

Consumer Law Information



"...and justice for all."

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The following information is an overview of the Louisiana and Federal law on certain subjects. It is not intended as legal advice. If you have a problem in these areas, you should contact an attorney for help.

Although each of us enter into numerous consumer transactions each day, most go so smoothly and are so routine that we do not even give them a second thought. When something does go wrong however, it pays to know what rights and options you have. Some of the most common problem areas and questions we get in our practice are about:

Consumer Loans

Defective Merchandise

Bankruptcy

Home Solicitation Sales

Truth in Lending

Equal Credit Opportunity

Fair Credit Reporting

Debt Collection Practices

Security Deposits

Merchandise You Didn't Order

Consumer Loans

In order to borrow money, you promise to make certain payments and to make them on certain dates. If you break either of the promises you make to borrow the money, you will be in “default” on the loan. This means that the person who loaned the money can demand payment. Most loans contain an “acceleration clause”. It says that if you default on any of your promises, the entire balance is due, not just the amount overdue.

If you co-sign a loan, you are liable for repayment of the entire amount of the loan. It does not matter if you got little or none of the money. When a lender asks for a co-signer, it usually means he does not think the original borrower is going to be able to repay the loan on his own. Most lenders are in the business of lending and collecting money. It should send a strong signal to you that the person asking you to co-sign for them may not pay off the loan and you will have to step in and do so.

The interest rate you pay on a loan is determined by the amount you are borrowing, how long you want to take to pay back the loan, what the lender will get if you don't pay on time and the lender's view of the risk that you won't make the payments. Some consumer loans carry interest charges of 30% or more. This means that every year, you pay about one-third of the amount borrowed just to use that money. It is always a good idea to shop around for lower interest rates, just as you would shop around for the best price on clothes or food items.

Defective Merchandise

We've all had the experience of buying something, getting it home and finding out it doesn't work as expected. If the item has hidden defects which existed before you bought it, the defects are so bad as to make the item useless, and you wouldn't have bought it had you known about the defects, you may be able to cancel the sale and get your money back. In Louisiana, the legal word for this remedy is “redhibition”. You must give the seller a chance to fix the item before you can get a refund. If the problem is not so serious, you may get only a partial refund or enough to fix the item.

Although these rules apply to cars as well, there are additional protections for car buyers. All used cars offered for sale by a dealer must have a “Buyers Guide” posted on the window which shows what warranty you will get with the car. In Louisiana, if you lease or buy a new car which is out of service for thirty days or more or goes into the shop four times to fix the same problem, you may be entitled to a replacement or refund. You must still allow the seller a chance to fix the car, but the law limits how many tries he gets. The defect must substantially impair the use or market value of the car. Most manufacturers also offer an informal dispute resolution program.

Bankruptcy

The laws and rules on bankruptcy are very complicated and change often. It is very unlikely you will be able to take advantage of all of the protections available to you without the help of an attorney. Most individuals file for one of two types of bankruptcy protection, Chapter 7 or Chapter 13. The court charges around \$300 for a bankruptcy.

A Chapter 7 bankruptcy is a liquidation of your assets in order to raise money to pay your creditors. You are allowed to keep certain items you own in full which are “exempt”, such as your clothing, dishes and bed. Items which you have mortgaged (either as security for a loan or in order to finance their purchase) are not exempt and usually must be surrendered to the person who holds the mortgage. When the proceedings are finished, you get a discharge from the court which declares that you no longer owe anything to the people you listed as creditors in your bankruptcy.

A Chapter 13 bankruptcy (also called a “wage earner plan”) allows you to make periodic payments on your debts and keep your belongings. You must have regular income to be able to take advantage of this type of bankruptcy. You and your attorney will prepare a plan that says how you will pay back the people you owe over 36-50 months. As long as you make your payments, your creditors can not try to collect what you owe. When the plan is over, your debts are discharged.

Home Solicitation Sales

Have you ever been sitting at home when a salesman shows up uninvited, to sell you burglar bars or vinyl siding or other home improvements? The salesman will try to get you to sign an agreement while he is at your house. You should not sign right away, but take some time to think about it, at least overnight. There are few honest businesses that will not make you the same offer the next day. Be doubtful about anyone who tells you the offer is “for a limited time only” or “only good today”. These should be warning signs.

If you do sign the agreement, one of the papers you will sign will tell you about a special right you have. Be sure to keep a copy of it, you may need it. In these sales, you have the right to change your mind and cancel the sale. To do so, you must tell the seller in writing and do so within three days of signing the agreement. You use the cancellation form the salesman gave you to get out of the contract.

Some sellers will even send workmen over the day after you sign the agreement to begin the work. Do not think that this means it is too late to change your mind. The law gives you a full three days to change your mind and cancel the sale. Do not let the workmen start work until you are positive you can afford to pay for it.

Truth in Lending

When you are buying goods, services or land on credit for you or your family to use, the lender must give you certain information. Although some agreements are not covered, such as when there will be less than five installments, there is no finance charge or the amount is over \$25,000 and not for land, most credit purchases you make will be covered.

On the papers you will be asked to sign will be a number of boxes with information in them. The details must be given to you in writing big enough to read. You will be able to see: the total finance charge; closing costs; total of payments; amount financed; annual percentage rate; number of payments; amount of late fees and whether a mortgage is being taken on any of your property.

If the item you are financing is your home, you have the right to change your mind. Just as with a home sale, you must do so in writing within three days. Of course, you will have to return any money you received from the lender. Lenders who don't follow these rules face tough penalties, including up to \$1000 paid to the borrower.

Equal Credit Opportunity

When you ask someone who usually gives or arranges credit for a loan, only your ability to repay should affect the lender's decision. It is illegal for a lender to refuse you credit based upon: your sex; marital status; age; race; national origin or religion. To make sure you are treated fairly, lenders can't ask questions about these factors.

The law also controls how the decision about your credit application is made. You must receive a written answer within thirty days of your application. If you are turned down, you must be told why and allowed to see the information used to reach that decision. This gives you the chance to catch any incorrect or outdated information. Penalties for a lender who ignores these rules can be over \$10,000.

Fair Credit Reporting

To make sure decisions about your credit are based on your ability to repay, companies that give credit reports must follow certain rules. Their reports must contain only up-to-date and accurate information. Generally, bad credit information more than seven to ten years old must be erased.

You can get a copy of your credit report for free and should review it. It will show who made it and who has seen it in the last six months. You can insist the company re-investigate inaccurate information or include your explanation of accurate information.

Fair Debt Collection

Whenever you are unable to pay your bills on time, it is a good idea to call the person you owe and explain the situation. If you do not, the creditor will become worried about whether or not you will repay the money you owe. Creditors are in business to make money and can't do so if people don't repay their loans. Although most creditors aren't trying to harass people who are behind on their bills, the only way for them to collect is to contact you.

When the person trying to collect the debt is not the person to whom you owe the money but is someone hired to collect the debt, you have certain protections on how you can be treated. For example, debt collectors may not call someone else about your bill except to find out where you work or live. They can't tell other people that you are behind on your bill. The debt collector is allowed to contact you by mail, phone or in person but may not call very early in the morning or late at night without your permission.

It is easy for you to stop some of the debt collector's calls. You may tell him not to call you at work. You may write a letter and tell him to quit contacting you. Be sure to keep a copy of your letter. After that, he can only contact you to advise of the status of the account (they are turning it over to their lawyer or filing suit). Keep in mind that he is only trying to collect what you've already promised to pay. Cutting off communication with the debt collector may speed up a lawsuit against you.

Not every contact is considered harassment, but certain acts are prohibited such as: using threats of violence; publishing your name on a list; using obscenity or profanity; using the phone just to annoy you; advertising your debt; or making false, misleading or deceptive statements. Debt collectors can not: say they are lawyers if they aren't; imply you've committed some crime; give false amounts you owe; give out false information about you; threaten to have you arrested, your belongings seized or your paycheck garnished unless they have already decided to do so. They can not threaten to do something illegal.

Within five days of first contacting you a debt collector must send you in writing: the amount you owe; the name of the creditor and the action you can take if you don't agree that you owe the money. You then have thirty days to tell him if you disagree with the debt. Once you receive proof of the debt, the collector can start trying to collect. If you owe multiple debts the collector is working on, you can decide how your payments get applied.

Security Deposits

The time to begin work on getting back your security deposit on a rented home is the day you move in. At that time, you should walk through the space with the landlord. Take notes about the condition of the unit, any carpet tears, nail holes and such. You and the landlord should agree on the list, each sign it and each keep a copy. If you can't agree on the condition when you move in, it is unlikely you will agree when you move out. Most apartment complexes have forms for such inspections. If your landlord doesn't have one, make up your own with a separate place for each room. Note the condition of the ceiling, walls, floors and furnishings. This will protect you from a claim that you damaged something when it was really damaged before you moved in.

When you are ready to move out, give the landlord plenty of advance notice. Most leases require thirty days notice or more by the tenant. After you've got the apartment cleaned up, arrange a time for you and the landlord to do another inspection. Pull out your copy of the inspection the two of you made when you moved in. Make notes of any new damages and try to get an idea what things the landlord will want to charge you for. If the stove or refrigerator isn't clean enough, there's still time for you to do so instead of paying the landlord's workers to do it.

When you move, return your keys to the landlord along with a letter containing your forwarding address and a request for your security deposit. Keep a copy of the letter. The landlord has thirty days to either return your entire deposit or he may return a portion of it and include an itemized statement of how the rest was spent to repair damages to the unit. If he doesn't, you may get it back in small claims court.

Merchandise You Didn't Order

Years ago, dishonest businessmen would send you things you didn't order and then bill you for it. The problem was so bad that Congress passed a law to stop the practice. As a result, it seldom happens any more.

If you get something in the mail which you did not order, you may keep it. Before getting too excited, you should check to be sure no one else in your family, including a child, ordered it without telling you about it. As a courtesy, you should inform the seller about his error, provided you can do so at little or no expense. It is possible that a completely honest merchant merely made a shipping error and would be glad to pay the return shipping charges. They will appreciate your honesty.