

AN OVERVIEW OF COMMON CONSUMER PROTECTION LAWS

By

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Noel White has been practicing law in Florida for **over 20 years**. Noel graduated from Stetson College of Law and has her own law firm in Dunedin, Florida. Noel helps empower her clients to gain direction by providing services primarily in the areas of wills, trusts and probate. She is admitted to practice before both Florida State and Federal Courts. Noel is an arbitrator for the New Motor Vehicle Lemon Law Arbitration program, the Clearwater Bar Association, Business Networking International Success Alliance Chapter, Pinellas Women in Networking and the Florida Association of Women Lawyers.

CREDIT CARDS

TYPES OF CREDIT CARD DISPUTES

- Unauthorized use – Someone steals, borrows or otherwise uses your card or card number without permission
 1. Liability limited to \$50
 2. Immediately contact lender to make a report
 3. Also can use billing error procedures
- Billing Error Procedures – Disputes about your bill
 1. Must raise the dispute **IN WRITING** within 60 days of the first bill with the improper charge
 2. Include, name and account number, dollar amount in dispute and statement of the reason for the dispute
 3. Send dispute letter to address provided by the lender for this purpose

“ Right to withhold payment

1. May use if you have a legitimate complaint about the quality of goods or services you bought with the card AND you first make a good faith effort to resolve the problem with the merchant directly
2. Goods or services you bought must have cost more than \$50
3. Bought those goods or services in your home state or within 100 miles of your mailing address
4. Items 2 and 3 do not apply if the credit card was issued by the seller (such as department store card) or if the seller mailed you the advertisement for the goods or services you purchased

How to Enforce Your Credit Card Dispute Rights

- ~ Complain to the Office of the Comptroller of Currency
- ~ Sue the company or take them to arbitration
 1. Right to sue may be limited by a mandatory arbitration provision which most credit card companies have slipped into their contracts
 2. Be sure to read the fine print and know what the costs will be to you
- ~ Raise claims if sued

DEBT COLLECTION OF CONSUMER DEBTS

- ~ FAIR DEBT COLLECTION PRACTICES ACT
 1. Major protection against third party debt collectors
 2. Gives you rights to ensure attempts to collect a claimed debt from you are done in a proper and respectful manner
 3. Gives you the right to direct the debt collector to cease contact with you
- ~ FLORIDA COLLECTION PRACTICES ACT
 1. Similar the Federal Act but applies to any person

~ Specific examples of what a debt collector cannot do

1. May not harass, oppress or abuse any person in connection with the collection of a debt. May not
 - a) Use, or threaten to use, violence against you, your reputation, family or property
 - b) Use obscene, profane or abusive language
 - c) Repeatedly make telephone calls with the intent to harass
 - d) Place telephone calls without identifying him/herself clearly

2. May not use any false, deceptive or misleading representations in connection with the collection of a debt. May not
 - a) Falsely represent the character, amount or legal status of any debt
 - b) Falsely represent or imply that he or she is affiliated with the U.S. or any State
 - c) Represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure of any property or wages of any person unless such action actually is lawful and the debt collector actually intends to take such action

3. May not use unfair or unconscionable means to collect or attempt to collect any debt. May Not

- a) Solicit any postdated payment instrument for the purpose of threatening or instituting criminal prosecution
- b) Deposit or threaten to deposit any postdated payment instrument prior to date on such instrument
- c) Communicate with a consumer regarding a debt by postcard
- d) Create charges to any person (such as collect telephone calls and telegram fees) by concealing the true purpose of the communication

4. May not communicate with a consumer without the prior consent of the consumer or the express permission of the court. May Not

- a) Communicate at any unusual time or place or a time or place known to be inconvenient to the consumer
- b) If the debt collector knows the consumer is represented by an attorney unless the attorney fails to respond within a reasonable period of time to a communication of the debt collector or unless the attorney consents to direct communication with the consumer
- c) At the consumer's place of employment if the debt collector knows the consumer's employer prohibits the consumer from receiving such communication

A debt collector must provide a consumer with a written notice, either in its initial communication or within 5 days of the initial communication that contains:

1. The amount of the claimed debt
2. The name of the creditor to whom the debt is owed
3. A statement of the consumer's rights to dispute the claimed debt
4. A statement of the consumer's rights to have the claimed debt verified and to have the original creditor and account information identified

Facts about Credit Reporting

" You have the right to free copies of the information in your file once every 12 months from each of the three big nationwide Consumer Reporting Agencies

1. Click on www.AnnualCreditReport.com
2. Call 800-322-8228, or
3. Complete the Annual Credit Report Request form from www.ftc.gov/credit and mail to:

Annual Credit Report Request Service
P.O. Box 105281
Atlanta, GA 30348-5281

~ Who are the three major Consumer Reporting Agencies?

 Equifax 800-685-1111 www.equifax.com	 Experian 888-EXPERIAN (888-397-3242) www.experian.com	Trans Union 800-916-8800 www.transunion.com
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What to you do if the information is inaccurate or incomplete?

In 1970, Congress created the Fair Credit Reporting Act (FCRA) to protect consumers when dealing with Consumer Reporting Agencies. Under the FCRA, both the Consumer Reporting Agency and the information provider have responsibilities for correcting inaccurate or incomplete information in your report. To protect your rights, contact both the Consumer Reporting Agency and the provider of information, including lenders, collection agencies or other businesses.

Tell the Consumer Reporting Agency *in writing* what information you believe is inaccurate. Be as specific as possible.

- The Consumer Reporting Agency must investigate the items in questions –usually within 30 days-unless they consider your dispute frivolous
- When investigation is complete, the Consumer Reporting Agency must give you the written results and a free copy of your report if the dispute results in a change.

What can you do if the Consumer Reporting Agency or Information Provider Refuses to Correct the Information Disputed?

- ~ Ask that a statement of the dispute be included in your file and in future reports
- ~ If you think the Consumer Reporting Agency has violated your rights under the law you may wish to seek the advice of an attorney about bring a private lawsuit
- ~ You can also contact the Federal Trade Commission (FTC) by visiting www.ftc.gov or call toll free, 1-877-FTC-HELP
- ~ Contact Florida's Consumer Protection Bureau by calling (855) 411-2322

FLORIDA'S LEMON LAW

Florida's Lemon Law applies to **NEW** or demonstrator vehicles sold or long-term leased in the state of Florida. When consumers buy or lease a new or demonstrator motor vehicle, they must receive from the selling dealer or lessor the "Consumer Guide to the Florida Lemon Law." This publication explains consumer rights, gives steps to follow to resolve problems, contains a toll-free number for the Lemon Law Hotline and a form the consumer can use to notify the manufacturer of chronic defects and time out of service for repair.

To obtain a "Consumer Guide to the Florida Lemon Law," or speak with someone about the Lemon Law, consumers in Florida may call the Lemon Law Hotline at 1-800-227-2222 consumers outside of Florida should call 1-800-227-2200

How The Florida Lemon Law Works

The Lemon Law covers defects or conditions that substantially impair the use, value or safety of a new or demonstrator vehicle (these are called "nonconformities") but not defects that result from accident, neglect, abuse, modification or alteration by persons other than the manufacturer or its authorized agent.

- ~ These defects must be first reported to the manufacturer or its authorized service agent (usually, this is the dealer) during the "Lemon Law Rights Period," which is the first 24 months after the date of delivery of the motor vehicle to the consumer.
- ~ **Do Not Delay** in reporting a problem as this may cost valuable time and protection.
- ~ Consumers should **Keep Records** of all repairs and maintenance. A written repair order should be obtained from the service agent (dealer) for each examination or repair under the warranty.

When To Give Notice

If the vehicle has been taken to the service agent for repair of the same recurring problem at least three times the consumer must give written notification by certified, registered or express mail, to the manufacturer (not the dealer) to afford a final opportunity to repair the vehicle. A Motor Vehicle Defect Notification form may be used for this purpose. Upon receipt of the notification, the manufacturer has 10 days to direct the consumer to a reasonably accessible repair facility, and then up to 10 days from delivery of the vehicle to fix it.

If the vehicle is not able to be repaired after repair shop for repair of one or more different problems for 30 or more consecutive days, the consumer must give written notification of this fact to the manufacturer (not the dealer), by certified, registered or express mail. A Motor Vehicle Defect Notification form may be used for this purpose. After the manufacturer's receipt of the notification, the manufacturer or its authorized service agent must have at least one opportunity to inspect or repair the vehicle. The consumer may be eligible for a purchase price refund or a replacement vehicle if the vehicle is out of service for repair of one or more nonconformities for a cumulative total of 30 or more days.

What Happens Next?

If the manufacturer does not provide a refund or a replacement vehicle, consumers may invoke their rights through one or two arbitration programs. The dispute must be submitted for arbitration to a manufacturer sponsored program, if that program was certified by the State of Florida when the consumer purchased or leased the vehicle and the manufacturer's warranty or other written material explained how and where to file a claim with a state-certified program.

If a manufacturer has no state-certified program, or if the manufacturer has a state-certified program, but the program fails to make a decision in 40 days, or the consumer is not satisfied with the state-certified program's decision, the dispute must be submitted to the Florida New Motor Vehicle Arbitration Board, which is administered by the Office of the Attorney General.

What about used cars?

Florida does not have a "Lemon Law" for used cars so what can a consumer do? Here are some tips:

- ~ Have a used car thoroughly inspected by an independent mechanic prior to purchase
- ~ Review the paperwork to see if any warranty is being provided or if the car is being sold "AS IS"
- ~ There is no 3 Day Cooling Off period for car purchase. You drive it off the lot then it is yours.
- ~ You may have other remedies under the Uniform Commercial Code or the Florida Unfair and Deceptive Trade Practices Act so you should consult with an attorney. This will, however, cost you time and money.

Door-to-Door Sales

The Florida Home Solicitation Sales Act applies to any home solicitation sale, defined at §501.021(2) as:

"a sale ... of consumer goods ... with a purchase price in excess of \$25 ... made pursuant to an installment contract, a loan agreement, other evidence of indebtedness, or a cash transaction or other consumer credit transaction in which:

- a) The seller or a person acting for him engages in a personal solicitation of the sale ... at a place other than at the seller's fixed location business establishment...; and
- b) The buyer's agreement or offer to purchase is given to the seller and the sale ... is consummated at a place other than at the seller's fixed location business establishment.

The Federal Trade Commission Rule defines a "door-to-door" sale covered by the rule as follows:

"a sale ... of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller."

Both the Florida law and the Federal law give a consumer a 3 day right to cancel and this notice of cancellation must be provided to the consumer in writing.

FLORIDA TELEMARKEETING ACT

The Florida Telemarketing Act requires non-exempt businesses that engage in the sale of consumer goods or services by telephone to be licensed and post security.

"Commercial telephone solicitation" means:

- (a) An unsolicited telephone call to a person for the purpose of inducing the person to purchase or invest in consumer goods or services;
- (b) Other communication with a person where:
 1. A gift, award, or prize is offered; or
 2. A telephone call response is invited; and
 3. The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or
- (c) Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

After a sale, it is NOT FINAL if not followed by a signed written contract. The contract made pursuant to a commercial telephone solicitation shall:

1. Be reduced to writing and be signed by the purchaser.
2. Match the description of the goods or services as that principally used in the telephone solicitation.
3. Contain the name, address, telephone number, and registration number of the commercial telephone seller and the salesperson, the total price of the contract, and a detailed description of the goods or services being sold and the value of the goods.
4. Contain, in at least 12-point type, immediately preceding the signature, the following statement: "You are not obligated to pay any money unless you sign this contract and return it to the commercial telephone seller."

10 Tip-offs the Caller Might be a Crook

1. The phone number does not display on your caller ID.
2. High pressure sales tactics, especially when the caller insists on an immediate decision.
3. The offer sounds too good to be true.
4. A request for your credit card number for any purpose.
5. They offer to send someone to your home or office to pick up the money, or suggest methods of overnight mail to get your funds quickly.
6. A statement that something is "free" followed by a requirement that you pay for something.
7. An investment that is without risk.
8. Unwillingness to provide written information or references. Legitimate telemarketers answer questions, provide written material to back up their claims and give the consumer ample time to decide.
9. A suggestion that you should buy or invest on the basis of trust.
10. You have been selected because of "important marketing research" e.g., your outstanding credit, you have been a generous supporter in the past, etc.

10 Ways to Avoid Becoming a Victim

1. Allow yourself time to decide.
2. Require written information by mail about the product, service, investment or charity. Additionally, ask for written information about the organization.
3. Make certain you fully understand the investment before purchasing. Do the math. For example, if you are offered your choice of 6 magazines for only 15 cents an issue per day, that multiplies out to \$1,620 for a 5-year subscription and may far exceed even the newsstand cover price.
4. Investigate which state and federal agencies regulate this firm and which agencies require the telemarketer to be registered.
5. Check the background of the company or organization before any purchase is made.
6. If investing or making a major purchase, request information also be sent to your accountant, financial advisor, banker or attorney for evaluation.
7. Ask what recourse you have if you buy and are not satisfied.
8. Beware of testimonials that you have no way of verifying.
9. Don't provide any personal or financial information over the phone, unless it is to a trusted source.
10. If necessary, HANG UP.

OTHER RESOURCES

National Consumer Law Center – www.nclc.org

Federal Trade Commission – www.ftc.gov

Florida Department of Consumer Services –
www.freshfromflorida.com/consumer.html

Florida Attorney General's Office – www.floridalegal.com