

CONSUMER LAW



HANDBOOK

2006

*HOUSTON BAR ASSOCIATION
COMMERCIAL & CONSUMER LAW SECTION*

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The handbook is divided into topics affecting consumers in a question and answer format. All of the issues and rights of consumers cannot be addressed in this handbook. We hope this gives a broad overview of your rights and remedies.

This handbook is based on Texas Law and is issued to inform and not advise. This is a general summary of the laws as they existed in September 2005. This is only general and basic information, and exceptions may exist. You should seek legal advice from an attorney of your choice to advise you in your particular situation.

CONSUMER LAW HANDBOOK
The Consumer Law Handbook
*is a project of the Houston Bar Association and the
Commercial & Consumer Law Section of the HBA*

FOREWORD

Consumer law covers a broad spectrum of legal issues, from contracts to landlord/tenant rights, from warranties to credit liability. In determining the most relevant topics to include within the scope of this handbook, authors from the Houston Bar Association's Commercial and Consumer Law Section turned to several sources: common questions asked during LegalLine, the HBA's call-in advice program; local consumer advocates and reporters; and their own experience as consumer law practitioners.

As we purchase goods, use services, seek shelter, provide for our future security, and generally go about the daily task of interacting in a commercial society, we all are consumers. Inevitably, we will have questions, concerns, and problems regarding those goods and services. We hope this handbook will provide information and resources to make you a knowledgeable consumer.

Randall O. Sorrels
2005-2006 President,
Houston Bar Association

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RESOLVING DISPUTES

If I have a dispute with a merchant, what can I do?

Generally, most disputes with merchants can be settled by contacting the merchant and describing to the owner or manager what it is that you are unhappy about regarding your purchased goods or services.

Sometime this is not enough, and you may need to take other steps to resolve your dispute. A registered letter carries with it a message of commitment to your complaint and has a greater chance to end up in the hands of those who can help solve your problem.

Some suggestions, which are explained below, are:

1. Send a letter by registered mail;
2. File a complaint with the Better Business Bureau and/or State Attorney General's Office (send a copy of the letter to the merchant);
3. Mediate your dispute with a third party; or
4. File a claim in small claims court.

When should I write a letter?

If your dispute cannot be resolved by a simple visit or telephone call to the merchant, write a letter to the merchant detailing your complaint. Also, send the letter to the manufacturer of the product if the dispute is about goods, not services.

Your letter should be clear, concise and to the point. You should give the merchant information such as where and when you purchased the goods or where and when the service was provided. For example, tell the merchant you purchased a Brand X four slice toaster on January 2, 2001, at the Jiffy Store located at Elm and First Streets. If you know who helped you at the store, provide his or her name. Tell the merchant how much you paid for the product. Send a copy of your receipt for the purchase of the product with your letter. If you cannot find the receipt and if you paid by check or credit card, send a photocopy of the cancelled check or credit card receipt. Explain what is wrong with the product and tell the merchant what you want. "I would like a full refund of my money." "I would like to have the product repaired so that it works as it was represented." Give the merchant a reasonable but definite time to respond to your letter — for example, within thirty days from the date of receipt of your letter. Send a copy of your letter to the manufacturer of the product.

Often, the product will include a warranty or booklet which will tell you where to send letters to the manufacturer. If the product does not include such information, address the letter to the Consumer Complaint Department at the manufacturer's address.



Be sure to send your letter by registered mail. You may do this by going to your local post office and filling out a green card and certified mail receipt. The post office will help you with this process. The cost to send a registered letter is less than \$8.00. Always keep a copy of the letter, mail receipt, and any other documents for your files. Do not send your original documents.

When should I file a complaint with the Better Business Bureau or the State Attorney General's office?

The Better Business Bureau of Metropolitan Houston accepts complaints about businesses from consumers. Many consumers inquire about a business' status with the Better Business Bureau before dealing with a merchant. Reputable merchants do not want thick files of complaints which may discourage future customers from dealing with them. If you file a complaint with the Better Business Bureau, send a copy of the complaint to the merchant. This act may provide added incentive for the merchant to address your problem. You may also submit a complaint with the Better Business Bureau online. The address of the Better Business Bureau is:

Better Business Bureau of Metropolitan Houston
5225 Katy Freeway
Houston, Texas 77007
Phone: 713/868-9500
Fax: 713/867-4947
www.bbbhou.org

Simultaneously with making a complaint to the Better Business Bureau, make a complaint to the Texas State Attorney General's Office (Consumer Protection Division). You may submit your complaint in person, by mail or electronically. The address of the Texas State Attorney General's Office is:

Texas State Attorney General's Office
Consumer Protection Division
P. O. Box 12548
Austin, Texas 78711-2548
Phone: 800/621-0508
www.oag.state.tx.us/consumer/consumer.shtml

What is mediation and how can it help me?

Mediation is a process in which an impartial person, the mediator, helps the parties to communicate to promote reconciliation, settlement or understanding among the parties. Unlike other forms of dispute resolution in the courts, mediation is non-binding. There is no fact-finding, decision or opinion by the third party mediator. In mediation, the parties maintain responsibility for and control over their own dispute. The mediator assists in (1) defining the issues; (2) dissolving obstacles to communication; (3) exploring alternatives; and (4) facilitating the negotiators reaching an agreement.

If you have a complaint against the provider of services or a merchant of goods, resolving your disputes before going to the courthouse may be the least expensive and most efficient way to do so. Harris County has available the Dispute Resolution Center that provides mediation by trained volunteer mediators to facilitate discussions of a dispute among parties, providing them an opportunity to express emotions or frustrations which may be blocking negotiations and address underlying concerns in a controlled environment. Those involved sit down with a trained mediator who facilitates

discussion between the parties as they work out a solution. All parties have an equal voice in the process. The meeting usually lasts about two hours.

This is a free service provided by the Houston Bar Association. To find out more about the Dispute Resolution Center, write Dispute Resolution Center, Inc., 49 San Jacinto, Suite 220, Houston, Texas 77002-1233 or telephone 713/755-8274; or fax 713/755-8885.

When should I use small claims court?

If you have clear legal rights, many merchants will settle your claim before it is necessary for you to take legal action. However, if you have a strong case but attempts to settle out-of-court fail, small claims court can be an inexpensive and easy way to settle the dispute. Small claims court gives you an opportunity to present your case to a judge or jury. However, it can involve more time and expense than you want to expend. Evaluate your claim and your commitment to seek relief before taking legal action.

Small claims court is appropriate for claims of \$5,000 or less. If you are successful, you will be awarded your actual damages and your costs. You do not need a lawyer to file a claim in small claims court.

After you decide to sue in small claims court, you must determine where to file your complaint. Generally, you must file your claim in the small claims court where the business or person you are suing is located. Look in the phone book for the justice of peace court where the business or person is located. The clerk of the court can help you with questions.

Go to the court with the name of the person you want to sue or the agent for service of the business. (The Secretary of State will have the name for the agent of service — State Capitol Room 1019 Brazos, Austin, Texas 78701, 512/463-5701). The court will give you a petition to complete. When you complete your petition, you will file it with the court with a fee (about \$55). The court will have a sheriff or constable serve the defendant. If the defendant denies your claim, you will be given a trial date and an opportunity to present your facts. Be prepared, clear and to the point. Bring all the necessary evidence — the product, the receipt, any witnesses besides yourself. The judge or jury will listen to both sides and decide who wins.

How do I collect a judgment?

If you are awarded a judgment, it will become final if not appealed within ten (10) days. Once it is final, you may demand that the defendant pay the judgment. If not paid promptly, you may request from the court that an abstract (or summary) of the judgment be prepared so that you may record the abstract in the county real property records. The abstract creates a judgment lien (which is valid for ten years) on any non-exempt real estate that the defendant owns in the county where the abstract is recorded. If the abstract does not encourage the defendant to pay your judgment immediately, at least before selling property covered by the lien, the defendant will have to pay off the judgment.

There are other more aggressive ways to collect your judgment (or to encourage the defendant to voluntarily pay it), including levy of execution on the defendant's property. This requires obtaining a writ of execution from the court, and having a deputy county constable serve the writ on the defendant. The writ specifies that if the defendant will not voluntarily pay the judgment, the constable must seize (and sell at auction) so much of the defendant's non-exempt property as necessary to satisfy the judgment. Texas law exempts certain assets from execution (including a homestead and up to \$30,000 worth of an individual's personal property). However, corporations do not get to claim any exemptions. If these methods do not work, there are other remedies available to attempt to reach the defendant's assets, including attachment, turnover, and garnishment.

CONTRACTS

What is a contract?

A contract is simply a legal term for a promise that the law will enforce. Contracts can be in writing or oral. It is important to recognize that the law will not enforce every promise someone makes.

When does the law enforce a promise?

Under the law, a promise is enforceable only if it is given in exchange for something. This legal principle, commonly referred to as “consideration,” requires both parties to the agreement to give something up of value for the agreement to be enforceable. For example, say that a jeweler promises to sell a ring to a buyer for \$300. This promise is enforceable because both parties have given up something of value: the jeweler gave up the ring while the buyer gave up \$300.

Does a contract have to be formal?

No. As a general rule, if you agree to do something, in exchange for someone’s promise to do something else, there is a legally enforceable agreement. For the most part, the law will enforce every agreement that the parties intended to be binding. There does not have to be a 10-page typewritten contract for there to be an enforceable contract. Stated simply, if each party intended to be legally bound when they made a promise to each other, they probably are legally bound.

My friend promised me in writing to give me a \$20 gift. Is that promise enforceable?

Usually not. The mere fact that someone has promised in writing to give you a \$20 gift does not mean that you can force that person to give you the \$20. The general rule is that promises to make a gift are not enforceable. This is because both parties have not agreed to give up something of value. Remember, the legal doctrine of “consideration” requires both parties to the agreement to give something up of value for the agreement to be enforceable. Here, your friend has agreed to give up \$20, but you have not agreed to do anything in return. As a result, this promise is not enforceable.



Sometimes a situation arises where someone who has been promised a gift has relied upon the promise to his/her detriment. For example, assume your friend promised you a \$20 gift. As noted above, such a gift is usually non-enforceable. If, however, you relied on your friend's promise, went to the store and bought a \$20 shirt, you would be entitled to enforce your friend's promise. The reason for this is because the law does not want to penalize you for relying to your detriment on your friend's promise.

Does a contract have to be in writing or signed to be enforceable?

The law provides that most contracts do not have to be in writing to be enforceable. Oral contracts have long been used in Texas, and they continue to be enforced today across the state. Many agreements are sealed by nothing more than a handshake. Make no mistake about it; such agreements are usually enforceable just as if there was a written contract between the parties.

However, some contracts are considered more important than others, and there is a law called the Statute of Frauds that requires certain contracts to be in writing. The types of contracts that must be in writing to be enforceable are described below.

What is the Statute of Frauds?

The Statute of Frauds is a law that requires four major categories of contracts to be in writing: (1) contracts for the sale of land; (2) contracts for the sale of goods for the price of \$500 or more; (3) contracts that cannot be performed in one year; and (4) contracts to pay the debts of another. To enforce these types of contracts, it is necessary that there be some writing sufficient to show that a contract has been made.

Here's an example. Seller decides to sell his motorcycle to Buyer for \$700. The parties reach an oral agreement. Several days later, Buyer changes his mind. Under the Statute of Frauds, such a contract should be in writing because the agreement involves the sale of goods with a price of \$500 or more. Because the agreement is not in writing, Seller cannot enforce the oral agreement against Buyer.

What kind of writing is required under the Statute of Frauds?

A writing will satisfy the Statute of Frauds if it contains: (1) the identity of the contracting parties; (2) a description of the contractual subject matter; (3) the terms and conditions of the agreement; and (4) the signature of the party against whom the contract is being enforced. The signature may be handwritten, typed or printed, and if so intended, a party's initials will suffice.

What is the purpose of the Statute of Frauds?

The Statute of Frauds is designed to provide reliable evidence of contract terms in the event of a dispute. It also prevents fraud and perjury as to the actual terms of the contract.

Are there any exceptions to the Statute of Frauds?

Yes. In certain cases, performance of a party's obligations will take a contract that is otherwise unenforceable under the Statute of Frauds and make it enforceable. For example, suppose Buyer orally agrees to purchase a \$2,000 custom-made dining room table from Seller. After Seller spends weeks building the table, Buyer says he has changed his mind and doesn't want the table. The agreement is for the sale of goods that cost more than \$500, so it should be in writing. What happens? Is the Seller out of luck? Under the law, if the party seeking enforcement of the agreement (in this case the Seller) can show that he acted in reliance on the oral agreement, and has suffered a substantial detriment for

which he has no adequate remedy, the agreement will be enforced. In this case, Buyer would therefore be forced to pay the \$2,000 for the dining room table.

How long do I have to change my mind after I sign a contract?

In most situations, once you sign a contract you are bound by its terms. While many people believe that they have the right to change their mind for up to three days after they sign a contract, that is not the law in most cases. There are only a few instances in which you have three days to change your mind, such as contracts that are negotiated door-to-door. In all other cases, the law will force you to honor the contract as soon as you sign it.

How old does someone have to be to enter into an enforceable contract?

A person of any age can enter into a contract. But Texas law holds that the contracts of a minor (that is, someone under the age of 18) are generally voidable at the minor's option. That means that a minor can enforce an agreement he/she enters into with an adult. But an adult cannot enforce an agreement entered into with a minor. This rule discourages adults from entering into contracts with persons under 18 years of age.

Should I put an agreement in writing?

It is always a good idea to put an agreement in written form. As noted above, certain types of contracts must be in writing to be enforceable. Therefore, if you are entering into an agreement for real estate, an agreement for the sale of goods valued at more than \$500, or an agreement that cannot be performed within one year, be sure to have a signed, written agreement. Otherwise, you will not be able to enforce the agreement. Even when the law does not require an agreement to be in writing, you should take steps, if at all possible, to put the agreement into writing. There is no need for a long, computer generated contract. A few words on a napkin oftentimes will suffice. That way you eliminate the possibility that any questions will be raised at a later date as to what the terms and conditions of the agreement are. Remember the old saying, "Better safe than sorry."

What damages are available if someone breaches a contract?

Every breach of a contract entitles the injured party to sue for damages. The general theory of damages in contract actions is that the injured party should be placed in the same position as if the contract had been properly performed. Thus, the injured party should be compensated in money for the loss of the bargain. Because damages are designed to compensate the injured party, not to punish the breaching party, punitive damages are not available in breach of contract actions.

WARRANTIES

What is a warranty?

A warranty is simply a guarantee that the buyer will get what he paid for. Most people think of a warranty as the booklet in the glove compartment of their car or the tag on their new washing machine, but there are many other kinds of warranties, as well.

What kinds of warranties are there?

1. ***Express Warranties***

An ***express warranty*** is almost anything said about the product or service that the buyer relies upon when he buys it. An express warranty includes the booklet or tag entitled "Warranty," but

can also arise from a sales pitch, an advertisement, or a sample or model. It can be written, oral, or may even arise by conduct. It can arise between neighbors in the sale of a used lawnmower just as easily as between a consumer and a manufacturer in the sale of a new car. “This lawnmower is as good as new,” is an express warranty.

2. *Implied Warranties*

An *implied warranty* is one that the law imposes automatically. It need not be written, spoken, or agreed. If the seller says nothing at all about warranties, they will still arise. In fact, most written warranties actually take away some of the rights a consumer might otherwise have. Here are some different kinds of implied warranties:

- a. There is an implied warranty of *title*, meaning that the buyer has the right to take the goods free of the lawful claim of anyone else. This becomes important if someone buys a car that turns out to be stolen, or a boat from a neighbor that the neighbor has not fully paid for.
- b. There is an implied warranty of *merchantability*, meaning that the thing bought is fit for the ordinary purpose for which goods of that kind are used—a chair must be fit for sitting, a broom for sweeping, a ladder for climbing.
- c. There is an implied warranty of *fitness for a particular purpose*, meaning that, if the seller knows or has reason to know that the buyer intends to use the good in some specific way when he sells it, the good must be fit for that purpose as well. In that case, there may arise a warranty that a chair be good for standing on, a mop for painting, or a broom for doing a pole vault.
- d. There is an implied warranty of *habitability* in the lease of a residence, meaning that the house or apartment must be suitable to live in. Lack of utilities, raw sewage, and even lack of heating or cooling might render a dwelling uninhabitable under the right conditions. The law imposes a duty upon landlords to repair such things. For more information on tenant rights and remedies, see the section of this booklet entitled “Landlord/Tenant Relationships.”
- e. There is an implied warranty of *good and workmanlike services*, meaning that the services purchased must be rendered in a competent, effective way so that the consumer gets what he bargained for. A consumer who pays for maid service is entitled to receive a clean house; a consumer who pays to have his house painted is entitled to a good job, with no paint on the windows or the car in the driveway; a consumer who brings his car in for an oil change is entitled both to the oil change, and also to get his car back without oil on the seats.

3. *Special Statutory Warranties*

The *Texas Lemon Law* is not a traditional warranty, but is properly thought of in the same terms. It applies to the sale of new cars, and is designed to protect consumers from buying “lemons.” If the seller is unable, after a “reasonable number of attempts,” to repair something that either creates a safety hazard or significantly reduces the market value or use of the car, then the seller must either replace the car or accept the return of the car and refund the buyer’s purchase price (less a reasonable allowance for the consumer’s use). For more information on this law, see the section of this booklet dealing with purchasing an automobile.

Can a seller get out of an express warranty?

Strictly speaking, a seller cannot get out of an **express warranty**. However, written contracts often contain a clause saying that “no other warranties” have been made in connection with the sale. These clauses may have much the same effect. This is not really “getting out of” an express warranty—it is an agreement that no express warranty was ever made. You would be likely to find such language in the contract to buy a used car, to shield the dealer from extravagant claims made by overzealous salesmen. Clauses that tend to negate express warranties are enforceable, but only to the extent that they are reasonable. It might be reasonable for some express warranties to be negated—such as a warranty that a car would “outrun every cop in Texas,” or a boat would “never sink.” It might not be reasonable to negate other express warranties, such as, “This boat has no holes in it.”

Of course, you don’t have to agree to a clause negating **express warranties**, but if you want to rely on a representation that a used car has never been wrecked, for example, then either make sure it is included in your written contract, or reconsider whether you would purchase the car if it had been wrecked. Don’t count on being able to go back after the sale and say, “But he told me this car had never been wrecked.”



Can a seller get out of an implied warranty?

An **implied warranty** can often be excluded or “disclaimed,” but the legal requirements are different for disclaiming different warranties. The warranty of **fitness for a particular purpose** may be disclaimed by general language, such as, “There are no warranties which extend beyond the description on the face hereof.” However, the warranty of **merchantability** can usually be disclaimed only by language that specifically mentions “merchantability.” If the expression “as is” or “without all faults” is used, this will also be sufficient to disclaim most implied warranties. Written language in a contract disclaiming either the warranty of **merchantability** or **fitness for a particular purpose** has to be “conspicuous.”

The warranties of **merchantability** and **fitness for a particular purpose** are most commonly disclaimed. The “fine print” on the form a consumer signs when he drops his car off for repairs almost always contains a disclaimer of these two warranties, as do many other purchase contracts. Without these disclaimers, if a mechanic told you that putting a \$1.00 widget on your car would fix its air conditioner, he might be required to absorb the \$300.00 cost of a new compressor, if the \$1.00 widget didn’t fix the problem.

It is possible to disclaim the warranty of **title**, but the courts frown on this and it is very difficult to do. Only in rare circumstances is a seller of goods not held responsible for conveying good title to a buyer. Even auctioneers have been held liable for the sale of goods without good title.

The warranty of *habitability* is and can rarely be disclaimed—probably more for commercial reasons than legal ones. (How many people would lease an apartment if the contract said the apartment didn't have to be suitable for human habitation?) However, an uninhabitable residential property can still be leased, if the warranty of habitability is waived to the extent that defects are adequately disclosed. For example, an old building not suitable for human habitation might be perfectly suitable for storage. Always read your lease or contract. Never take things for granted when entering legal agreements.

The warranties of *good and workmanlike services* may be disclaimed, but only when the parties' agreement sufficiently provides for the quality and manner of the desired construction. The *Lemon Law* can never be disclaimed.

What is the difference between a full and a limited warranty?

Federal law requires that warranties be written in simple, "non-legal" language, and that all warranties be labeled either "full" or "limited." For a warranty to be called "full," it must:

- (i) not be limited in the duration of *implied* warranties;
- (ii) apply to anyone who owns the product during the warranty period;
- (iii) allow the consumer to get repair, replacement, or refund within a reasonable time, and at no charge, if the product does not conform with the warranty;
- (iv) allow the consumer to elect to receive either a replacement or refund if the product cannot be repaired after a reasonable number of attempts; and
- (v) not limit damages caused by the defective product (such as when a defective toaster burns a hole in a kitchen countertop), unless the exclusion is conspicuously written on the face of the warranty.

Any warranty labeled "limited" fails to meet at least one of the above requirements and may fail to meet *all* of them. A "full warranty" is better. You should carefully read any warranty that accompanies a product you may be considering purchasing. As a general rule, the longer the written warranty is, the more likely it is to be a "limited" warranty and the *more limited* it is likely to be—it usually takes more words to tell you what you are not going to get.

THE DTPA: CONSUMER PROTECTION FROM SELLERS

The Texas Deceptive Trade Practices Act ("DTPA") gives consumers a legal means against sellers for false, misleading and deceptive business practices. Arguably, this law is the most powerful weapon available to Texas consumers. If someone violates the DTPA, he may be held liable for up to three times your damages plus all your court costs and attorney's fees.

Essentially, acts of a seller that are misleading or deceptive potentially violate the Act. Moreover, the intentions of the seller to mislead or deceive are irrelevant for liability purposes. If a seller thinks he is telling the truth about what he is selling, but in fact it is a misrepresentation, the seller is still liable. The law protects against misrepresentations; it does not protect one's good faith in making those representations.

The Act lists 25 things that are considered false, misleading, or deceptive. Some of the DTPA violations include:

- Passing of goods or services as those of another;
- Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- Causing confusion or misunderstanding as to affiliation, connection or association with, or certification by, another;



- Using deceptive representations or designations of geographic origin in connection with goods or services;
- Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- Disparaging the goods, services, or business of another by false or misleading representation of facts;
- Advertising goods or services with intent not to sell them as advertised;
- Advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or that are prohibited by law;
- Knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- Misrepresenting the authority of a salesman, representative, or agent to negotiate the final terms of a consumer transaction;
- Basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work as the charge for the warranty or guaranty, if any;
- Disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;
- Advertising any sale by fraudulently representing that a person is going out of business;

- Representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;
- The failure to disclose information concerning goods or services that was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

Who does the DTPA protect?

To be able to sue under the DTPA, you must be a “consumer.” A “consumer” is defined as any individual, partnership, corporation, or governmental entity. Thus, not only are individuals protected under the DTPA, but partnerships and corporations as well. The only limitation prevents business consumers with more than \$25 million in assets from suing under the DTPA. Partnerships and corporations must sue in the name of the business.

After you pass the “consumer” hurdle, the DTPA only requires you to show that you either purchased or tried to purchase, goods or services. Therefore, if you receive something for free and someone represents something regarding that free item, those representations are not actionable even if they are misleading or not true. For example, if the local appliance store called you and told you that you had just won a new 4-cycle washing machine, and it turns out that it only has 3 cycles, you could not sue under the DTPA because it was a gift.

The DTPA is quite broad. It may not surprise you to know that you may sue partnerships and corporations that are in the business of selling goods or services, but under the Act, you may also sue individuals who are involved in business of any kind. You may sue anyone who makes a false, misleading or deceptive statement. So, even sales transactions between friends that involve representations that items are “in perfect condition” could expose the selling friend to liability under the DTPA—and maybe even treble damages! Thus, a good rule of thumb is that when you are selling an item, be clear that you are only stating your opinion, and if you are not sure about something, do not say anything. Keep in mind you are responsible for whatever you say.

There is, however, a situation where your silence may cause you to violate the DTPA. Under the DTPA, it is a violation to not reveal known defects if the reason to not tell was to lure the consumer into the transaction, and the consumer never would have entered the deal had they known the hidden facts. For example, assume you are selling your washing machine and you fail to tell the buyer that the spin cycle does not work. This omission would be a violation of the DTPA. Obviously, the buyer would not have bought the washing machine if he knew that it would not function properly. In this situation, silence can result in a violation of the Act.

The DTPA is as user-friendly as it is consumer-protective.

You do not necessarily need a lawyer to use the Deceptive Trade Practices Act. If your damages are less than \$5,000.00, you may represent yourself in small claims court. However, if the damages you claim (up to three times your actual damages and court costs plus attorney’s fees) are greater than \$5,000.00, the suit will go to district or county court, where a lawyer’s expertise will probably be needed.

However, when you are ready to file a lawsuit, you cannot go straight to court and file your claim. The DTPA requires that you give written notice of your problem to the merchant or seller at least sixty (60) days before you can file suit in court. Basically, this entails writing the seller specifying the situation and how you were damaged. Many times, once sellers are reminded that ultimately they may be liable for three times your actual damages, court costs and attorney’s fees for their misrepresentations, they will move very quickly to resolve your complaint. Thus, the written notice

gives you and the seller a chance to resolve the dispute without expensive and time-consuming litigation.

Furthermore, be sure to send this written notice of claim by certified mail, return receipt requested. By sending it in this manner, you will have proof that you sent it and exactly who received it. The written notice letter should include: the factual background regarding the transaction; what you think the merchant or seller did or said that gives rise to a claim under the Act; the specific nature and details of your claim (including the amount of actual damages sought and attorney's fees, if any); the fact that this letter serves as the prerequisite notice before filing suit; that if the claim is not resolved within this sixty (60) day period, you intend to pursue your claim in court; and if successful in court, you may be entitled to three times your damages. Here is an example:

*Mrs. Jane Ryan
123 Whiteoak Road
Hometown, TX 77777*

October 11, 2003

Dear Mr. Sam Seller:

Last Thursday, October 8, 2003, I bought a "brand new" washing machine from your appliance store. You specifically told me that not only was it brand new, but that it came equipped with 4 cycles and 4 different temperature settings. I paid \$289.00 for this washing machine. However, when I used the machine you sold me for the first time, I found scratches and dents on the inside tub, the machine had only 2 cycles, the spin cycle did not work, and it had only three different temperature settings. Since clothes cannot be washed in this machine, it is totally worthless.

I feel that the representations you made to me while I was in your store were false, deceptive and misleading under the Texas Deceptive Trade Practices Act. Because the machine is worthless, I would be happy to return the machine for a full refund.

Under the Act, I am required to give you sixty (60) days notice of my complaint prior to the filing of any suit. This letter should be considered as such notice. If we are not able to come to a mutually agreeable settlement with regard to the washing machine, I will proceed by filing suit in the appropriate court. I would also like to inform you that if I am successful in court, I may be entitled to three times my damages, my court costs and my attorney's fees.

Thank you for your prompt attention to this matter. I look forward to hearing from you soon at my home phone number (XXX-XXX-XXXX) to discuss resolving this troubling situation.

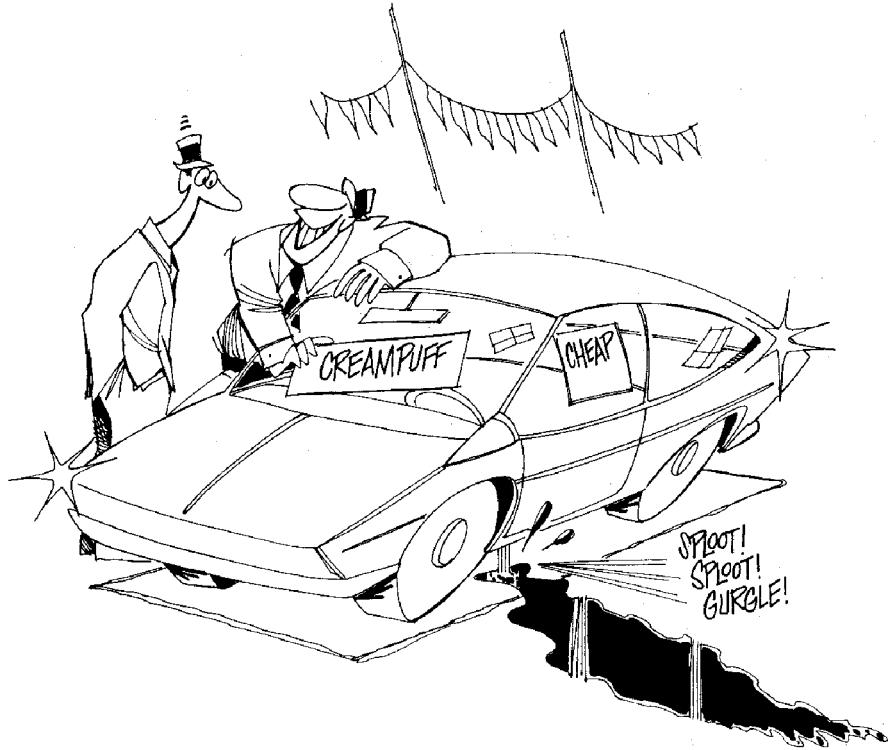
*Sincerely,
Jane Ryan*

The DTPA is a useful tool for consumers to level the playing field against merchants. Remember, false, misleading and deceptive business practices are actionable under the Act. However, always keep in mind that any time you sell anything, you are also subject to the Act. Although the Act can be a very useful tool against an overbearing merchant, one must be careful and remember that it applies equally to all.

PURCHASING AN AUTOMOBILE

I bought a car on Saturday evening but changed my mind after I read some of the papers on Sunday morning. Do I have an absolute right to cancel the contract within 72 hours?

No. A 72-hour cancellation notice applies to certain home solicitation transactions, telephone solicitation transactions, and home improvement contracts. It does not apply to automobile purchases. However, if you discover problems with the vehicle after the purchase, which significantly impair its value, you may be able to utilize a different remedy. The problem must be concealed or difficult to discover and significant enough that you would not have purchased the vehicle if you had known about the problem. If you think this circumstance applies to you, you should immediately contact an attorney for assistance.



I have had credit problems in the past. When I purchased my most recent car the "finance person" at the dealership told me that I had to buy credit insurance. Do I have to do this? Also, the salesman told me that he needed to adjust the sales price of the car I was buying and the trade-in value of my car so that it would appear as if I had a greater equity or down payment. Is this proper?

No. The law states that you can be required to buy credit insurance only if it is disclosed to you on the Retail Installment Contract.

As to the trade-in value, that is a problem that may violate some consumer credit laws. Remember, honesty is the best policy and the car dealer will "fudge" the numbers only if the dealer profits. For either of these problems, you should contact an attorney.

I have had repeated problems with my new vehicle. Despite several attempts, the dealer doesn't seem to be able to correct the problem. What can I do?

Like many other states, Texas has a Lemon Law statute. It is administered by the Texas Department of Transportation, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. Phone 800.622.8682. You can get a pamphlet with Lemon Law information and a complaint form by writing to the Department of Transportation at the above address.

What types of problems are covered by the Lemon Law?

Vehicles that are still covered by the manufacturer's warranty and have less than 24,000 miles are covered by the Lemon Law (there are some exceptions if the mileage is only slightly above 24,000

miles and the problem first occurred before 24,000 miles). If you buy a used car that meets this criteria it is covered. Other used car purchases are generally **NOT** covered by the Lemon Law proceeding, but other remedies may be available. The problem must be significant. However, the word "significant" like the word "beauty," is often in the eye of the beholder. For instance, a piece of weather stripping or molding that has come loose is probably not a significant problem. However, it may be a clue that a significant problem does exist.

The Motor Vehicle Commission divides significant problems into two categories: 1. Safety issues; and 2. Non-safety issues. Once again, these problems can vary. A defective seat spring that pokes through the seat upholstery is probably a non-safety defect in the rear or passenger seat. However, if there is a defective seat spring in the driver's seat that distracts the driver while operating the vehicle, that may be a safety defect. There is also a cumulative problem provision that involves 30 days out of service without a loaner car.

Why is it important to distinguish between safety and non-safety defects?

Two repair call visits of a safety-related nature entitle you to remedies under the Lemon Law. If the problem is a non-safety problem, it takes four visits to entitle you to those remedies.

What remedies am I entitled to under the Lemon Law?

The Lemon Law is generally a warranty enforcement provision. The Motor Vehicle Commission can make the manufacturer buy back the vehicle, replace it with a similar vehicle, or order that it be capably repaired. However, the Motor Vehicle Commission rarely awards monetary damages and cannot award attorney's fees.

What if I don't like the decision of the Motor Vehicle Commission?

The decision is binding on the automobile manufacturer, but not on you. If you don't like the decision you can hire a lawyer and file a lawsuit. However, the automobile manufacturer is allowed to tell the Judge or jury about the Lemon Law commission finding.

I have experienced numerous mechanical problems with my used car. Can the Lemon Law help me?

No. The Lemon Law only applies to the purchase of new vehicles. However, if you bought a used vehicle that is still subject to the manufacturer's warranty, carefully review the manufacturer's warranty and contact the manufacturer. The manufacturer will often intervene and assist you if you are having warranty difficulties. If you have a manufacturer's warranty, it can be honored at any authorized dealer. You do not have to return the vehicle to the selling dealer for manufacturer warranty work.

I bought a used car with an extended service contract. The service contract company will not help and the dealer tells me he sold the vehicle to me "As Is." What can I do?

If you purchased the extended service contract at the same time that you purchased the vehicle or within ninety days thereafter from the selling dealer, the dealer cannot disclaim any warranties. This means that you did not buy the car "As Is" even if you signed papers that said so. The service contract is the warranty and the dealer must honor the warranty. The "As Is" document violates the law and may entitle you to monetary damages. You should consult an attorney.

What if I'm having problems with my used car but I didn't buy a service contract and the car was sold "As Is?"

The "As Is" disclosure is strong medicine and there is probably not anything you can do unless you can prove that the dealer knew or should have known of the problem. You may be able to prove this through service records, talking with previous owners, or talking with mechanics or body shop professionals who state that the problem is obvious to a knowledgeable person.

I bought my car from an individual, not a dealer. Does the law treat them differently?

No. Almost all of the laws regarding the sale of vehicles are the same for individuals as for dealers.

I think the salesman pressured me into buying credit life and disability insurance and an extended contract when I didn't really want one. What can I do?

You can immediately write to the insurance company or service contract provider and cancel either the contract or the insurance. However, do this sooner rather than later. Refunds under these services are often calculated under a method called the Rule of 78s, which deducts a larger amount at the beginning of the loan term and a lesser amount in later periods.

I purchased a car at a local new car dealership that arranged financing for me. They made me sign a temporary delivery agreement and said that it was just a formality. What is this document and what does it mean?

This document is the source of many bad transactions for consumers. Few buyers realize it, but a car dealer does not provide the funds for you to buy a vehicle. The money is provided by third-party lenders. Lenders consider your loan a transaction that is separate and independent from your purchase of the car.

The dealer may actually offer to sell your Retail Installment Contract to several different lenders and will choose the lender that provides the most money for the dealer, not the best loan terms for the buyer. Potential lenders are not bound to you until they agree to buy the Retail Installment Contract. This is the reason that the dealer asks a buyer to sign a Temporary Delivery Agreement: You are driving the vehicle without completing the financing transaction.

Dealers argue that the Temporary Delivery Agreement is a convenience to the Buyer so that the Buyer can drive the vehicle home while waiting for credit approval. Consumer advocates state that the real reason the dealer wants you to sign the document is because the Dealer is afraid you will find a better deal at another location and the Dealer will lose the sale.

If there is an unexpected problem with the Buyer's credit or no lender is willing to buy the loan on the terms proposed by dealer, the dealer may ask the Buyer to return the vehicle or sign an amended Retail Installment Contract. The new contract will never be a better deal for the Buyer. The Buyer should immediately contact an attorney if he is asked to sign a second contract under these circumstances.

I bought a used car from a dealer a year ago. I have contacted him many times but I have not yet received the title or any record that the title has been applied for. What can I do?

This is a very serious problem that may be an indication of even bigger problems. The law requires the title to a used vehicle to be transferred immediately. This is particularly so if you pay cash for the vehicle. Never pay for the vehicle in full unless you receive the title at the same time or are at least given a chance to inspect the title. The potential problems are serious.

The law allows a car dealer twenty (20) working days to prepare and submit the application for

certificate of title. All fees collected from you should be paid by that time as well. Car dealers sometimes run into problems with a title. They could lose the original title, the person that sold the vehicle to the dealer may be late in delivering the title or even more sinister problems can occur. A delayed title is often an indication of.

- a) an odometer disclosure problem;
- b) a wrecked or reconditioned vehicle;
- c) a fraudulent title to a stolen vehicle; or
- d) financial problems of the dealer.

A licensed car dealer must post a bond with the State of Texas in the amount of \$25,000.00. The bond is to compensate anyone who buys a car from the dealer but does not receive a title or anyone who sells a car to the dealer but does not receive payment. However, the \$25,000.00 bond is often insufficient to cover more than a couple of transactions. Act quickly because recovery on the bond is "first come, first served."

I took my car to a repair facility last month. The repair facility performed work that I did not authorize and charged more than they said they would. I argued with them about these problems but ended up writing a check so I could get my car. On the way home I realized that they did not fix the problem. I was so mad I stopped payment on my check. What can they do?

If you stopped payment on the check, the repair facility can repossess your car if they provided notice to you of the right of repossession. This notice must be provided to you before they attempt to cash the check. You should immediately express your complaint in writing and probably should consult an attorney. If you cannot afford to have your car repossessed, you should pay the check.

Based upon your advice above I paid the check to the repair facility, but I'm still steamed. What can I do?

The law states that a worker such as a mechanic provides an implied warranty of "good and workmanlike" service. It cannot be disclaimed and does not need to be provided in writing. The difficulty of your position is that you must prove that the mechanic did not properly perform the repairs.

The most practical way to do this is to immediately take the car to another repair shop. Have them inspect the car and provide a written report of work that needs to be done and the cost to perform the work. Ask them if the work performed by the previous repair facility was performed properly, if at all. Ask them to write their brief opinion on the repair order. Keep any parts that are involved. You can then complain in writing on your own or hire an attorney.

Can a mechanic repossess your car if you fail to pay for repairs?

Yes, if you sign a repair contract that provides for repossession in a "conspicuous" manner, a mechanic is not required to return your car to you until you pay for the repairs. If you pay the repairs with a check that is dishonored, or if payment on the check is stopped, the mechanic is entitled to repossess your car. A major limitation on the mechanic's repossession remedy is that the mechanic may not "breach the peace."

Many of these remedies sound like something I can do for myself. When should I consult an attorney?

You should consider contacting an attorney after you have attempted to resolve the problem yourself. Hopefully, your efforts to resolve the problem were made in writing. If not, do so immediately or at least record your memory of the conversations on paper.

Most disputes can be resolved either on your own or with minimal effort of an attorney. However, these are some warning signs that probably require the assistance of an attorney:

- You learn that the vehicle had suffered serious damage in a prior collision, but this was not told to you at the time you purchased the car;
- You have not received the title or the non-negotiable certificate of title (pink slip) within forty-five days after the sale;
- An authorized dealer refuses to honor the factory warranty because of a defect in the car prior to your ownership;
- The vehicle's odometer has been altered;
- You have been asked to sign a revised Retail Installment Contract and other purchase documents under less favorable terms than your original transaction;
- Your vehicle has been repossessed even though you have made all of your payments to the lender (except for mechanic's lien repossessions).

If you are considering purchasing a new or used vehicle, take the following check list with you and get answers from your dealer. These questions will help you obtain important information about the vehicle, including warranties, service and financing.

CAR BUYER CHECK LIST

VEHICLE: (Make) _____ (Model) _____ (Year) _____

(Odometer) _____ (VIN) _____ (Stock Number) _____

DEALER: _____

The Dealer above declares the following information to be true and correct as to the Vehicle described above:

1. VEHICLE TITLE.

- NEW. You are the first retail buyer of this VEHICLE.
- DEMONSTRATOR. This VEHICLE has been used by us as a DEMONSTRATOR. It has fewer than 6,000 miles on the odometer and has been used only by an employee as a personal vehicle or for a test drive by a prospective buyer.
- USED. This is a used vehicle with _____ miles. Unless marked below the title is a Blue Texas title which has not been salvaged or reconditioned.
- OUT OF STATE TITLE. This vehicle currently has a title from the state of _____.
- DUPLICATE TITLE. The original title was lost or stolen and a new title was issued.
- SALVAGED. This VEHICLE has been damaged and sold for salvage.
- FLOOD DAMAGE. This Vehicle has been Flood Damaged.
- RECONDITIONED. This vehicle has been SALVAGED and rebuilt.

2. PRIOR OWNERSHIP:

- We acquired the VEHICLE from: the Manufacturer, a Non Dealer, another Dealer, as a Trade-in.
- We acquired the VEHICLE from a Dealer Only Auction.
- This is a PROGRAM CAR. This means that the VEHICLE was probably used in a Rental Car or Business Vehicle fleet.
- We acquired the Vehicle on _____ (date) from _____ (name of Seller). The last registered owner of this VEHICLE was _____ and the reported mileage on _____ (date) was _____ miles.

3. VEHICLE CONDITION.

- We have NOT inspected the vehicle. We do NOT know its history. We will NOT answer the questions below. **YOU SHOULD HAVE IT CHECKED BY YOUR OWN MECHANIC BEFORE YOU MAKE A PURCHASE DECISION.**
- The VEHICLE has not been damaged in a collision.
- This VEHICLE has been in a collision.
- We have access to insurance industry information on the insurance claims that have been paid on this vehicle. Attached is a summary.
- We do NOT have access to any information about prior insurance claims on this vehicle.
- The damage was minor and will not affect the coverage of any manufacturer's warranty or any Extended Service Contract which we sell to you.
- The damage was significant and may affect portions of the Manufacturer's warranty or the Extended Service Contract.
- No Manufacturer Warranty or Extended Service Contract is available because the prior collision voids any warranty or renders the VEHICLE ineligible for any Extended Service Contract.
- You buy the VEHICLE AS IS with full disclosure of these problems.

4. SERVICE HISTORY.

- This vehicle has been properly serviced according to the manufacturer's suggested maintenance procedures.
- There are no service records from the prior owner but we inspected the vehicle and find no lack of maintenance which would adversely affect the manufacturer's warranty or any extended service contract which we will sell to you.
- We have no records of the service history, have not inspected the vehicle, and do not know whether the vehicle is eligible for any remaining manufacturer's warranty or an extended service contract.
- You may take the VEHICLE to a mechanic of your choice for an inspection.

5. FINANCING.

- NOT APPLICABLE. Buyer is paying cash or has arranged own financing.
- APPROVED. Your contract has been assigned to _____ (Lender). Lender's address is on the Retail Installment Contract which we gave you at least 10 minutes to review before we asked you to sign it. You were immediately given a copy of that contract which was signed by us.
- NOT APPROVED. Your financing application has not been approved. You will buy this vehicle only if we are able to sell your Retail Installment Contract to a Lender on terms agreeable to us. We will notify you in writing within 10 days as to whether we were able to sell your Retail Installment Contract to a Lender. At any time prior to our delivery of that notice to you, you may return the VEHICLE for a full refund of your down payment and the return of your trade-in vehicle. If we do not approve your finance application, we will refund your down payment and return the vehicle you traded to us. You

will not pay for the use of the VEHICLE unless you drive the VEHICLE more than 500 miles. However, you agree to carry full coverage insurance on the VEHICLE and to pay for any damage to the VEHICLE while it is in your possession. Do not add any items such as stereos, car alarms, or accessories to the vehicle because these will become a part of the VEHICLE and we will not reimburse you for any such costs.

WE HAVE SOLD AND YOU HAVE PURCHASED THE VEHICLE. You have received delivery of the VEHICLE and there is no three day cooling off period. THIS SALE IS FINAL.

6. CREDIT INSURANCE.

No credit insurance is sold in this transaction.

Credit Insurance must be purchased to obtain financing.

You agreed to purchase Credit Insurance after we explained by our licensed insurance agent, _____, the cost and benefit of Credit Insurance to you. It was explained that the Credit Insurance that we sell is expensive and that it probably duplicates life or disability insurance that you already have or that is provided by your employer. It was also explained that if you have ANY health problem it will likely disqualify you from coverage and the insurance company will refund your premium and refuse to pay the claim, leaving you with no coverage and a loss of the interest you paid on the loan for the Credit Insurance. It was also explained that there is/is not a waiting period of ____ days before you are eligible for benefits and that a written claim verified by a medical professional will be necessary to obtain the benefits.

7. EXTENDED SERVICE CONTRACT\WARRANTY.

You did not buy a service contract.

No service contract is available with the purchase of the VEHICLE.

The manufacturer's warranty will continue until the earlier of _____ miles or _____ (date).

Coverage under the Extended Service Contract will begin only after the manufacturer's warranty expires. You must perform regular maintenance such as oil changes and provide the receipts to obtain reimbursement for most repairs.

You must obtain pre-approval to obtain reimbursement on most repairs.

You must buy an extended service contract to obtain financing from the DEALER. The DEALER will keep ____% of the money for the Extended Service Contract. The remainder will be paid to _____.

8. ARBITRATION.

The sale of this VEHICLE is NOT subject to an arbitration agreement.

The sale of this VEHICLE is subject to an optional arbitration agreement.

The sale of the VEHICLE is subject to a MANDATORY arbitration agreement. You must sign the agreement or we will not sell the VEHICLE to you. A copy of the arbitration agreement is stapled to this Checklist. If you have a complaint against us you FORFEIT your right to a trial by jury, a trial in front of a judge, and most rights of appeal. You cannot file a lawsuit. You must go to Arbitration. Arbitration is binding and there is virtually no right of appeal. The filing fee to initiate an Arbitration hearing is \$250.00 if the complaint is \$10,000.00 or less; \$750.00 if the complaint is \$10,001.00 to \$50,000.00; and \$1,250.00 if the complaint is \$50,001.00 to \$100,000.00. You will also be required to pay a deposit of at least half of the cost of the arbitrator(s) (Judge), the hearing room (court room), and any court reporter. These costs are at least \$1,500 per day for ONE Arbitrator. Multiple Arbitrators will increase the cost proportionally.

The DEALER and any LENDER reserve the right to use the court system to enforce any right they may have for your non-payment of the purchase of the vehicle. These include sequestration and judgment collection, among others.

9. ADVERTISED/STICKER PRICE.

- This is a New VEHICLE and the window sticker price is \$_____. The original window sticker is affixed to the window.
- The window sticker has been removed from the car but a copy is provided to you.
- The VEHICLE has NOT been advertised in any electronic or print media in the last 30 days.
- The VEHICLE has been advertised within the last 30 days at a price of \$_____.
- A new Vehicle identical to the VEHICLE has been advertised in the last 30 days at a price of \$_____.

10. DEALER ACCESSORIES AND SERVICES.

- Our Vehicle Purchase Order does NOT contain a preprinted entry for the purchase of Customer Services, NADW, Road Services or similar products.
- Our Vehicle Purchase Order DOES contain a preprinted entry for the purchase of Customer Services, NADW, Road Services or similar products.
- The purchase of this Service is REQUIRED. DEALER will not sell the VEHICLE to you if you do not agree to purchase it. The service is described as follows: _____

_____. A brochure and/or materials describing the service have been provided to you.

11. REBATES/SPECIAL FINANCE RATES.

- There are no Rebates or Special Finance Rates offered with the sale of the VEHICLE.
- A REBATE of \$_____ is offered with the purchase of the VEHICLE.
- A FINANCE RATE of _____% APR is offered with the purchase of the VEHICLE on financing up to _____ months. Your credit application must be approved to receive this special rate.
- You must choose either the REBATE or the SPECIAL FINANCE rate.

12. TRADE-IN.

- There is no TRADE-IN.
- You have agreed to trade to us a _____ (Year) _____ (Make) _____ (Model) with _____ miles (TRADE-IN) as a part of your purchase of the VEHICLE. You owe \$_____ to _____ (Lender) as of _____ (Date).
- The TRADE-IN is valued at \$_____ in the _____ (month, year) NADA guide to used vehicle.
- You have NEGATIVE EQUITY in your TRADE-IN. This means that you owe more money than the TRADE-IN is worth. This NEGATIVE EQUITY will be added to the purchase price of the VEHICLE.

13. TRANSACTION SUMMARY.

VEHICLE PRICE	\$ _____
DEALER ADD-ONS	\$ _____
TOTAL VEHICLE PRICE	\$ _____
TRADE-IN VALUE	\$ _____
(not Allowance)	

less TRADE-IN LOAN	\$ _____
NET TRADE-IN	\$ _____
DOWN PAYMENT	\$ _____
REBATE	\$ _____
Less TOTAL PAID	\$ _____
NET VEHICLE PRICE	\$ _____
SALES TAX	\$ _____
TITLE AND LICENSE	\$ _____
CREDIT INSURANCE	\$ _____
EXTENDED SERVICE CONTRACT	\$ _____
TOTAL AMOUNT DUE OR FINANCED	\$ _____

APR	\$ _____ %
AMOUNT FINANCED	\$ _____
FINANCE CHARGE	\$ _____
TOTAL FO PAYMENTS	\$ _____
PAYMENTS & DOWN	\$ _____

PAYMENTS	\$ _____ per month
DUE DATE	_____ of each month
FIRST PAYMENT	_____ date
NUMBER of PAYMENTS	_____

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REPOSSESSION

What is repossession?

Repossession is the right of a seller, bank or finance company to take back possession of an item when a buyer misses an installment payment or fails to pay for the item.

Can a creditor repossess without seeking court approval?

Yes. When a consumer fails to pay an installment payment, or several of them, as required by a security agreement, the creditor has the right to take possession of the collateral without resort to judicial process if this can be done without “breach of the peace.” This is commonly referred to as “self-help repossession.”

What does “breach of the peace” mean?

A “breach of the peace” is synonymous with disorderly conduct. Texas courts have found the following actions occurring during an attempt to repossess property as a “breach of the peace”: physically taking a set of car keys from the debtor; fighting with the debtor; breaking and entering into the debtor’s garage; gaining entry to a building by picking a lock; and causing unreasonable damage to property. It is not a “breach of the peace” for a creditor to repossess a car from in front of a debtor’s home even in the middle of the night.

What happens if a creditor “breaches the peace” while repossessing an item?

Self-help repossession is valid only if it is accomplished without breach of the peace. Thus, if a debtor can establish that the creditor “breached the peace,” the debtor may be able to invalidate the repossession. If a repossession has been wrongful, the debtor may have a tort claim against the creditor and may be able to seek damages.

Assume you are three months late on your car payments. The car dealer therefore has the right to repossess your car so long as this can be done without “breach of the peace.” One day, the car dealer comes to your house and sees the car locked inside the garage. Wanting the car, the dealer breaks the windows to the garage and picks the lock so he can gain access to the car. He then drives the car away. Because the car dealer has “breached the peace,” this repossession effort would be declared invalid and you might be able to bring a lawsuit against the dealer for his actions.

Does a creditor have to give the debtor notice before repossession?

No. Notice to the consumer of the creditor’s intent to repossess the collateral is not required.

Can a debtor get the property back after it has been repossessed?

If a creditor accomplishes the repossession of the collateral, the debtor may redeem it by tendering the entire balance due, plus repossession charges, attorney’s fees, and other foreclosure costs. Needless to say, this can be quite costly. Such redemption must occur before the creditor has disposed of the collateral or entered into a contract for its disposition or taken steps to retain the collateral in satisfaction of the debt.

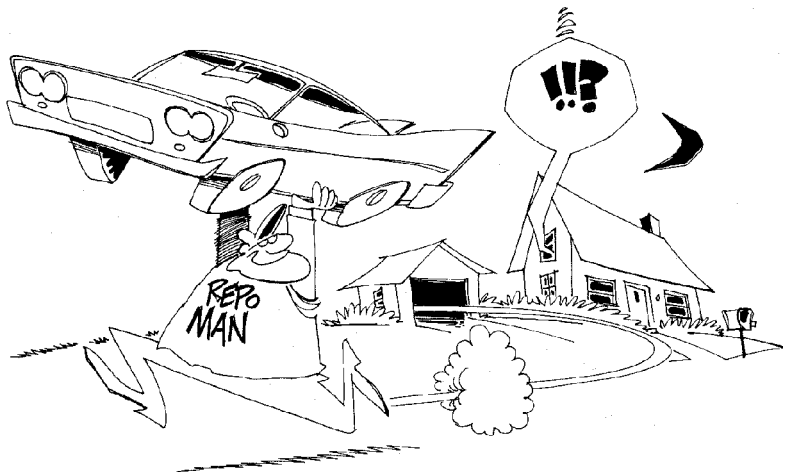
Does a debtor still owe for an item after it has been repossessed?

Yes. Self-help repossession can have severe consequences for a debtor. Having purchased consumer goods on credit, the debtor may have made several payments towards the purchase price. But because the debtor has missed a single payment or a series of payments, the creditor has the right to seize the goods. The creditor then may sell the repossessed goods, and the debtor is liable for any deficiency.

In such a situation, the debtor’s goods are gone; the debtor’s deposit and all installment payments made up to the time of default are lost; and the debtor could be liable for a deficiency judgment. Not an ideal situation to be in.

What does a creditor have to do after repossessing property?

The law requires that the creditor, after repossessing the debtor’s goods, is required to: (1) take reasonable steps to notify the debtor and other interested parties of the sale of the goods; and (2) insure that every aspect of the sale be in a commercially reasonable manner. A commercially reasonable manner is a manner of sale which in method, time, place, terms, and advertising are calculated to obtain a fair price for the goods.



What happens if a creditor does not act in a commercially reasonable manner?

If a creditor does not act in a commercially reasonable manner, he is not entitled to recover a deficiency judgment against the debtor. Instead, the creditor is only entitled to the proceeds from the sale of the collateral, which are usually less than the amount owed by the debtor.

What does repossession do to my credit report?

It is one of the most damaging things that can be reported on your credit. It does not matter whether it is voluntary or involuntary. It will have a negative effect for a long time.

What happens if I am contacted by a law enforcement officer to perform the repossession?

You should always obey a law enforcement officer who is in uniform, wearing a badge, and delivering official court documents. If so, the officer will clearly identify himself, his purpose and deliver an official copy of the court papers to you. However, many repossession companies use names that sound like law enforcement agencies, threaten an arrest or criminal prosecution, and use titles that sound official (like investigator.) These actions may rise to the level of impersonation of a law enforcement officer, which is a breach of the peace.

CREDIT CARD/DEBIT CARD LIABILITY

What is a credit card?

As a practical matter, a credit card is an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. Credit card transactions involve a convenient means of paying bills and the granting of a revolving line of credit to the cardholder. This revolving line of credit usually comes with a grace period of up to 25 days to pay the card issuer at least the minimum monthly balance.

What is a secured credit card?

Most credit card obligations are unsecured; that is, no property or funds are pledged for repayment of the credit card debt. However, some credit card issuers have programs where the credit card obligation is secured by a deposit account (bank account). The target population for secured cards has historically been people who would be rejected for unsecured cards because of a prior bankruptcy or minimal credit history. Risk to the credit card issuer is reduced because the debt is fully secured by a deposit account. (See also "Security Interest in Purchases.")

What is a debit card?

A debit card is defined as an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal.

As a practical matter, a debit card more closely resembles a check than a credit card; i.e., payment to the merchant is virtually simultaneous with the sales transaction. (Note that credit cards typically offer a grace period [see "What is a credit card?," above].)

A debit card provides for point of sale transfers from a cardholder's bank account to the merchant's bank account.

What is a charge card?

A charge card has many of the same features and resembles a credit card in many ways. Charges can be made on one day and paid at a later date (usually within 25 days). However, unlike a credit card, a charge card must be paid in full on the due date—the cardholder cannot maintain an outstanding or running balance like a credit card.

Applications and solicitations of credit cards

In direct mail applications and solicitations, disclosures must be given to the consumer of six key elements of information: (1) the APR or interest rates that will apply to the card, including a variable rate disclosure; (2) any annual fee; (3) any minimum finance charges; (4) any transaction fees charged for purchases; (5) grace periods (or the absence of them) for purchase transactions; and (6) the balance calculation method for purchases (not applicable for cash advances). Each of these key terms must be presented in a table placed conspicuously in the application or solicitation or on the accompanying materials. In addition, the direct mail application materials must disclose any cash advance fees, late fees, or overline fees.

At least 30 days prior to the scheduled renewal date of the cardholder's account, the credit card issuer must make additional disclosures if the renewal carries with it the imposition of an annual fee. These disclosures include (1) the date by which the account will expire if not renewed; (2) the six key terms that will apply if the account is renewed (but not ancillary fees such as late charges); and (3) the method the cardholder may use to terminate continued credit availability under the account.

What is a cardholder agreement?

The Cardholder Agreement governs the relationship between the credit card issuer and cardholder. The Agreement contains all the legal and factual terms and conditions by and through which a cardholder or authorized user "charges" his or her account, as well as the guidelines by which the credit card issuer makes the extension of credit to the consumer. Consumers should retain copies of their Cardholder Agreements for future reference. In the event of a question or dispute regarding a purchase or extension of credit, this document usually explains the procedure and remedy to resolve a problem.

What initial disclosures are made?

In general, after the contract has been entered into by cardholder and credit card issuer, the initial disclosures include the following:

- The conditions under which a finance charge may be imposed, including any free-ride period and the fact that no such free ride is provided if that is the fact.
- The method of determining the balance upon which a finance charge will be imposed.
- The method of determining the amount of finance charge.
- Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances, and the corresponding nominal annual percentage rate (APR).
- Identification of other charges that may be imposed as part of the plan and their methods of computation.
- A description of any security interest.
- The minimum periodic payment required.
- A statement of the protection provided to the cardholder for billing error disputes and the prohibition of adverse credit reporting while a billing dispute is going on, as well as the right of the cardholder to raise claims and defenses against the issuer under certain conditions.

What are cash advances?

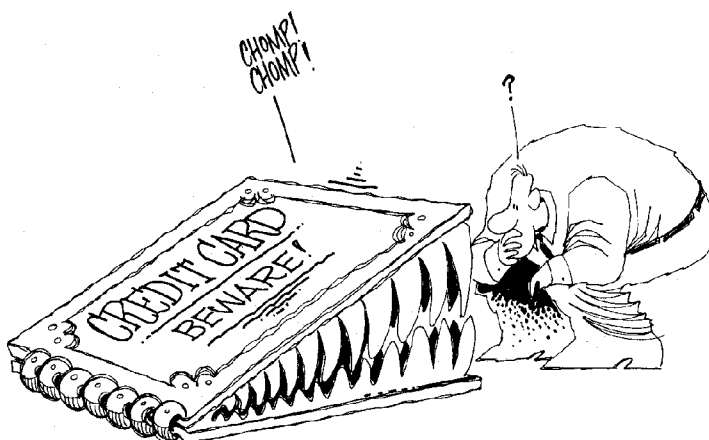
Credit cards, charge cards and debit cards usually have a “cash advance” feature through which the cardholder can obtain immediate cash, with a concomitant charge (plus fees as described below) to this card.

- A. Credit Card** - Cash advances taken on a credit card are typically accompanied by both a transaction fee and an interest carry. Interest is charged from the cash advance until the date paid pursuant to the terms of the Cardholder Agreement.
- B. Charge Cards** - Cash advances to charge cards are similar to credit cards (i.e., a transaction fee is assessed and interest is charged until paid). However, charge cards typically must be paid in full as set out in the monthly statement.
- C. Debit Card** - A debit card more closely resembles a check; a cash advance to a debit card is actually an immediate point of purchase withdrawal from the customer’s checking or savings account. Accordingly, an interest carry charge is not typically assessed, and transaction fees are infrequently levied.

What if something was charged in error to my credit card?

In 1975, the Federal Fair Credit Billing Act (FCBA) became law. In a nutshell, the FCBA provides as follows:

1. Open-end truth-in-lending disclosures (e.g., for Mastercard or Visa customers) were enlarged to include a statement, in a form prescribed by the FCBA, of the cardholder’s right to billing error corrections, as well as the issuer’s duty to acknowledge and investigate alleged errors. Such disclosures must be made when the credit card account is opened and periodically thereafter.
2. The first step in the process is for the cardholder to send to the issuer a written inquiry within 60 days after transmission of the bill, including his name and account number and the nature of his billing complaint. The cardholder may use his monthly billing statement stub to register his complaint unless the bank has required a separate statement. The term “billing error” means items on a periodic statement that reflect (1) credit extensions not made, or made in a different amount; (2) credit extensions for which documentation or clarification is requested; (3) undelivered or unaccepted goods or services; (4) incorrect payments or credits; (5) clerical or computational mistakes; and (6) other errors designated by the FCBA.
3. The second step for the issuer who receives a proper written claim is to make a written acknowledgment or a written response within 30 days. If mere acknowledgment is the issuer’s first response, this must be followed by a full response within two billing cycles (but not more than 90 days) after the complaint was originally received.
4. If the issuer determines upon investigation that a billing error has been made, it must make appropriate corrections—including credit for any associated finance charges—and so advise the cardholder in its response. If an investigation does not reveal any error, its response must explain this conclusion to the cardholder, including reasons why the issuer believes the account to



be correct. Upon request, the issuer must provide copies of documentation of the cardholder's debt.

5. Until the issuer investigates and responds one way or the other to a claim of error, it may not (1) restrict or close the credit card account as retribution for the claim of error or (2) send an adverse report of the item to any credit bureau. On the other hand, the issuer may collect any amount not in dispute and may report the disputed item to the credit bureau following investigation, a written response, and an additional 10-day grace period for the cardholder to make payment. If the item is reported to the credit bureau, however, the issuer must indicate that the matter is in dispute and notify the cardholder of its action.
6. If the issuer fails to make a proper response to a claim of billing error, it is forbidden to collect the disputed amount and any finance charges thereon, with the forfeiture limited to \$50. This penalty is independent of any Truth-in-Lending civil penalty for failure to disclose to a cardholder his fair credit billing rights.

What is the limit of my liability if my credit card is lost or stolen?

A cardholder is liable for unauthorized use of his credit card only if (1) he has accepted it; (2) the liability does not exceed \$50; (3) the card issuer gives adequate notice of the potential liability; (4) the issuer provides the cardholder with a description of a means by which the issuer may be notified of loss or theft of the card; (5) the unauthorized use occurs before the cardholder has notified the issuer of the loss or theft; and (6) the issuer has provided a method (such as a signature line or photograph) whereby the cardholder can be identified as the person authorized to use the card.

The liability of the issuer is made even clearer insofar as the burden is on the issuer to show that the conditions have been met that give rise to the \$50 liability per card.

Liability limitations for the holder are not applicable where the cardholder voluntarily and knowingly allows another to use his card and that person goes on a frolic of his own. Unauthorized use occurs only where there is no actual, implied, or apparent authority for such use by the cardholder. If such authority exists, the cardholder will be held responsible for any purchases made through use of the card.

In sum, a credit card holder may refuse to pay off his card balance if he is in a dispute with a local merchant involving more than \$50 and has made a good faith attempt to get satisfaction from the merchant. The issuing bank in such a case may not exercise its common-law right of set-off against the customer's account to force payment of the disputed amount.

What is the 100-mile rule?

The 100-mile rule helps limit the liability of the card issuer for fraudulent use of a credit card. The card issuer is not liable for unauthorized purchases outside a 100-mile radius of the mailing address provided by the cardholder. In these instances, given timely and correct notice, the risk of loss passes to the merchant who participated in the transaction.

What information am I entitled to if I am denied credit?

If you are denied credit by a store or other business that regularly transacts business with its customers on credit, the Fair Credit Reporting Act requires that business give you notice of the reason for the denial of credit. Also, the Equal Credit Opportunity Act states that you may not be denied credit on the basis of gender, marital status, race, or age.

What is the effect of a credit bureau's failure to prevent the same error from recurring in the consumer's file?

As many as 50 million consumers have inaccurate credit records. Reporting agencies' failure to take appropriate steps to permanently correct errors can result in a consumer's recovery for actual and punitive damages and attorney fees.

Are there any protections for me against harassment by a creditor?

Yes, the Texas Debt Collection Act and the Federal Fair Debt Collection Practices Act limit the times and manner in which a creditor, or the creditor's representative such as a collection agency, can contact you regarding payment of your debt. For example, the creditor may not contact you before 8:00 a.m. and after 9:00 p.m. Also, once you request in writing that a creditor not contact you at your home or your employment, the creditor may only contact you one more time to inform you of what further action they plan to take. Your request should be mailed, and be sure to keep a copy of your letter.

CREDIT REPORTS - HOW TO PROTECT AND REPAIR

What is a credit report and why are they important?

Consumer Reporting Agencies ("CRA") (also referred to as credit bureaus) obtain information from their members about your creditworthiness. The credit history that the CRA maintains about you generally consists of whether you have filed for bankruptcy in the past ten years, whether you have paid your creditors on a timely basis for the past seven years, and the identity of those recently requesting your credit report. Credit reports are widely used by businesses in deciding whether or not to extend you credit, by landlords in deciding whether or not to rent to you, and by employers in deciding whether or not you are a desirable employee.

How can I obtain a copy of my credit report?

If anyone takes action against you because of information supplied to them by a CRA, they are required to notify you and to give you the name, address and telephone number of the CRA that provided the information to them. If you request your credit report from that CRA within 60 days, then the CRA must provide you with your credit report at no charge. You are also entitled to obtain a copy of your credit report every 12 months if you certify that: (1) you are unemployed and plan to seek employment within 60 days; (2) you are on welfare; or (3) your report is inaccurate due to fraud. Otherwise, a credit reporting agency may charge you up to \$8 to receive a copy of your credit report.

The three national credit reporting agencies are:

- Equifax, P. O. Box 740241, Atlanta, Georgia 30374-0241; 800/685-1111.
- Experian (formerly TRW), P. O. Box 949, Allen, Texas 75013; 888/397-3742.
- Trans Union, 760 West Sproul Road, P. O. Box 390, Springfield, Pennsylvania 19064-0390; 800/888-4213.

How do I have errors in my credit report corrected?

You should notify the CRA in writing of the information you believe to be inaccurate. The credit reporting agency must then investigate the disputed information (usually within 30 days). You should also forward the credit reporting agency any documents or information you have which proves the information to be inaccurate. In conducting its investigation, the credit reporting agency must forward all relevant information you provide to its source of the disputed information. The source of the information must then conduct its own investigation and report the results of its investigation to the credit reporting agency. If the provider of the information determines that the disputed information is

inaccurate, it must notify all nationwide CRAs so that they may correct the information in your file. If the source of the disputed information is unable to verify its inaccuracy, then the CRA must remove the disputed information from your credit report.

After the CRA completes its investigation, it must provide you with the written results and a free copy of your credit report if the dispute resulted in a change. Once a disputed item is changed or removed, the CRA cannot reinsert the information into your file unless the information provider verifies its accuracy and completeness, and the credit reporting agency gives you a written notice that includes the name, address and phone number of the provider of the information.

You may also dispute the accuracy of information in your credit report with the creditor or other information provider. You must dispute the accuracy of the reported information in writing, and if the creditor provides a specific address for such disputes, the dispute must be directed to that address.

If disputing the information with the credit reporting agency and/or the information provider does not resolve the matter to your satisfaction, you may request that the credit reporting agency include your statement of why the information is inaccurate in your file and in all future reports it provides. The CRA may charge you a fee if you ask them to provide your statement to anyone that has requested your credit report in the past. If you dispute the item directly with the information provider, then the information provider must include a notice of your dispute any time it reports the information to a CRA.

How do I prevent erroneous information from being reported about me?

Any time you receive an invoice or a demand for payment which you do not believe you owe, you should notify the creditor or collection agency in writing that you dispute the debt and demand documentation of the validity and accuracy of the amount the creditor is demanding.

Can “credit doctors” or “credit repair companies” really erase my bad credit?

No. Credit doctors cannot do anything for you that you cannot legally do by yourself. Credit repair companies generally use two techniques in order to improve your credit record. The first is to dispute all information contained in your credit record in an effort to inundate the credit reporting agency. If the credit reporting agency is unable to verify the accuracy of each piece of information within 30 days, they are generally required to remove the information from your credit report. Credit reporting agencies, however, may refuse to investigate frivolous disputes and cannot remove accurate information until it has expired (7 years or 10 years for bankruptcies). The second technique credit doctors use is to provide you with a social security number that belongs to someone who has good credit. This scheme is not only fraudulent, but it is illegal and will only make your problems worse.

BEWARE OF COMPANIES THAT:

- Want you to pay for credit repair services before the company completes the job and provides you with an improved credit report. Money-back guaranties are worthless if the company is no longer in business.
- Promise to have accurate and timely information removed from your credit report.
- Advise you of ways to create a “new credit identity.”
- Promise that they have the ability to have information removed from your credit report that you could not yourself have removed, or fail to advise you of your legal rights up front.

Where should I go for help to repair my credit record?

The best way to improve your credit is to gain control of your financial situation. The Consumer Credit Counseling Service 800/873-2227 or 713/923-2227 in Houston is a great place to start. The Consumer Credit Counseling Service can be found on the Web at www.cccsintl.org.

Where can I obtain additional information or report questionable conduct of creditors or credit reporting agencies?

- Federal Trade Commission Consumer Response Center - FCRA, Washington, D.C. 20580; 202/326-3761; www.ftc.gov/bcp/menu-credit.htm
- The Regional Office of the Texas Attorney General's Consumer Protection Division; 713/223-5886; www.oag.state.tx.us/consumer/consumer.htm
- The Better Business Bureau; 713/868-9500; www.bbbhou.org
- Your personal attorney.

TELEMARKETING FRAUD

What is telemarketing fraud?

While many companies that use the telephone to sell goods and services are reputable, some use phony prizes, cheap products and high-pressure sales tactics to defraud consumers. The following are representative examples of telemarketing scams:

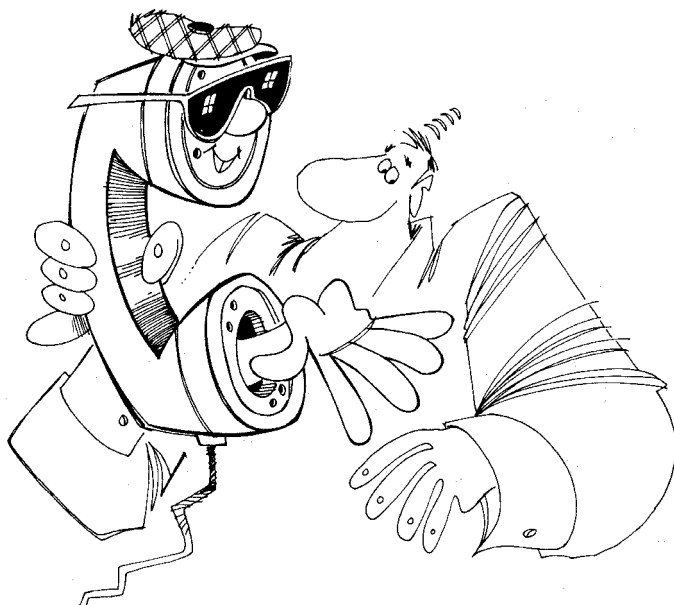
- 1) *An offer of free gifts.* Fraudulent telemarketers frequently offer “free” gifts if you will pay shipping and handling charges, processing or redemption fees or even gift and sales taxes before delivery. Commonly, the gifts are worth much less than the extra charges. Moreover, the gifts are not really “free” if you have to pay anything to receive them.
- 2) *Phony contests offering prizes.* As with offers of free gifts, the offer is often not what it seems. Usually no contest is ever held, and everyone is simply awarded a cheap prize. Even where a contest is actually held, your odds of winning any valuable prize are incredibly low, like one in a million. To claim the prize, you often will be asked to pay some fee, and the prize is commonly worth far less than the fee. The telemarketer may also request your credit card number for “identification” purposes or to verify that you have won a prize and then make a charge on your credit card when you thought no sale had actually been made.
- 3) *Travel.* So-called “free” or “low-cost” vacations often come with extra charges, hidden restrictions and hard-to-meet conditions. You might be required to join a travel club for a fee. A vacation-for-two may only include airfare for one or, while purportedly providing tickets for two for the price of one, may cost significantly more than two discount tickets purchased at least two weeks in advance. You could be charged extra for “peak season” reservations. As a result, your vacation ends up costing two to three times what you would have paid had you made your own arrangements.
- 4) *Advertisements offering jobs, credit repair or loans.* These advertisements instruct interested consumers to dial a toll-free 800 or 888 number for more information. When the toll-free call is made, consumers are then given a sales pitch and asked to make an advance payment by check, electronic draft or credit card. Alternatively, consumers may be asked to call a “900” number for more information, and then be charged from a few dollars to more than \$50 per minute. The problem with these offers is that the service is often worth far less than the advance fee paid by consumers. That is why various state and federal laws explicitly prohibit advance fees for assisting people in obtaining permanent employment, credit repair or loans.

- 5) *Get-rich-quick schemes.* Some fraudulent telemarketers promise high-profit, no risk investments in rare coins, real estate, gems, securities, oil and gas leases, and precious metals. These promises of “getting rich quick” are often false. Either the investment does not produce the level of profit which is promised, the level of risk is relatively high or the investment is simply worthless. Those who have been victimized before are frequently the targets, since they are often eager to recoup losses from previous deals.
- 6) *Charities.* Some unscrupulous telemarketers will say they’re calling on behalf of a charity. They may ask consumers to buy tickets for a benefit show, make a donation toward sending handicapped children to the circus, or purchase light bulbs or other household items at inflated prices, to cite a few recent examples. The problem is that often little or none of your contribution will actually go to the charity.
- 7) *Vitamins.* Some health-conscious consumers fall prey to telemarketers selling vitamins. As with many other scams, the sales pitch may include a prize offer to get you to pay as much as \$600 for a 6-month supply of vitamins that are worth as little as \$25.
- 8) *Water purifiers.* Capitalizing on growing environmental awareness, some businesses are selling so-called water purification or filtration systems by telephone. Telemarketers use scare tactics to convince you that your tap water is filled with impurities or cancer-causing substances when, in fact, your drinking water is perfectly safe. Also, you may end up paying \$300 to \$500 for a device that is worth less than \$50.

How can I protect myself?

- 1) *Don’t be pressured.* Insist on getting all information in writing before you agree to buy. At the same time, don’t assume a business is legitimate on the basis of impressive-looking brochures or enthusiastic testimonials. Remember as well that, under Texas law, a telemarketer may not call your home before 9 a.m. or after 9 p.m. on a weekday or a Saturday or before noon or after 9 p.m. on Sunday.
- 2) *Ask detailed questions before you buy.* Ask how much everything costs. Find out the total amount you are obligated to pay, including all shipping and handling fees and any hidden costs. If you are purchasing a travel package, find out what is included and what the restrictions are. In addition, find out if you have to buy the airline tickets through the telemarketer and whether you are limited to traveling during certain off-peak or inconvenient times.

A seller who claims that you have won a prize or contest must tell you the odds of winning each of the offered prizes, the rules for claiming



the prizes, and the number of people who have received the most valuable prize in the past 12 months.

- 3) *Check them out.* Find out if any complaints have been registered against the company with the Better Business Bureau of Metropolitan Houston or the Consumer Protection Division of the Texas Attorney General's Office. In addition, call the National Fraud Information Center at 1-800-876-7060 if you suspect a telemarketing call was fraudulent. The NFIC number is answered from 9:30 a.m. to 5:30 p.m. Eastern time and can provide guidance on whether a telemarketing call is fraudulent. But remember that scam artists frequently change names and locations. Just because there are no complaints on file with the BBB, the Attorney General or the NFIC does not mean a business is trustworthy.

Also, check with the Texas Secretary of State to see if the company is registered and bonded as a telemarketer as required by state law. Likewise, check with the Texas Secretary of State to find out if any credit repair clinic or loan broker is registered as a credit services organization. Similarly, check with the Texas Department of Licensing and Regulation to find out whether any firm offering to help you obtain permanent employment is registered as a personnel service. Whenever a firm is not registered as required by state law, you simply should refuse to do business with it.

- 4) *Avoid paying advance fees for employment, credit repair or loan services.* Under Texas law, no one offering to assist you in obtaining permanent employment may charge an advance fee. Likewise, businesses offering credit repair or loan brokering services must obtain a \$10,000 bond and file proof of the bond with the Texas Secretary of State before charging an advance fee. Under federal law, any credit repair business using the mail or a telephone or a fax is prohibited from charging an advance fee. Similarly, a federal rule prohibits telemarketers who make interstate calls from charging advance fees for credit repair, loan brokering and assistance in recovering money lost in previous telemarketing scams.
- 5) *Be careful about disclosing personal financial information.* Don't give your credit card number over the phone unless you know the business is reputable. An easy way for a scam operator to close a deal is to get your credit card number and then make a charge for a purported sale. Similarly, do not provide your checking account number over the phone, because unscrupulous telemarketers can seek to draft against your account even without your signature.
- 6) *Take time to make a decision before investing.* Consult someone whose financial advice you trust — a banker, lawyer, accountant or friend. Have them review any contract or prospectus before you commit yourself.
- 7) *Be careful with charitable fundraising.* You have the right to know if the caller is a volunteer or a professional telemarketer/fundraiser. Don't commit yourself over the phone. Ask for written information about how much of your donation will actually go to the charity and how much will be spent on administrative and fundraising costs.
- 8) ***Above all, follow this advice: "If it sounds too good to be true, it probably is!"***

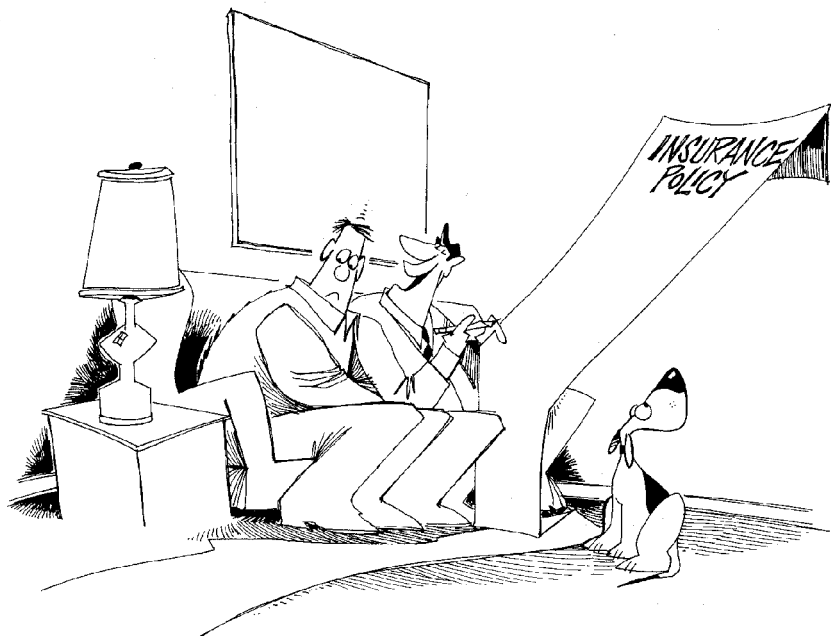
What can I do after I have already paid for a fraudulent product or service?

- 1) *Payment by credit card.* If you used a credit card to pay for a fraudulent product, federal law allows you to refuse to pay for goods not delivered or delivered not as represented. Claims and defenses arising out of a telemarketing sale may, in some instances, be asserted against the credit card issuer, usually a bank that issued your MasterCard, Visa, Discover or American Express card. The only preconditions to this right are that you first make a good-faith effort to resolve the dispute with the telemarketer, the amount at stake must exceed \$50, and the transaction must have occurred in the same state (or within 100 miles) of your current address.

You should take the position that your telephone transaction occurred in Texas, since that is where the telemarketer initiated and completed the sale. You should not pay the disputed charge on your credit card before invoking this right, however, as payment waives the right to assert claims about the telemarketer's deceptive or fraudulent conduct against the card issuer.

Under Texas law, if you use your credit card to purchase goods or services from a telemarketer, other than a public charity, the seller has two options. First, the seller can send you a written contract fully describing the goods or services being offered, the total price charged, the name, address and business telephone number of the seller and any terms and conditions of the sale. If this option is chosen, the seller cannot make a charge on your credit card until you returned a signed contract. That would at least give you the chance to review the deal and refuse to sign if it appeared to be different from what you were promised initially. Second, the seller can charge your credit card immediately, but then you must be given the right to receive a full refund if you return the goods undamaged or cancel any services within 7 days after you received the goods or services. Once a timely cancellation is made, the law requires the seller to make a refund within 30 days. The problem with this remedy is that many telemarketing sellers are fly-by-night operations which do not remain in one location long enough for you even to cancel. If you did cancel and failed to receive a refund within 30 days, you could complain to the Consumer Protection Division of the Texas Attorney General's Office or contact a private attorney to sue for any payments made to the telemarketer.

- 2) *Payment by check or money order.* If you pay a telemarketer by check or money order, your only certain remedy is to stop payment before the check or money order is processed. Unfortunately, this is only successful when the stop-payment order is made very promptly, usually within 2 to 3 business days after a check or money order is issued, although you may have more time when the money is being sent to a distant location.
- 3) *Payment by cash or failure to stop payment of a check.* In these circumstances, there is no remedy which will provide instant relief. Nevertheless, you should complain to the Better Business Bureau, the Consumer Protection Division of the Texas Attorney General's Office, the Federal Bureau of Investigation and the National Fraud Information Center. That might lead to a public enforcement action, but, even if such an action is filed or an indictment is issued, there is little chance of recovery unless the telemarketer had a bond and filed proof of it with the Texas Secretary of State. If you suffered a significant financial loss, you ought to consult with a private attorney to review your options.



How can I avoid telemarketing calls?

Under a new state law that became effective on January 1, 2002, Texas consumers can request the Public Utility Commission to be placed on a statewide no-call list by contacting the PUC at (866) 896-6225 or www.texasnocall.com. Telemarketers are obligated to avoid calling anyone placed on this list, you should complain to the Public Utility Commission Protection Division of the Texas Attorney General's Office 713/223-5886.

You can also seek to have your telephone number removed from many national telephone sales lists by writing the following organization which maintains a national list of persons who do not want to receive sales calls: Telephone Preference Service, c/o Direct Marketing Association, P.O. Box 9008, Farmingdale, NY 11735-9008. Keep in mind, however, that there is no law which prohibits calls to individuals on this list. Current federal rules merely require that telephone solicitors maintain company-specific lists of consumers who specifically request not to receive further calls from that particular telemarketer. So you may be forced to ask every telemarketer who calls your number to remove your name and telephone number from their list.

INSURANCE

How are insurance premiums calculated?

Insurance premiums are regular payments an insured makes to purchase insurance coverage. The amount you pay is dependant on various factors such as age, health, previous driving record, mortality rates, interest rate projections, etc. Actuaries (persons who compute insurance premium rates based on statistical data) apply these factors in making a series of complex calculations to establish premium rates.

What is the difference between liability and property insurance?

There are typically two types of insurance: property and liability. Property insurance insures risk of loss to your property. A property policy will typically reimburse you the value of your property that has been stolen or damaged.

A liability insurance policy insures you for damages you may have caused to another person's property. For instance, if you are in an automobile accident, a liability policy protects you against claims made by a third person. A typical liability policy requires the insurance company to defend and indemnify you for your liability arising out of claims made against you.

What is PIP coverage?

Personal Injury Protection (PIP) coverage is included in automobile insurance and is sometimes referred to as "no fault" insurance. PIP covers you, members of your household and any authorized driver or passenger of your automobile for injuries sustained in an automobile accident, regardless of who is at fault. PIP coverage pays up to \$2,500.00 for each eligible person injured. The benefits may be applied to pay any reasonable expenses incurred for: necessary medical bills, funeral services, loss of income, and household services performed by the injured person (if a non-income producer).

Texas requires insurance companies to include PIP coverage in every automobile liability policy. However, you may reject PIP coverage by written request to your company.

What is uninsured/underinsured motorist coverage?

Uninsured/underinsured motorist coverage is included in automobile insurance and compensates you for injuries you sustain resulting from an accident with an uninsured/underinsured motorist (UM). If you are in an accident with an uninsured motorist, your insurance company will pay you an amount

equal to what the UM's liability company would have paid if the UM carried liability insurance. The same analysis applies to underinsured motorist coverage except the amount recoverable from your company is reduced by the amount recovered or recoverable from the insurer of the underinsured motorist.

Texas requires insurance companies to include UM coverage in every automobile liability policy. The coverage generally pays for bodily injury, death and property damage.

How do I know if I am covered under my insurance?

Usually, a coverage question can be resolved by looking at the policy itself. In the event the policy is unclear regarding your specific claim, you should contact your insurance company and ask for its interpretation of the policy language, keeping in mind the company will most likely err on the side of noncoverage. You should also keep in mind that Texas law requires ambiguous insurance policy language to be construed in favor of the insured. Therefore, if after speaking with the company you feel the policy language is still ambiguous, you may wish to contact the Texas Department of Insurance or an attorney to assist you further. Insurance contracts have been interpreted countless times. Thus, a person specializing in insurance law will often be able to tell you how the policy language will be interpreted by a court.

How soon does the company have to pay my claim?

Article 21.55 of the Texas Insurance Code (the prompt claim payment law) governs the amount of time an insurance company has in processing your claim. In most instances, Texas' prompt payment law requires a company to respond within fifteen (15) days after receiving your written notice of claim. During this time, the company may ask for more information about your loss and commence its investigation of the claim.

Upon obtaining all requested information, the company then has fifteen (15) business days to accept or reject your claim. If the company is unable to accept or reject your claim within fifteen (15) days, they must notify you as to why they need additional time to process your claim. The company will then have up to forty-five (45) days to accept or reject your claim. (In the event of a weather-related catastrophe or major natural disaster, the claim-handling deadlines under the Texas prompt payment law are extended for an additional fifteen (15) days.)

Once the company agrees to pay your claim, it must send your check or draft within five (5) business days, in most instances. If the company rejects your claim, it must say why in writing.

What is "bad faith"?

Texas law imposes on every insurance company a duty of good faith and fair dealing with its insureds. This duty arises out of the contract of insurance between you and your insurance carrier. If a company unreasonably withholds benefits of the insurance policy from you, the company has acted in "bad faith," and you are entitled to pursue both a breach of contract action (a lawsuit seeking the benefits of the insurance contract) and a tort action (a lawsuit based on a civil wrong committed by the insurance company, which entitles you to seek damages outside of the contract resulting from the insurance company's bad faith; i.e., lost wages, emotional distress, etc.)

An insurance company can commit bad faith many different ways, including: (1) unreasonably refusing to settle a case on your behalf and thereby exposing you to a potential judgment in excess of policy limits; (2) unreasonably delaying payment and/or (3) unreasonably denying a claim or cancelling a policy, etc.

What may I do if I feel I have been treated unfairly by an insurance company?

If you feel you have been treated unfairly by an insurance company and wish to take action against it, there are several avenues available to you. First, you may file a complaint with the Texas Department of Insurance. The Texas Department of Insurance allows dissatisfied consumers to collect additional claim payments and refunds to which they were entitled, but did not receive.

The second avenue available to you is to attempt to negotiate a settlement either informally or through Alternative Dispute Resolution (ADR) such as mediation or arbitration. ADR is becoming an increasingly popular method of solving disputes because it saves the time and expense of litigation.

Finally, you may sue the company directly for breach of contract and bad faith. If you are successful, you may be entitled to collect damages arising from the contract of insurance, (i.e., benefits provided in the insurance contract), extra-contractual damages (i.e., award for damages arising from the insurance company's bad faith, if any) and, if the facts of your case are egregious enough, punitive damages (money damages awarded to plaintiff that are intended to punish the defendant insurer to prevent similar conduct in the future).

How do I make a complaint to the Texas Department of Insurance?

You may obtain complaint forms online (www.tdi.state.tx.us) or by calling 800/599-7467. You may submit a complaint with the Texas Department of Insurance online, by e-mail, by mail or by fax:

Texas Department of Insurance
Consumer Protection Program (111-1A)
P.O. Box 149091
Austin, Texas 78714-9104
Fax 512/475-1771
www.tdi.state.tx.us
www.consumerprotection@tdi.state.tx.us

Include the following information with your complaint:

- (1) your name, address and day-time telephone number;
- (2) the exact name of the insurance company (as it appears on your policy);
- (3) the full name of any agent or adjuster who may be involved;
- (4) your policy number;
- (5) your claim number and the date of your loss, if applicable;
- (6) a concise description of your problem;
- (7) what you believe would be a fair resolution of your complaint; and
- (8) copies of all supporting documentation, including: invoices, canceled checks, advertising materials and any letters between you and the company or agent.

The Texas Department of Insurance also has a toll-free consumer helpline open weekdays from 8:00 a.m. until 5:00 p.m. to help answer your insurance questions, questions regarding an insurance company's address, complaint history, financial strength and license status. For answers to these questions, contact the Texas Department of Insurance Consumer Help Line at 800/ 252-3439.

How long before my potential claims against an insurance company expire?

Under Texas law, you generally have two years after the accident to either settle your claim or go to court. (For a bad-faith action, you have two years from the day coverage is denied and for an action under the Insurance Code, you have two years from the date the unfair act or practice occurred.) Be

sure to save all correspondence with your insurance company, as these letters may come into play later for determining what date your claim accrued.

LANDLORD/TENANT RELATIONSHIPS

Can I sublease my apartment?

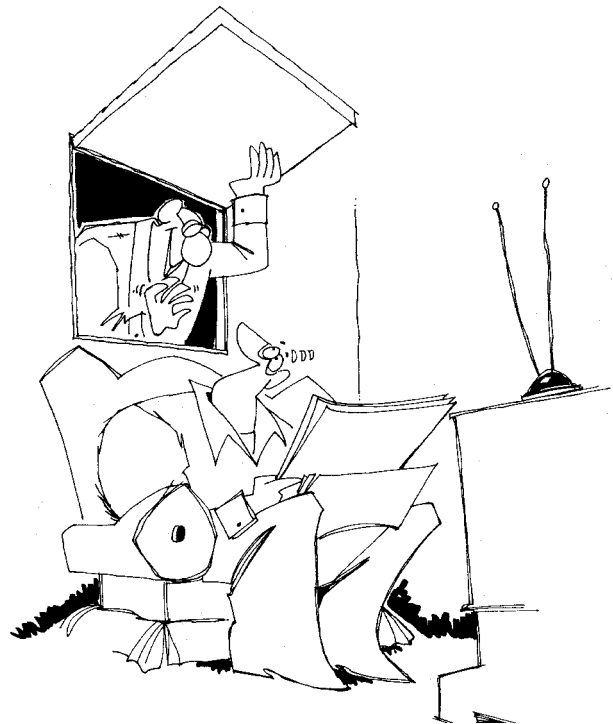
Not without your landlord's prior consent. The law prohibits you, as a tenant, from subleasing your apartment without the prior consent of your landlord. Your landlord, however, can give you the right to sublease. Your written lease must specifically give you the right to sublease. If your lease does not include a right to sublease, then you cannot sublease. Even if your lease does not give you the right to sublease your apartment, ask your landlord for approval to sublease. He may agree to allow you to sublease. Remember though, that if your landlord gives you permission to sublease and you successfully find someone to sublease your apartment, you will still be liable to the landlord for any rents that your subtenant does not pay.

Can my landlord come into my apartment?

Whether your landlord can enter your apartment depends on what your written lease says. If your lease has language about your landlord's right to come into your apartment, then this language determines your landlord's right. If your lease does not specifically talk about your landlord's right to enter your apartment, then your landlord probably cannot enter at any time that he wants. He may, however, enter at reasonable times to inspect the condition of the inside of your apartment. If your landlord comes into your apartment wrongfully, he may be liable to you for any damage he causes. The key to your landlord's right to enter your apartment is that your landlord must enter at a reasonable time and must act reasonably in all respects in doing so.

What are my rights if the landlord fails to pay the utility company?

If your landlord has expressly or impliedly agreed in your lease to furnish and pay for water, gas, or electric service to your dwelling, the landlord is liable to you, the tenant, if the utility company has cut off utility service to your dwelling or has given written notice to you that the utility service is about to be cut off because of your landlord's nonpayment of the utility bill. If your landlord is liable for cutting off your utilities, you have several options. First, you may pay the utility company money to reconnect or avert the cutoff of the utilities. You may also terminate the lease if you give notice to the landlord in writing that you are terminating the lease and you move out within thirty (30) days from the date you have notice from the utility company of a future cutoff or notice of an actual cutoff, whichever is sooner. If you terminate the



lease, you can deduct your security deposit from the rent owed without the necessity of a lawsuit, or obtain a refund of your security deposit pursuant to law. Also, if you terminate the lease, you may recover a pro rata refund of any advance rents paid from the date of termination or the date you move out, whichever is later. You may also deduct from your rent, without having to take any judicial action, the amounts you paid the utility company to reconnect or avert a cutoff. If you deduct from your rent your payment of the landlord's utility bill, you must give your landlord a copy of the receipt from the utility company that shows the amount you paid to reconnect or avert cutoff of the utilities. Additionally, you may sue and recover from the landlord actual damages, including without limitation, moving costs, utility connection fees, storage fees, and lost wages from work; alternatively you must sue for one's month's rent or \$500. You may also recover attorney's fees from the landlord, excluding any attorney's fees for a suit for damages relating to a personal injury. The options explained become available to you on the date you have notice from the utility company of a future cutoff or notice of an actual cutoff, whichever is sooner. Your options expire and you cannot use them if the following occurs:

- (1) your landlord gives you written proof from the utility company that all delinquent sums due the utility company have been paid in full and
- (2) at the time you receive the proof, you have not yet terminated the lease or filed suit under the options set out above.

Can my landlord enter my apartment, take my property, and even sell my property if I do not pay my rent?

Yes, if the landlord follows all of the procedures required by the law.

Your landlord may have a lien for unpaid rent that is due. The lien attaches to certain property that is in your residence or that you have stored in a storage room on the rental premises. This lien is called a "landlord's lien." This law permits the landlord to enter your unit in a peaceful manner, and take your property until you pay the rent owed. If you fail to pay the rent due, the landlord can sell your property. In order for the landlord to be able to exercise his rights under the landlord's lien law, he must comply with the specific requirements of the law.

The Lien

First, the landlord's lien is only enforceable if it is underlined or **printed in conspicuous bold print** in your lease agreement. If your lease does not contain language that sets forth the lien, or if your lease provides for the lien, but the language is not underlined or printed in bold letters, then your landlord cannot legally enter your apartment and take your property, because the purported lien is invalid. This means that if your landlord does come into your unit and takes your property without a valid lien in place, then he could be liable to you for damages and could be guilty of theft. Second, if the lien is correctly set forth in your lease, your landlord is entitled to take only certain property and must remove the property peacefully. The law prohibits him from taking the following items:

- (1) wearing apparel;
- (2) tools, apparatus, and books of a trade or profession;
- (3) schoolbooks;
- (4) a family library;
- (5) family portraits and pictures;
- (6) one couch, two living room chairs, and a dining table and chairs;
- (7) beds and bedding;
- (8) kitchen furniture and utensils;
- (9) food and foodstuffs;

- (10) medicine and medical supplies;
- (11) one automobile and one truck;
- (12) agricultural implements;
- (13) children's toys not commonly used by adults;
- (14) goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the residence; and
- (15) goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement.

If your landlord takes any of the items listed above, he has broken the law and could be liable to you as explained below. Third, upon taking your property, your landlord or his agent must leave you a written note stating the following:

- (1) that he has entered your apartment;
- (2) a list of each of the items that he removed;
- (3) the amount of the rent you owe;
- (4) the name, address, and telephone number of the person you may contact about the amount owed; and
- (5) that the property taken will be promptly returned on full payment of the past-due rent.

This written note must be left in an obvious place in your apartment so that you can easily see it. Fourth, your landlord may charge you for packing, removing, and storing your property that is removed, if you have a written lease and the right of your landlord to collect such charges is contained in the written lease. These charges must be reasonable. If your lease is not in writing, or if you have a written lease that does not set forth the landlord's right to collect these types of charges, or if the charges are not reasonable, then your landlord is violating the law and could be responsible to you for damages as set out below.

Your landlord may sell or dispose of your property if your written lease authorizes it. In addition to the law requiring that your written lease specifically permit the sale of your property taken under a landlord's lien, the landlord must take the following steps in order to legally sell your property:

- (1) send you a note in writing not later than the 30th day before the date of the sale stating:
 - a. the date, time and place of the sale
 - b. a list of the amounts owed by you to the landlord, and
 - c. the name, address, and telephone number of the person you may contact regarding the sale, the amount owed, and your right to get your property back;
- (2) the note must be sent to you by both first-class mail and certified mail, return receipt requested, at the address that the landlord last knew was your address;
- (3) your property must be sold to the highest cash bidder at the sale;
- (4) the money received by the landlord for the sale of your property must first be used to pay for the past-due rent owed, and then if allowed by your lease reasonable packing, moving, storage, and sale costs;
- (5) any money left after payment of the rent owed and other charges as permitted by your lease shall be mailed to you at your address last known to the landlord no later than the 30th day after the date of the sale; and
- (6) if you make a written request to the landlord (which you should do) for an explanation of the money received from the sale and which amounts you owed that were paid with the money and in what order the amounts were paid, the landlord must provide you with the

explanation in writing not later than the 30th day after the date on which you make your written request.

Even if your landlord complies with each of the above requirements, you may still reclaim your property at any time before the property is sold by paying the landlord or his agent all past-due rents owed, and all reasonable packing, moving, storage, and sale costs authorized by written lease.

What are my rights for violations by my landlord?

As you can see, the law is strict in regard to the taking and selling of a tenant's property. Despite a landlord's right to exercise a lien for unpaid rents, many landlords do not comply with the requirements necessary to lawfully remove and dispose of a tenant's property. If your landlord does not follow each of the steps set forth above, then he may be acting wrongfully and you have the right to sue your landlord. The law provides that if your landlord or his agent willfully violates any of the requirements discussed above, then you as the tenant are entitled to get from the landlord the following:

- (1) your actual damages;
- (2) the return of any property taken from your apartment that has not yet been sold;
- (3) the return of the money received by the landlord or his agent from the sale of any property taken from your apartment;
- (4) one month's rent or \$500.00 whichever is greater, less any amount for which you are liable to the landlord; and,
- (5) your reasonable attorney's fees.

Before you file suit though, you may want to talk with your landlord to try to get your property back. Remember, even if your landlord has wrongfully taken your property, you still owe past-due rent and your landlord has the right to evict you and sue to collect the unpaid rent. Working with your landlord to resolve the situation is better than fighting in court.

If I am injured on the leased property, is my landlord responsible for my injuries?

Maybe.

"Premises liability" includes liability arising out of all physical conditions on or of real property which can result in injury. In recent years, the primary focus on this issue has been in security-related cases where an owner or operator of a premises has been held liable for the criminal acts of third parties. Premises liability is not governed by statute; but, rather is based on negligence principles. The mere fact that your landlord owns the real property does not make him automatically liable for your injuries. Generally speaking, for your landlord to be liable three elements must be present. First, your landlord must owe you a duty of care. Second, your landlord must have breached that duty. Third, you must have suffered damages caused by your landlord's breach of his duty of care.

The landlord generally owes no duty to you or your invitees, even for injuries caused by unsafe conditions or criminal intrusions. The only exceptions where the landlord owes you a duty of care is when your injuries arise from: (a) the landlord's negligent repairs, (b) concealed defects in the premises that the landlord was aware of at the time of the lease, or (c) a defect in the premises that remained under landlord's control.

The duty of care regarding repairs can be established in two ways. First, once your landlord undertakes to repair something in your unit, his duty to use ordinary care is established. Second, once you demand that the landlord make a repair that he is obligated to make based on your lease or applicable statute, a similar duty is established.

Concealed defects in the premises similarly establish a landlord's duty of care. The landlord can only be liable, however, when he knew about the defective condition at the time of the transfer, did not tell you about it, and you neither knew nor should have known about the defect.

Defects in common areas and other areas remaining under the landlord's "control" establishes the third basis for the landlord's duty of care. The main inquiry is whether your landlord had control of the place in which the injury arose, since your landlord is generally not liable for injuries occurring on the premises leased and controlled by you. Landlords typically control common areas, such as stairwells and doorways, and owe you a duty to keep these areas in reasonably safe condition. If your landlord employs an on-site property manager, both the landlord and the property manager will typically have the right to "control" the property. If the landlord has delegated all right to control the daily management of the premises to the property manager, then the landlord may not owe you a duty of care. If, however, the landlord has not acted responsibly and failed to exercise reasonable care in selecting a manager, he may be liable for your injuries despite his delegation of control.

Thus, if you were injured inside your specific leased space (e.g., your apartment unit, or your house) which you control on a daily basis, then your landlord probably owes you no duty, and would not be liable for your injuries. The exception to this rule is if you were injured by a condition inside your particular unit that was the landlord's responsibility to maintain and upkeep, then the landlord may owe you a duty of care. Additionally, if you were injured in a common area on the premises (e.g., a parking lot, or recreation area), then either or both the owner and property manager may owe you a duty of care.

Having determined that your landlord (be it the owner or property manager) owes you a duty, specifically what is his duty? The landlord's duty to you as a tenant is to use ordinary care to keep the premises in a reasonably safe condition. The next element to ascertain is whether the landlord breached this duty. For the landlord to have breached his duty, the following must exist:

- (1) The landlord must have actual or constructive knowledge of some condition on the premises caused by the landlord;
- (2) The condition posed an unreasonable risk of harm;
- (3) The landlord did not exercise reasonable care to reduce or eliminate the risk; and
- (4) The landlord's failure to use reasonable care caused your injury.

The type of conditions which constitute a breach of the duty to keep the premises reasonably safe include physical defects in a premises (e.g. malfunctioning elevator doors, uneven exterior tiling), and substances spilled or which fall on the premises (e.g. water on tile floors). More questionable is the lack of protection against the criminal activities of third parties. The situations in which a landlord must provide protection and the level of protection required are unclear. For instance, even if a condition which poses an unreasonable risk of harm exists on the property, the landlord of the property does not breach a duty by reason of the mere existence of that condition until and unless the landlord "knew or should have known" that the condition existed and failed to remedy the condition. The key issue therefore is whether the landlord knew or should have known that an unreasonable risk of harm from third party criminal acts existed. To answer this question, you must establish that either (a) the landlord knew that the condition existed and failed to remedy the condition as a reasonable person would have, or (b) the condition existed for a sufficient period of time, and that the landlord should have discovered the condition and removed it in the exercise of ordinary care.

RESOURCE AND REFERRAL NUMBERS

GOVERNMENT AGENCIES

- Attorney General's Office for the State of Texas 800/621-0508 or 713/223-5886
(handles consumer complaints against individual or business; will send forms to consumer to fill out, and assign a moderator to work out the problem)
Consumer Protection Division
808 Travis, Suite 300
Houston, Texas 77002
- Texas Department of Banking 512/475-1300
(supervises state chartered banks www.banking.state.tx.us)
- Bankruptcy Court, Southern District of Texas 713/250-5115
- Business Information Texas Economic Development 512/936-0100
- Consumer Credit Commissioner 800/538-1579
(regulates small loans, pawn loans, motor vehicle installments loans, home equity lending and secondary mortgage loans with interest rates higher than 10%)
- Consumer Fraud/Harris County District Attorney's Office 713/755-5836
- Consumer Product Safety Commission 800/638-2772
(can investigate product safety complaints against consumer products www.cpsc.gov)
- Governor's Office Hotline 800/252-9600
- Houston Service Help Line 713/247-1000 or 311
- City of Houston Health & Human Services Department 713/794-9311
- City of Houston Housing & Community Development Department 713/868-8300
(landlord/tenant disputes, housing discrimination complaints www.houstonhousing.org)
- Insurance Consumer Line, Texas Department of Insurance 800/252-3439
- Motor Vehicle Information 800/622-8682
(handles complaints about manufacturer's defects and Lemon Law)
- National Fraud Information Center 800/876-7060
(handles complaints about contracts or interest rates charges by telemarketing and Internet companies)
- Public Utility Commission of Texas 512/936-7000
- Small Claims Court Information 713/755-5125

Labor Law Department of Texas Workforce Commission 800/832-9243
(handles salary complaints and disputes)

The Work Source (Heights) 888/469-5627

CONSUMER SERVICES

Better Business Bureau 713/868-9500
1333 West Loop South, Suite 1200
Houston, Texas 77027

Telephone Preference Service *(to be removed from solicitation lists)*
c/o Direct Marketing Association
P.O. Box 9008
Farmindale, NY 11735-9008

HELPFUL NUMBERS

Certified Public Accountant (CPA) Referral Service..... 713/622-7733

Chamber of Commerce, Greater Houston Partnership 713/844-3600

Houston Apartment Association 281/933-2224

Houston Association of Realtors..... 713/629-1900

Harris County Medical Society 713/524-4267

Department of Transportation..... 800/299-1700

National Association of the Remodeling Industry 713/621-6274
(Non-profit organization for contractors/suppliers)

LEGAL RESOURCES

Dispute Resolution Center 713/755-8274
*(handles disputes between neighbors, families, friends, consumers/merchants,
landlords/tenants & employers/employees)*

Grievance Committee of the State Bar of Texas 713/758-8200
(Houston office which handles complaints against local attorneys)

Lone Star Legal Aid 713/652-5911
(pro-bono legal assistance for non-criminal cases; must meet program requirements)

State Bar of Texas Client Attorney Assistance Program 800/932-1900

Houston Lawyer Referral Service, Inc. 713/237-9429
(free referral to a specialized attorney)

Houston Volunteer Lawyers Program. 713/228-0732
(pro bono legal assistance for non-criminal cases; must meet program requirements)

LegalLine. 713/759-1133
(free legal advice sponsored by the Houston Bar Association from 5 p.m. to 9 p.m., on the 1st . . and 3rd Wednesday of each month.)

Hispanic and Mexican-American Bar Association's Consejos Legales 713/759-1133
(Spanish language legal advice over the phone, 6 p.m. to 8 p.m., 1st Thursday of each month)

Vietnamese LegalLine 713/759-1133
(Vietnamese language legal advice over the phone, 5 p.m. to 7 p.m., 3rd Tuesday of each month.)

CREDIT COUNSELING

Consumer Credit Counseling Services & Management International 713/923-2227
(financial counseling and debt management)

Credit Counseling Centers of America 800/493-2222
(financial counseling and debt management)

Credit Coalition. 713/224-8100
(free financial literacy classes)

CREDIT BUREAUS

(consumer assistance for persons denied credit, employment or insurance; provides complimentary annual credit report)

Equifax. 800/685-1111

Trans Union Credit Information 800/916-8800

Experian (formerly TRW). 888/397-3742

USEFUL PUBLICATIONS

HBA Consumer Law Handbook. 713/759-1133

For multiple copies, please call the Community Education Department. Individual copies are available from the Houston Bar Association, 1001 Fannin, Suite 1300, Houston, TX 77002, or by sending a self-addressed, 9 x 12 envelope with \$1.95 postage to the address above. Please specify that you would like the Consumer Law Handbook. All HBA legal handbooks are available online in other language at www.hba.org.



Houston Bar Association
Commercial & Consumer Law Section
1001 Fannin, Suite 1300
Houston, Texas 77002
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