flat fee of $3.80. Or you can contact the BBB online at www.bbb.org for consumer fraud and scam alerts, and information about BBB programs, services and locations.

BBBOnLine provides Internet users an easy way to verify the legitimacy of online businesses. Companies carrying the BBBOnLine seal have been checked out by the BBB, and agree to resolve customer concerns regarding goods or services promoted online. Visit www.bbbonline.org for a list of participating companies, complete program standards, and more.

The Council of Better Business Bureaus, the umbrella organization for the BBBs, can assist with complaints about the truthfulness and accuracy of national advertising claims, including children's advertising; provide reports on national soliciting charities; and help to settle disputes with automobile manufacturers through the BBB AUTO LINE program.

In addition to the BBBs listed below, there are 16 BBBs in Canada. The Council of Better Business Bureaus can give you the addresses for Bureaus in Canada.

Council

Council of Better Business Bureaus, Inc.
4200 Wilson Boulevard
Arlington, VA 22203
703-276-0100
Fax: 703-525-8277
Web site: www.bbb.org

Bureaus

Alabama

1210 South 20th Street
P.O. Box 55268 (35255-5268)

Birmingham, AL 35205
205-558-2222
Toll free: 1-800-834-5274 (in AL)
Fax: 205-538-2239
Web site: www.birmingham.bbb.org

1528 Peachtree Lane, Suite 1
Cullman, AL 35057
205-558-2222
Toll free: 1-800-824-5274 (in AL)
Fax: 205-538-2239

118 Woodburn
Dothan, AL 36305
334-794-0492
Toll free: 1-800-824-5274 (in AL)
Fax: 334-794-0659

205 S. Seminary Street, Suite 114
Florence, AL 35630
205-740-8223

107 Lincoln Street, N.E.
P.O. Box 36804
Huntsville, AL 35801
205-533-1640
Fax: 205-533-1177
Web site: www.huntsville.bbb.org

100 North Royal Street
P.O. Box 2008 (36652-2008)
Mobile, AL 36602-3295
334-433-5494
Fax: 334-438-3191
Web site: www.mobile.bbb.org

Alaska

2805 Bering Street, Suite 5
P.O. Box 93550
Anchorage, AK 99503-3819
907-562-0704
Fax: 907-562-4061
Web site: www.anchorage.bbb.org

P.O. Box 74675
Fairbanks, AK 99707
907-451-0222
Fax: 907-451-0228

Arizona

4428 North 12th Street
Phoenix, AZ 85014-4585
900-225-5222
602-264-1721
Web site: www.phoenix.bbb.org

3620 North 1st Avenue, Suite 136
Tucson, AZ 85719
520-888-5353
Fax: 520-888-6262
Web site: www.tucson.bbb.org

Arkansas

1415 South University
Little Rock, AR 72204-2605
501-664-7274
Fax: 501-664-0024
Web site: www.arkansas.bbb.org

California

705 18th Street
P.O. Box 1311 (93302-1311)
Bakersfield, CA 93301
805-322-2074
Fax: 805-322-8318
Web site: www.bakersfield.bbb.org

315 North LaCadena
P.O. Box 970 (92324-0814)
Colton, CA 92324
900-225-5222
Fax: 909-825-6246
Web site: www.la.bbb.org

6101 Ball Road, Suite 309
Cypress, CA 90630-3966
900-225-5222
909-426-0813
Fax: 714-527-3208
Web site: www.la.bbb.org

2519 West Shaw, #106
Fresno, CA 93711
209-222-8111
Fax: 209-228-6518
Web site: www.fresno.bbb.org

3727 West Sixth Street, Suite 607
Los Angeles, CA 90020
900-225-5222
909-426-0813
Fax: 213-251-9984
Web site: www.la.bbb.org

510 16th Street, Suite 550
Oakland, CA 94612-1584
510-238-1000
Fax: 510-238-1018
Web site: www.oakland.bbb.org

400 S Street
Sacramento, CA 95814-6997
916-443-6843
Fax: 916-443-0376
Web site: www.sacramento.bbb.org

5050 Murphy Canyon Road, Suite 110
San Diego, CA 92123
619-496-2131
Fax: 619-496-2141
Web site: www.sandiego.bbb.org

1530 Meridian Avenue, Suite 100
San Jose, CA 95125
408-445-3000
Fax: 408-265-4528
Web site: www.sanjose.bbb.org

400 South El Camino Real, Suite 350
P.O. Box 294
San Mateo, CA 94401-0294
650-696-1240
Fax: 650-696-1250

213 Santa Barbara Street
P.O. Box 129 (93102-0129)
Santa Barbara, CA 93102
805-963-8657
Fax: 805-963-8556
Web site: www.santabarbara.bbb.org

11 S. San Joaquin Street, Suite 803
Stockton, CA 95202-3202
209-948-4880
Fax: 209-465-6302
Web site: www.stockton.bbb.org

Colorado

3022 N. El Paso (80907-5454)
P.O. Box 7970
Colorado Springs, CO 80933-7970
719-636-1155
Fax: 719-636-5078
Web site: www.coloradosprings.bbb.org

1780 South Bellaire, Suite 700
Denver, CO 80222-4350
303-758-2100
Fax: 303-758-8321
Web site: www.denver.bbb.org

1730 South College Avenue
Suite 303
Fort Collins, CO 80525-1073
970-484-1348
Toll free: 1-800-571-0371 (in WY)
Fax: 970-221-1239
Web site: www.rockymnt.bbb.org

119 West 6th Street, Suite 203
Pueblo, CO 81003-3119
719-542-6464
Fax: 719-542-5229
Web site: www.pueblo.bbb.org

Connecticut

Parkside Building
821 North Main Street Ext.
Wallingford, CT 06492-2420
Fax: 203-269-3124203-269-2700
Web site: www.connecticut.bbb.org

Delaware

1010 Concord Avenue, Suite 101
Wilmington, DE 19808-5532
302-594-9200
Fax: 302-594-1052
Web site: www.wilmington.bbb.org

District of Columbia

1012 14th Street, N.W., 9th Floor
Washington, DC 20005-3406
202-393-8000
Fax: 202-393-1198
Web site: www.dc.bbb.org

Florida

5830 142nd Avenue North, Suite B (34620)
P.O. Box 7950
Clearwater, FL 33758-7950
813-535-5522 (Pinellas County)
Toll free: 1-800-525-1447 (in FL)
Fax: 813-530-5863
Web site: www.clearwater.bbb.org

7820 Arlington Expressway, #147
Jacksonville, FL 32211
904-721-2288
Fax: 904-721-7373
Web site: www.jacksonville.bbb.org

921 East Gadsden (32501)
P.O. Box 1511
Pensacola, FL 32597-1511
850-429-0222
Fax: 850-429-0006
Web site: www.pensacola.bbb.org

1950 S.E. Port St. Lucie Blvd., Suite 211
Port St. Lucie, FL 34952-5579
561-870-2010
Fax: 561-337-2083

580 Village Blvd., Suite 340
West Palm Beach, FL 33409-1904
561-686-2200
Fax: 561-686-2775
Web site: www.westpalm.bbb.org

1011 North Wymore Road, Suite 204
Winter Park, FL 32789-1736
407-621-3300
Toll free: 1-800-275-6614 (in FL)
Fax: 407-629-5167
Web site: www.orlando.bbb.org

Georgia

101 1/2 South Jackson, Suite 2
P.O. Box 808 (31702)
Albany, GA 31701
912-883-0744
Fax: 912-438-8222

P.O. Box 2707
Atlanta, GA 30301
404-688-4910
Fax: 404-688-8901
Web site: www.atlanta.bbb.org

301 7th Street (30901)
P.O. Box 2087
Augusta, GA 30903-2085
706-722-1574
Fax: 706-724-0969
Web site: www.augusta-ga.bbb.org

208 13th Street
P.O. Box 2587 (31902-2587)
Columbus, GA 31901-2137
706-324-0712
Fax: 706-324-2181
Web site: www.columbus-ga.bbb.org

277 Martin Luther King Blvd., Suite 102
Macon, GA 31201-3476
912-742-7999
Fax: 912-742-8191
Web site: www.macon.bbb.org

6606 Abercorn Street, Suite 108-C
Savannah, GA 31405
912-354-7521 (9 am-1 pm, M-Th)
Fax: 912-354-5068
Web site: www.savannah.bbb.org

Hawaii

First Hawaiian Tower
1132 Bishop Street, 15th Floor
Honolulu, HI 98613-2822
808-536-6956
Fax: 808-523-2335
Web site: www.hawaii.bbb.org

Idaho

1333 West Jefferson
Boise, ID 83702-5320
208-342-4649
Fax: 208-342-5116
Web site: www.boise.bbb.org

1575 South Blvd.
Idaho Falls, ID 83404-5926
208-523-9754
Fax: 208-524-6190
Web site: www.idahofalls.bbb.org

Illinois

330 North Wabash Avenue, Suite 2006
Chicago, IL 60611
312-832-0500
Fax: 312-832-9985
Web site: www.chicago.bbb.org

3024 West Lake, Suite 200
Peoria, IL 61615-3770
309-688-3741
309-688-9496 (auto line)
Fax: 309-681-7290
Web site: www.peoria.bbb.org

810 East State Street, 3rd Floor
Rockford, IL 61104-1101
815-963-2222
Fax: 815-963-0329
Web site: www.chicago.bbb.org

Indiana

722 West Bristol Street, Suite H-2
P.O. Box 405 (46514-2988)
Elkhart, IN 46515-0405
219-262-8996
Fax: 219-266-2026
Web site: www.elkhart.bbb.org

4004 Morgan Avenue, Suite 201
Evansville, IN 47715-2265
812-473-0202
Fax: 812-473-3080
Web site: www.evansville.bbb.org

1203 Webster Street
Fort Wayne, IN 46802-3493
219-423-4433
Fax: 219-423-3301
Web site: www.fortwayne.bbb.org

22 E. Washington Street, Suite 200
Victoria Center
Indianapolis, IN 46204-3584
317-488-2222
Fax: 317-488-2224
Web site: www.indianapolis.bbb.org

6111 Harrison Street, Suite 101
Merriville, IN 46410
219-980-1511
219-769-8053
Toll free: 1-800-637-2118 (in IN)
Fax: 219-554-2123
Web site: www.gary.bbb.org

207 Dixie Way North, Suite 130
South Bend, IN 46637-3360
219-277-9121
Fax: 219-273-6666

Iowa

852 Middle Road, Suite 290
Bettendorf, IA 52722-4100
319-355-6344
Fax: 319-355-0306

505 5th Avenue, Suite 950
Des Moines, IA 50309-2375
515-243-8137
Toll free: 1-800-202-1600 (in IA)
Fax: 515-243-2227
Web site: www.desmoines.bbb.org

505 6th Street, Suite 417
Sioux City, IA 51101
712-252-4501
Fax: 712-252-0285
Web site: www.siouxcity.bbb.org

Kansas

501 Southeast Jefferson, Suite 24
Topeka, KS 66607-1190
785-232-0454
Fax: 785-232-9677
Web site: www.topeka.bbb.org

328 Laura
P.O. Box 11707 (67201)
Wichita, KS 67211
316-263-3146
Fax: 316-263-3063
TDD/TTY toll free in KS: 1-800-856-2417
Web site: www.wichita.bbb.org

Kentucky

410 West Vine Street, Suite 340
Lexington, KY 40507-1629
606-259-1008
Toll free: 1-800-866-6668 (in KY)
Fax: 606-259-1639
Web site: www.lexington.bbb.org

844 South Fouth Street
Louisville, KY 40203-2186
502-583-6546
Toll free: 1-800-388-2222 (in KY)
Fax: 502-589-9490
Web site: www.louisville.bbb.org

Louisiana

1605 Murray Street, Suite 117
Alexandria, LA 71301-6875
318-473-4494
Fax: 318-473-8906
Web site: www.alexandria.bbb.org

2055 Wooddale Blvd.
Baton Rouge, LA 70806-1546
504-926-3010
Fax: 504-924-8040
Web site: www.batonrouge.bbb.org

3008 Park Avenue, Suite 204
Houma, LA 70364
504-868-3456
Toll free: 1-800-259-9766 (in LA)
Fax: 504-876-7664

100 Huggins Road
Lafayette, LA 70506
318-981-3497
Fax: 318-981-7559
Web site: www.lafayette.bbb.org

3941-L Ryan Street (70605)
P.O. Box 7314
Lake Charles, LA 70606-7314
318-478-6253
Fax: 318-474-8981
Web site: www.lakecharles.bbb.org

141 Desiard Street, Suite 808
Monroe, LA 71201-7380
318-387-4600
Fax: 318-361-0461
Web site: www.monroe.bbb.org

1539 Jackson Avenue, Suite 400
New Orleans, LA 70130-5843
504-581-6222
Fax: 504-524-9110
Web site: www.neworleans.bbb.org

3612 Youree Drive
Shreveport, LA 71105
318-861-6417
Toll free: 1-800-372-4222 (in LA)
Fax: 318-861-6426
Web site: www.shreveport.bbb.org

Maine

812 Stevens Avenue
Portland, ME 04013-2648
207-878-2715
Fax: 207-797-5818

Maryland

2100 Huntingdon Avenue
Baltimore, MD 21211-3215
900-225-5222
Fax: 410-347-3936
Web site: www.baltimore.bbb.org

Massachusetts

20 Park Plaza, Suite 820
Boston, MA 02116-4344
617-426-9000
Fax: 617-426-7813
Web site: www.bosbbb.org

293 Bridge Street, Suite 320
Springfield, MA 01103-1402
413-734-3114
Fax: 413-734-2006
Web site: www.springfield-ma.bbb.org

32 Franklin Street
P.O. Box 16555 (01601-6555)
Worcester, MA 01608-1900
508-755-2548
Fax: 508-754-4158
Web site: www.worcester.bbb.org

Michigan

40 Pearl, N.W., Suite 354
Grand Rapids, MI 49503
616-774-8236
Fax: 616-774-2014
Web site: www.grandrapids.bbb.org

30555 Southfield Road, Suite 200
Southfield, MI 48076-7751
248-644-9100
Fax: 248-644-5026
Web site: www.detroit.bbb.org

Minnesota

2706 Gannon Road
St. Paul, MN 55116-2600
651-699-1111
Toll free: 1-800-646-6222
Fax: 651-699-7665
Web site: www.mnd.bbb.org
Serves both MN and ND.

Mississippi

4500 155 N., Suite 287 (39211)
P.O. Box 12745
Jackson, MS 39236-2745
601-987-8282
Toll free: 1-800-987-8280 (in MS)
Fax: 601-987-8285
Web site: www.mississippi.bbb.org

Missouri

306 E. 12th Street
Suite 1024
Kansas City, MO 64106-2418
816-421-7800
Fax: 816-472-5442
website: www.kansascity.bbb.org

205 Park Central East, Suite 509
Springfield, MO 65806-1326
417-862-4222
Fax: 417-869-5544
Web site: www.springfield-mo.bbb.org

12 Sunnen Drive, Suite 121
St. Louis, MO 63143
314-645-3300
Fax: 314-645-2666
Web site: www.stlouis.bbb.org

Nebraska

3633 O Street, Suite 1
Lincoln, NE 68510-1670
402-476-5855
Fax: 402-476-8221
Web site: www.lincoln.bbb.org

2237 North 91st Plaza
Omaha, NE 68134-6022
402-391-7612
Fax: 402-391-7535
Web site: www.omaha.bbb.org or
www.omahafreenet.org/bbb/

Nevada

P.O. Box 44108 (89116-2108)
Las Vegas, NV 89116-2108
702-320-4500
Fax: 702-320-4560
Web site: www.lasvegas.bbb.org

991 Bible Way (89502)
P.O. Box 21269
Reno, NV 89515-1269
702-322-0657
Toll free: 1-888-350-4222
Fax: 702-322-8163
Web site: www.reno.bbb.org

New Hampshire

410 South Main Street, Suite 3
Concord, NH 03301-3483
603-224-1991
Fax: 603-228-9035
Web site: www.concord.bbb.org

New Jersey

400 Lanidex Plaza
Parsippany, NJ 07054-2797
973-581-1313
Fax: 973-581-7022
Web site: www.parsippany.bbb.org

1721 Route 37 East
Toms River, NJ 08753-8239
732-270-5577
Fax: 732-270-6739

1700 Whitehorse-Hamilton Square, Suite D-5
Trenton, NJ 08690-3596
609-588-0808
Fax: 609-588-0546
Web site: www.trenton.bbb.org

16 Maple Avenue
P.O. Box 303
Westmont, NJ 08108-0303
609-854-8467
Fax: 609-854-1130
Web site: www.westmont.bbb.org

New Mexico

2625 Pennsylvania, N.E., Suite 2050
Albuquerque, NM 87110-3657
505-346-0110
Toll free: 1-800-873-2224 (in NM)
Fax: 505-346-2696
Web site: www.albuquerque.bbb.org

308 North Locke
Farmington, NM 87401-5855
505-326-6501
Fax: 505-327-7731
Web site: www.farmington.bbb.org

201 North Church, Suite 330
Las Cruces, NM 88001-3548
505-524-3130
Fax: 505-524-9624

New York

346 Delaware Avenue
Buffalo, NY 14202-1899
716-856-7180
Fax: 716-856-7287
Web site: www.buffalo.bbb.org

266 Main Street
Farmingdale, NY 11735-2618
900-225-5222
212-533-6200
Web site: www.newyork.bbb.org

257 Park Avenue South
New York, NY 10010-7384
900-225-5222
212-533-6200
Fax: 212-477-4912
Web site: www.newyork.bbb.org

Learbury Centre
401 N. Salina Street
Syracuse, NY 13203
900-225-5222
Fax: 315-479-5754
Web site: www.syracuse.bbb.org

30 Glenn Street
White Plains, NY 10603-3213
900-225-5222
212-533-6200
Web site: www.newyork.bbb.org

North Carolina

1200 BB&T Building
Asheville, NC 28801-3418
704-253-2392
Fax: 704-252-5039
Web site: www.asheville.bbb.org

5200 Park Road, Suite 202
Charlotte, NC 28209-3650
704-527-0012
Fax: 704-525-7624
Web site: www.charlotte.bbb.org

3608 W. Friendly Avenue
Greensboro, NC 27410-4895
336-852-4240
Fax: 336-852-7540
Web site: www.greensboro.bbb.org

3125 Poplarwood Court, Suite 308
Raleigh, NC 27604-1080
919-872-9240
Fax: 919-954-0622
Web site: www.raleigh.bbb.org

P.O. Box 69
Sherrils Ford, NC 28673-0069
828-478-5622
Fax: 828-478-5462

500 West 5th Street, Suite 202
Winston-Salem, NC 27101-2728
336-725-8384
Fax: 336-777-3727
Web site: www.winstonsalem.bbb.org

Ohio

222 W. Market Street
Akron, OH 44303-2111
330-253-4590
Fax: 330-253-6249
Web site: www.akron.bbb.org

1434 Cleveland Avenue, N.W. (44703)
P.O. Box 8017
Canton, OH 44711-8017
330-454-9401
Toll free: 1-800-362-0494 (in OH and WV)
Fax: 330-456-8957
Web site: www.canton.bbb.org

898 Walnut Street
Cincinnati, OH 45202-2097
513-421-3015
Fax: 513-621-0907
Web site: www.cincinnati.bbb.org

2217 East 9th Street, Suite 200
Cleveland, OH 44115-1299
216-241-7678
Fax: 216-861-6365
Web site: www.cleveland.bbb.org

1335 Dublin Road, #30-A
Columbus, OH 43215-1000
614-486-6336
Fax: 614-486-6631
Web site: www.columbus-oh.bbb.org

40 West Fourth Street, Suite 1250
Dayton, OH 45402-1830
937-222-5825
Toll free: 1-800-776-5301 (local area only)
Fax: 973-222-3338
Web site: www.dayton.bbb.org

219 North McDonel (45801)
P.O. Box 269
Lima, OH 45802-0269
419-223-7010
Fax: 419-229-2029
Web site: www.wcohio.bbb.org

3103 Executive Parkway, Suite 200
Toledo, OH 43606-1310
419-531-3116
Toll free: 1-800-743-4222 (northwest OH and southeast MI)
Fax: 419-578-6001
Web site: www.toledo.bbb.org

25 Market Street
P.O. Box 1495
Youngstown, OH 44501-1495
330-744-3111
Fax: 330-744-7336
Web site: www.youngstown.bbb.org

Oklahoma

17 South Dewey Avenue
Oklahoma City, OK 73102-2400
405-239-6081
Fax: 405-235-5891
Web site: www.oklahomacity.bbb.org

6711 South Yale, Suite 230
Tulsa, OK 74136-3327
918-492-1266
Fax: 918-492-1276
Web site: www.tulsa.bbb.org

Oregon

333 S.W. Fifth Avenue, Suite 300
Portland, OR 97204
503-226-3981
Fax: 503-226-8200
Web site: www.portland.bbb.org

Pennsylvania

528 North New Street
Bethlehem, PA 18018-5789
610-866-8780
Fax: 610-868-8668

29 E. King Street, Suite 322
Lancaster, PA 17602-2852
900-225-5222
215-448-3870
Fax: 717-291-3241
Web site: www.easternpa.bbb.org

1608 Walnut Street, Suite 6
Philadelphia, PA 19103
900-225-5222
215-893-3870
Fax: 215-893-9312
Web site: www.easternpa.bbb.org

300 6th Avenue, Suite 100-UL
Pittsburgh, PA 15222-2511
412-456-2700
Fax: 412-456-2739
Web site: www.pittsburgh.bbb.org

The Connell Building, Suite 407
129 N. Washington Ave (18503-2204)
P.O. Box 993
Scranton, PA 18501-0993
717-342-9129
Fax: 717-342-1282
Web site: www.scranton.bbb.org

Puerto Rico

P.O. Box 363488
San Juan, PR 00936-3488
787-756-5400 (8:30 am-4:30 pm)
Fax: 787-758-0095
Web site: www.sanjuan.bbb.org

Rhode Island

120 Lavan Street
Warwick, RI 02888-1071
401-785-1212
Fax: 401-785-3061
Web site: www.rhodeisland.bbb.org

South Carolina

2330 Devine Street (29205)
P.O. Box 8326
Columbia, SC 29202-8326
803-254-2525
Fax: 803-779-3117
Web site: www.columbia.bbb.org

307-B Falls Street
Greenville, SC 29601-2829
864-242-5052
Fax: 864-271-9802
Web site: www.greenville.bbb.org

1601 North Oak Street, Suite 101
Myrtle Beach, SC 29577-1601
843-626-6881
Fax: 843-626-7455
Web site: www.myrtlebeach.bbb.org

Tennessee

P.O. Box 1178 TCA
Blountville, TN 37617-1178
423-325-6616
Fax: 423-325-6621
Web site: www.knoxville.bbb.org

1010 Market Street, Suite 200
Chattanooga, TN 37402-2614
423-266-6144
Fax: 423-267-1924
Web site: www.chattanooga.bbb.org

2633 Kingston Pike, Suite 2 (37919)
P.O. Box 10327
Knoxville, TN 37939-0327
423-522-2552
Fax: 423-637-8042
Web site: www.knoxville.bbb.org

6525 Quail Hollow, Suite 410 (38120)
P.O. Box 17036
Memphis, TN 38187-0036
901-759-1300
Fax: 901-757-2997
Web site: www.memphis.bbb.org

414 Union Street, Suite 1830
P.O. Box 198436
Nashville, TN 37219-8436
615-242-4BBB
Fax: 615-254-8356
Web site: www.nashville.bbb.org

Texas

3300 South 14th Street, Suite 307
Abilene, TX 79605-5052
915-691-1533
Fax: 915-691-0309
Web site: www.abilene.bbb.org

724 South Polk (79101)
P.O. Box 1905
Amarillo, TX 79105-1905
806-379-6222
Fax: 806-379-8206
Web site: www.amarillo.bbb.org

2101 South IH35, Suite 302
Austin, TX 78741-3854
512-445-2911
Fax: 512-445-2096
Web site: www.centraltx.bbb.org

P.O. Box 2988
Beaumont, TX 77701-2988
409-835-5348
Fax: 409-838-6858
Web site: www.beaumont.bbb.org

P.O. Box 3868
Bryan, TX 77802-4413
409-260-2222
Fax: 409-846-0276
Web site: www.bryan.bbb.org

216 Park Avenue
Corpus Christi, TX 78401
512-887-4949
Fax: 512-887-4931
Web site: www.corpuschristi.bbb.org

2001 Bryan Street, Suite 850
Dallas, TX 75201-3093
900-225-5222
214-740-0348
Fax: 214-740-0321
Web site: www.dallas.bbb.org

Northwest Plaza, Suite 1101
El Paso, TX 79901
915-577-0191
Fax: 915-577-0209
Web site: www.elpaso.bbb.org

1612 Summit Avenue, Suite 260
Fort Worth, TX 76102-5978
817-332-7585
Fax: 817-882-0566
Web site: www.fortworth.bbb.org

5225 Katy Freeway, Suite 500
Houston, TX 77007
900-225-5222
713-867-4946
713-867-4944 (Spanish)
Fax: 713-867-4947
Web site: www.houston.bbb.org

916 Main Street, Suite 800
Lubbock, TX 79401-3410
806-763-0459
Fax: 806-744-9748
Web site: www.lubbock.bbb.org

10100 County Road, 118 West
P.O. Box 60206
Midland, TX 79711-0206
915-563-1880
Fax: 915-561-9435
Web site: www.midland.bbb.org

3121 Executive Drive (76904)
P.O. Box 3366
San Angelo, TX 76902-3366
915-949-2989
Fax: 915-949-3514
Web site: www.sanangelo.bbb.org

1800 Northeast Loop, 410, Suite 400
San Antonio, TX 78217-5296
210-828-9441
Fax: 210-828-3101
Web site: www.sanantonio.bbb.org

3600 Old Bullard Road, #103-A (75701)
P.O. Box 6652
Tyler, TX 75711-6652
903-581-5704
Toll free: 1-800-443-0131 (in TX)
Fax: 903-534-8644
Web site: www.tyler.bbb.org

2210 Washington Avenue
Waco, TX 76701-1019
254-755-7772
Fax: 254-755-7774
Web site: www.waco.bbb.org

609 International Blvd. (78596)
P.O. Box 69
Weslaco, TX 78599-0069
956-968-3678
Fax: 956-968-7638
Web site: www.weslaco.bbb.org

4245 Kemp Blvd., Suite 900
Wichita Falls, TX 76308-2830
817-691-1172
Toll free: 1-800-388-1778
Fax: 817-691-1174
Web site: www.wichitafalls.bbb.org

Utah

1588 South Main Street
Salt Lake City, UT 84115-5382
801-487-4656
Fax: 801-485-9397
Web site: www.saltlakecity.bbb.org

Vermont

(Contact Boston office)
Toll free: 1-800-4BBB-811 (802- Vermont only)
Web site: www.bosbbb.org

Virginia

586 Virginian Drive
Norfolk, VA 23505
757-531-1300
Fax: 757-531-1388
Web site: www.norfolk.bbb.org

701 East Franklin, Suite 712
Richmond, VA 23219
804-648-0016
Fax: 804-648-3115
Web site: www.richmond.bbb.org

31 West Campbell Avenue
Roanoke, VA 24011-1301
540-342-3455
Fax: 540-345-2289
Web site: www.roanoke.bbb.org

Washington

1401 North Union, #105
Kennewick, WA 99336-3819
509-783-0892
Fax: 509-783-2893

4800 South 188th Street, Suite 222 (98188)
P.O. Box 68926
Sea Tac, WA 98168-0926
206-431-2222
Fax: 206-431-2211
Web site: www.seatac.bbb.org

508 W. 6th Avenue, Suite 401
Spokane, WA 99204-2730
509-455-4200
Fax: 509-838-1079
Web site: www.spokane.bbb.org

32 N. 3rd Street, Suite 410
P.O. Box 1584
Yakima, WA 98901
509-248-1326
Fax: 509-248-8026
Web site: www.yakima.bbb.org

Wisconsin

740 North Plankinton Avenue
Milwaukee, WI 53203-2478
414-273-1600
Toll free: 1-800-213-1002 (in WI)
Fax: 414-224-0081
Web site: www.wisconsin.bbb.org

APPENDIX E

STATE, COUNTY, AND CITY GOVERNMENT CONSUMER PROTECTION OFFICES

This information was downloaded from the 1998-99 CONSUMER'S RESOURCE HANDBOOK available on the internet at www.pueblo.gsa.gov. The Handbook also has other helpful information such as corporate consumer complaint contacts.

City, county and state consumer protection offices provide consumers with important services. They mediate complaints, conduct investigations, prosecute offenders of consumer laws, license and regulate a variety of professionals, promote strong consumer protection legislation, provide educational materials and advocate in the consumer interest.

City and county consumer offices are familiar with local businesses and local ordinances. The cities where these offices are located are in bold type to help you find the office closest to you. If there is no local consumer office in your area, contact your state consumer office. State offices, whether in the attorney general's or governor's office, or in a separate department of consumer affairs, are familiar with state laws and look for statewide patterns of problems. Consumer protection offices in the U.S. territories also are included.

To save time, call the office before sending in a written complaint. Ask if the office handles the type of complaint you have, and if complaint forms are provided.

Many offices prepare consumer alerts on local problems and issues, with specific information on the applicable state and local laws. Call, send an E-mail or visit the web sites listed below for more information.

Agencies

Alabama

State Office
Dennis Wright, Chief Director
Consumer Affairs Section
Office of the Attorney General
11 South Union Street
Montgomery, AL 36130
334-242-7334
Toll free in AL: 1-800-392-5658
Fax: 334-242-2433
Web site: e-pages.com/aag/cuspro.html

Alaska

Consumer Protection Unit
Office of the Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
907-269-5100
Fax: 907-276-8554
Web site: www.law.state.ak.us

American Samoa

Cheryl Crenwelge Sione
Assistant Attorney General
Consumer Protection Bureau
P.O. Box 7
Pago Pago, AS 96799
011-684-633-4163
Fax: 011-684-633-1838

Arizona

State Offices
Sydney Davis, Chief Counsel
Consumer Protection
Office of the Attorney General
1275 West Washington Street
Room 259
Phoenix, AZ 85007
602-542-3702
602-542-5763 (consumer information and complaints)
Toll free in AZ: 1-800-352-8431
TDD: 602-542-5002
Fax: 602-542-4377

Noreen Matts
Assistant Attorney General
Consumer Protection
Office of the Attorney General
400 West Congress South Bldg.
Suite 315
Tucson, AZ 85701
520-628-6504
Toll free in AZ: 1-800-352-8431
Fax: 520-628-6532
E-mail: NMATTS@AG.state.az.us

County Offices

Stephen Udall, County Attorney
Apache County Attorney's Office
P.O. Box 637
St. Johns, AZ 85936
520-337-4364, ext. 240
Fax: 520-337-2427

Terence Hance, County Attorney
Coconino County Attorney's Office
Coconino County Courthouse
100 East Birch
Flagstaff, AZ 86001
520-779-6518
Fax: 520-779-5618

Jerry DeRose, County Attorney
Gila County Attorney's Office
1400 East Ash Street
Globe, AZ 85501
520-425-3231
Fax: 520-425-3720

Jack Williams, County Attorney
Graham County Attorney's Office
Graham County Courthouse
800 West Main
Safford, AZ 85546
520-428-3620
Fax: 520-428-7200

Dennis Lusk, County Attorney
Greenlee County Attorney's Office
P.O. Box 1717
Clifton, AZ 85533
520-865-4108
Fax: 520-865-4665

Steven Suskin, County Attorney
La Paz County Attorney's Office
1320 Kofa Avenue
P.O. Box 709
Parker, AZ 85344
520-669-6118
Fax: 520-669-2019

William Ekstrom, County Attorney
Mohave County Attorney's Office
315 North 4th Street
P.O. Box 7000
Kingman, AZ 86402-7000
520-753-0719
Fax: 520-753-2669

Melvin Bowers, County Attorney
Navajo County Attorney's Office
P.O. Box 668
Holbrook, AZ 86025
520-524-4026
Fax: 520-524-4244

Barbara LaWall, County Attorney
Pima County Attorney's Office
1400 Legal Services Building
32 North Stone
Tucson, AZ 85701
520-740-5600
Fax: 520-791-3946

Robert Olson, Pinal County Attorney
Pinal County Attorney's Office
P.O. Box 887
Florence, AZ 85232
520-868-6271
Fax: 520-868-6521

Martha Chase, County Attorney
Santa Cruz County Attorney's Office
2100 N. Congress Drive
Suite 201
Nogales, AZ 85621
520-761-7800- ex. 3121
Fax: 520-761-7859

Charles Hastings, County Attorney
Yavapai County Attorney's Office
Yavapai County Courthouse
255 E. Gurley
Prescott, AZ 86301
520-771-3344
Fax: 520-771-3110

David Ellsworth, County Attorney
Yuma County Attorney's Office
168 South Second Avenue
Yuma, AZ 85364
520-329-2270
Fax: 520-329-2284

City Office

Ronald Detrick, Deputy City Attorney
Consumer Affairs Division
Tucson City Attorney's Office
110 East Pennington Street, 2nd Floor
P.O. Box 27210
Tucson, AZ 85726-7210
520-791-4886
Fax: 520-791-4991

Arkansas

State Office
Kay Barton, Director
Consumer Protection Division
Office of Attorney General
200 Catlett Prien
323 Center Street
Little Rock, AR 72201
501-682-2341
TDD toll free in AR: 1-800-482-8982
TDD: 501-682-2014
Web site: www.ag-state.ar.us

California

State Offices
Marjorie M. Berte, Director
California Department of Consumer Affairs
400 R Street, Suite 3000
Sacramento, CA 95814
916-445-4465
Toll free in CA: 1-800-952-5210
TDD: 916-322-1700
510-785-7554

Dan Lungren, Attorney General
Office of Attorney General
Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
916-322-3360
Toll free in CA: 1-800-952-5225
TDD: 916-324-5564
Web site: caag.state.ca.us/piu

Marty Keller, Chief
Bureau of Automotive Repair
California Dept. of Consumer Affairs
10240 Systems Parkway
Sacramento, CA 95827
916-445-1254
Toll free in CA: 1-800-952-5210 (auto repair only)
TDD: 916-322-1700

County Offices
Betty Moose, Commissioner
Alameda County Consumer Affairs Commission
1328 Via El Monte
San Lorenzo, CA 94580
510-535-6444

Gary Yancey, District Attorney
Contra Costa County
District Attorney's Office
725 Court Street, 4th Floor
P.O. Box 670
Martinez, CA 94553
510-646-4500
Fax: 510-646-2116

Alan Yengoyan
Senior Deputy District Attorney
Business Affairs Unit
Fresno County District Attorney's Office
1250 Van Ness Avenue, 2nd Floor
Fresno, CA 93721
209-488-3156
Fax: 209-495-1315

Edward Jagels, District Attorney
Criminal Division
Kern County District Attorney's Office
1215 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301
805-868-2340
Fax: 805-868-2700

Monty Hopper, Director
Kern County Department of Weights & Measures
1116 E. California Avenue
Bakersfield, CA 93307
805-861-2418
Fax: 805-324-0668

Pastor Herrera, Jr., Director
Los Angeles County Department of Consumer Affairs
500 West Temple Street, Room B-96
Los Angeles, CA 90012
213-974-1452 (Public)
213-974-9750 (Private)
Fax: 213-687-0233
Web site: www.co.la.ca.us/consumer-affairs

Marin County Mediation Services
4 Mount Lassen Drive
San Rafael, CA 94903
415-499-7454
Fax: 415-499-6978

Robert Nichols
Deputy District Attorney
Consumer Protection Division
Marin County District Attorney's Office
Hall of Justice, Room 130
3501 Civic Center Drive
San Rafael, CA 94903
415-499-6450
Fax: 415-499-3719
E-mail: consumer@marin.org
Web site: www.marin.org/mc/da

Susan Massini, District Attorney
Mendocino County District Attorney's Office
P.O. Box 1000
Ukiah, CA 95482
707-463-4211
Fax: 707-463-4687

Dean Flippo
Monterey County District Attorney
Consumer Protection Division
P.O. Box 1369
Salinas, CA 93902
408-755-5073
Fax: 408-755-5608

Daryl Roberts
Deputy District Attorney
Consumer Affairs Division
Napa County District Attorney's Office
931 Parkway Mall
P.O. Box 720
Napa, CA 94559
707-253-4211
Fax: 707-253-4041

Robert Gannon
Supervising Deputy District Attorney
Consumer/Environmental Prot. Unit
Orange Co. District Attorney's Office
405 West 5th Street, Suite 606
Santa Ana, CA 92701
714-568-1200
Fax: 714-568-1250

Jay Orr
Supervising Deputy District Attorney
Economic Crime Division
Riverside County District Attorney's Office
4075 Main Street
Riverside, CA 92501
909-275-5400
Fax: 909-275-5470

M. Scott Prentice
Supervising Deputy District Attorney
Consumer and Environmental Protection Division
Sacramento County District Attorney's Office
P.O. Box 749
Sacramento, CA 95812-0749
916-440-6174
Fax: 916-440-7660

Peter Longanbach, Director
Consumer Fraud Division
San Diego County District Attorney's Office
P.O. Box X-1011
San Diego, CA 92112-4192
619-531-3507 (complaint message line)
619-531-4040

Consumer Protection Unit
San Francisco Co. District Attorney's Office
425 Brannan Street
San Francisco, CA 94103
415-552-6400 (public inquiries)
Fax: 415-552-7038

Franklin Stephenson
Supervising Deputy District Attorney
San Joaquin Co. District Attorney's Office
222 East Weber, Room 412
P.O. Box 990
Stockton, CA 95202
209-468-2315
Fax: 209-468-0314

Leigh Lawrence, Director
Economic Crime Unit
Consumer Fraud Department
County Government Center
1050 Monterey Street, Room 235
San Luis Obispo, CA 93408
805-781-5856
Fax: 805-781-1173

John Wilson, Deputy in Charge
Consumer Fraud & Environmental Protection Unit
San Mateo Co. District Attorney's Office
401 Marshall Street
Hall of Justice and Records
Redwood City, CA 94063
650-363-4656
Fax: 650-363-1681

Allan Kaplan, Senior Deputy
District Attorney
Consumer Protection Unit
Santa Barbara County District
Attorney's Office
1105 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2300
Fax: 805-568-2398

Al Bender
Deputy District Attorney
Consumer Protection Unit
Santa Clara County District
Attorney's Office
70 West Hedding Street
West Wing, 4th Floor
San Jose, CA 95110
408-792-2568
Fax: 408-279-8742

Patricia McRae, Director of Mediation Services
Santa Clara County Consumer
Protection Unit
70 West Hedding Street
West Wing, 4th Floor
San Jose, CA 95110
408-792-2880 (consumer protection)
408-792-2881 (small claims advisory)
Fax: 408-279-8742
Web site: claraweb.co.santa-clara.ca.us/da/compform.htm

Robin McFarland Gysin
Coordinator, Div. of Consumer Affairs
Santa Cruz Co. District Attorney's Office
701 Ocean Street, Room 200
Santa Cruz, CA 95060
408-454-2050
TDD/TTY: 408-454-2123
Fax: 408-454-2227
Web site: www.CO.Santa-Cruz.CA/US

Criselda Gonzalez
Deputy District Attorney
Consumer Affairs Unit
Solano Co. District Attorney's Office
600 Union Avenue
Fairfield, CA 94533
707-421-6859
Fax: 707-421-7986

Thomas Quinlan
Deputy District Attorney
Consumer Fraud Unit
Stanislaus Co. District Attorney's Office
P.O. Box 442
Modesto, CA 95353-0442
209-525-5550
Fax: 209-525-5545

Melodianne Duffy, Supervisor
Consumer Mediation Section
Ventura County District Attorney's Office
800 South Victoria Avenue
Ventura, CA 93009
805-654-3110
Fax: 805-648-9255
E-mail: on web site
Web site: www.Ventura.Org/VCDA

Mark Jerome Jones
Chief Deputy District Attorney
Special Services Unit-Consumer/Environmental
Yolo County District Attorney's Office
P.O. Box 245
Woodland, CA 95776
916-666-8424
Fax: 916-666-8423
E-mail: YOLADA@aol.com

City Offices

Donald Kass
Supervising Deputy City Attorney
Consumer Protection Division
Los Angeles City Attorney's Office
200 North Main Street
1600 City Hall East
Los Angeles, CA 90012
213-485-4515
Fax: 213-237-0402
E-mail: dkass@atty.ca.la.ca.us

Michael D. Rivo
Head Deputy City Attorney
San Diego City Attorney's Office
Consumer and Environmental Protection Unit
1200 Third Ave, Suite 700
San Diego, CA 92101-4106
619-533-5600 (consumer complaints)
Fax: 619-533-5600

Adam Radinsky
Deputy City Attorney
Teresa Bransfield
Consumer Affairs Specialist
Consumer Protection, Fair Housing Public Rights Unit
1685 Main Street, Room 310
Santa Monica, CA 90401
310-458-8336
310-458-8370 (Spanish hotline)
Fax: 310-395-6727
TDD/TTY: 310-458-8696
E-mail: teresa@pen.ci.santa-monica.ca.us

Colorado

State Office
Consumer Protection Division
Office of Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203-1760
303-866-5189
Toll free: 1-800-332-2071
Fax: 303-866-5691

County Offices
Sarah Law, District Attorney
Archuleta, LaPlata and San Juan Counties District Attorney's Office
P.O. Drawer 3455
Durango, CO 81302
970-247-8850
Fax: 970-259-0200

Phillip Parrott, Chief
Deputy District Attorney
Denver District Attorney's Economic Crimes Unit
303 West Colfax Avenue, Suite 1300
Denver, CO 80204
303-640-5956 (administration)
303-640-3557 (complaints)
TDD/TTY: 303-640-5127
Fax: 303-640-2592
Web site: infodenver.denver.co.us

David Zook
Chief Deputy District Attorney
Economic Crime Division
El Paso and Teller Counties District Attorney's Office
105 East Vermijo, Suite 205
Colorado Springs, CO 80903-2083
719-520-6002
Fax: 719-520-6006

Gus Sandstrom, District Attorney
Pueblo County District Attorney's Office
201 West 8th Street, Suite 801
Pueblo, CO 81003
719-583-6030
Fax: 719-583-6666

A.M. Dominguez, District Attorney
Tony Molocznik, Chief Investigator
Weld County District Attorney's Office
P.O. Box 1167
Greeley, CO 80632
970-356-4010
Fax: 970-352-8023

Connecticut

State Offices
Mark Shiffrin, Commissioner
Department of Consumer Protection
165 Capitol Avenue
Hartford, CT 06106
860-566-2534
Toll free in CT: 1-800-842-2649
Fax: 860-566-1531
Web site: www.state.ct.us/dcp/

Steven M. Rutstein
Assistant Attorney General
Antitrust/Consumer Protection
Office of Attorney General
110 Sherman Street
Hartford, CT 06105
860-808-5400
Fax: 860-808-5593
Web site: www.cslnet.ctstateu.edu/attygenl

City Office
Philip Cacciola, Director
Middletown Office of Consumer Protection
245 DeKoven Drive
Middletown, CT 06457
860-344-3491
TDD: 860-344-3521
Fax: 860-344-0136

Delaware

State Offices
Director
Consumer Protection Unit
Department of Justice
820 North French Street
Wilmington, DE 19801
302-577-8600
Fax: 302-577-6499
Toll Free in DE: 1-800-220-5424

Eugene Hall, Deputy Attorney General
Fraud and Consumer Protection Unit
Office of Attorney General
820 North French Street
Wilmington, DE 19801
302-577-8800
Toll free: 1-800-220-5424
Fax: 302-577-3090

District of Columbia

W. David Watts, Director
Department of Consumer and Regulatory Affairs
614 H Street, NW, Room 1120
Washington, DC 20001
202-727-7120
TDD/TTY: 202-727-7842
Fax: 202-727-8073

Florida

State Offices
James Kelly, Director
Department of Agriculture and Consumer Services
Division of Consumer Services
407 South Calhoun Street
Mayo Building, 2nd Floor
Tallahassee, FL 32399-0800
Outside FL 850-488-2221
Toll free in FL: 1-800-435-7352
Fax: 850-487-4177
Web site: www.fl-ag.com

Jack Norris
Chief of Multi-State Litigation
Consumer Litigation Section
110 SE 6th Street
Fort Lauderdale, FL 33301
954-712-4600
Fax: 954-712-4706

Cecile Dykas
Assistant Deputy Attorney General
Economic Crimes Division
Office of the Attorney General
110 SE 6th Street, 10th Floor
Fort Lauderdale, FL 33301
954-712-4600
Fax: 954-712-4658

County Offices
Mona Fandel, Director
Broward County Consumer Affairs Division
115 S. Andrews Avenue
Annex Room A460
Fort Lauderdale, FL 33301
954-765-5350, ext. 232
Fax: 954-765-5309
E-mail: mfandel@co.broward.fl.us
Web site: www.co.broward.fl.us

Leonard Elias, Consumer Advocate
Metropolitan Dade County
Consumer Protection Division
140 West Flagler Street, Suite 902
Miami, FL 33130
305-375-4222
Fax: 305-375-4120

Frederic Kerstein, Chief
Dade County Economic Crime Unit
Office of State Attorney
1350 NW 12th Avenue
5th Floor, Graham Building
Miami, FL 33136-2111
305-547-0671

Harold Delk, Manager
Hillsborough County Commerce Dept.
Consumer Protection Unit
P.O. Box 1110
Tampa, FL 33601
813-272-6750
Fax: 813-276-8646
Web site: www.hillsboroughcounty.org

Carlos Morales, Chief
Orange County Consumer Fraud Unit
415 North Orange Avenue
P.O. Box 1673
Orlando, FL 32802
407-836-2490
Fax: 407-836-2376
Web site: www.onepgov.net

Citizens Intake
Office of the State Attorney
401 N. Dixie Highway, Suite 1100
West Palm Beach, FL 33401
561-355-7108
Toll free: 1-800-353-3859
Fax: 561-355-7192

Lawrence A. Breeden, Director
Palm Beach County Division of Consumer Affairs
50 South Military Trail, Suite 201
West Palm Beach, FL 33415
561-233-4820
Toll free: 1-800-930-5124 (Palm Beach County only)
Fax: 561-233-4838

Consumer Affairs/Code Compliance Manager
Pasco County Consumer Affairs Division
7530 Little Road, Suite 140
New Port Richey, FL 34654
813-847-8110
813-847-8106
Fax: 813-847-8969

Sheryl Lord, Director
Pinellas County Office of Consumer Protection
14250 49th Street N., 2nd Floor
Clearwater, FL 34622-0268
813-464-6200
Fax: 813-464-6129

City Offices
Helen Ridley
Chief of Consumer Affairs
City of Jacksonville Division of Consumer Affairs
St. James Building
117 West Duval Street, Suite M-100
Jacksonville, FL 32202
904-630-3467
Fax: 904-630-3638

Katherine Bryant
Department Secretary
Lauderhill Consumer Protection Board
1176 NW 42nd Way
Lauderhill, Fl 33313
954-321-2456 (Lauderhill residents only)

Georgia

State Office
Barry Reid, Administrator
Governor's Office of Consumer Affairs
2 Martin Luther King, Jr. Drive, SE
Suite 356
Atlanta, GA 30334
404-656-3790
Toll free in GA (outside Atlanta area):
1-800-869-1123
Fax: 404-651-9018

Hawaii

State Offices
JoAnn Uchida, Executive Director
Office of Consumer Protection
Department of Commerce and Consumer Affairs
235 S. Beretania Street (96813)
Room 801, P.O. Box 3767
Honolulu, HI 96812-3767
808-586-2636
Fax: 808-586-2640

Gene Murayama, Investigator
Office of Consumer Protection
Department of Commerce and Consumer Affairs
75 Aupuni Street
Hilo, HI 96720
808-974-6230
Fax: 808-974-6233

Janice Borngraber, Investigator
Office of Consumer Protection
Department of Commerce and Consumer Affairs
54 High Street
P.O. Box 1098
Wailuku, HI 96793
808-984-8244
Fax: 808-984-8245

Idaho

State Offices
Brett De Lange, Deputy Attorney General
Office of the Attorney General
Consumer Protection Unit
650 West State Street
Boise, ID 83720-0010
208-334-2424
Toll free in ID: 1-800-432-3545
TDD/TTY: 208-334-2424
Fax: 208-334-2830
Web site: www.state.id.us/ag/middle\consumer\consumer.htm

Illinois

Governor's Office of Citizen Assistance
222 South College Street
Springfield, IL 62706
217-782-0244
Toll free in IL: 1-800-642-3112 (handles problems related to state government)

State Offices
Patricia Kelly, Chief
Consumer Protection Division
Office of Attorney General
100 West Randolph
12th Floor
Chicago, IL 60601
312-814-3000
TDD: 312-793-2852
Fax: 312-814-2593

Charles Gil Fergus, Bureau Chief
Consumer Fraud Bureau
100 West Randolph, 12th Floor
Chicago, IL 60601
312-814-3580
Toll free in IL: 1-800-386-5438
TDD: 312-814-3374
Fax: 312-814-2593

Assistant Attorney General
Office of Attorney General
1001 E. Main
Carbondale, IL 62901
618-529-6400
Toll free in IL: 1-800-243-0607 (consumer hotline serving southern Illinois)
TDD: 618-457-4421
Fax: 618-457-5509

Regional Offices

Deborah Hagan, Bureau Chief
Office of Attorney General
Department of Consumer Affairs
500 South Second Street
Springfield, IL 62706
217-782-1090
Toll free in IL: 1-800-243-0618 (handles problems related to state government)

County Offices
Joseph Hudson, Supervisor
Consumer Fraud Division - 303
Cook County Office of State's Attorney
28 North Clark, Suite 400
Chicago, IL 60602
312-345-2400
Fax: 312-345-2401

William Haine, State's Attorney
Madison County Office of State's Attorney
157 N. Main Street
Suite 402
Edwardsville, IL 62025
618-692-6280
Fax: 618-656-7312

City Offices
Caroline Shoenberger, Commissioner
Chicago Department of Consumer Services
121 North LaSalle Street, Room 808
Chicago, IL 60602
312-744-4006
TDD: 312-744-9385
Fax: 312-744-9089
Web site: www.ci.chi.il.us

Sharon Carter, Administrator
Consumer Protection Office
City of Des Plaines
1420 Miner Street
Des Plaines, IL 60016
847-391-5006
Fax: 847-391-5378

Indiana

State Office
Lisa Hayes, Chief Counsel and Director
Consumer Protection Division
Office of Attorney General
Indiana Government Center South
402 West Washington Street, 5th Floor
Indianapolis, IN 46204
317-232-6330
Toll free in IN: 1-800-382-5516
Fax: 317-233-4393
E-mail: INATTGN@ATG.IN.US
Web site: www.al.org/hoosieradvocate

County Office
Scott Newman
Marion County Prosecuting Attorney
560 City-County Building
200 East Washington Street
Indianapolis, IN 46204-3363
317-327-3892
TDD/TTY: 317-327-5186
Fax: 317-327-5409
E-mail: bphillip@ci.indianapolis.in.us
Web site: www.indygov.org

Iowa

State Office
William Brauch
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
1300 East Walnut Street, 2nd Floor
Des Moines, IA 50319
515-281-5926
Fax: 515-281-6771
E-mail: consumer@max.state.ia.us
Web site: www.state.ia.us/government/ag/consumer.html

Kansas

State Office
C. Steven Rarrick
Deputy Attorney General
Consumer Protection Division
Office of Attorney General
301 West 10th
Kansas Judicial Center
Topeka, KS 66612-1597
913-296-3751
Toll free in KS: 1-800-432-2310
Fax: 913-291-3699

County Office
Consumer Fraud Division
Johnson County District Attorney's Office
Johnson County Courthouse
100 North Kansas Ave.
Olathe, KS 60061
913-764-8484, ext. 5287
Fax: 913-791-5011

Kentucky

State Offices
Todd Leatherman, Director
Consumer Protection Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601-8204
502-696-5389
Toll free in KY: 1-888-432-9257
Fax: 502-573-8317
Web site: www.law.state.ky.us/cp/default.htm
E-mail: webmaster@mail.law.state.ky.us

Robert Winlock, Administrator
Consumer Protection Division
Office of Attorney General
9001 Shelbyville Road, #3
Louisville, KY 40222
502-425-4825
Fax: 502-425-9406

Louisiana

State Office
Isabel Wingerter, Chief
Consumer Protection Section
Office of the Attorney General
1 America Place
P.O. Box 94095
Baton Rouge, LA 70804-9095
504-342-9639
Toll free nationwide: 1-800-351-4889
Fax: 504-342-9637
Web site: www.laag.com

County Office
Andrea G. Ragas, Investigator
Consumer Protection Division
Jefferson Parish District Attorney's Office
Gretna Courthouse Annex, 5th Floor
Gretna, LA 70053
504-365-3334
504-368-1020
Fax: 504-368-4562

Maine

State Offices
William Lund, Director
Office of Consumer Credit Regulation
35 State House Station
Augusta, ME 04333-0035
207-624-8527
Toll free in ME: 1-800-332-8529
Fax: 207-582-7699

Stephen Wessler, Division Chief
Public Protection Division
Office of Attorney General
6 State House Station
Augusta, ME 04333
207-626-8849

Maryland

State Offices
William Leibovici, Chief
Consumer Protection Division
200 Saint Paul Place, 16th Floor
Baltimore, MD 21202-2021
410-528-8662 (consumer complaint hotline)
410-576-6550 (consumer information)
TDD: 410-576-6372 (MD only)
Fax: 410-576-6566 and 410-576-7040
E-mail: consumer@oag.state.md.us
Web site: www.oag.state.md.us

Andrew Srebroski, Division Manager
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County Administration Building,
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Upper Marlboro, MD 20772
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TDD: 301-925-5167
Fax: 301-952-4709

Massachusetts

State Offices
Tom Reilly, Attorney General
Office of the Attorney General
Consumer Protection and Antitrust Division
One Ashburton Place
Boston, MA 02108-1698
617-727-8400, The Consumer Hotline - information and referral to local county and city government consumer offices (listed below) that work in conjunction with the Department of the Attorney General
Fax: 617-727-5765
Web site: www.magnet.state.ma.us/ag/ago.htm

Office of the Attorney General - Springfield
Consumer Protection and Antitrust Division
436 Dwight Street
Springfield MA 01103
413-784-1240
Fax: 413-784-1244

Daniel Grabuaskas, Director
Executive Office of Consumer Affairs and Business Regulation
One Ashburton Place, Room 1411
Boston, MA 02108
617-727-7780
TDD/TTY: 617-727-1729
Fax: 617-227-6094
E-mail: ask@consumer.com
Web site: www.consumer.com/consumer

County and City Offices

City of Boston
Consumer Affairs and Licensing Division
City Hall, Room 817
Boston, MA 02201
617-635-3834
Fax: 617-635-4174

Cambridge Consumers' Council
831 Massachusetts Ave.
Cambridge, MA 02139
617-349-6150
Fax: 617-349-6148
Web site: www.ci.cambridge.ma.us/~Consumer

Fall River Consumer Program
One Governent Center
Fall River, MA 02722
508-324-2672
Fax: 508-324-2626

Consumer Protection Office
District Attorney's Office
238 Main Street, 4th Floor
Greenfield, MA 01301
413-774-5102
Fax: 413-773-3278

Consumer Protection Program
Haverhill Community Action, Inc.
25 Locust Street
Haverhill, MA 01830
978-373-1971
Fax: 978-373-8966

Consumer Assistance Council, Inc.
149 Main Street
P.O. Box 2445
Hyannis, MA 02601
508-771-0700
1-800-867-0701
Fax: 508-771-3011

Greater Lawrence Community Action, Inc.
350 Essex Street
Lawrence, MA 01842
978-681-4990
Fax: 978-681-4949

Middlesex Community College
Law Center
33 Kearney Square, Room 117
Lowell, MA 01852
978-656-3342
Fax: 978-656-3150

Medford Consumer Advisory Commission
90 Main Street
Medford, MA 02155
718-393-2460
Fax: 781-393-2342

Consumer Assistance Office of Metro West, Inc.
209 West Central Street
Natick, MA 01760
508-651-8812
Fax: 508-651-8813

Newton-Brookline Consumer Office
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02159
617-552-7205
Fax: 617-552-7027

Mass PIRG Consumer Action Center
Whipple Center
182 Green Street
North Weymouth, MA 02191
781-335-0280
Fax: 781-340-3991

Berkshire County Consumer Advocates, Inc.
150 North Street
Pittsfield, MA 01201
413-443-9128
Fax: 413-496-9225

Consumer Aide Program
South Shore Community Action Council
265 South Meadow Road
Plymouth, MA 02360
508-747-7575 ext. 25 or 26
Fax: 508-747-1250

Consumer Protection Division
Norfolk District Attorney's Office
10 Granite Street
Quincy, MA 02169
781-984-5600 ext. 118
Fax: 781-770-3891

Consumer Affairs Office
Revere City Hall
281 Broadway
Revere, MA 02151
781-286-8114
Fax: 781-284-6999

Consumer Information Center
P.O. Box 1449
Springfield, MA 01101
413-263-6513, 6518, 6519
Fax: 413-263-6514

Bentley Consumer Action Line
Bentley College - Lindsay Hall
175 Forest Street
Waltham, MA 02154
1-800-273-9494

Consumer Council of Worcester County
Worcester Community Action Council, Inc.
484 Main Street, 2nd Floor
Worcester, MA 01608
508-754-1176
Fax: 508-754-0203

Michigan

State Offices
Frederick Hoffecker, Assistant in Charge
Consumer Protection Division
Office of the Attorney General
P.O. Box 30212
Lansing, MI 48909
517-373-1140 (complaint information)
517-373-1110
Fax: 517-335-1935

Rodger James, Director
Bureau of Automotive Regulation
Michigan Department of State
Lansing, MI 48918-1200
517-373-4777
Toll free in MI: 1-800-292-4204
Fax: 517-373-0964

County Offices
Mike Studders, Chief Investigator
Bay County Consumer Protection Unit
Bay County Building
515 Center Avenue
Bay City, MI 48707-5994
517-895-4139
Fax: 517-895-4167

Margaret DeMuynck, Director
Consumer Protection Department
Macomb County
Office of the Prosecuting Attorney
40 North Main Street, 6th Floor
Mt. Clemens, MI 48043
810-469-5350
TDD: 810-466-8714
Fax: 810-469-5609
Web site: www.macomb.lib.mi.us/macatt

City Office
Esther K. Shapiro, Director
City of Detroit
Department of Consumer Affairs
1600 Cadillac Tower
Detroit, MI 48226
313-224-3508
313-224-6995 (complaints)
Fax: 313-224-2796

Minnesota

State Office
Curt Loewe
Director, Consumer Services Division
Minnesota Attorney General's Office
1400 NCL Tower
445 Minnesota Street
St. Paul, MN 55101
612-296-3353
Toll free: 1-800-657-3787
TDD/TTY: 612-297-7206;
TDD/TTY toll free: 1-800-366-4812
Fax: 612-282-5801
Web site: www.ag.state.mn.us/consumer
E-mail: consumer.ag@state.mn.us

County Office
Hennepin County Citizen Information Hotline
Office of Hennepin County Attorney
C-2000 County Government Center
Minneapolis, MN 55487
612-348-4528
TDD/TTY: 612-348-5875
Fax: 612-348-9712
Web site: www.co.hennepin.mn.us/coatty/hcatty.htm

City Office
James Moncur, Director
Minneapolis Department of Regulatory Services
Division of Licenses & Consumer Services
City Hall, Room 1C
350 South 5th Street
Minneapolis, MN 55415
612-673-2080
TDD/TTY: 612-673-3300/3360
Fax: 612-673-3399
E-mail: opa@ci.minneapolis.mn.us
Web site: www.ci.minneapolis.mn.us

Mississippi

State Offices
Joe Hardy, Director
Bureau of Regulatory Services
Department of Agriculture and Commerce
121 North Jefferson Street
P.O. Box 1609
Jackson, MS 39201
601-354-7063
Fax: 601-354-6502

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Director, Consumer Protection Division
802 North State Street, 3rd Floor
P.O. Box 22947
Jackson, MS 39225-2947
601-359-4230
Toll free in MS: 1-800-281-4418
Fax: 601-359-4231
Web site: www.ago.state.ms.us/consprot.htm

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Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102
573-751-3321
Toll free in MO: 1-800-392-8222
TDD/TTY toll free in MO: 1-800-729-8668
Fax: 314-751-7948

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Consumer Affairs Unit
Department of Commerce
1424 Ninth Avenue
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Helena, MT 59620-0501
406-444-4312
Fax: 406-444-2903

Nebraska

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Assistant Attorney General
Department of Justice
2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509
402-471-2682
Fax: 402-471-3297

Nevada

State Offices
Patricia Morse Jarman
Commissioner of Consumer Affairs
Department of Business and Industry
1850 East Sahara, Suite 101
Las Vegas, NV 89104
702-486-7355
Toll free: 1-800-326-5202
TDD: 702-486-7901
Fax: 702-486-7371
E-mail: consumer@govmail.state.nv.us
Web site: www.state.nv.us/fyiconsumer/

Ray Trease
Supervisory Compliance Investigator
Consumer Affairs Division
Department of Business and Industry
4600 Kietzke Lane, Bldg. B, Suite 113
Reno, NV 89502
702-688-1800
Toll free in NV: 1-800-326-5202
TDD: 702-486-7901
Fax: 702-688-1803

New Hampshire

State Office
Consumer Protection/Antitrust Bureau
New Hampshire Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
603-271-3641
TDD toll free: 1-800-735-2964
Fax: 603-271-2110
Web site: www.state.nh.us/oag/cpb.htm

New Jersey

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Fax: 973-648-3538
TDD: 973-504-6588
E-mail: askconsumeraffairs@oag.lps.state.nj.us
Web site: www.state.nj.us/lps/ca/home.htm

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Fax: 609-853-6813

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Union, NJ 07083
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400 Park Avenue
Weehawken, NJ 07087
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Fax: 201-319-0112

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Santa Fe, NM 87504
505-827-6060
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New York

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Office of Attorney General
State Capitol
Albany, NY 12224
518-474-5481
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TDD toll free: 1-800-788-9898
Fax: 518-474-3618
Web site: www.oag.state.ny.us

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Albany, NY 12223-1556
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Fax: 518-474-2474
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E-mail: groatn@consumer.state.ny.us

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Watertown, NY 13601
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White Plains, NY 13501
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Fax: 914-422-8706
Toll free: 1-800-771-7755

County Offices
Michael B. Whalen, Director
Albany County Consumer Affairs
Albany County Courthouse
Albany, NY 12207
518-487-5048

Nelson Kranker, Director
Dutchess County Department of Consumer Affairs
94-A Peach Road
Poughkeepsie, NY 12601
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Fax: 914-486-2947

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Erie County District Attorney's Office
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Buffalo, NY 14202
716-858-2424
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Nassau County Office of Consumer Affairs
160 Old Country Road
Mineola, NY 11501
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Fax: 516-571-3389

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255 Main Street
County Government Center
Goshen, NY 10924
914-291-2050
Fax: 914-291-2085

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Rockland County Office of Consumer Protection
County Office Building
18 New Hempstead Road
New City, NY 10956
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Fax: 914-638-5415

Douglas Briggs, Director
Schenectady County Consumer Affairs
64 Kellar Avenue
Schenectady, NY 12307
518-356-7473
Fax: 518-357-8319

Dennis Abbey, Director
Steuben County Department of Weights, Measures and Consumer Affairs
3 East Pulteney Square
Bath, NY 14810
607-776-9631
TDD: 607-776-9631, ext. 2406

Charles Gardner, Director
Suffolk County Executive's Office of Consumer Affairs
North County Complex, Bldg. 340
Veterans Memorial Highway
Hauppauge, NY 12402
516-853-4600
Fax: 516-853-4825

Jon Van Vlack
Consumer Affairs Director
Ulster County District Attorney's Consumer Fraud Bureau
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Kingston, NY 12401
914-340-3260

Richard Linkowski, Deputy Director
Westchester County Department of Consumer Protection
112 East Post Road, 4th Floor
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914-285-2155
Fax: 914-285-3115

Frank Castaldi, Jr., Chief
Frauds Bureau
Westchester County District Attorney's Office
District Attorney's Office
111 Grove Street
White Plains, NY 10601
914-285-3414
Fax: 914-285-3115

City Offices
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Citizen Advocate
Office of Citizen Services
Babylon Town Hall
200 E. Sunrise Highway
Lindenhurst, NY 11757
516-957-7474

Town of Colonie Consumer Protection
Memorial Town Hall
Newtonville, NY 12128
518-783-2790

Stephen Pedone, Commissioner
Mt. Vernon Office of Consumer Protection
City Hall, 11th Floor
Mount Vernon, NY 10550
914-665-2433
Fax: 914-665-2496

Jules Polonetsky, Commissioner
New York City Department of Consumer Affairs
42 Broadway
New York, NY 10004
212-487-4444
212-487-4481 (Spanish)
212-487-4488 (Chinese)
718-286-2296 (Korean)
TDD: 212-487-4465
Fax: 212-487-4197
Web site: www.ci.nyc.ny.us/html/dca/home.html

Isabel Butler, Director
Queens Neighborhood Office
New York City Department of Consumer Affairs
120-55 Queens Blvd.
Room 301
Kew Gardens, NY 11424
718-286-2990
Fax: 718-286-2997

Schenectady Bureau of Consumer Protection
City Hall, Room 204
Jay Street
Schenectady, NY 12305
518-382-5061
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1153 West Fayette Street, Suite 301
Syracuse, NY 13204
315-471-4676
Fax: 315-475-0769

Stan Alexander, Director
Yonkers Office of Consumer Protection, Weights and Measures
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Yonkers, NY 10701
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North Carolina

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Fax: 919-716-6050
Web site: www.jus.state.nc.us/justice/cpsmain

North Dakota

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The State Capitol Building
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701-328-2210
TDD: 701-328-3409
Fax: 701-328-2226
Web site: www.state.nd.us/ndag

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Consumer Protection and Antitrust Division
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Bismarck, ND 58505-0040
701-328-3404
Toll free in ND: 1-800-472-2600
TDD: 701-328-3409
Fax: 701-328-3535
Web site: www.state.nd.us/cpat/cpat.html

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Kent Keys
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1013 North 5th Street
Grand Forks, ND 58203
701-746-5431
Toll free in ND: 1-800-450-1823
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Ohio

State Offices
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TDD: 614-466-1393
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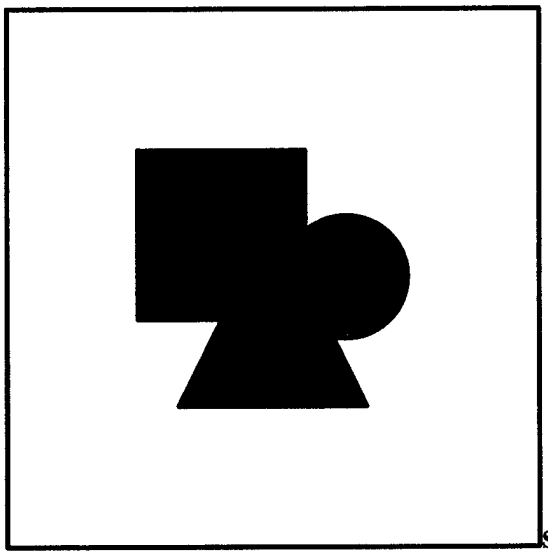
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