

New
Consumer's
Hampshire
Sourcebook

3rd Edition

2006

*New
Hampshire
Consumer's
Sourcebook*

Written and Edited by
Elizabeth M. Dolan, Ph.D.
University of New Hampshire
and

The New Hampshire Attorney General's Office
Consumer Protection and Antitrust Bureau Staff
Richard W. Head, Senior Assistant Attorney
General

The ***Sourcebook*** was written to provide factual information concerning the covered topics. It is not meant to take the place of professional advice in any specific situation. The publication of the ***Sourcebook*** has been paid for with funds recovered by the Consumer Protection and Antitrust Bureau that were designated for consumer education programs.

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Preface

Living in New Hampshire offers unique opportunities to enjoy a quality of life that has been lost in many other places while still having access to the vast majority of benefits that the marketplace offers to twenty-first century Americans.

Unfortunately, New Hampshire consumers need effective protection from some of the dangers and risks that the marketplace presents. In the pages that follow you will find that we have provided some general information about the laws that apply to a variety of consumer transactions, some examples of how the law might apply to a situation, some points to keep in mind if you find yourself in similar circumstances and some ideas for where to turn for more help. The Sourcebook is not intended to give you legal advice, but whenever possible we have described the laws and legal concepts that apply to the purchase of many goods and services in simple, direct terms.

This is the third edition of the Sourcebook. The first edition was released in 1996 and the second edition in 2001. A number of people need to be credited for their work. They include the staff of the Attorney General's Office in 1996, especially Associate Attorney General Charles T. Putnam, Senior Assistant Attorney General Walter L. Maroney, and legal intern Someshwer Rao Takkallapelli, who contributed many hours to the project. The 1996 edition also made use of the expertise of other interns and staff at the Attorney General's Office, including Nolan Koon, Diana Jankowski Parker, Lisa Firkey, James Rosenberg, Lisa Lamphere and Kimberly Therrien, who researched one or more topics and helped us to get the descriptions of the law right. Suzann Enzian Knight of the UNH Cooperative Extension Service contributed extensive first drafts of several chapters relating to credit problems. For the 2001 edition, Associate Attorney General M. Kristin Spath, Senior Assistant Attorney General Mary Castelli, Attorney David Rienzo, and Legal Interns Christine La Valle, Amy Mayhew and Charles Gathungu contributed to the expansion and revision of the Sourcebook. For the 2006 edition, we need to thank the NH Attorney General's Office staff and Matty Leighton, Administrative Assistant in the Family Studies Department at UNH, without whom this edition would not have been finished.

Although we are indebted to all these people, we alone shoulder the responsibility for errors and omissions in the pages that follow. If you are in doubt about any of the information that is presented here or want help in applying it to a specific situation that you face, you may wish to consult an attorney.

We hope that the New Hampshire Consumer's Sourcebook will help to make the marketplace more accessible and understandable for our fellow citizens by providing the information needed to avoid the pitfalls that await the ill-informed or unwary.

Elizabeth M. Dolan
Richard Head
Durham and Concord, New Hampshire

User's Guide

We have made the New Hampshire Consumer's Sourcebook as easy as possible to use as a reference book. Nevertheless, you might want to consider the following tips before diving into the Sourcebook searching for answers to your questions:

- ✔ Browse the *Table of Contents* and *Boxes* to get an idea of what topics we have included. Although the main chapters are laid out in alphabetical order to make it easier for readers to find information, the "*Extra Note*" boxes have been distributed in various parts of the book to save space and paper. The other boxes, "*Watch Out For*" and "*For Your Information*," are part of the sections to which they relate.

- ✔ Read *1st Word*, a general overview of contracts, first to find out how principles of contract law govern much of what happens in the marketplace. Much of "consumer protection" can be best understood within the context of contracts.

- ✔ Use the *Index*, *Table of Contents*, and *Boxes*, and the alphabetical arrangement of chapters, as aids in finding information that you want.

- ✔ Most sections of the *Sourcebook* have a summary of the laws that apply to the topic, lists of points to consider and places to go for more information or help.
 - ▶ **The Law** will help you get a better understanding of your rights and obligations, and may help you to negotiate with a business, present your case in small claims court or decide if you need other help.
 - ▶ **Points to Remember** will be especially helpful if you want to know what steps to take to protect yourself before you have a problem.
 - ▶ The **Examples** should give you an idea of real applications and situations, and may make a relatively complicated idea easier to understand. We have tried to make the **Examples** amusing as well as useful.
 - ▶ Finally, **Where to Go If You Have a Problem** provides some suggestions on where to turn for help if you have already had a problem.

We have tried to make the information in the *Sourcebook* as accurate and current as possible. Laws change, however. If you have access to the Internet, you may want to visit the Consumer Protection and Antitrust Bureau's site on the State of New Hampshire's "Webster" website at www.nh.gov for updated information.

We hope that you enjoy using the Sourcebook.

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1st Word

We encourage you to read this section first. In this section we have tried to provide a simple, general overview of contract and basic consumer law that will be the basis for all the other discussions and information relating to consumer protection.

CONTRACTS

Any discussion of consumer protection must begin with a word about contracts. In many respects, consumer law protects consumers from some of contract law's harsher results. At the same time, the law regarding contracts still underpins most of our actions in the purchase of goods and services. Therefore, a good working knowledge about contracts is important to understand the opportunities and hazards of the marketplace.

A contract is a legally enforceable agreement between two or more persons. The agreement may be to do, or not do, something. It may be oral or written, or may be formed completely by conduct.

The law will enforce both oral and written contracts, but in most instances written contracts are preferable to oral contracts. The parties to an oral contract may disagree about the precise terms of the contract, and may have a hard time proving exactly what each one of them meant. The law has methods for selecting whom to believe when two people disagree, but the methods are imprecise at best. Parties to a written contract may still have plenty to disagree about, but they tend to have fewer disagreements about the terms of the contract. In some instances, the law requires contracts to be in writing, for example, contracts for the sale of land, leases for longer than a year, and contracts that will take more than a year to fully perform.

EXAMPLE: Mary Jones goes to Humongomart, walks in and picks up a pair of blue jeans from the shelf for her son John. There is a sign over the shelf that says "Special: Blue Jeans \$12." Without a word, she goes to the cash register and hands the cashier \$12. The cashier takes the money, puts the jeans in a bag and hands Ms. Jones a receipt. A contract for the purchase and sale of a pair of blue jeans has been made and executed between Humongomart and Mary Jones without saying or writing a word. The contract incorporates some written information -- the price term, for instance, and probably Humongomart's posted return/refund policy -- but the essential terms of the contract have been formed by the conduct of Ms. Jones and the cashier.

Consumers often have little or no power to change the words of written contracts or to strike out terms of the agreement that they do not like. The consumer's only choice may be to accept or reject the entire agreement. Contracts that are standardized and difficult to change are called "contracts of adhesion" and are generally written by lawyers for the bank, leasing company, car dealer, or whatever business with which the consumer is

dealing. A consumer should always read a written contract before signing it and compare the terms with other contracts from other sources.

Under some special instances, no matter how much gets said or written down, a contract may not be formed or the law may not enforce an agreement. For example, some people do not have the age (such as minor children) or mental capacity that the law requires to make their contracts binding. A contract is unenforceable if the purpose is illegal or repugnant to social policy, such as contracts for gambling debts or murder for hire. Contracts brought about by fraud often cannot be enforced. In rare cases, contracts found to be legally “unfair” may not be enforced in whole or in part.

Typically, when one party to a contract fails to do what was promised, the contract is broken and the injured party may bring a legal action for damages. Generally speaking, the purpose of the damages is to put injured parties in the position that they would have been in if the contract had not been broken. Contrary to what many people think, the law will not usually award money for emotional injuries connected to a breach of contract.

EXAMPLE: Frank Benjamin hires Zongo the Clown to perform at his daughter's birthday party on one weekend, and at his son's birthday party the next weekend. Benjamin and Zongo sign a written contract in which Zongo agrees to perform on the two dates and Mr. Benjamin agrees to pay \$100 in advance. Zongo performs at the first party, but accepts an invitation to perform on "Star Hunt" the next weekend, missing the son's party. Mr. Benjamin's damages are \$50, even if his son is so distraught that he decides to grow up and be a bank robber instead of a brain surgeon.


Consumers must remember that a business is as entitled to have the consumer perform promises to it as the consumer is to have the business perform its promises. The law does not excuse consumers from their contracts simply because it becomes burdensome or inconvenient to live up to them. In the one special instance of bankruptcy, the law allows some contracts to be broken but exacts a heavy price from the bankrupt debtor (whether the debtor is an individual or business). Consumers must live up to the contracts they make unless a judge has modified or voided the contract.

UNFAIR AND DECEPTIVE PRACTICES


New Hampshire's principal consumer protection law is called "*Regulation of Business Practices for Consumer Protection*" but it is commonly known as the "*Consumer Protection Act*." The *Consumer Protection Act* is patterned after the *Federal Trade Commission Act* and, like its federal counterpart, the New Hampshire law prohibits "*the use of any unfair or deceptive act or practice or any unfair method of competition in trade or commerce.*"

The terms “unfair or deceptive act or practice” and “unfair method of competition” have developed special legal meanings yet remain difficult to define. Often people have a different idea of what is “unfair or deceptive” than do courts or lawyers. For example, a retail store may have a policy of refusing to grant refunds, granting instead credits only to be used at the store. Many consumers think that such a policy is “unfair” or “deceptive.” However, if the policy is fully and accurately disclosed to customers by the store then a court will very likely enforce it.


To say that the legal meaning of “unfair or deceptive acts or practices” is different from the general meaning of those words is not to say that the universe of possible “unfair” or “deceptive” business practices is limited under the law. On the contrary, the *Consumer Protection Act* does not limit either the number or type of “unfair” or “deceptive” practices. The law says that unfair methods of competition or unfair or deceptive acts or practices “*shall include but [are] not limited to*” the following list of practices:

 Claiming that goods or services are new or original when they are actually used, secondhand, deteriorated, reconditioned or altered.


EXAMPLE: Honest Clem’s Autos places a sign reading “New Bulgemobile Supreme” on the car purchased by Sally Consumer. The car was in fact used for 6 months by Rusty’s Auto Rentals and sold to Honest Clem’s. The car is not “new” but is actually “used.”

 Claiming that goods or services are of a particular quality or grade when they are not.

EXAMPLE: Mondo Merchandise advertises that it is selling “premium quality Air Jumpin’ sneakers” (a nationally advertised brand and quality) for 50% off. The sneakers are actually factory seconds. The claim that the sneakers are “premium” is untrue and the advertisement is an unfair or deceptive claim.

 Indicating that goods or services come from a country or place other than where they are actually from.

EXAMPLE: Michelangelo Jeans carry a tag claiming that they are “Made in Italy.” They are actually made in Manchester. The tag unfairly or deceptively claims that the jeans are made in Italy.

 Passing off goods or services as someone else’s.

EXAMPLE: An auto-body shop advertises “We install genuine Bulgemobile parts!” In reality, it uses cheaper look-alike parts. The shop is “passing off” the look-alike parts as if they were genuine Bulgemobile parts.

1st Word



Claiming that goods or services have certain characteristics, ingredients, uses, benefits or qualities, or certain sponsorship or approval when they actually do not, or that a person has a certain sponsorship, approval, status, affiliation or connection that he or she does not actually have.

EXAMPLE: Miracull Back Appliances has a brochure for its Larry Byrd Back Spasm Eliminator in which it claims that a famous former basketball player with famous back problems “loves his Miracull Back Spasm Eliminator.” The athlete has never used the product and does not own it and isn’t a commercial sponsor of it. The claim of sponsorship or approval is unfair or deceptive.



Disparaging another business’s goods or services by false or misleading statements.

EXAMPLE: Hot Propane, Inc. sends a letter to the customers of Frozen North Propane stating that Frozen North has filed for bankruptcy and encouraging them to sign up for Hot Propane’s services “before you get left out in the cold.” Frozen North has not filed for bankruptcy. Hot Propane has disparaged Frozen North’s services with a false statement.



Advertising goods or services while intending not to sell them as advertised or not to have a reasonable supply on hand (unless the advertisement specifically says that quantities are limited). This effectively prohibits so-called “bait and switch” schemes.

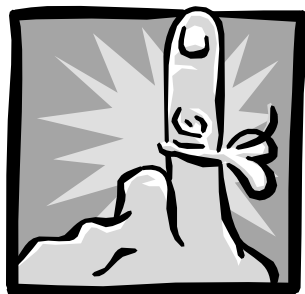
Happy Wanderer Pavers tells a homeowner that it is “doing a job up the street” and therefore can pave her driveway for ½ price. In fact, the price quoted is above market price. Happy Wanderer bought a whole load of asphalt to “peddle” door-to-door and will have to go back to the asphalt plant to get more asphalt if it gets the homeowner’s business. Happy Wanderer has made unfair and deceptive statements regarding the existence of, amount of, and reason for the price reduction.



Making false or misleading statements about the existence of, reasons for, or amount of a price reduction.

EXAMPLE: Honest Clem’s Autos advertises “the popular Bulgemobile Empresses at 20% below the invoice price.” When customers arrive at Honest Clem’s the salespeople tell them that the Empresses are “all sold out” and the Empress got poor ratings from a popular consumer magazine, then try to sell them the Bulgemobile Athena (a more expensive auto). At the time the advertisement was run, Honest Clem’s knew that it only had one Empress in stock (and that was under a purchase agreement with the general manager’s nephew).

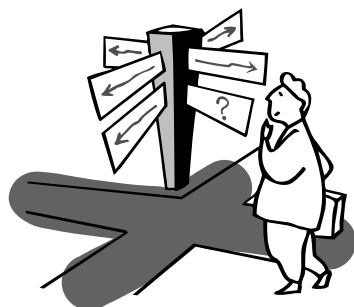
These are some of the ways that a business may be found to have engaged in unfair or deceptive practices, but this list is not exhaustive. From time to time you may hear that the courts of this, or another, state have found that a particular business practice violates New Hampshire’s *Consumer Protection Act*, the *Federal Trade Commission Act*, or another state’s consumer protection law.



POINTS TO REMEMBER

- ☑ Always read a written contract before signing it. You might decide not to enter into the transaction, or you might decide to shop around and compare the terms of the agreements that you are offered to select the agreement that best fits your needs.
- ☑ Remember that a business is entitled to have you perform your promises to it just as you are entitled to have the business perform its promises. Therefore, you must live up to a contract that you make unless a judge has modified or voided the contract.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ The Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General's Office has primary enforcement jurisdiction over consumer protection matters.

NH Consumer Protection and Antitrust Bureau
 33 Capitol Street
 Concord, NH 03301-6397
 603-271-3641 or 1-888-468-4454
 Web: <http://www.doj.nh.gov/consumer/index.html>

- ☑ The Federal Trade Commission is a federal agency which deals with consumer protection matters on a national level or when interstate commerce is involved.




Federal Trade Commission
 600 Pennsylvania Ave., NW
 Washington, DC 20580
 1-877-FTC-HELP or 1-877-382-4357 (toll-free)
 TDD: 1-202-326-2502
 Web: <http://www.ftc.gov>



EXTRA NOTE



Health Clubs

Health club members in New Hampshire who prepay their memberships are protected against unfair contract clauses and against losing their money if the club suddenly closes. The law also applies to weight loss clinics and martial arts businesses. Prepaid membership contracts:

-  *Can be canceled by the purchaser within three business days by notifying the club in writing (each membership contract must include a statement outlining the right to rescind)*
-  *Cannot require contracts for longer than one year*
-  *Cannot include an automatic renewal clause*

All health clubs in New Hampshire must be registered with the New Hampshire Attorney General's Office. The registration includes the names and addresses of the owners, officers, stockholders and parent organizations. The registration requires, among other things, a complete listing of the club's employees and their qualifications. Registered health clubs are also required to have means of repaying customers for the unused portion of any prepaid membership contract if the club suddenly closes.

The Consumer Protection Bureau may require a club to post a bond to protect health club members who pay in advance for membership or services in the event the club closes. When signing up for a membership, you should ask to see evidence that the club has either:

-  *Posted a bond in compliance with the law*
-  *That the club has been exempted from the law*

If you pay a club for more than one month's membership, and the health club has not posted a bond, then you should be aware that you risk losing your money if the club should close. If you discover that the health club has not registered, please report it in writing to the NH Attorney General's Office Consumer Protection and Antitrust Bureau in Concord at 603-271-3641 or 1-800-468-4454, or on-line at <http://doj.nh.gov/consumer/index.html>.

Advertising

We see or hear dozens of advertisements every day on the radio and television, and in newspapers, magazines, billboards, direct mail promotions, and catalogs. The information about the products or services advertised can range from very detailed and factual to very general. Advertisers are subject to both the New Hampshire *Consumer Protection Act (CPA)* and Federal Trade Commission (FTC) regulations that require advertisements to fairly and accurately represent the goods and services being promoted.

THE LAW

Both federal and New Hampshire laws prohibit advertising that may be misinterpreted by the average consumer. False, deceptive or misleading advertising not only hurts the consumer who is trying to obtain information prior to a purchase, but also injures competing businesses that accurately advertise their products and services. Although the laws describe a number of specific types of deceptive advertising strategies, the language of the laws does not prevent other situations from being considered deceptive or fraudulent.

Misleading Ads

An advertisement may violate the *CPA* if it is likely to confuse or mislead consumers about the nature, identity, or quality of goods or services. This is especially true if an ad makes a statement that falls into one of the categories the *CPA* expressly prohibits. Although the *CPA* is described in detail in the section entitled ***1st Word***, several of the provisions relevant to advertising are listed here. An advertiser may not:

- ☒ Claim that goods or services are a particular quality or grade when they are not
- ☒ Claim that goods or services are new or original when they are actually used or reconditioned
- ☒ Indicate that goods or services come from a region or place other than where they are actually from
- ☒ Claim that goods or services have characteristics, ingredients, uses, benefits or qualities when they do not

Advertising

- ☒ Claim that goods or services have sponsorship or approval when they actually do not, or that a person has a certain sponsorship, approval, status, affiliation or connection that he or she actually does not have
- ☒ Pass off goods or services as someone else's
- ☒ Disparage another business's goods or services by false or misleading statements
- ☒ Make false or misleading statements about the existence of, reasons for, or amount of a price reduction.

Under the *CPA*, a consumer need not actually be confused or misled if the ad is found to have the capacity to mislead or deceive. Literally true claims and photographs can be deceptive if the surrounding representations and circumstances make them deceptive. Moreover, subsequent disclosures in the store, on the product label, or in the written contract do not void deceptive claims in ads.

Bait and Switch Ads

The *CPA* prohibits the “advertising of goods or services with intent not to sell them as advertised.” This covers what is commonly called “bait and switch” tactics. The FTC defines bait and switch advertising as: “*an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.*”

EXAMPLE: StupendoMart advertised that it is selling the “Famous Whoosh! Mach I Vacuum Cleaner for \$100, Regular List Price \$400!” When Mr. Klean goes to StupendoMart to buy a Whoosh! Mach I, salesperson Larry Zales tells him that a leading consumer magazine gave the machine its lowest rating, and that he hears LOTS of complaints about the Whoosh! Mach I, and besides, the last one in stock was JUST sold. Zales then tells Mr. Klean that StupendoMart just got a shipment of Whoosh! Dustfeasters, and that he can give Mr. Klean an unadvertised special of \$399.99 which is a substantial savings off the Dustfeaster's regular list price of \$430. Mr. Klean probably has been subjected to a bait and switch tactic. The remedy may be to return the vacuum and cancel the sale.

Price and Quantity Advertising

The *CPA* prohibits the “advertising of goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.” Proving to a court that a product was advertised with “intent” not to supply a reasonably expectable public demand can be shown if:

- ☒ The seller knew what its inventory of an item was before it ran an ad for the item,

AND

- ☒ A reasonable seller would know that an inventory of that size for that item at that price would be too small.

FTC RULES

The FTC has made rules that apply to advertising which are useful to consumers, lawyers, and courts in analyzing consumers' rights under the *CPA*. The rules cover many different products, including but not limited to:

- ▶ Closed end credit (for cars, furniture, home improvement loans, etc.)
- ▶ Open end credit (credit cards)
- ▶ Tires
- ▶ Use of the word "free"
- ▶ Cigarettes
- ▶ Pictures shown by television sets
- ▶ Retail "rain checks"

Some of these topics are covered in some detail elsewhere in the *Sourcebook*. For more information on closed-end credit, refer to *Credit: Truth-In-Lending*. For information on open-end credit, see *Credit Cards*. For rain checks, see *Extra Note: Rain Checks*.

The FTC has standards for analyzing whether claims made in an advertisement are "substantiated" (have a reasonable basis in fact) or not. The FTC criteria include:

- ▶ The nature of the product advertised
- ▶ The specificity of the ad's claims
- ▶ The availability of data to substantiate a claim
- ▶ The amount of substantiation that experts think is necessary
- ▶ The benefits of a truthful claim
- ▶ The consequence for the consumer if the claim is false
- ▶ The consumer's reliance on the claim


EXAMPLE: In May, WorldMart advertises the "Famous Yard Horse Lawn & Garden Tractor for the AMAZING LOW PRICE OF \$150." John Clerk will testify that he told Mary Manager that the store had just one such tractor in stock and that it could get no more the day before the ad was sent to the newspaper. Professor Loftus Mentus will testify that, in May, a store like WorldMart can reasonably expect to sell 50 lawn tractors like the one advertised if they are offered for just \$150. There is a strong case here that WorldMart "intended" not to supply a "reasonably expectable public demand." The outcome would be different if the words "quantities limited" were used in the ad. You should note also that proving what a "reasonable seller" would know is often a matter of expert opinion, and that the buyer's remedy may not be of great practical significance (such as the forced sale of the tractor at the advertised price).


ADVERTISING RESTRICTIONS ON SPECIFIC PRODUCTS

Condominium and Land Sales

Condominium developments that are subject to the *Condominium Act, RSA 356-B*, and subdivisions of land that are subject to the New Hampshire *Land Sales Full Disclosure Act, RSA 356-A*, must meet certain disclosure and advertising requirements.




First, the developer must submit a “nonbinding reservation agreement” to the New Hampshire Consumer Protection & Antitrust Bureau for approval. This agreement allows the prospective purchaser of the real estate an unqualified right to cancel his or her transaction with the developer.


-  After submitting the agreement, a developer may advertise its development only if the advertisement carries a disclaimer stating that:
- ▶ The development has not been registered; and
 - ▶ The developer may only take nonbinding reservation agreements.

-  Furthermore, a developer who advertises the development in a way that states or implies that it has improvements or amenities (roads, tennis courts, pools and the like) may only do so if:
- ▶ The improvements or amenities are built; or,
 - ▶ The developer discloses that the improvements or amenities are not yet built or are only proposed. For more information about condominiums, refer to the section on *Condominiums and Timeshares*.

Environmental Claims

A group of state attorneys general has issued guidelines for making claims about a product’s or a service’s impact on the environment (a.k.a. “green advertising”). The guidelines do not have the force of law. Since they have the backing of several state governments and have been revised in light of public comments, they tend to be persuasive to manufacturers and courts. The guidelines cover:

-  Use of some terms including “Environmentally Friendly,” “Safe for the Environment,” “Recyclable,” “Biodegradable,” and “Recycled”
-  The distinctions between the environmental impact of the product versus the environmental impact of the packaging alone
-  Use of third party seals of approval (environmental certifications)

 The need for objective scientific support for environmental claims.

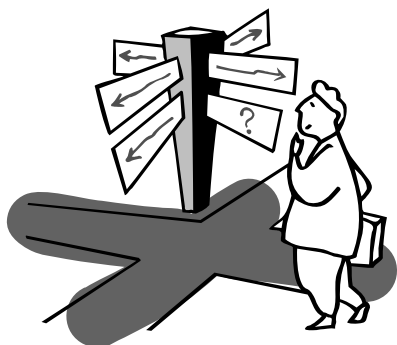
Hearing Aids

The FTC hearing aid rule prohibits misleading, deceptive or untruthful statements in ads for hearing aids. The law specifically prohibits:

- The use of words like “state-approved”
- Claims of a scientific breakthrough
- Claims that a hearing aid will restore hearing
- Claims that a hearing aid will prevent further hearing loss
- Claims that a hearing aid is good for all types of hearing loss or for noisy situations

Professional Services

The laws and boards governing the practice of certain professions such as law or medicine often regulate the advertising practices of persons in those professions. Advertising practices of some professions may also be subject to the *CPA*. For a list of regulated professions and their governing boards, refer to ***Licensed Professions and Regulated Activities***.



WHERE TO GO IF YOU HAVE A PROBLEM

- If your complaint is about a local retailer’s advertisement, express your concern to the store manager or customer service department. Mistakes do happen and it is a good policy to assume that the retailer is not trying to cheat or mislead customers. For information on effectively resolving a problem, refer to the section entitled ***Remedies: Effective Negotiation***.
- Contact the NH Consumer Protection and Antitrust Bureau.

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

Advertising

- ✔ The Federal Trade Commission has information about advertising in general and about the advertising of specific products and services. This information can be accessed through the FTC website.

Web: <http://www.ftc.gov>. Click on “Consumer Protection.”

- ✔ Contact the Better Business Bureau. The BBB actively promotes ethical advertising standards between its members and the greater business community.

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991
Web: <http://www.concord.bbb.org>

- ✔ If the advertisement was on television, contact the advertiser and the network or its local affiliate. Your local public library should have addresses and telephone numbers for the networks and advertisers. Ask the librarian for help in locating what you need.

EXTRA NOTE



Child Restraint Law

New Hampshire law requires that any child under the age of eighteen riding as a passenger in a motor vehicle be secured by either a seat belt or a child safety seat and that any child under the age of four be secured by an approved child restraint (RSA 265:107-a). It is the driver's responsibility to ensure that all child-passengers are properly restrained. There are only four exceptions to this requirement. Children do not have to be restrained: (1) in taxis and buses, (2) in vehicles manufactured

prior to 1968, (3) when they have physical conditions that prevent the use of seat belts or child safety seats, and (4) under certain special-education conditions.

If you fail to have a child passenger “buckle up,” you face a first offense fine of \$50, and a second offense fine of \$100.

Auto Inspections

New Hampshire requires motor vehicles to be inspected on an annual basis so that they are kept in safe operating condition. At times, service stations and auto repair shops have been found to engage in activities that place the consumer at a disadvantage. Some repair shops use safety inspections to sell unneeded repairs and some dealers sell “unsafe” vehicles thereby triggering the laws governing the sale of unsafe cars. (For more information on auto repairs, refer to *Auto Repairs*, and for information on unsafe motor vehicles refer to *Autos: Used*)

THE LAW

Chapter Saf-C 3200 of the New Hampshire Code of Administrative Rules contains the rules that apply to car and motorcycle inspections. The rules govern a variety of practices at inspection stations including the **hours** that they must be open, the **signs** and **certificates** that must be displayed, and the **procedures** that are used to reject a vehicle.

The New Hampshire Department of Safety requires inspection stations to inspect the following equipment on motor vehicles:

- ▶ Wheels and tires
- ▶ Brakes
- ▶ Instruments (odometer, speedometer, reverse gear)
- ▶ Electrical system (horn, neutral starter safety switch lights and headlamp aim)
- ▶ Glass and mirrors
- ▶ Exhaust system
- ▶ Fuel system
- ▶ Body and chassis

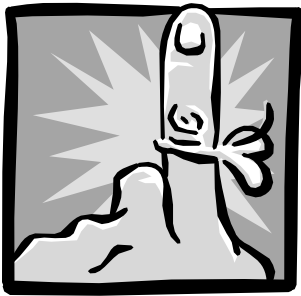
NOTE: The inspection is geared to the safety of the vehicle, not to its operation, so items like the engine, clutch, and transmission are not included in the inspection.

EXAMPLE: John Karoner takes his car to Jane's Filling Station for its annual safety inspection. Jane tells John that he needs to replace a front headlamp. He pays for the repair and Jane applies the inspection sticker to the front windshield of John's car. As John is driving home, his transmission fails and must be replaced. Jane has properly performed the safety inspection because the inspection does not include a prediction and diagnosis of a transmission's useful life.

Auto Inspections

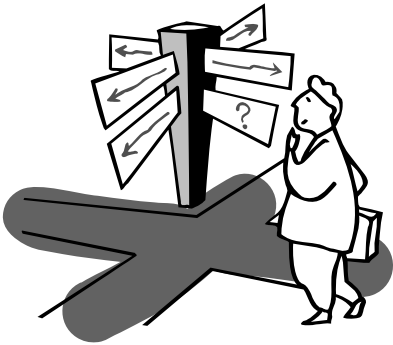
If your vehicle fails the safety inspection, get a written list of what needs to be repaired or replaced in order to pass inspection. You will also want to have the inspection station provide you with an invoice estimating the cost of parts and labor for the needed repairs (for more information on repair shops, refer to ***Auto Repairs***). Have the mechanic show you the problems that caused your vehicle to fail the inspection.

The necessary repairs do not have to be done at the inspection station. In fact, having your vehicle fixed at another repair shop may be advantageous because the defects diagnosed at the inspection station will be verified by a second mechanic. After the repairs are made, return the vehicle to the shop where the inspection was done to get the inspection sticker for your vehicle.



POINTS TO REMEMBER

- ✔ The purpose of vehicle inspection is to ensure that your vehicle is in safe operating condition.
- ✔ If your vehicle fails inspection, get a list of what needs to be repaired or replaced and an estimate of the cost of repairs.
- ✔ You are under no obligation to have the repairs done at the service shop that inspected your vehicle.



WHERE TO GO IF YOU HAVE A PROBLEM

- ✔ Complaints regarding practices of inspection stations may be referred to the New Hampshire Department of Safety.

NH Department of Safety, Motor Vehicle Division
33 Hazen Drive
Concord, NH 03305
603-271-6383

- ✔ Complaints about a used car that involves possible mechanical defects may indicate a violation of the laws regulating sales of “unsafe” motor vehicles. Refer to the section on ***Autos: Used*** for further information.

Auto Leasing

Leasing has become a popular alternative to buying a vehicle, and can have some advantages over buying. You are not committed to a particular model of vehicle for more than a couple of years, and you don't have to worry about being stuck with a "lemon." Leasing a vehicle is not the same as renting a car for a short period of time, such as for two weeks while you are on vacation. Auto leases typically extend for two or three years.

Leases differ from traditional methods of financing a vehicle in significant ways. Motor vehicle leases may contain provisions imposing *greater* costs over the term of the lease than would be expected from owning the vehicle. For example, motor vehicle leases frequently contain early termination penalties, under which a consumer may be liable for large cash payments if she or he breaks (or defaults on) the lease prior to the full term. Most motor vehicle leases also contain mileage limitations, and may impose high charges for every mile the vehicle travels in excess of those limits. Financial considerations at the end of the lease may include a charge for excess wear and tear or a charge for the difference between a vehicle's fair market value at lease end and the value predicted for the vehicle when the lease started. Consumers must understand all potential costs associated with a lease to accurately evaluate whether a lease is really a better deal than conventional financing.

The type of information that must be given in a lease for many kinds of consumer products, including vehicles, is regulated by federal law through the *Consumer Leasing Act, Regulation M* issued by the Federal Reserve Board under the *Consumer Leasing Act* details the precise language to be used in consumer leases and in advertisements about consumer leases. New Hampshire's *Motor Vehicle Leasing Act, RSA 361-D* requires several additional disclosures in common motor vehicle leases.

THE LAW

The *Consumer Leasing Act* applies to personal property leased by a consumer for personal, household or family (not business) use for a period of more than four months. Items such as cars and trucks would be covered. A business which offers vehicles for lease must give a written statement to the consumer, before the lease is signed, containing the following information:

This section was revised with the assistance of Jeanne Hogarth, Ph.D., Program Manager in Consumer and Community Affairs at the Federal Reserve.

Auto Leasing

- ▶ A description of the vehicle being leased
- ▶ Whether a security deposit is required
- ▶ The amount due at lease signing or delivery (such as a security deposit), if any
- ▶ The payment schedule *and* dollar amount of the periodic payments
- ▶ Any other charges that are not part of the monthly payment
- ▶ The total of all the payments (in other words, the amount that will have been paid by the end of the lease)
- ▶ The payment calculation including the gross capitalized cost (you can ask to have this itemized), capitalized cost reduction, adjusted capitalized cost, residual value, depreciation and any amortized amounts, rent charge, total of base periodic payments, number of lease payments, base periodic payments, itemization of other charges, and total periodic payment
- ▶ An early termination notice, and disclosure of any early termination or default charges
- ▶ The residual value of the vehicle
- ▶ A statement of who is responsible for routine maintenance, and the wear and use standards of the lease
- ▶ Whether or not you may buy the vehicle, and if so, when and under what conditions, including price
- ▶ Amount or method to determine end-of-lease liability
- ▶ Any other fees and taxes that have to be paid, and who pays them
- ▶ Any insurance that is needed and paid for by the consumer, and that which is paid for by the leasing company
- ▶ Any express warranties on the item to be leased
- ▶ The standards used to determine “wear and tear” and mileage limits
- ▶ Whether the leasing company will hold a “security interest” in your vehicle
- ▶ Information about charges for late payments

Motor vehicle leases typically contain **early termination and default penalty clauses**. These provisions exist because most leases call for uniform payments over the term of the lease, at the end of which the item will presumably have depreciated to its “residual value.” Motor vehicles, unlike other types of consumer goods, depreciate faster in value earlier in their useful lives than later. Accordingly, in the early months or years of a long term lease, your total lease payments may not be equal to the rapidly diminishing value of the motor vehicle. In theory, this difference gets made up toward the end of the lease

term, when the vehicle's value has stabilized. If you terminate the lease early in the term, whether at your option or through default, the leasing company may not be fully compensated for the actual value of the vehicle at the time it is returned.

Motor vehicle leases used to permit the leasing company to resell the car at auction in the event of early termination or default, and charge the consumer for the difference. This method was too uncertain to result in "reasonable" charges to the consumer in all cases. Nowadays, leases contain complex calculations to measure the difference between the value of the car upon early termination and the total of payments made under the lease. A good "rule" to use in evaluating the reasonableness of any motor vehicle lease's early termination provision is to compare the "blue book" value of the car at the time of surrender to the total of payments made under the lease up to the surrender date.

NOTE: Early termination charges can be as high as several thousand dollars! The actual charge will depend, however, on when the lease is terminated. The earlier that you terminate the lease, the higher the charge is likely to be.

Generally, auto leases are "open-end" leases which have the potential for end-of-lease payments. With an open-end lease you take the risk that at the end of the lease, the vehicle will be worth less than the residual value specified in the lease documents. An open-end lease will probably have lower periodic payments than a comparable "closed-end" lease. In a "closed-end" lease, sometimes referred to as a "walk-away lease," you are not responsible for the difference if the actual value of the vehicle at the scheduled end of the lease is less than the residual value. You may, however, be responsible for excess wear and excess mileage charges, and for other lease requirements.

At the end of an "open-end" lease, when you return the vehicle, the dealer will either sell it or appraise it.

NOTE: Under the *Consumer Leasing Act*, you have the right to get an independent appraisal by someone agreed to by you and the leasing company.

Depending on the sale proceeds or the appraised value in comparison to the vehicle's residual value, you may or may not have to make an "end-of-lease" payment and, depending on whether a right to a refund was in your contract, you could be entitled to a refund. If the


EXAMPLE: Herb Hobby had leased a sport utility vehicle from Clarence's Fine Autos. At the end of the lease, the appraised residual value of the vehicle was found to be \$1000 more than had been estimated in the lease. Not only did Herb not have to make an end-of-lease payment, but he got a \$1000 reimbursement check from Clarence's since the lease contained a clause giving Herb the right to a refund.


Auto Leasing


residual value is greater than the vehicle's sale proceeds or appraisal value, you will have to make up the difference through an end-of-lease payment to the leasing company. This payment may be limited to three-times the base monthly payment.

NOTE: If your end-of-lease payment is solely an excess mileage charge or an excess wear charge, the *Consumer Leasing Act's* payment limit does not apply (the leasing company usually cannot collect an end-of-lease payment that is more than three times the average monthly payment).

Mileage limitations are common with closed-end lease contracts. Any excess mileage will probably require an end-of-lease payment. You should negotiate mileage allowances with the leasing company before signing the contract.

 If you are considering a lease where you have early termination or purchase options, ask how the mileage allowance will be handled in case you exercise either option.

 If you do not use the car for all the miles allowed in the lease, you probably will not get a refund.








 If you buy the vehicle at the end of a closed-end lease, you generally will not have to pay for excess mileage.

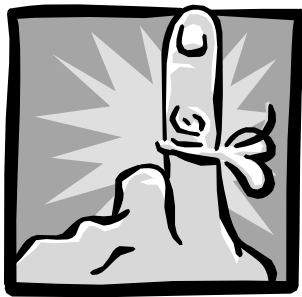
Compare the cost of traditional financing with the cost of the lease before making a decision. To estimate the total cost related to traditional financing, add the total of the down payment, amount financed, finance charges, cost of insurance and estimated repairs and maintenance. For the total cost of the lease, include all lease charges plus any other required costs such as insurance and repairs and maintenance. Consumer finance magazines such as *Money* and *Kiplinger's Personal Finance* have occasional articles on motor vehicle leasing which often include worksheets to compare the costs of leasing to traditional financing. You can also find extensive information on leasing through the Federal Reserve Board's website: <http://www.federalreserve.gov/pubs/leasing>.

ADVERTISING RULES






Both the federal *Consumer Leasing Act* and New Hampshire's *Motor Vehicle Leasing Act* require important disclosures in advertisements for consumer leases. The most important disclosure is a requirement that the financing structure specifically be described as a lease. An advertisement that includes a statement about the amount of any payment, or capitalized cost reduction (or that no payment is required), must also disclose the following several points of information. For television and radio commercials, the

advertiser can provide a toll-free number to provide the disclosures to you rather than put them in the ad itself. The ad must reveal:

-  That the transaction is a lease
-  The total amount of any payment required at the beginning of the lease
-  The number, amounts, and due dates of the scheduled periodic payments
-  Whether a security deposit is required
-  Whether extra charges may be due at the end of the lease term
-  Whether your liability, if any, at the end of the lease is based on the difference between the residual value of the vehicle and the realized value
-  The option to purchase



POINTS TO REMEMBER

-  Shop around for the best leasing deal. Not all leases are created equal.
-  Read the lease carefully. An attractive low monthly payment might be available only if you make a large down payment or have a balloon payment at the end of the lease. For information about balloon loans, see ***Watch Out For: Balloon Loans.***
-  Remember that a lease is a complicated legal arrangement which is very different from traditional financing and which should be carefully examined before you enter into an agreement.
-  Be sure the document you are signing reflects the kind of financing you want. Some auto dealers will attempt to promote a lease by emphasizing the low weekly or monthly payments available under an “alternative” financing plan.
-  Be sure you understand what the capitalized cost of any leased vehicle is. The capitalized cost is the total cost of the leased vehicle plus any other item you may agree to capitalize (such as the remaining payments on a prior lease or financing agreement), which serves as the base price from which all other lease charges are

Auto Leasing

determined. Because of the complex structure of leases, the capitalized cost may reflect a price for the vehicle which is equal to or greater than the manufacturer's suggested retail price (MSRP). Under New Hampshire's *Motor Vehicle Leasing Act* and under federal law, you have the right to ask the auto dealer for an itemization of all components of the capitalized cost.

- ✔ If you have traded in a vehicle, make sure you are getting credit for its value; sometimes, leasing companies may inflate the capitalized cost under a lease to negate a vehicle's trade-in value.
- ✔ Beware of open-end leases. This type of lease requires you to pay the difference if the leased vehicle is worth less at the end of the lease than was originally estimated.
- ✔ Be sure you know:
 - ▶ What the up-front costs are (security deposit, down payment, advanced payment, taxes);
 - ▶ What your payments will be;
 - ▶ What the penalties are for early termination of the lease; and
 - ▶ What the termination costs are, for example, excess mileage penalties for a vehicle, excessive wear and tear, and disposition charges.
- ✔ Remember, when you have paid off the lease, you do not own the vehicle; you may be able to purchase it at an additional cost.



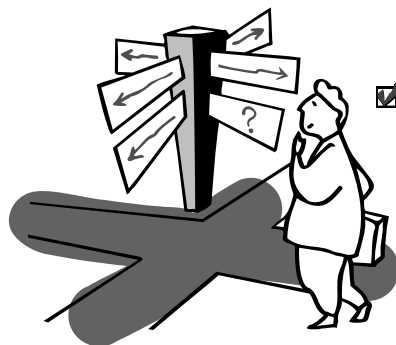
For Your Information . . .

Leasing Consumer Products

Other kinds of property can also be leased, such as musical instruments, exercise equipment, tools, etc. Leasing can be advantageous since it allows you to try something out for a period of time to see how you like it. The *Consumer Leasing Act* also applies to consumer product leases, in addition to vehicles. Most of the information contained in ***Auto Leasing*** applies equally to other types of consumer product leases.

NOTE: Neither the federal nor New Hampshire laws cover the leasing of real estate or housing, or rent-to-own agreements. For information about rental housing, refer to ***Renting, Security Deposits & Evictions***. For information on rent-to-own contracts, refer to ***Rent-To-Own***.

- ☑ New Hampshire's *Motor Vehicle Leasing Act* requires that auto leases be in at least 8 point type (this size), that a copy of the lease be given to you at the time the lease is signed, and that a completed lease have no blank spaces.



WHERE TO GO IF YOU HAVE A PROBLEM

- ☑ Contact the NH Consumer Protection & Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ☑ The Federal Reserve Board has a publication specifically on **car leasing**. A free copy of “Keys to Vehicle Leasing -- A Consumer Guide” can be obtained by writing to the Federal Reserve, or downloaded from the Federal Reserve website:

Public Services
Federal Reserve Board
Mail Stop 127
Washington, DC 20551
212-452-3244
Web: <http://www.federalreserve.gov/pubs/leasing>

EXTRA NOTE



Finding Legal Help

***New Hampshire Legal Assistance** is a statewide program providing legal advice and representation without charge to eligible New Hampshire citizens. The main office is in Manchester (668-2900 or 1-800-562-3174) and there are branch offices located in Claremont (542-8795 or 1-800-562-3994), Littleton (444-8000 or 1-800-548-1886), and Portsmouth (431-7411 or 1-800-334-3135). For the Senior Citizen's Law Project, call 1-888-9944.*

- ✔ *The **New Hampshire Bar Association** has a lawyer referral service and a reduced fee referral program. Call 229-0002.*
- ✔ *The **Legal Advice and Referral Center (LARC)** provides free information, legal advice and referral services to low-income persons regarding family law, welfare, and housing. Call 224-3333 or 1-800-639-5290.*
- ✔ *The **DOVE Project** provides free legal representation for qualifying survivors of domestic violence at final restraining order hearings. Call 1-800-852-3388.*
- ✔ *At the **LawLine**, volunteer lawyers provide free legal information on the second Wednesday of the month from 6:00 p.m. to 8:00 p.m. Call 1-800-868-1212.*

Auto Repairs

Anyone who owns a motor vehicle has to take it in for servicing and repairs on occasion. We all hope that the repairs don't happen too often because an out-of-service vehicle interferes with our schedules and burdens us with unexpected bills. Shopping for a repair shop is similar to shopping for other types of services or merchandise. You want to look for the best quality of workmanship at the best price.




Vehicle repair customers in New Hampshire have certain rights and protections. The *New Hampshire Motor Vehicle Repair Law* protects you from some kinds of unreasonable demands that can be made by a repair facility. This section discusses how to exercise your rights under this law and maintain a healthy relationship with the vehicle repair facility that you choose.

THE LAW






The *New Hampshire Motor Vehicle Repair Law (RSA 358-D)*, which applies to all cars and small trucks but not to motor cycles and large trucks, gives vehicle repair customers certain rights. You have the right to:

- ▶ Ask for a written estimate
- ▶ Approve any repairs before they are made
- ▶ Approve any repair charges that exceed the written estimate
- ▶ Have parts returned to you
- ▶ Receive an invoice detailing the work (parts and labor) done on your vehicle
- ▶ Refuse to pay any charges exceeding 10% of the written estimate that you did not previously approve.


Every repair shop is required to post a six-foot-square sign listing the consumer's rights in a place where consumers can see it. The sign should provide the following information:

-  Your right to request a written estimate and to give written or oral approval before work begins.
-  Your written or oral permission is required before work beyond what is stated in the written estimate begins.
-  You must consent to any work that amounts to more than 10% of the original estimate or additional work..


Auto Repairs

-  The repair shop must obtain your authorization before beginning work even if you have not requested an estimate.
-  Your right to request the return of all replaced parts before work begins on your car, unless the parts have to be returned to a manufacturer or distributor under a warranty or exchange agreement.
-  Your right to receive an invoice.
-  Your right to refuse to pay for any unauthorized work..
-  You should file any complaints about a repair shop's failure to comply with the *Motor Vehicle Repair Law's* requirements with the New Hampshire Attorney General, 33 Capitol St., Concord, New Hampshire 03301.




When you take your vehicle in for repair or service, you should always request a written estimate before any work is done. A repair shop that declines to perform the work does not have to give you a written estimate. A shop cannot, however, cause you to waive your right to a written estimate as a condition to performing service or work. You have a right to ask for an estimate and the written estimate protects you in two ways:

-  It restricts the repair shop from changing the price that it quotes for the work.

EXAMPLE: Millie takes her car in for a repair. She asks for a written estimate and gets one -- the estimated cost of the repair is \$100. The shop cannot charge Millie more than \$110 to do the repair unless her permission is given for the higher cost. The shop cannot do any other repairs on Millie's car without her permission.

-  It prohibits the shop from charging you more than 10% above the price stated in the original estimate.

Any estimate you get should contain the following items:

-  A list of the work to be done.
-  An estimated completion date/time.
-  An estimate for the price of labor and parts. It is a good idea to find out whether you will be charged at a “book” (flat) fee or hourly (only for the actual hours worked) rate for labor.

Although a repair shop may project a date or time to complete the work on your vehicle, the shop cannot be held responsible when uncontrollable factors cause delays. Uncontrollable factors include such things as a severe storm, a strike, an unexpected illness, an unexpected shortage of labor or parts, or a situation where you are unable to approve additional repair work.

Remember, you must give your approval before a repair shop can work on your vehicle. Even if you do not request a written estimate (which you should do as a matter of course), the repair shop has to at least get your oral consent before beginning any work. If the shop does any unapproved work, you do not have to pay for it. Unfortunately, this right sometimes conflicts with the mechanics lien statute which is discussed below.

Before the shop begins work on your vehicle, you may ask that any parts removed be returned to you. If the part(s) must be returned to the manufacturer or distributor under a warranty or exchange agreement (e.g., batteries), then the shop does not have to comply with your request.

If the repair shop subcontracts any of the work performed on your vehicle, the shop is responsible for the subcontractor's work as if the shop did the work itself. For example, you take your vehicle to a repair shop for an alignment and to have the tires rotated. You authorize the necessary work. This shop, however, does not have an alignment computer and customarily has another shop do its alignment work. The shop you initially authorized to do the alignment and rotate the tires is responsible for the work done at the alignment shop.

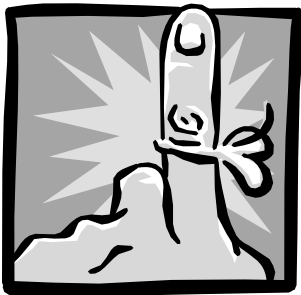
When you pick up your vehicle, the repair shop should give you a copy of the invoice with all of the following information:

- ☑ A list of all work performed, either by the repair shop or subcontractor.
- ☑ A list of all parts supplied worth more than \$.50 and the retail cost of each part.
- ☑ A statement of whether any used, rebuilt, or reconditioned parts were supplied in completing the repair work.
- ☑ The number of hours of labor and the hourly rate for labor.
- ☑ A statement of whether the repair shop will guarantee the work, and if so, the terms and length of any guarantees.

The repair shop must keep a copy of the invoice for its own records for a period of one year.

MECHANIC'S LIEN

Under New Hampshire law, mechanics have an automatic lien (a right to keep possession of a consumer's car when they have done work on it) until they are paid for their work. Often repair shops rely on their mechanic's lien to keep possession of a consumer's car when the consumer claims that the repair shop overcharged for repairs. In such cases, if the repair shop has violated *RSA 358-D* by doing unauthorized work or exceeding the written estimate by more than 10%, a court would probably find that the violation rendered the mechanic's lien void. However, when this type of dispute occurs, you are usually in no position to wait for your car until a judge can decide the case. A fair suggestion would be to pay any undisputed repair charges immediately, then put the disputed amount into an escrow account in a bank until the dispute is settled. The shop should be willing to release the car from the lien under these conditions. In some cases, however, when you are facing a mechanic's lien you may have no practical option but to pay the disputed charges and seek the return of your money in Small Claims Court. (For information on small claims courts, refer to *Remedies: Small Claims Court*).



POINTS TO REMEMBER

Before choosing a repair facility, take the time to shop around for a reputable repair shop. One of the best ways is to ask family or friends for their recommendations.

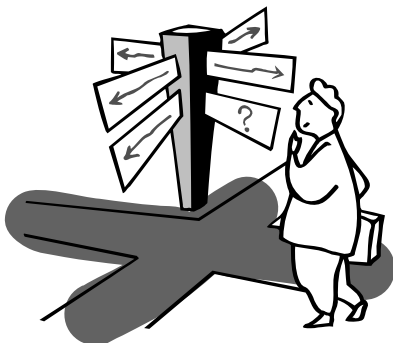
- Be wary of discount offers for repair work. You may be better off in the long-run sticking with a single reputable mechanic who knows your car well and will not perform unnecessary repairs.
- Find out whether the shop and its technicians have met their licensing or registration requirements. You may also want to look for any evidence indicating that the technicians are certified in special areas of automobile repair.
- Never sign a blank repair order. Make sure the written repair order reflects what you want done on your vehicle.
- Obtain a written estimate. If the repair shop cannot provide you a written estimate because the nature of the problem is unknown, ask the shop to contact you and give you an estimate when it does find the problem. Remember to get a price estimate for the diagnostic work that the shop will do to identify the problem.

- ✔ For costly or complicated repairs, try to get a second opinion from another shop.
- ✔ Find out whether the charge for labor is a flat fee or is based on the actual time it takes for the repair.
- ✔ Keep records of all repair work done to your vehicle, including the written estimates, invoices, names of the persons involved in the repair transaction, and so forth.

Dealers' service departments routinely get notices about car defects from the manufacturers. These so-called "hidden warranties" often never find their way into the public knowledge. If your vehicle has a problem that is not covered under the warranty, before having the repairs made, ask the service department manager if he or she has received a technical service bulletin (TSB) from the manufacturer regarding the particular problem. You may be able to get the repair done for free if a TSB has been issued on the matter.

Unscrupulous auto mechanics have ingenious ways of separating you from your money. Several of the newer scams include:

- ✘ Engine-monitoring computers in newer cars have generated a new set of fraudulent repair possibilities. It is unlikely that the computer itself will have a problem, so if a mechanic tells you that the computer is the source of your car's troubles, seek a second opinion.
- ✘ A dishonest mechanic may attempt to charge you separately for items (and labor) that are all part of the same repair job. Getting a written estimate before having repairs done, and getting a second opinion if the estimate seems high, is one way of avoiding this scam.
- ✘ Your car does *not* need to be repaired *before* it is broken or worn out. Although some routine things like hoses and belts should be replaced periodically before they break, the warning systems in cars will give you plenty of warning when something needs to be replaced. Do not be talked into repairing or replacing parts that have not yet worn out.



WHERE TO GO IF YOU HAVE A PROBLEM

- ✔ If you have a problem with repair work on your vehicle, you should talk to the manager or owner of the repair shop where the work was performed to explain the

Auto Repairs

nature of your complaint. (You might want to refer to the section on ***Remedies: Effective Negotiation*** before you start).

- ✔ If you are not satisfied with the shop's response, write a letter to the shop explaining your position (refer to the section on ***Remedies: Writing A Complaint Letter*** for pointers on how to do this). Include all the facts that you can recall and send copies of invoices plus any other relevant documents. Keep copies of all the mailed documents. If the shop does not respond appropriately after receiving your letter, send a cover letter explaining the situation, along with copies of any documents, to the New Hampshire Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✔ You may also wish to contact the following offices to address any inquiries or complaints.

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991
Web: <http://www.concord.bbb.org>
E-mail: info@bbbnh.org

NH Department of Safety, Division of Motor Vehicles
33 Hazen Drive
Concord, NH 03305
603-271-6383


Autos: Lemon Law

New cars and other new motor vehicles are covered by manufacturers' warranties. These warranties must follow the rules set by the federal *Magnuson-Moss Warranty Act and the Uniform Commercial Code (UCC)* (refer to the section on **Warranties** for more information). The manufacturer's warranty is provided at no extra cost to the buyer. Sometimes, despite the best efforts of a dealer's service department, a defect cannot be satisfactorily fixed. These unfixable vehicles are popularly referred to as "lemons." New Hampshire's "Lemon Law" provides a method for the "lemon" owner to satisfactorily resolve the problem.


THE LAW

New Hampshire's "Lemon Law" (*RSA 357-D*) applies only to new vehicles purchased from New Hampshire dealerships. New Hampshire consumers who find themselves with a defective new vehicle that the dealer has been unable to repair may turn to the Motor Vehicle Arbitration Board (MVAB). The MVAB will decide whether the motor vehicle is so impaired by its defect that the manufacturer should take the vehicle back. The MVAB, a five-person panel of consumers, auto dealers and certified mechanics, has been in existence since January 1, 1992. The MVAB reviews consumer complaints about defective vehicles and holds evidentiary hearings which typically include inspecting and/or test driving the vehicle. If a majority of the panel members find that the vehicle is substantially impaired due to defects covered by the manufacturer's warranty, the board will order the manufacturer to either buy the "lemon" back from the consumer or, at the consumer's option, trade the "lemon" for another vehicle of equal value. The MVAB can also award "damages" which can include license and registration fees as well as the finance charges (interest) for the loan to purchase the defective vehicle. Either the consumer or manufacturer can appeal a MVAB decision to the Superior Court.


A vehicle is considered to be a "lemon" if:

 The new vehicle is substantially impaired in use, value, or safety due to a defect covered by the manufacturer's warranty that the manufacturer or its authorized representative has not fixed.

In order to qualify for arbitration, a consumer must ordinarily show either:

 The manufacturer or its representative has made at least three unsuccessful attempts to fix the motor vehicle; or

Autos: Lemon Law

 The motor vehicle has been out of service for 30 or more business days (cumulative) due to defects or nonconformities covered by the warranty.

NOTE: In some cases involving extensive or dangerous defects, the MVAB may decide to hear a case with fewer repair attempts or days out of service.

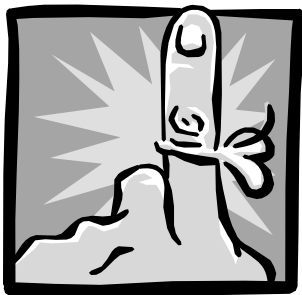
New Hampshire's "Lemon Law" requires that manufacturers of new motor vehicles provide purchasers with a notice of their rights to arbitration under New Hampshire law, including a "demand for arbitration" form.

NOTE: New Hampshire's "Lemon Law" applies only to "new" motor vehicles, described in the statute as vehicles still under manufacturer's express warranty. Low mileage used cars may, under some circumstances, qualify for arbitration and relief under the "Lemon Law" for defects in systems covered by a warranty. Older used cars, which are out of warranty when purchased, do not generally fall within the protection of the New Hampshire "Lemon Law." (For information on legal protection for used car buyers, refer to the section entitled *Autos: Used*.)

EXAMPLE: In 2006, Joe Smiley buys a used 2005 Tomoto Tomotovan with only 25,000 miles on the odometer. The vehicle is still covered by the manufacturer's 50,000 mile drive train warranty. If Joe experiences recurrent transmission problems with the vehicle during the remaining warranty period, he would probably qualify for a hearing before the MVAB under the NH "Lemon Law." If, on the other hand, Joe had bought his van with 60,000 miles on the odometer and all original manufacturer's warranties had expired, he probably would not qualify for assistance under the NH "Lemon Law."

MANUFACTURERS' WARRANTIES

New Hampshire's "Lemon Law" also requires that any motor vehicle sold in New Hampshire conform to the applicable manufacturer's warranty and that manufacturers promptly correct defects covered by the warranty. This requirement is complemented by RSA 382-A:2-329 which requires automobile manufacturers to maintain in-state service agents and to provide parts needed for repairs within 30 days or less. (For further information, refer to *Warranties*.)



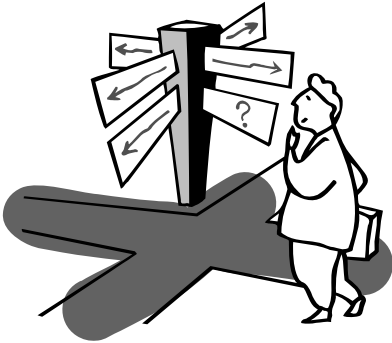
POINTS TO REMEMBER

- Read the manufacturer's warranty carefully when you buy a new car. Know what is and is not covered.
- When you take your new car for servicing, give the dealer's service manager a list of symptoms and keep a copy for

your records.

- ✓ Keep copies of repair orders which should state the reported problem, all necessary repairs, and the dates the vehicle was in the shop.
- ✓ Carefully consider whether you need to buy a service contract or extended warranty. If your car has an excellent repair record, you may not need or want this extra coverage. For more information about service contracts, refer to *Service Contracts and Extended Warranties*.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✓ Contact the New Hampshire Motor Vehicle Arbitration Board for arbitration if your car's problem falls under the New Hampshire "Lemon Law."

MVAB
33 Hazen Drive
Concord, NH 03301
603-271-6383
603-271-1061 Fax

- ✓ Contact the Better Business Bureau for mediation and arbitration assistance if your car's problem does not fall under New Hampshire's "Lemon Law."

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301-3459
603-224-1991
E-mail: info@bbbnh.org
Web: <http://www.concord.bbb.org>

- ✓ Contact the NH Consumer Protection and Antitrust Bureau.


NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

EXTRA NOTE





Pets

Pets are wonderful companions and can be good protection. In return, New Hampshire law requires that we protect our pets in several basic ways (RSA 436 & RSA 437).

 *Animal shelters and pet stores cannot give away or sell any **cat or dog** before it reaches eight weeks old.*

Animals must have a veterinarian's health certificate within 14 days of transfer of ownership (whether by purchase or adoption). If the animal is found to be diseased, the purchaser/adopter may return it within two business days for a full refund or for another animal.

 ***Chicks, ducklings, goslings, and rabbits** must be at least four weeks old before being sold or offered for adoption. New Hampshire law also prohibits these animals from being artificially colored.*

 ***Dogs, cats and ferrets** three months or older must be vaccinated against rabies. The veterinarian will issue a certificate of rabies vaccination and a tag (dogs are required to wear the tag).*

These laws apply to all breeds, purebred as well as mixed breed, whether the litter was planned or accidental. These laws also apply no matter how the pet is acquired: bought, found, adopted, or received as a gift.

Autos: New

A new car is the single largest purchase of personal property that most people make. Although a variety of state and federal laws regulate some aspects of new car sales, the responsibility for making sound purchasing decisions rests squarely on the consumer's shoulders. When shopping for a new car, you may benefit greatly from reading a "how to" manual on car buying, many of which can be found in bookstores and public libraries. Magazines such as *Consumer Reports*, *Money*, and *Kiplinger's Personal Finance* produce special annual issues on new cars and car buying.

This section covers the basics of advertising, oral promises, and deposits. If you are interested in the new car warranty law (also known as the "lemon law"), refer to the section on *Autos: Lemon Law*. New Hampshire *does not* have a rescission or "cooling-off" period during which a car buyer can cancel the deal.

ADVERTISING

Car dealers often print or show pictures of cars in their ads. Usually, ads are written in such a way as to avoid creating a promise to sell an unlimited number of cars at the advertised price. The dealer is *not* running a deceptive advertisement if it includes a "stock number" (a unique number assigned to a car when it comes into the dealer's stock) or states that a limited number of cars are available at the advertised price, so long as the ad is truthful. Car dealers will frequently claim that their advertisements were in error due to mistakes by publishers or broadcasters. Ads, however, do occasionally create legally enforceable promises. For example, a picture of a car which clearly depicts certain features may be found to create a promise of those features to the potential purchaser. A car advertisement stating a price for a specifically described automobile has probably created a promise to sell that automobile at that price. A deceptive ad claim is strengthened, however, if the consumer can show that the dealer had no such car in stock at the time the advertisement was run or that the ad misstated the number of cars.

If a dealer refuses to honor an ad, you should try negotiating by using the good faith impression which the erroneous ad created. Refer to the section on *Remedies: Effective Negotiation* for some pointers on how to do this. If you cannot negotiate a deal, you may wish to contact the New Hampshire Consumer Protection & Antitrust Bureau, describing what happened and enclosing a copy of the ad. If the Bureau finds a pattern of "erroneous" ads, or the dealer runs the "erroneous" ad without any effort to correct the error, the dealer's claim may lose its credibility.

Bait and Switch

Like some other retailers, car dealers, unfortunately, have been known occasionally to engage in “bait and switch” advertising (for more information on this ad scam, refer to the section on *Advertising*).

This type of advertisement is generally designed to increase “traffic” in the showroom with attractive prices on low priced cars that have relatively few features.

Often the car shopper learns that an advertised special is really not so special after all and buys a different car. The use of bait and switch advertising in such a situation is therefore probably of little practical importance.

However, if you encounter such a situation and want to hold steadfast to the advertised price on the precise car that was advertised, you are probably entitled to do so.

EXAMPLE: Granhart Motors advertises the “Latest Moonshot for the incredibly LOW PRICE of just \$12,995!” Wilma Byer reads the advertisement and goes to Granhart Motors. The salesperson tells Wilma that the last Moonshot was just sold, and that it’s a “real dog” anyway. The advertised model was stripped down and “they even charged extra for the spare tire and seats!” The salesperson then tells Wilma that the Porcine Windmaker has “twice the value” of the Moonshot and sells for “only \$19,999!” Although it is unclear what Wilma’s remedies or damages would be if she goes ahead and buys the Windmaker, she would be in a good position if she holds out for the purchase of the Moonshot at the advertised price because she has a strong case that Granhart is running a bait and switch ad.



ORAL PROMISES

Salespersons and managers often make promises to potential buyers during the sales negotiation for a new car, and consumers often complain that these promises are untrue or unenforceable. Although patterns of deceptive behavior often can be stopped because they violate the New Hampshire *Consumer Protection Act*, it is often difficult and very expensive to prove what was said during a sales negotiation. Few laws apply directly to the negotiation process. The

decision as to whether statements made during the negotiations happened at all and therefore created enforceable promises is generally left to a judge.

EXAMPLE: Granhart Motors advertises “This year’s Moonshot for the incredibly low price of just \$12,995!” Walt Byer reads the advertisement and goes to Granhart Motors. The salesperson tells Walt that “this year’s Moonshot is just the car for you!” Byer purchases the car and later finds that the title documents and purchase order state that he bought a Moonshot manufactured in the previous model year and the previous calendar year. The advertisement and oral statement about “this year’s car” along with the documentary statements about the date of the manufacture and information about the change in model year may demonstrate to a judge that the characteristics of the car were misrepresented, in violation of RSA 358-A:2.V.

Two strategies can help avoid this frustration:

-  Do some research about the cars you may be interested in buying and then demand that the salesperson give you written proof confirming any claims made.
-  Assume that nothing said to you about the car or the deal is enforceable and get any promises made to you in writing.

MAKING A DEPOSIT

A deposit is typically used to “lock in” the buyer to the deal. You probably should not make any deposit if you:

- Plan to shop at other dealers
- Do not have the dealer’s promises and assurances in writing
- Think that you might change your mind for any reason

You have no legal or moral obligation to make a deposit until you are ready to enter a legally binding contract. Therefore, you should resist any pressure to leave a deposit. Only put a deposit on a car when you are absolutely sure that you are satisfied with the deal and want to buy that particular car. Be especially suspicious if you are pressured to leave a deposit to “hold” a car for you. If you think that you might change your mind for any reason, get the salesperson’s written promise to refund the deposit.

Your deposit should not be more than \$100, unless the dealer is making special preparations or installing special equipment. The deposit is intended to cover the dealer’s cost of preparing the car for you in the event that you break the deal. The deposit should be reasonably related to the cost connected with the process, such as typing up loan forms, odometer disclosure statements and similar paperwork.



Watch out for . . .

Spot Delivery Sales

A “spot delivery” occurs when a dealer turns possession of a vehicle over to the buyer immediately after the buyer signs the purchase agreement. In the rare case where the buyer pays cash, this practice is unlikely to cause any problems. But, since most of us cannot afford to purchase a car without help from a bank or finance company, spot delivery can lead to abuses.

Why Dealers Use Spot Delivery Sales

A customer may decide to purchase a car while at the dealer's shop. The customer signs a purchase agreement, leaves a down payment, and later changes his or her mind. This causes lots of trouble for the dealer. So, dealers have been trying for years to find a way to eliminate this practice and to keep prospective customers from changing their minds.


By allowing the customer to drive away in the new car, the theory goes, the dealer can dramatically reduce the likelihood that the customer will decide to cancel the purchase. Also, by delivering the car to the consumer immediately, the dealer has "taken the customer out of the market." This means the customer will not go across the road to the competition and possibly find a better deal there.


How a Spot Delivery Sale Works

Usually, a "spot delivery sale" starts out like any other sale. The customer picks out a car, takes it for a test drive, and then sits down with the salesperson to negotiate a purchase price. When a price is agreed upon, the dealer fills out a purchase order which the customer signs. The customer then fills out a loan application, which is submitted to a bank or a finance company. If financing is approved, the customer drives home in the new car.

When a Spot Delivery Sale Goes Wrong

If the spot delivery transaction takes place as described in the previous paragraph, then there should be no problems. Often, however, these transactions do not follow that scenario.

 The dealer may turn the car over to a buyer without knowing if the financing is going to be approved in a spot delivery sale.

 Finance companies may not be able to make a quick decision about financing. It can take days for a finance company to decide to approve a loan.

If the finance company approves the loan, there is no problem. *But* if the financing is *not* approved, then there is trouble. The customer has possession of a car with no loan to help pay for it!

The car sale is completed when the dealer and the customer sign the sales order. Typically, the finance agreement has nothing to do with whether the sale takes place.

The finance agreement only relates to how the car will be paid for. So, the dealer has sold and delivered a vehicle and now the dealer has no way to be paid for that vehicle.

NOTE: The customer can pay the dealer for the vehicle in the same manner as outlined in the finance agreement (so much per month over so many months). But this will probably not be a good option for the dealer. The dealer wants to be paid quickly, and for as close to the full price of the deal as possible. When the finance company agrees to make the loan, it will pay the dealer up-front for the car. The dealer will be paid somewhat less than the agreed-upon price of the car, but to the dealer, that is a more attractive option than is getting a few hundred dollars a month for a period of years as the consumer pays off the debt.

To eliminate the problem of financing falling through, many dealers who practice spot delivery now insert a

clause in the sales agreement which *makes the sale contingent on financing*. This means that if the finance company denies the loan, the deal is off. By making this addition to the contract, the dealer tries to reserve the right to have the car returned if the financing deal falls through.

If the customer has to return the new car, the dealer should be prepared to return the customer to the same position that customer was in before the deal was made. This




EXAMPLE: *Carl and Katie think it is time to trade in their old car for a newer one. They drive past Honest Bob's Real New Car Emporium one Sunday afternoon and see just what they are looking for – an Acme Buckaroo SUV. They take a test drive and decide they like the vehicle and are interested in buying it. Honest Bob sits them down to work out a price. Carl tells Honest Bob that his credit is not the best, but Honest Bob says, "Don't worry! I can arrange financing for just about anybody!" Honest Bob tells Carl and Katie that he can get them financed at \$379.95 per month for five years with their trade-in and \$1000 down. While this is more than they want to spend, when Honest Bob tells them that he can put temporary plates on the Buckaroo right then so they can drive it home today, Carl and Katie decide they can cut back on some other things. Honest Bob draws up a bill of sale and a retail installment sales contract. Everybody signs, and Carl and Katie leave in their new Buckaroo.*

Three days later, Carl gets a call at work. It is Honest Bob who says he has bad news. The finance company has turned down their credit application. Honest Bob tells Carl, "I can still get you financing, but the best I can do is \$435.50 per month payment, plus I'll need another \$600 in down payment." Carl tells Honest Bob, "I can't believe it. We had a deal. We signed papers! We can't afford a higher payment, and we don't have \$600. We gave you every penny in our savings account on Sunday!" Honest Bob says that if Carl doesn't return the Buckaroo by 5:30 that evening, he will repossess it that night. And, if Carl doesn't cooperate with the repossession, he will report the car stolen. Carl says, "OK, I'll bring the Buckaroo back after I get off work. I will expect you to have my old car and my down payment refund waiting for me. And I won't be looking at buying another car from you – ever!" Honest Bob replies "Heh, heh, I am afraid I have some bad news for you there. I sold your trade-in yesterday. And your down payment? That is a non-refundable deposit. You don't get that back. You just get the Buckaroo back here by 5:30." Carl returns the Buckaroo, and walks home.

means the dealer must return all down payments, any vehicle that the customer traded in, and any other money or goods turned over to the dealer in the transaction.

Potential for Abuses

When the car dealer gives possession of a new car to the new car buyer, but makes the sale of the car contingent upon financing, a host of opportunities for abuse arise. A dealer who wants to increase profits will call the customer a few days after the sale and try to change the deal.

-  The dealer may tell the customer that financing was denied and the customer needs to either pay more per month and/or make a larger down payment.
-  If the customer refuses to pay more, the dealer can then invoke the contingency clause in the sales agreement and tell the customer the sale is void and that the car must be returned.
-  Sometimes, the dealer will also tell the customer that his or her trade-in car has already been sold, and/or that the deposit is non-returnable.




All of these tactics are designed to make the customer believe that he or she has no choice but to pay the extra money demanded by the dealer.

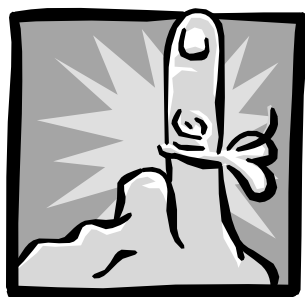
What You Can Do

- Refuse to participate in a spot delivery sale.
- IF the dealer tries to make you take delivery of a new car before your financing is approved, just say no.
- You will have nothing to lose, and by keeping your old car, you make it impossible for the dealer to sell it before you own the new one.

If you decide to participate in a spot delivery sale, be sure you understand the terms of the deal. Find out if there is a contingency agreement. Make sure the dealer understands that if financing is denied you want to get your old car back *and* your down payment back.

If you have purchased a vehicle as a spot delivery, and the dealer has informed you that financing was denied, and that you need to pay more, there are a few things you can do.

-  Find out whether your sales contract contains a contingency clause.
 - ▶ If it *does not*, the dealer may *not* demand the return of the new car
 - ▶ If the contract *does* contain a contingency clause, call the finance company to verify that your loan has been denied.
-  Under federal law, when a loan application is denied the lender must notify the borrower of the denial.
 - ▶ If the finance company verifies the denial, you can try to get your own financing through another lender
 - ▶ If you are unable to do so, you may want to turn the car back in to the dealer, but if you do, you should demand your old car and your deposit back.
-  If the dealer threatens to repossess the car, again check the sales contract (NOT the financing agreement). Unless the sales agreement allows the dealer to repossess if financing is denied, the dealer may not do so.
 - ▶ If the dealer is allowed by the sales contract to repossess the vehicle, the dealer must still obey the laws related to repossession. Most notably, the repossession must not “breach the peace.” Refer to ***Credit: Debt Collection*** for more information about repossessions.



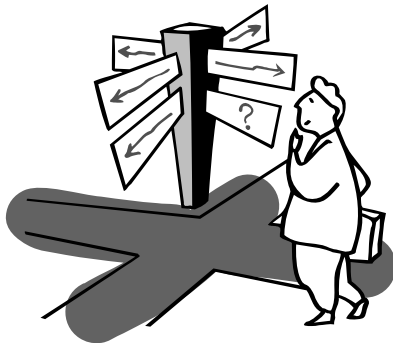
POINTS TO REMEMBER

- Do your homework about the model or models you are interested in before going to any dealers. Know what features you are looking for and about what price you are willing to pay.
 - Test-drive each model you are considering. Test-drive the actual car you will be purchasing before taking possession of it.
- Do not accept a car that has mechanical or cosmetic problems. Be cautious of oral promises that the problems will be fixed later. Get all promises in writing.
- Compare financing from different sources. The dealer may not have the best financing deal. Check with local banks and credit unions to see what terms they are offering.
 - Only make a deposit on a vehicle that you are absolutely certain of purchasing.
 - Do not buy on impulse or because the salesperson is pressuring you to close the deal “now.”
 - Read all documents you are asked to sign carefully, making sure that you understand what you are being asked to sign.

Autos: New

- ☒ If you don't understand something, ask for an explanation. If the explanation is unsatisfactory, do not sign the document. Wait until you are ready to buy to sign anything.
- ☑ The sale of the vehicle and the financing agreement are two separate agreements.
- ☑ Unless the sales agreement specifically states that the sale only takes place upon the buyer's obtaining financing, the sale takes place regardless of whether financing is obtained.
- ☑ If you take possession of a new car on a spot delivery plan and you are later told that you have to return the car because financing fell through, call the finance company to verify that credit was denied.
- ☑ If you have to return your new car because financing was denied, you are entitled to get your down payment and your trade-in back.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ If you have a problem with a new car purchase, contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
<http://www.doj.nh.gov/consumer/index.html>

- ☑ You may also want to contact the Better Business Bureau, as many dealers are BBB members:

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991

E-mail: info@bbbnh.org

Web: <http://www.concord.bbb.org>

Click on "Tips for Business and Consumers" for articles about new car buying.

Click on the "Dispute Resolution" tab under "Tips for Business and Consumers" for information on the BBB AutoLine.

Click on the “Complaints” tab under “Tips for Business and Consumers” to file a complaint about a new car online.

- ☑ For information on arbitrating a new car warranty dispute, contact the Motor Vehicle Arbitration Board (refer to ***Autos: Lemon Law*** for more information):

Motor Vehicle Arbitration Board
33 Hazen Drive
Concord, NH 03305
603-271-6383
603-271-1061 Fax

- ☑ If your problem is with a dealer, and is NOT a warranty issue, the NH Automobile Dealers Association has an arbitration service with members of the association called the Automotive Consumer Action Program (AUTOCAP):

NH Automobile Dealers Association - AUTOCAP
P.O. Box 2337
Concord, NH 03302-2337
1-800-852-3305
603-225-4895 Fax
Web: <http://www.nhada.com>

EXTRA NOTE



Gift Certificates

*Have you ever discovered a long lost gift certificate, one that had been buried in a drawer or at the bottom of a “to-do” pile of paperwork? Did you get excited about the prospect of cashing it in only to discover that it had expired? Don’t toss the gift certificate away quite yet because you still may be able to use it. In New Hampshire, a gift certificate of **less than \$100 value cannot have an expiration date.***

If the business tries to tell you that you cannot use your gift certificate (that is worth less than \$100) because it has expired, politely tell them that such expiration dates are illegal in New Hampshire. The business should be willing to oblige you since most businesses care about their community images. If the business won’t accept your “old” gift certificate, you can take the business to Small Claims Court. By showing the court that the business violated the law by putting an expiration date on the gift certificate with a value of less than \$100, you may be entitled to your actual damages or \$1000, whichever is more.

*Gift certificates of **\$100 or more expire when they become abandoned property, currently after 5 years.** If this type of large value gift certificate goes unused for more than 5 years, the business is required to turn that money over to the State as “abandoned property.” The Abandoned Property Division of the NH Treasury Department lists the names of anyone with abandoned property on its Internet site, and in occasional newspaper ads. Anyone whose name appears on the list can contact the Abandoned Property Division to have his or her money returned (as a check, not as a gift certificate). You can call the Abandoned Property Division at 1-800-791-0920 (toll-free) or 271-2619, or access the abandoned property list through the New Hampshire homepage at <http://www.state.nh.us/treasury/Divisions/AP/APindex.htm>.*

NOTE: *This law does not apply to season passes or non-refundable coupons. This law does not apply to gift certificates:*

- For which you did not pay (or the person who gave it to you did not pay), or*
- Given to you by a business for promotional purposes.*

Autos: Used

Every year, thousands of people buy “previously owned” cars. The majority of used car buyers are satisfied with their purchases. However, used car buyers can run into problems that do not exist in the new car market. Some problems may be similar to those of new car buyers, such as misleading advertising and oral promises. Used car buyers should take special care to “shop smart.” This section covers some of the rights and protections you have as a used car consumer in New Hampshire.


Used car buyers can have as many problems with so-called “spot delivery” sales as new car buyers. For more information on “spot delivery sales,” refer to *Autos: New, Watch Out For. . . Spot Delivery Sales*.


New Hampshire has neither a “cooling off” period to cancel a used car sale, nor a used car “lemon law.” Although some states have such laws, New Hampshire’s “lemon law” applies only to cars still within the original warranty period (refer to the section on *Autos: Lemon Law*), and a “cooling off” period is nonexistent in either new or used car sales. New Hampshire does offer protection for the used car buyer by regulating the sale of “unsafe” used cars (i.e., cars that cannot pass state inspection), in addition to warranty protection under the *Uniform Commercial Code (UCC)*. Further protection is extended by a Federal Trade Commission (FTC) rule requiring used car dealers to provide certain information to their customers about the cars they sell.

THE LAW

New Hampshire, unlike many other states, permits the sale of so-called “unsafe” vehicles which cannot pass state inspection when sold. New Hampshire’s *Unsafe Vehicle Act (RSA 358 F)* gives consumers several important legal rights in the sale of such used vehicles. An “unsafe” vehicle is one whose brakes, frame, exhaust system, or lights will not pass the state’s safety inspection.

Before a dealer can sell an unsafe used car, the dealer must:

 Disclose that the car will not pass the state safety inspection

 Offer the buyer the opportunity to have the car inspected for safety (the dealer may charge a “reasonable” amount for the inspection).

Autos: Used





If the consumer still wants to buy the car, knowing it is considered “unsafe,” the dealer may sell the car but must list the safety defects for the buyer along with a notice stating:

This motor vehicle will not pass a New Hampshire inspection and is unsafe for operation. The following defects must be corrected before an inspection sticker will be issued.

Any violation of RSA 358-F is considered to be an unfair and deceptive trade practice which triggers certain rights and remedies under the New Hampshire Consumer Protection Act.

EXAMPLE: Bondough's Best, a used car dealer, receives a used Porcine Troughmaster in trade. While getting it ready for resale, Clyde Bondough notices that the Troughmaster's frame and exhaust pipes are rusted through. Harvey Parsley comes to the lot the next day and says "Porcines are the best! I especially love the Troughmaster." Before Bondough's can sell Harvey the Troughmaster, it must tell him that the car probably will not pass a state safety inspection, and offer him a chance to get the car inspected. Harvey may still buy the Troughmaster if he gets a list of all the items that did not pass inspection and the warning stated in the text.

RSA 266:8 also gives the used car buyer protective rights. When a dealer licensed by the New Hampshire Department of Safety finds that a car will not pass the state safety inspection, the dealer must:




-  Destroy the inspection sticker on the car
-  Fill out a form distributed by the Department of Safety
-  Have the buyer sign the form to acknowledge that the buyer is aware the car will not pass inspection
-  Provide the buyer and the Department with a copy of the form, and keep a copy of the form in the dealer's files.

UNIFORM COMMERCIAL CODE

New Hampshire used car buyers are also protected when the dealer wants to sell a used car without any warranty. Such sales are traditionally made using the words “As Is” on the bill of sale, receipt, or contract. New Hampshire’s version of the *Uniform Commercial*

EXAMPLE: Candy Voltaire goes to Prince's Used AutoGems, a "licensed" dealer, and buys a 1999 Porcine Windbucket. The Windbucket will not pass inspection. The purchase order says "As Is As Shown." The purchase order does not have the language or signature as required by the UCC, the previous inspection sticker is still on the windshield, and there is no signed form as required by RSA 266:8. Sam Speed, the salesperson who sold Candy the car, agrees that he never told her about her right to a safety inspection, but claims that Candy waived her rights when she took delivery of the car "As Is As Shown." Speed is probably wrong, and it is very likely that a court would find the sale violated the UCC, RSA 358-F, and RSA 266:8.

Code (for more information about the *UCC*, refer to **Warranties**) states that when a seller is selling goods (including used cars) without any warranty, the contract should employ the following language:

-  That the goods are being sold “as is” or with “all faults”
-  That the buyer assumes all risks as to the good’s quality and performance
-  That if the goods prove defective after purchase, the buyer, not the seller or manufacturer, must absorb any service or repair costs.

This rule applies to used car transactions and may be a source of problems for buyers where the “As Is” paperwork does not conform to the *UCC* safeguards.

FTC BUYER’S GUIDE

The FTC has a very helpful set of rules called the “Buyer’s Guide” rules, which apply to used car sales and advertising. The nationally required rules apply to all used car dealers who sell more than four used cars per year.

The FTC rules require used car dealers to give potential buyers certain information about the cars. The used car dealer is required to **post a window sticker** called a “Buyer’s Guide” on each used car stating whether the car is being sold with a warranty or “as is.” If the sticker states that the car is being sold “as is,” the dealer is prohibited from making any contradictory statements in advertisements, sales pitches, or sales documents.

EXAMPLE: Candy Voltaire goes to Prince’s Used AutoGems and buys a 1998 Porcine Windbucket with 130,000 miles showing on the odometer. The Windbucket’s clutch melts down and must be replaced two hours after Candy drives the Windbucket off the lot. The Buyer’s Guide says “As Is.” Sam Speed, the salesperson who sold Candy the car, agrees with Candy’s claim that he told her that the car should go “another 30,000 miles with no problem, easy,” contradicting the Buyer’s Guide and violating the FTC rule. Speed, and Prince’s, by violating the Buyer’s Guide rule, have probably committed an unfair or deceptive trade practice that should give rise to the private remedies provided under the NH Consumer Protection Act.

EXAMPLE: Candy Voltaire goes to Prince’s Use AutoGems and buys a 1999 Porcine Windbucket. The Windbucket will not pass inspection. The purchase order says “As Is As Shown.” The purchase order has the language and signature as required by the UCC, and the previous inspection sticker was removed from the windshield, and there is a signed form as required by RSA 266:8. Sam Speed, the salesperson who sold Candy the car, agrees with her claim that he never told her about her rights to a safety inspection, and said the various disclaimer forms were “just a little formality,” but claims she waived her rights when she took delivery of the car “As Is As Shown.” A court would likely find that the sale violated the UCC, RSA 358-F, and RSA 266:8 because Candy was induced to waive her rights before she had a clear idea of what they were.

Autos: Used

Any statements contradicting what appears on the FTC Buyer's Guide posted on the vehicle are prohibited. The Buyer's Guide information, however, should put the careful consumer on notice to disregard any warranty statements the dealer or salesperson makes. A dealer's violation of the FTC Buyer's Guide rules is not a direct violation of New Hampshire law. Nevertheless, if a dealer violates the Buyer's Guide rule, it provides strong and persuasive evidence that the practice also constitutes an unfair or deceptive practice as defined by New Hampshire's *Consumer Protection Act*.

“NEW” USED CARS

A growing number of car dealers are selling “program” cars. Program cars have been used in fleet leasing programs (such as to car rental companies) and usually have at least a part of the original manufacturer's warranty remaining at the time of sale. These cars can be good values since they may have low mileage, may still have warranty coverage, and may have less short term depreciation. Also, program cars which turn out to have problems may, under certain circumstances, qualify for arbitration under New Hampshire's *New Car Lemon Law* (refer to **Autos: Lemon Law** for more information). They can also be bad values due to possible abuse by previous owners and unknown operating conditions.

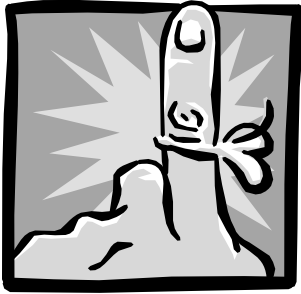
New Hampshire's *Consumer Protection Act* expressly prohibits a seller from “[r]epresenting that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.” Any advertisements, sales pitches, or other documents that represent program cars as new cars are of interest to the New Hampshire Consumer Protection & Antitrust Bureau. Although the Bureau cannot take action in every case, the Bureau is interested in monitoring the trends in this area. If you can demonstrate that a dealer misrepresented a used car as new, then you have a strong case to rescind the sales contract because the dealer used deceptive methods to make the sale.



Watch out for . . .

ODOMETER TAMPERING

Both federal and state laws make tampering with (disconnecting, rolling back) motor vehicle odometers illegal. Used car dealers and persons selling their own cars are prohibited from tampering with the odometer to make it appear that the vehicle has fewer miles on it (with fewer miles, the vehicle can usually be sold at a higher price). Both federal and New Hampshire state laws impose severe penalties for tampering with an odometer with the intent to defraud.

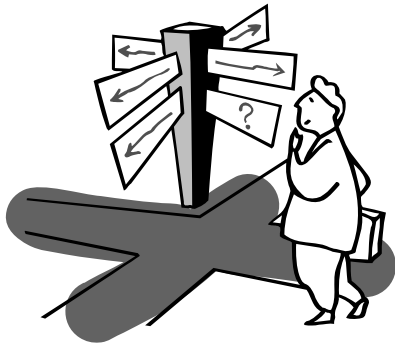


POINTS TO REMEMBER

- ✔ Check newspaper ads and used car guides at your local library to get an idea of what a fair price is for the car you are considering.
- ✔ Shop during daylight hours so that you can thoroughly inspect the car and take a test drive. Check all the parts of the car to make sure they work including the signals, heater, air conditioner, and lights.
- ✔ Make notes about the characteristics of all the cars you look at (so remember to take a notepad and pen or pencil with you). What extras does it have? What repairs need to be made? What is the price? You will be able to compare the notes later.
- ✔ Ask about the previous owner and the car's mechanical history. Contact the former owner if possible to find out if the car was in an accident or had any other major problems. Ask if the car's repair and maintenance records are available to you. Information about the car's history may be available through private web sites such as carfax.com.
- ✔ Have a mechanic inspect the car you want to purchase. Get a written list of all the things that need to be repaired. (The fee you will have to pay the mechanic for this inspection outweighs the trouble of purchasing a "lemon.") Ask the salesperson to either make any necessary repairs or deduct the repair cost from the selling price.
- ✔ Read all documents carefully. Don't sign anything you don't understand. Negotiate changes you want and get them written into the contract.
- ✔ Get all promises in writing (signed by the person making the promise) and date it.
 - ▶ Remember that the laws described in this section apply only to used car dealers, not to individuals selling their own vehicles.
- ✔ Only make a deposit on a vehicle you are absolutely certain of purchasing. (Refer to **Autos: New** for more information about deposits)
 - ▶ The sale of the vehicle and the financing agreement are two separate agreements.

- ▶ If you take possession of a used vehicle on a spot delivery plan, and you are later told that you have to return the vehicle because financing fell through, call the finance company to verify that credit was denied. For more about spot delivery sales, refer to *Autos: New, Watch Out For . . . Spot Delivery Sales*.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ If you have a problem with a used car purchase, contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
<http://www.doj.nh.gov/consumer/index.html>

- ✔ If you believe the Buyer's Guide rule has been violated, contact the FTC.

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
877-FTC-HELP (877-382-4357) Toll-free
TDD: 202-326-2502
Web: <http://www.ftc.gov>

- ✔ The Better Business Bureau may also assist in mediating or arbitrating a dispute:







Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991
E-mail: info@bbbnh.org
Web: <http://www.concord.bbb.org>

Auto Titles

The title to a motor vehicle is the proof of who owns the vehicle. In New Hampshire, as in all states, motor vehicle titles are registered with the state. There are certain procedures that must be followed when registering a motor vehicle the first time, when buying a used vehicle, and when removing a lienholder from the title. Laws governing auto titles vary from state to state. This section deals with the laws that apply to auto titles in New Hampshire.

THE LAW




In New Hampshire, a Certificate of Title is required whenever ownership or registration of a vehicle is changed (*RSA 261*). Certain information is required for the Certificate of Title to be issued:

-  The owner's name and address
-  A description of the vehicle including make, model, year, vehicle identification number (VIN), body type (such as sedan, coupe, etc.), number of cylinders, and whether the vehicle is new or used
-  Date of purchase by the person applying for the title
-  Name and address of the person or dealer from whom the vehicle was purchased
-  Names and addresses of any lienholders (creditors who hold a security interest in the vehicle), in order of priority, and a description of their security agreements
-  Manufacturer's or importer's certification of origin for new vehicles.

When a motor vehicle is purchased from a dealer, the dealer has 10 days from the date of the sale to mail an application for a Certificate of Title to the New Hampshire Department of Safety's Division of Motor Vehicles (DMV). When a lienholder possesses the vehicle's title at the time of the sale, the dealer has 20 days from the date of the sale to get the application to the DMV. If the vehicle is purchased through a private sale from another individual, the consumer has 20 days from the date of the sale to get the application and other appropriate documents to the DMV.

If you are changing the vehicle's registration to a New Hampshire registration from another state, you will need to provide the following information with the application for the Certificate of Title:

Auto Titles

-  The Certificate of Title issued by the other state or country (if not in English, include a notarized translation)
-  Whether or not any creditor holds a security interest in the vehicle
-  Any other information required by the DMV for the purpose of identifying the vehicle.

In New Hampshire, the title will include the following information:

- The date issued
- The name and address of the owner(s)
- The names and addresses of any lienholders in order of priority
- The title number assigned to the vehicle
- A general description of the vehicle.

When you have made the last payment on the loan which helped you buy your car, truck, van, motorcycle, or sport utility vehicle, your former creditor will notify the DMV that it no longer holds a security interest in the vehicle. The creditor will send a statement verifying that the loan is paid in full to the DMV so that the creditor's security interest in the vehicle is released. The lienholder/creditor has 10 days after the loan is paid in full to contact the DMV. The Certificate of Title will then be sent to you. You should keep the Certificate of Title with your other important legal papers, not in your vehicle.

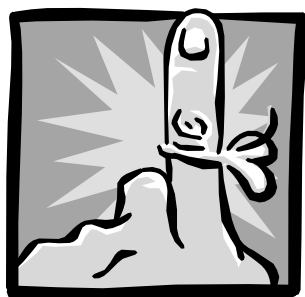
When you sell your vehicle, the dealer or other buyer will expect you to fill out and sign the "Assignment of Title" on the back of the Certificate of Title.

The Assignment of Title requires you to fill in the exact number of miles showing on the odometer or to disclose that the odometer reading is not the actual mileage. The person or persons signing the Assignment of Title must be the same person(s) who appear as "owner(s)" on the Certificate of Title. Never sign the Assignment form without filling in the name of the buyer. Sometimes dishonest people or dealers will use a blank Assignment of Title to pretend that a car sale is a "private sale" when it is really a "dealer

EXAMPLE: In 2001, John and Mary Caroner buy a 2001 Slimmobile using a bank loan. In 2004 they finish paying back the loan and receive a Certificate of Title to the Slimmobile. The Certificate names "John and Mary Caroner" as the "owners" of the car. In 2006, the Caroners trade the Slimmobile for a new Bulgemobile. They each print and sign their names as "sellers" of the Slimmobile on the back of the Certificate of Title.

sale” and subject to state and federal laws (refer to ***Autos: Used*** for more information). When a sale like this goes awry, it can cause trouble for the person who signed the blank Assignment of Title.

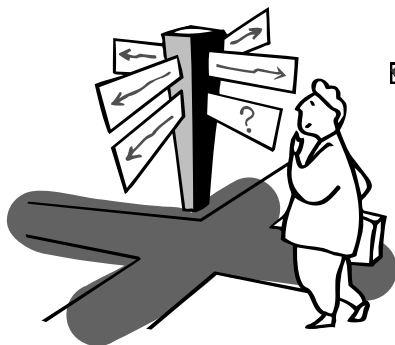
If you are purchasing a motor vehicle in another state, and want to register it in New Hampshire, you can apply to the DMV for a 20-day registration permit. You get this permit by applying in person at one of the DMV substations around the state and paying a \$10 fee. Only one 20-day registration can be issued to any one person during a calendar year.



POINTS TO REMEMBER

- ✔ When you buy a motor vehicle for cash, or when you pay off your loan, be sure that the person or company responsible for notifying the DMV to issue your Certificate of Title does so promptly. If you do not receive the Certificate of Title, remind the person or company to send the correct forms to the DMV.
- ✘ Never let anyone persuade you to sign the back of a Certificate of Title that has been left blank because it may result in difficult title problems for the person buying your car and potential legal liability for you.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Contact the New Hampshire Division of Motor Vehicles for any questions about your vehicles' titles:

NH Division of Motor Vehicles, Title Bureau
23 Hazen Drive
Concord, NH 03301
603-271-2251
Web: <http://www.nh.gov/safety/dmv/>

- ✔ Or contact the DMV substation nearest you.

EXTRA NOTE



Bank Savings Accounts

*Banks and other savings institutions offer a wide variety of savings options. Recent federal legislation nicknamed Truth-in-Savings helps consumers sort through the large number of variables impacting interest earnings. Truth-in-Savings requires that the **Annual Percentage Yield (APY)** be given to consumers for all types of savings accounts. The APY, representing the interest on \$100 held in the account for 365 days, provides consumers with a uniform measure of savings account earnings, similar to the Annual Percentage Rate that is required for credit transactions.*

APY is an important piece of information for consumers to have because there are so many variables affecting the interest earnings on a savings account, not the least of which are how the interest is calculated and when it is credited. The stated interest rate for an account is only a starting place. The more often your actual earnings are calculated and credited to your account, the higher the APY, and the more money your savings earn.

✔ *When shopping around for a savings account, whether a certificate of deposit (CD) or statement account, look for the highest APY relative to the stated interest. This will mean that your money will be earning “at its greatest potential.”*

- ▶ *Banks are now routinely charging fees on statement savings accounts. These charges can be for:*
- ▶ *Excessive number of withdrawals (when the number of withdrawals exceeds the number allowed during a stated period).*







A “dormant” account – one that has not had any activity in some period of time.

Charitable Solicitations


Charities routinely contact people through the mail or over the telephone to ask for contributions. Some charities, however, are not really charities at all. Occasionally, con artists will solicit contributions or sales on behalf of fictitious or bogus "charities," or will claim to represent a real charity, but will pocket the money for themselves rather than forward it to the charity. Consumers need to be aware of these dangers, and of the agencies that regulate the charities and people who raise money for them.


THE LAW

The Director of Charitable Trusts administers the laws in New Hampshire that authorize the state's attorney general to regulate both charitable trusts and the people paid by charities to raise money for them. All charities doing business in New Hampshire must be registered with the Charitable Trusts Unit of the New Hampshire Attorney General's Office. Once a year, charities must file reports disclosing their fund-raising activities and other important information with the Unit. The law prohibits certain activities or practices including:

-  Any unfair or deceptive practices
-  Any statement or implication that money is being raised for a charity or for charitable purposes if it is not
-  The use of a name, symbol or statement closely related or similar to something used by another charitable trust, if its use would confuse or mislead the person being solicited
-  Any statement or implication that money is being raised for a charity when the charity has not given written authorization to the solicitor to do so
-  The use of any emblem, device, or printed matter belonging to a charity when the charity has not given written authorization to the solicitor to do so
-  Any statement or implication that a person (usually a celebrity or public figure) sponsors, endorses or approves of a solicitation unless that person has given the person or entity making the solicitation written consent to do so

Charitable Solicitations

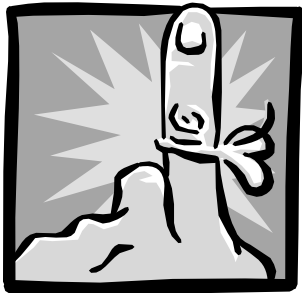
 Any statement or implication that registration with the New Hampshire Attorney General's Office is the State's approval of the charity or its methods

 Any statement or implication by a paid solicitor that a charity will receive a fixed or estimated percentage of the total contribution that is greater than the solicitor has stated in forms filed with the Unit.

Whenever a charity uses paid solicitors or fund raising counsel to help it raise money, the solicitor or counsel must be registered with the Charitable Trusts Unit. The solicitor or counsel must disclose certain information to the Unit in order to be registered. Also, a paid solicitor must post a \$20,000 surety bond and a fund raising counsel must post a \$10,000 surety bond with the Unit. This is to cover claims arising from any violation of the charitable trust laws. The requirement to use only registered solicitors and counsel does not apply to paid staff of the charity or to volunteers.

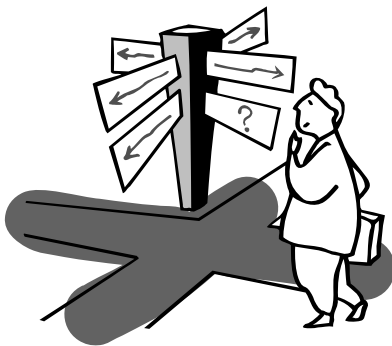
EXAMPLE: John B. Goode, a paid staff member of the Trans-Gondwonaland Preservation Society, a New Hampshire trust, contacts Faith Hope to ask her to make a contribution to the society. The society must have a report on file with the Charitable Trusts Unit, but Goode does not need to be registered as a solicitor or counsel with the Charitable Trusts Unit.

Joan Dollarz, a paid solicitor to the Trans-Gondwonaland Preservation Society, a New Hampshire Trust, contacts Faith Hope to ask her to make a contribution to the society. The society must have a permit on file with the Charitable Trusts Unit, and Dollarz must be registered as a paid solicitor with the Unit.



POINTS TO REMEMBER

- Get as much information as you can about a charity and its activities before making a contribution.
- You have the right to demand, and receive, information on how much of the proceeds collected is used for the charity's work and how much goes toward administrative and fund-raising costs. Do not make contributions to a charity that either will not give you information or dismisses your request for information.



WHERE TO GO IF YOU HAVE A PROBLEM

- Whenever you have questions about a charity or a charity's fund raiser, contact the New Hampshire Charitable Trusts Unit for more information:

NH Charitable Trusts Unit
33 Capitol Street
Concord, NH 03301
603-271-3591
Web: <http://www.doj.nh.gov/charitable/index.html>

- ☑ The Better Business Bureau also has information on New Hampshire charities:

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991, 603-228-3789, or 603-228-3844
Web: <http://www.concord.bbb.org>
Click on "file a complaint" to file a complaint about a charity. Click on "tips for business and consumers" then click on "Resource Library" for articles on charitable giving.

- ☑ The Better Business Bureau also maintains a data base on charities:

BBB Wise Giving Alliance
4200 Wilson Blvd., Suite 800
Arlington VA 22203
1-703-276-0100

- ☑ For information on charities not registered in New Hampshire, contact the National Charities Information Bureau:

National Charities Information Bureau
Web: <http://www.give.org>

EXTRA NOTE



Home Heating

New Hampshire winters can be grueling, especially for people who have a hard time paying their heating bills. If you or someone you know is having trouble providing home heat, you may wish to:

- Conserve heat by making the home as energy efficient as possible.*
- Try to negotiate payment terms with the electric, gas or home heating oil company.*
- Contact the Fuel Assistance Administration, Governor's Office of Energy and Community Services. The phone number is 271-8317 or contact the office through its web site at <http://www.nh.gov/oep/programs/fuelassistance/index.htm>*

Starting in the late summer you may see advertisements for payment plans that allow you to "lock in" the price that you will pay for fuel oil or propane gas for the coming winter. These programs take many forms, but usually you must pay in advance for a certain amount of fuel in order to "guarantee" the price. The "guaranteed" price will be lower than the prevailing market prices for the fuel only if prices for the same fuel rise above what you have already paid. For some people, these programs can help them budget their heating costs by requiring them to pay all or part of their fuel bill during the warm months. With these programs, you are essentially gambling that the future price of the fuel will be higher. No one can "guarantee" the lowest price for fuel because we cannot be absolutely certain how much fuel prices will rise, if at all, during the winter although the principle of supply and demand often results in higher fuel prices in winter than summer.

If you have problems with a fuel provider not living up to a contract, contact the NH Consumer Protection and Antitrust Bureau at 603-271-3641 1-800-468-4454, or through its web site at <http://doj.nh.gov/consumer/index.html>.

For problems with natural gas, contact the Public Utilities Commission at 603-271-2431. Oil and propane are not regulated by the Public Utilities Commission.

Condominiums and Timeshares

Alternative types of owning real estate, such as condominiums and timeshares, have gained in popularity over the last twenty-five years. Misinformation, and occasionally fraudulent acts, have sometimes plagued consumers and developers. Several laws require that developers register their ventures with appropriate authorities and provide potential purchasers with specific information.

A condominium form of ownership means that individual owners own their specific units and have shared ownership of the grounds, facilities and the like. Individual owners pay a monthly fee to cover the costs of common facilities and services, such as shared maintenance and insurance. In contrast, a cooperative form of ownership means that owners own shares in the corporation that owns the building or buildings in which they live. Each resident then rents a unit from the corporation, with the rent including the shared costs for mortgage, maintenance, taxes, and so forth.

Timeshares can be a convenient way to "own," or have rights to, vacation properties. With timesharing, owners do not own a particular unit but have a deeded right or a right to use a unit for a certain period of time every year. Fees cover the timeshare owner's portion of the mortgage, taxes, insurance and maintenance.

THE LAW

Registration


The primary statutes are the federal *Land Sales Full Disclosure Act*, the New Hampshire *Condominium Act* and New Hampshire *RSA 356-C*. Any condominium of more than 10 units, all "timesharing" developments, and subdivisions of more than 15 lots must register with, or formally be exempted by, the New Hampshire Attorney General. The registration (or exemption from the registration) must happen before the developer sells or offers for sale, any units, timeshare interests, or lots. This law also requires that the developer present all material facts about the property to potential buyers (a fact is "material" if it would influence the average person's decision to buy the property). Furthermore, the law requires that buyers' deposits must be held in escrow until the closing. Some projects must present a public offering statement to each buyer before or at the time of purchase. In addition, under the law, buyers may cancel their purchase

Condominiums

within five days after signing the purchase contract or five days after receiving the public offering statement whichever is later.

Condominium Conversions

New Hampshire's *RSA 356-C* covers the rights of tenants in buildings being converted from rental property to condominium or cooperative ownership. Tenants have specific legal rights during the conversion process.

 Tenants must be notified by registered mail no earlier than 120 days before the building owner files an application with the Attorney General's Office to register the condominium or stock cooperative.

 Before filing a registration for a condominium or stock cooperative, the owner must notify the tenants of the following items:

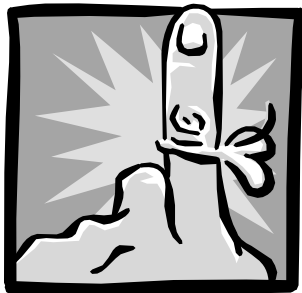
- ▶ The name of the rental property owner and the number of dwelling units or buildings to be converted into condominiums or a stock cooperative
- ▶ A statement that the conversion must be registered with the Attorney General's Office
- ▶ A statement that the application for registration will be submitted within 120 days
- ▶ A statement that the owner will notify every tenant when the registration is made
- ▶ A statement that each tenant will have exclusive right to contract for the purchase of the unit in which he or she resides for a period of thirty (30) days after the registration is completed, unless the unit will be undergoing substantial change.

Tenants choosing not to buy their units have either 270 days or until the lease expires, whichever is longer, before being required to vacate the unit. For elderly or disabled tenants choosing not to buy, the developer must allow 18 months before requiring them to move.

Timeshares

Timeshare managements are usually governed by long, complicated legal documents. Timeshare owners often have the right to "bank" or trade their rights and get access to other timeshare vacation properties. Timeshare promotions may entice you to visit with prizes or free accommodations. The value of the promotional offerings may be overvalued and even misrepresented. It is important to learn all you can about timeshare ownership in general and the particular development where you may be purchasing. It is also important to avoid high pressure sales tactics until you or your lawyer have carefully reviewed the public offering statement and other documents connected with the timeshare. In most instances, a timeshare buyer has five business days to cancel a timeshare purchase agreement.

EXAMPLE: While vacationing in the White Mountains, Jimmy and Jamie accept an offer to "get a free weekend vacation getaway, just for touring Rochmore Vacation Estates," a timeshare resort. After a 5-hour tour and presentation, the saleswoman gives them a "declaration," "bylaws," "public offering statement" and other marketing information. She presses them to "Make up your minds quickly because the prime timeshare weeks are selling out fast!" Jimmy and Jamie refuse to make a decision on the spot, agreeing only to look the documents over when they get home from their vacation.



POINTS TO REMEMBER

- ☑ Resist high pressure sales tactics that are meant to entice you to buy the timeshare immediately.
- ☑ Be realistic about how often you will use it and how much you can afford to pay. Ask questions:
 - ? How much are annual fees and maintenance charges?
 - ? What other timeshare resorts may you use with your membership?
 - ? Is the timeshare unit available during your vacation periods?
- ☑ Talk to people already owning timeshares about the services, availability, upkeep and reciprocal rights to use other facilities.
- ☑ Before buying a condominium or cooperative, talk to some of the other owners. Find out how often maintenance fees are raised, how well the complex is managed, and if there have been any problems with other owners or with the management during the past year.

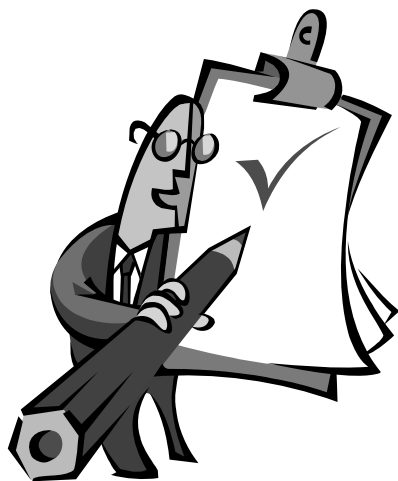
WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Contact the NH Consumer Protection and Antitrust Bureau if you have a problem or concern about a condominium conversion or timeshare:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

EXTRA NOTE



Rain Checks

A store that has run out of an advertised special will typically offer you some type of compensation such as a “rain check” or discount coupon (unless the ad stated “quantity limited”). Both New Hampshire’s Consumer Protection Act (CPA) and the Federal Trade Commission’s “Unavailability Rule” protect consumers from stores using misleading advertising practices.

The Federal Trade Commission (FTC) rule applies to grocery stores. The rule requires grocery stores to have a reasonable supply of advertised items to meet a reasonable demand, unless the ad clearly states that quantities are limited or available only at certain stores. When a grocery store runs out of an advertised special, the consumer is entitled to one of three remedies:

- ✔ *A “rain check” allowing the customer to buy the item later at the sale price*
- ✔ *A substitute item of comparable value to the sale item*
- ✔ *Some kind of compensation that is at least equal in value to the advertised item*

If a grocery store routinely runs out of advertised specials and fails to specify “quantities limited,” and does not provide “rain checks” or substitutions, contact the Federal Trade Commission at 1-877-FTC-HELP or 1-877-382-4357 (toll-free).

Credit Cards

Credit cards are the most common form of "open ended" or revolving credit. Most people have at least one credit card, and often many more than one. Credit cards are issued by banks and retailers. "Bank" cards, such as VISA, MasterCard or Discover Card, can be used at a wide number of retailers. Retail store cards are used only at the business issuing the card, such as Macy's, Sears, or Exxon. Travel and entertainment cards, such as American Express or Diner's Club, were originally meant to help business travelers by allowing them to charge their travel expenses. These cards typically require payment in full upon receipt of the bill. Both bank cards and retail cards allow you to make partial payments on your outstanding balance.





Federal law provides some protection for the consumer by limiting liability for unauthorized charges. Credit cards do get lost or stolen so the limited liability can be a great benefit to consumers.




THE LAW

The *Truth-in-Lending Act (TILA)*, a federal law, has several special rules governing credit card transactions. These special rules fall into three categories: initial disclosures, periodic disclosures, and rules concerning disputed charges.

Initial Disclosures

Credit cards offer a continuous form of credit. When one applies for a credit card some special pieces of information must be clearly described:

-  The conditions under which a **finance charge** (including interest and late fees) may be imposed on the consumer's account, including the extent of any "grace period" before finance charges accrue
-  The method by which the creditor will determine the **balance** on which a finance charge is imposed
-  The method of determining the amount of any **finance charge**, including interest, late fees and any minimum or fixed charge
-  The **periodic rate of interest** (such as 1 1/2% per month)

-  The so-called **nominal Annual Percentage Rate (APR)**, which is computed by multiplying the periodic interest rate by the number of periods in a year to arrive at an annual rate
-  Disclosure of whether the agreement gives the creditor a **security interest** in any merchandise purchased with the credit card (or any other property)
-  A statement of the consumer's **right to dispute charges** (this statement must also be provided every six months).




EXAMPLE: Bobbie Cardholder's Vista Account contract discloses that she must pay her account bill within 25 days of the billing date and that the interest rate on the unpaid balance is 1 1/2% per month. Bobbie's periodic rate, then, is 1 1/2% and her APR is 18% (1 1/2% x 12 months).

EXAMPLE: The same rule applies to other transactions, like home equity lines of credit, which may be payable at longer intervals than credit card accounts. Thus, if Bobbie got a letter in the mail from Vigilant Mortgage Company proposing a home equity line of credit with payments every three months at a periodic rate of 9%, she might think she was getting a good deal. In fact, the APR on this loan is 36% (9% x 4 periods), which is practically an invitation to lose her home.

Many of the same disclosure rules that apply to revolving, open-ended credit transactions also apply to closed-ended credit transactions, such as installment contracts. Refer to ***Loans and Financial Services*** for more information on closed-ended credit transactions.








Periodic Disclosures

Credit card issuers also must provide consumers with statements at the end of each billing period which include the following additional disclosures (these should be familiar to you from your monthly credit card bills):

-  The date of the bill and the beginning date of the billing cycle
-  The outstanding balance owed at the beginning of the billing cycle
-  The date and amount of each extension of credit during the billing cycle, with a description

EXAMPLE: Felix Shopper gets his monthly Vista Account statement and thinks that the interest charges on his unpaid balance seem rather high. He reads the "fine print" about how the finance charges are calculated and discovers that the interest was computed against the total balance owed (beginning balance + charges during the billing cycle) without subtracting credits for payments made during the billing cycle. This practice is legal but, as Felix discovered, results in higher interest charges than one might expect.

of the transaction sufficient to identify it

-  Any credits to the account (such as payments received)
-  All finance charges for the billing cycle, itemized as interest, late fees, minimum fees, annual fees, etc.
-  The balance on which the finance charge was computed and a statement as to how the balance was arrived at
-  The APR
-  The final balance
-  The date by which payments must be made to avoid any finance charge
-  The address of the creditor for purposes of disputing charges or other inquiries.



Watch Out for . . .

SHORT BILLING CYCLES AND RATE HIKES

A number of credit card issuers have shortened their billing cycles which means that you have less time to pay your bill, or a shorter grace period, before being charged interest and late fees.

While federal law requires that credit card payments be credited to the account on the day it was received, there are loopholes. One or two issuers require that the payment arrive by 10 a.m. for the payment to be posted on that date. Any payment that does not conform to the requirements set by the issuer (for example, payment by check or money order, inclusion of the payment coupon, using the envelope provided, etc.) can be posted as late. As of now, federal law does not cover payments made electronically.

Credit card issuers can change interest rates on you, too. Sometimes, how you use your card can trigger an interest rate increase. For example, if your unpaid balance rises over some unspecified (to the customer) limit, you may be notified of a rate increase. If you are late with your payment more than once during some time period (such as six-months), that might also trigger a rate increase.

A credit card issuer must give you written notice of any change 15 days before the change takes place. This applies to the length of the billing cycle, interest rates, or any other change in conditions. To protect yourself, read those pesky inserts! Notice of changes in fees, interest rates, and other things often go unnoticed by the card user because the announcement is part of a packet of solicitations that comes with the monthly statement.



For Your Information . . .

Choosing a Credit Card

Not all credit cards are created equal. This is especially true when choosing among so-called "bank" cards, such as Visa and MasterCard. Issuers of these cards vary widely in the credit terms they offer. Some of the factors you should consider when shopping for a credit card are:



Annual Percentage Rate (APR) – This is very important if you tend to carry a balance on your card. Some banks will offer a special introductory low APR. You need to be aware of:

- ? How long the introductory rate will last
- ? What the APR will be when the introductory rate expires
- ? Whether the special introductory APR applies to only transferred balances, only new charges, or both
- ? Whether there are any special rules that you need to follow to maintain the lower APR.



Grace Period – This is important if you tend to completely pay off your balance every month. If there is no free period, interest charges will accrue with each new purchase. Remember, the grace period applies only if you pay your balance in full.

- ? How long is the time you have to pay your bill before interest charges are assessed?



Fees – Some banks charge annual fees for their cards. Other fees to be aware of are late fees and over-the-credit-limit fees.

- ? How much is the annual fee?
- ? Is there something you can do to have the fee waived?
- ? Is there a card which has no annual fee?
- ? If you tend to pay your bill close to its due-date, what is the late fee?
- ? If you tend to keep your balance close to your card's credit limit, what is the over-the-limit fee?



Finance charge calculation – Finance charges can be calculated several different ways:

- ▶ The "adjusted balance method," where payments are subtracted from the balance before the finance charges are calculated, is the one most favorable for the consumer.
- ▶ The "previous balance" method is the least beneficial for the consumer because if the balance is not paid in full, interest charges are assessed on the outstanding balance at the beginning of the billing cycle (payments are not subtracted).
- ▶ The "average daily balance" method falls in between the others, and is probably the most common method.

DEALING WITH ERRORS

In addition to disclosure requirements, *TILA* establishes a **three-step procedure** by which consumers can dispute errors in their credit card periodic statements:



If you notice an error in your statement, or question the validity of a charge, you must notify the credit card company in writing (at the address listed on the periodic statement) of the error within 60 days of the date of the billing statement. You will need to identify yourself, using the same name as on the credit card, give the account number, and describe the nature of the claimed billing error. If the problem is that you cannot identify a charge, ask the company to send "documentary evidence" such as a copy of the sales slip for that charge. Keep a copy of the letter for your files. Many credit card companies provide the consumer with a toll-free telephone number for inquiring about billing, and will correct errors this way without a problem. But you should protect yourself with a follow-up letter detailing the problem and the resolution agreed upon during the telephone conversation.



The credit card company must send an acknowledgment of the complaint to you within 30 days of receiving the notice of error. If the error is the credit card company's mistake, you may simply find the next bill has the correction.



The credit card company must, within two billing cycles or 90 days (whichever is shorter), either correct the error or provide you with an explanation for the charge, if you requested this. The company must also provide you with documentary evidence (such as a copy of the receipt) of the validity of the disputed charge.

Credit Cards

You are not liable for the disputed charge from the time you notify the credit card issuer of the error until the matter is resolved. Finance charges (interest or late fees) may not be assessed on the disputed amount. Finance charges may be assessed later if the charge is found to be valid. You must, however, pay the undisputed portion of your bill by the due date to avoid interest and late charges on that portion of your bill.

If a credit card company fails to comply with this procedure, it forfeits its right to collect on the disputed debt and also forfeits any finance charge attributable to the disputed charge to a maximum of \$50.

LOST OR STOLEN CREDIT CARDS

An amendment to *TILA* in the early 1970s limits liability for consumers whose credit cards are lost or stolen. A consumer must pay only the first \$50 in unauthorized charges on each lost or stolen credit card.

It is very important to act quickly when you discover that your credit cards are gone because you can limit even the \$50 liability. Once you notify a credit card company of the loss of a card, you are not liable for unauthorized charges made after that time, even the first \$50. Thieves and others who make unauthorized charges tend to make the charges very soon after acquiring the card, so it is rather difficult to avoid paying the \$50 initial liability unless the credit card company waives it for you.

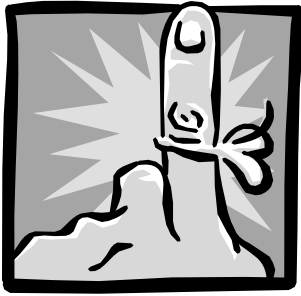
NOTE: This rule does not apply to ATM or debit cards. For more information, refer to *Extra Note: Debit (ATM) Cards*.



For Your Information . . .

Minimum Credit Card Payments

As of January 2006, the minimum payments on credit cards must be high enough to cover fees, finance charges, and at least 1% of principal owed. The result is higher minimum payments than credit card users have experienced previously. According to the Institute of Consumer Financial Education, the minimum required payment on a \$10,000 balance that had been \$200 could increase to \$400. The higher required payments may be troublesome for some credit card users. The up-side is that those who pay only the minimum required payment will be paying off the balance owed, not just paying interest. A \$10,000 credit card balance with 18% APR would be paid off in 15 years, rather than the 58 years and almost \$29,000 in interest payments under the old system.



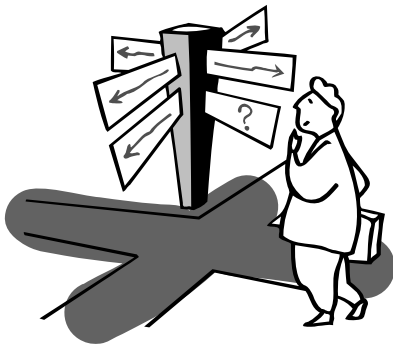
POINTS TO REMEMBER

- ✓ Expect a low credit limit on a new credit card. The issuer will want to make sure that you pay your bills on time.
- ✓ Examine your credit card statements carefully each month, checking for errors. Mistakes do happen - a charge listed twice, transposed numbers, a payment not credited, etc. Keep your credit receipts to verify the charges you make. You should also remember that you have certain protections while the billing error is being investigated. Some of these are discussed above, but bear repeating:
 - ☒ You do not have to pay the disputed portion of the bill
 - ☒ You do not have to pay finance charges or late payment fees on the disputed amount
 - ☒ Your account may not be closed or canceled due to the dispute
 - ☒ Your credit rating may not be threatened due to the dispute
 - ▶ If the credit card company finds no error, or they send you the requested documentation for a charge, you then have ten (10) days to pay the disputed portion of the bill before any penalties or finance charges are imposed.
- ✓ Keep a list of all your credit card numbers and their toll-free telephone numbers in case your cards are lost or stolen.
- ✓ Call the credit card company and report your loss as soon as you discover your credit card is missing. Each credit card company should have provided you with a toll-free telephone number, and an address, for just such emergencies. (Look on your last statement if you cannot find initial credit agreement documents.)
 - ▶ Send a letter, preferably by certified mail, to the credit card company(s) repeating the information you provided during the telephone conversation with the company representative, including the name of the representative. Be sure to make a copy of the letter for your files.
 - ▶ Check your bills very carefully over the next few billing cycles to find unauthorized charges. Remember, you are responsible for only a maximum of \$50 on each card that was lost or stolen.

Credit Cards

- ▶ Notify the credit card company of any unauthorized charges when you send your payment for authorized (legitimate) charges.
- ☒ Never give your credit card number out over the telephone unless YOU initiated the telephone call (for example, you call a catalog company to place an order). Credit card numbers can be "stolen" by a fraudulent telemarketer asking you to provide your credit card number for "verification."
- ☒ Never return a credit card through the mail without first cutting it up into pieces.
- ☒ Never dispose of a credit card in the trash without first cutting it up into pieces.
- ✔ If you receive an unsolicited credit card (one you did not apply for and do not want), cut it up and return it to the issuer. Notify both the New Hampshire Consumer Protection and Antitrust Bureau and the Federal Trade Commission.
- ✔ Pay your credit card bill within days of receiving it. While the U.S. Postal Service indicates that 90% of domestic mail arrives at its destination within three mailing days, the credit issuers may need additional time to process the payments, sometimes up to a week if the payment does not meet the requirements set by the issuer.
- ✔ If the due date is inconvenient for you (for example, the bill arrives after all your other bills have been paid), call the credit card issuer and have your due date changed.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau

33 Capitol Street

Concord, NH 03301-6397

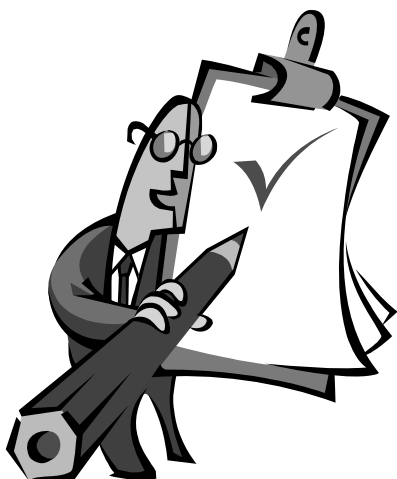
603-271-3641 or 1-888-468-4454

Web: <http://www.doj.nh.gov/consumer/index.html>

- ✔ If the problem is with an out-of-state retailer, contact the Federal Trade Commission:

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free), TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

- ✔ Contact the credit card company any time you find an unauthorized charge on your bill. A telephone number for this purpose should appear on your bill.



EXTRA NOTE

Free Credit Report

The Federal Fair Credit Reporting Act requires each of the nationwide consumer reporting companies – Equifax, Experian, and TransUnion – to provide you with a free copy of your credit report, at your request, once every 12 months.

The three nationwide consumer reporting companies have set up one central website, toll-free telephone number and mailing address through which you can order your free annual report. To order, click on annualcreditreport.com, call 877-322-8228, or complete the Annual Credit Report Request Form and mail it to: Annual Credit Report Request Service, PO Box 105281, Atlanta, GA 30348-5281.

Annualcreditreport.com is only one online source authorized to provide free credit reports under the federal law. Beware of other sites that may look and sound similar. Consumers who order their free annual reports online must be sure to correctly spell annualcreditreport.com to avoid being misdirected to other websites that offer supposedly free reports, but actually require the purchase of other products.

EXTRA NOTE



Debit (ATM) Cards

Automated teller machines allow you to withdraw cash and make deposits without having to talk to a bank teller or write a check. You can also use a debit card to pay bills, buy groceries and buy other things. The transaction is immediate: the money is electronically transferred between your account and the recipient's account.

Guard your debit card and your personal identification number (PIN) with care since the card and the PIN can give others direct access to your bank account.

- Do not write your PIN any place where it can be observed or stolen. If you are able to choose your own PIN, pick a number you can easily remember but is not obvious. DO NOT choose your social security number, birth date or telephone number.*
- Never walk away from an ATM machine without either completing or canceling your transaction.*
- Never allow another person to have access to your card or PIN.*
- Limit the funds that are accessible with your ATM card.*

*If your debit card is **lost or stolen**, federal law gives you some protection against unauthorized use. You need to **IMMEDIATELY** notify the bank of your loss, since the longer you wait, the greater your liability is for unauthorized withdrawals from your account.*

- If you notify the bank within **two business days** of the loss of your card, you are liable for a maximum of only **\$50** in unauthorized use of your account.*
- If you notify the bank between **three and sixty days** after your loss, your liability increases to **\$500** in unauthorized use.*
- After 60 days**, you are responsible for **all unauthorized withdrawals** made on your account with your lost debit card.*

Credit: Debt Collection

Debt collection practices, whether by creditors, collection agencies, or attorneys, are a frequent and often emotionally charged source of consumer complaints. Many people finding themselves subject to debt collection may already be experiencing a broad range of financial and personal difficulties. Debt collection is an added indignity. Although debtors are bound to honor their contracts (with a few exceptions for bankruptcies), they should not find themselves subject to harassing and deceptive collection practices.

Overzealous and occasionally unscrupulous debt collectors have given the field of debt collection a history of abusive practices. Some of the more common abuses include:

- ☒ Repeated phone calls late at night or early in the morning
- ☒ Abusive or threatening language
- ☒ Contacting friends, neighbors or employers about a debt
- ☒ Using deception to obtain information about a consumer (such as pretending to do a telephone survey)
- ☒ Using deception to force payment, for example, by pretending to be a lawyer, claiming to have initiated a lawsuit, or using stationery designed to look like official court or government communication.

In response to such abuses, both New Hampshire and federal statutes regulate and control the time, manner, and substance of collection procedures, and provide consumers with remedies against abusive collection activities.

THE LAW

Debt collection practices are governed by two laws: New Hampshire's *Unfair, Deceptive or Unreasonable Collection Practices Act (RSA 358-C) (State Act)* and the federal *Fair Debt Collection Practices Act (15 U.S.C. § 1692-1695) (FDCPA)*. In addition, the Federal Trade Commission (FTC) has guidelines for the collection industry describing specific acts and practices the FTC considers to be in violation of the *FDCPA*.

Type of Debts Covered

Both the *State Act* and *FDCPA* cover debt collection activities against consumers arising out of "consumer debts" incurred primarily for personal, family or household purposes. This covers nearly the whole range of personal transactions for which a consumer may incur debt, including retail financing, credit card purchases, auto loans, and first and second mortgages. No minimum or maximum dollar amount triggers or cancels the protections available under either statute.

The *State Act* and the *FDCPA* provide similar protections for consumers. Debt collectors who are operating in New Hampshire *must* comply with the requirements of both the *State Act* and *FDCPA*. The redresses offered to consumer debtors who find themselves harassed by unscrupulous debt collectors are somewhat different.


Types of Debt Collectors Covered


The most important difference between the two laws is that the *State Act* applies to creditors collecting debts owed to them in their regular course of business, while *FDCPA* generally does not.

Under the *State Act*, a debt collector is: *any person who by direct or indirect action, conduct or practice enforces or attempts to enforce a debt owed . . . as a result of a consumer credit transaction.* This definition applies equally to:

 Creditors attempting to collect on debts owed directly to them

 Collection agencies attempting to collect on behalf of creditors for a fee or commission

 Factors (companies purchasing or accepting an assignment of delinquent accounts receivable from creditors, usually at a discount, and then initiating collection actions against consumers on their own behalf)

 Repossession companies specializing in seizing property owned by consumers but subject to security interests ("repo companies" typically specialize in seizing financed cars from consumers who default on car loans).

EXAMPLE: Dr. Helper's office manager, Toni True, is in charge of collecting on past due accounts. Toni tries to be as understanding as possible but the doctor has bills to pay too. When Dr. Helper gets complaints about the overly zealous measures Toni uses to collect debts owed by patients, she discovers that Toni's actions are covered by the State Act, although not by FDCPA.





The *FDCPA* applies to collection agencies, factors, and repossession companies but *excludes* most creditors attempting to collect debts owed to them in the regular course of their own businesses. However, this exclusion does not apply to creditors who suggest that their collection efforts are being performed by a third party.

FDCPA covers some "debt collectors" who may be beyond the scope of the *State Act*. For example, *FDCPA* explicitly applies to attorneys who act as debt collectors. Whether the *State Act* applies to attorneys remains an unresolved issue.

EXAMPLE: The Jollytime Company uses its own in-house attorney, Sage Law, to collect debts and therefore is not ordinarily subject to FDCPA. However, if Ms. Law does not identify herself to a debtor as an employee of the Jollytime Company, the debtor might be led to think that Jollytime had already "turned the matter over" to independent lawyers. In this case, FDCPA would apply to Jollytime and Ms. Law.



HOW DEBTORS ARE PROTECTED

Both the *State Act* and *FDCPA* prohibit debt collectors from engaging in certain practices, and give debtors some protection during the debt collection process. In general, both statutes:

-  Require debt collectors to clearly identify themselves and the nature of any debt at issue in their communication with consumers
-  Prohibit a broad range of actions by debt collectors
-  Establish a consumer's rights to limit the type, frequency and location of a debt collector's contacts with the consumer
-  Establish consumer remedies, including statutory damages, if debt collectors violate the requirements and prohibitions of either act.

What Debt Collectors Must Do






The debt collector must disclose in any written or telephone communication to the consumer:

-  Its identity and business address
-  The name of the person making the telephone call

Credit: Debt Collection

-  The identity of the person or company for whom the debt collector is attempting to collect the debt.

In addition, under *FDCPA*, debt collectors **must follow up an initial phone contact with a written communication within 5 days** containing the following information:

-  The amount of the debt
-  The identity of the person or company for whom the debt collector is attempting to collect the claimed debt
-  A statement that the consumer may make a written request within 30 days that the debt collector identify the original creditor, if different from the current creditor (this provision is intended to identify the original source of the debt if it has been sold or assigned to a collection agency)
-  A statement that the consumer may notify the debt collector in writing within 30 days that he or she is disputing the debt, and that the debt collector must furnish the consumer with documents verifying the disputed debt or a copy of any judgment against the consumer
-  A statement that if the consumer does not notify the debt collector within 30 days that she or he disputes any or all the claimed debt, the debt collector will assume that the debt is valid.

What Debt Collectors Cannot Do

A wide range of collection activities is specifically prohibited. Generally these prohibited activities fall into two categories: actions designed to intimidate, harass or annoy consumer debtors; and actions that are unfair, misleading or deceptive.

- The use of obscene or abusive language and threats of violence is prohibited.** The *FDCPA* also forbids any threat of criminal action or harm to the consumer's person, property, or reputation. Debt collectors have even been held liable for the use of ethnic slurs, curse words, insults such as "liar," "deadbeat" and "crook," and for threatening to "ruin" credit ratings.
- Debt collectors are prohibited from contacting consumer-debtors at unusual times, or times known to be inconvenient to the consumer. The *FDCPA* actually goes as far as specifying that calls placed before 8:00 a.m. and after 9:00 p.m. (in the consumer's time zone) are generally improper. If a debt collector knows, or has reason to believe,

that odd hours are not inconvenient for the consumer (such as if the consumer works at night), then the consumer may be contacted at other times.

- ☒ Debt collectors may not telephone the consumer-debtor repeatedly or engage the consumer-debtor in endless telephone conversation.
- ☒ Both the *State Act* and *FDCPA* state that debt collectors may not contact consumer-debtors at their places of employment under certain circumstances:
 - ▶ Under the *State Act*, a debt collector may not call a consumer-debtor at his or her place of employment if the debtor informs the debt collector that he or she does not wish to be contacted there.
 - ▶ Under the *State Act*, even if the debt collector is not told to refrain from calling at a place of employment, the debt collector may, at most, place one telephone call per month to the debtor's place of employment.
 - ▶ In making a call to a place of employment, the debt collector may not inform the employer of the reason for the call unless asked by the employer.
 - ▶ Under the *FDCPA*, a debt collector may not call the consumer-debtor at work if it is known that the employer prohibits the employee from receiving such communications. In effect, this provision allows a consumer-debtor to inform a debt collector that his or her employer forbids incoming personal calls and requires the debt collector to respect such a notice.

NOTE: One narrow exception to this prohibition exists. A debt collector who has been unable to locate a consumer-debtor may send one letter to the consumer-debtor's last known place of employment.

- ☒ A debt collector may not communicate with anyone other than the consumer-debtor, his or her spouse or the parents or guardians of a debtor who is a minor, about the debt unless the debtor expressly agrees to permit the "third party" contacts. The *State Act* further limits contacts with spouses, parents, and guardians to one instance for the sole purpose of locating the debtor when the debt collector has been unable to locate the debtor for at least 30 days.
- ☒ A debt collector is prohibited from continuing to write or call a consumer-debtor once informed that the consumer is represented by an attorney or other representative (such as a credit counselor).
- ☒ Debt collectors are prohibited from publishing the names of debtors in any medium (such as a newspaper or magazine). They may not advertise the sale of debts (to so-called "factors") in order to embarrass or humiliate debtors through public exposure.

Prohibited Tactics

A number of misleading or deceptive tactics by debt collectors are expressly prohibited. Debt collectors may not mislead debtors about who they are, may not mislead debtors about the debts, may not mislead about what actions they will be taking, or make any false representations in order to obtain information.

☒ Debt collectors may not misrepresent who they are or misrepresent documents by:

- ▶ Using false names
- ▶ Pretending to be an attorney, state, local or federal official, law enforcement or court officer
- ▶ Using forms or documents designed to look like "official" court or government documents if they are not
- ▶ Pretending to be affiliated with a credit reporting agency
- ▶ Falsely implying that documents are not legal process forms or do not require any action or response by the consumer when they do
- ▶ Suggesting that a debt has been turned over to an "innocent third party" when in fact the debt has been transferred to a collection agency.

☒ Debt collectors may not make misrepresentation about the debt by:

- ▶ Misrepresenting the size or status of the claimed debt, or falsely characterizing the status of any legal proceedings involving the debtor
- ▶ Stating or implying that attorney's fees or costs will be added to the debt unless such charges are specifically allowed by contract, agreement, or court order (most consumer credit agreements, such as credit card contracts, contain a provision obligating the consumer to pay collection costs and fees)
- ▶ Implying that a transfer or sale of the debt will cause the consumer-debtor to lose the ability to defend him- or her-self about the non-payment of the debt, or will be subject to some unlawful debt collection practice
- ▶ Communicating, or threatening to communicate, false credit information to another person or creditor, including failing to communicate that a particular debt is disputed.

☒ Debt collectors may not mislead about what action they might take by:

- ▶ Making unfounded threats of criminal charges against the debtor

- ▶ Falsely implying that the debtor will be arrested or imprisoned, or that his or her wages will be garnished or property attached unless those actions are legal and the debt collector intends to take that action (the debt collector must disclose that a court order is required for any of these actions)
- ▶ Threatening to take any action which the debt collector either does not have the legal right to take, or does not ordinarily take (such as unfounded threats of litigation)
- ▶ Stating or implying that failure to pay a debt will result in the debt being turned over to collection agency who would use harsh, vindictive, or abusive tactics.

☒ Debt collectors may not use false representations to collect a debt or to get information by:

- ▶ Using false pretenses to either induce the debtor to contact the debt collector or make payment, or to obtain information about the consumer from third parties
- ▶ Threatening the consumer with arrest or seizure of property or wages, without disclosing that court orders may be required for any such action.

In addition, *FDCPA* specifically lists a number of tactics regarding the collection of money from consumers by debt collectors which it declares unfair. Debt collectors may not:

- ☒ Threaten repossession or seizure of the consumer's property, unless the debt collector has the right to do so
- ☒ Cause the consumer any expense through deceptive tactics (for example, toll calls, collect calls, or telegram fees incurred by the consumer in responding to a bogus "prize offer")
- ☒ Collect an amount greater than the debt, for such things as attorney's fees or costs, or other incidental expenses, unless these kinds of charges are expressly allowed in the credit agreement or by law
- ☒ Accept checks from a debtor which is postdated by more than 5 days unless the debt collector subsequently notifies the debtor that the check is about to be deposited (this notice must be provided not more than 10 and not less than 3 days before the debt collector deposits or cashes the postdated check)
- ☒ Deposit or cash a postdated check before the date listed on its face

Credit: Debt Collection

- Solicit postdated checks for the purpose of initiating or threatening criminal actions
- Contact the debtor by post card, or include information or symbols on an envelope which identifies the writer as a debt collector.

Debtor's Rights

Consumer-debtors are given several legal rights upon being contacted by a debt collector.

The debtor has the right to dispute the existence or validity of the amount of the debt. The debtor must be informed of this right by the debt collector. The debtor who wishes to dispute all or any portion of the alleged debt must notify the debt collector that all or part of a claimed debt is disputed. The notice about the disputed debt must be:

EXAMPLE: Sue receives a notice from a debt collection agency that her magazine subscription is still unpaid. She finds the canceled check that she wrote to pay for the subscription several months ago. Sue writes a letter to the debt collection agency stating that she has paid for her subscription, attaching a photocopy of both sides of her canceled check.

- In writing
- Postmarked or delivered in-hand within 30 days of receiving the follow-up notice from the debt collector



For your information . . .

What to Do If You are Contacted by a Debt Collector

- If you are being contacted by a debt collector, keep a record of the dates, times, description of what was said or done, and the name of the person making the contact.
- Whenever you need to communicate with a debt collector by mail, send the letter by certified mail, return receipt requested, and keep a copy of the letter for your files.

A disputed debt could be:

- ▶ A debt that you believe that you do not owe, or that you believe that you do not owe the amount stated
- ▶ A debt that you have already paid
- ▶ A debt related to being hospitalized. If you informed the hospital that you could not pay for the care, the hospital should have considered payment under a charitable care policy
- ▶ A debt the collection of which you believe is barred because too much time has passed
- ▶ A debt that was previously discharged in bankruptcy.



For your information . . .

Bankruptcy

Bankruptcy is a remedy open to those with overwhelming debt. Congress revised the federal bankruptcy law, and the new rules went into effect in October 2005. Debtors may no longer have a choice of whether they file a Chapter 7 (straight) or Chapter 13 (wage earner repayment plan) bankruptcy. The new rules will bar some people from filing under Chapter 7 and push them into filing a Chapter 13 repayment plan. Furthermore, counseling and financial education are now required of all those who file for bankruptcy.

What counts as allowable living expenses when calculating how much income is available for debt repayment has been modified. Only allowable expenses are included as living expenses. More assets may be liquidated (sold) to help with debt repayment.

When, exactly, a lawsuit can be brought regarding a debt depends entirely upon the type of claim and/or the basis of the debt. For example, a credit card company has three years to sue on a debt, while a debt already reduced to judgment in a court may be subject to a collection lawsuit for up to 20 years. Most debt claims, however, that arise from a written credit contract must be brought within 3 years of the payment default. There are exceptions to this rule, for example, a retail sales installment contract claim may be brought within 4 years of the default of payment. Also, a person can sue to collect on a judgment from a court for a longer period of time.

NOTE: If you receive a call from a debt collector or a creditor about an old debt, you should be careful to avoid making a new promise to pay. Instead, you should review the debt, perhaps with an attorney, to make sure it is still valid. If you do make a promise to pay an old debt that was time-barred, you may effectively "reaffirm" that debt so that it can be collected as if it were a new debt.

What the Debt Collector Must Do

After receiving the notice of dispute from the consumer-debtor, the debt collector must:

- ✔ Suspend collection activities regarding the claimed debt until the collector verifies the debt or gets a copy of the judgment against the debtor
- ✔ Provide the verification requested by the consumer (such as a copy of the bill).

If more than one debt is being collected by the debt collector, the consumer-debtor needs to instruct the debt collector on how to apply any payments made to those other debts. The debt collector may not apply a payment to a disputed debt.

Limiting Debt Collector Contact

The consumer-debtor has the right to limit further contacts by the debt collector. Under the *FDCPA*, you can stop a debt collector from contacting you by writing a letter to the debt collector asking that contact stop. The letter should include a statement such as: "I am exercising my right under federal law and I want you to stop contacting me." This letter should be sent to the debt collector by certified mail with a return receipt requested. Keep a copy of the letter for your files. Understand, however, that this type of letter does not make the debt go away if you really do owe it. You can still be sued for the debt.

Once the debt collector receives the letter, the collector should have no more contact with you, with the following two exceptions:

- ✔ A single notice both to advise you that the collection efforts are being terminated and inform you of any actions which may (or will) be taken as a result of nonpayment (such as a lawsuit or possible repossession of disputed goods)

EXAMPLE: Anthony receives a telephone call from a debt collection agency stating that he owes money on a credit card that he got rid of 7 years ago. Anthony does not make a promise to pay something each month. Instead he asks the agency to send information about the debt. After he gets a notice from the agency, he writes a letter stating that he believes the debt to no longer be valid because it is too old.

- ✓ Any communications incidental to seeking legal remedies for nonpayment (such as service of process in a court case or leaving a notice regarding repossession of disputed goods at the consumer's residence).

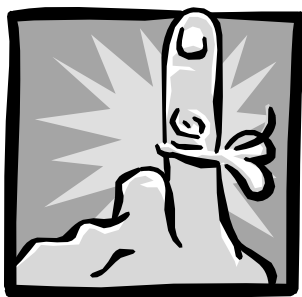
Contact with the debt collector will also stop if you are represented by an attorney, and the debt collector is notified of your legal representation. Thereafter, all communications must be directed to the attorney, unless the attorney fails to answer the related correspondence or return phone calls within 10 days. Under the *State Act*, you may also be represented by a financial counseling organization or any other similar person, in addition to an attorney. The debt collector then must similarly only contact the designated representative when notified to do so.

What a Debtor Can Do if a Debt Collector Violates the Law

Both the *State Act* and *FDCPA* permit consumers to sue debt collectors who engage in improper collection practices. Both Acts provide for injunctive relief in the form of court orders forbidding a debt collector to continue any improper practice. In addition, each Act provides actual and statutory damages for individual consumers, as well as costs and attorney's fees. The *State Act* permits for the greater of actual damages or \$200, while the *FDCPA* provides for actual damages plus statutory damages of up to \$1,000.

Under the *State Act*, the debtor may raise a counterclaim in any suit brought by a creditor or debt collector, relative to the debt collector or creditor violating the *State Act*. Upon proof of a violation by the debt collector or creditor, the court will award damages to the debtor-consumer, and will reduce the debt owed by the amount of the damages.

Consumers may seek remedies through a court action in either superior or small claims court for violation of the *State Act*, or in federal court for violation of the *FDCPA*. The statute of limitations (the time during which an action may be brought in court) under these statutes is different: no more than three years after the violation in state court and one year in federal court.



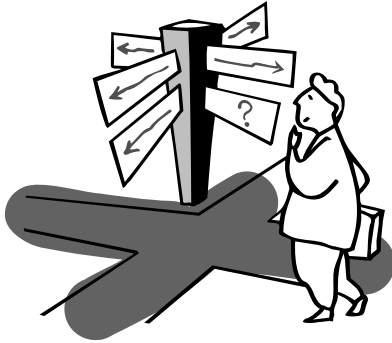
POINTS TO REMEMBER

- ✓ If you are contacted by a collection agency or debt collector, you have to receive a written notice giving you information about the alleged debt. You have the right to know the amount owed, the name of the creditor, and what action you may take if you believe you do not owe the debt.
- ☒ Remember, a debt collector cannot harass you to repay the debt in any way.

Credit: Debt Collection

- ☒ The debt collector may not contact you at unreasonable times, or at work if your employer disapproves.
- ☒ A debt collector may not contact your friends or relatives.
- ☑ Remember, that while you may find it upsetting to have a debt collector contact you, if the debt is valid, reasonable collection methods are not in violation of the law.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ Contact the NH Consumer Protection and Antitrust Bureau if you have a problem with a debt collection agency in New Hampshire:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ☑ Contact the Federal Trade Commission if you have a problem with an out-of-state debt collection agency:

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll free)
Web: <http://www.ftc.gov>

- ☑ If you have a debt problem and would like the assistance of a credit counselor, contact the Consumer Credit Counseling Service of NH & VT (CCCS). CCCS is a nonprofit organization with offices in several cities across the state. Look in your local telephone book for the office nearest you, or call their toll-free number:

Consumer Credit Counseling Service of NH and VT
105 Loudon Road
Concord, NH 03302
1-800-327-6778 (toll-free)
Web: <http://www.CCCSNH/VT.org>

Credit Discrimination

One of the biggest problems in obtaining credit is establishing a credit history. People who have never been issued a credit card or have never taken out a loan may have a difficult time establishing credit. At times, the elderly and those who have recently divorced experience difficulty in obtaining credit. Federal law, however, prohibits creditors from denying credit solely on the basis of race, religion, color, ethnic origin, age, gender, source of income, or marital status.

THE LAW

The federal law known as the *Equal Credit Opportunity Act* ensures that your credit or loan application will be assessed only on the strength of your "credit worthiness" (ability and willingness to repay) and not on any arbitrary or discriminatory practices. Creditors are prohibited from denying credit on the basis of religion, race, national origin, gender, marital status, or source of income. This covers retail installment contracts, credit cards, mortgages and all other types of personal (consumer) loans.

Creditors determine "credit worthiness" based on present debt-load, income, past payment record, and general financial stability. (For more information on credit reports, refer to the section on ***Credit Reporting***) The creditor has 30 days to review an application and make a decision. If the creditor denies the credit, the applicant must be given the specific reason(s) for denial. Creditors are **NOT ALLOWED TO:**

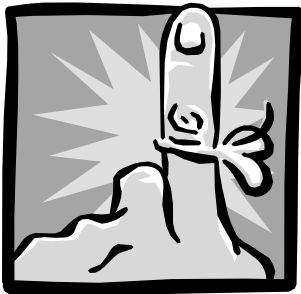
EXAMPLE: Ava and Eddie Greenacre are recently retired, with their pensions and Social Security benefits as their primary sources of income. They decide they need to buy a new car, so Eddie applies for an auto loan at the bank where they've done business for 30 years. Eddie is told that they will have to have a cosigner for the loan, preferably one of their employed adult children, because their income is "unstable." Ava receives a letter from the bank's credit department telling her that she has to reapply for her Vista Account due to her retirement. Ava and Eddie Greenacre probably have a case for credit discrimination against their bank under the Equal Credit Opportunity Act.

- Inquire about your marital status other than "married," "single" or "separated"
- Compel you to indicate a social title, such as "Mr." or "Mrs." or "Miss"

Credit Discrimination

- Ask for information concerning your spouse unless the application is for a joint account or loan, or if alimony or child support is part of your income
- Ask for information concerning your plans to have children
- Ask for a "cosigner" unless required for all loans of that type or all similar applicants.

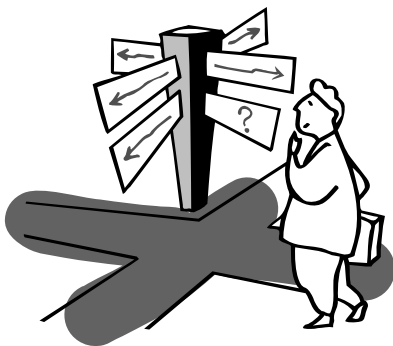
If the application is for a home mortgage, the creditor may ask about race, religion, and national origin but you are under no obligation to provide this information. The information is used by the federal government to check for discriminatory practices and may not be used by the creditor to deny your mortgage application.



POINTS TO REMEMBER

- An unmarried person cannot be refused credit if a married person with the same credit history would receive credit.
- No lender has the right to inquire about birth control practices or plans for children.
- No lender can refuse to count child support, alimony, or Social Security as income if it is received regularly.
- Creditors cannot require a person, upon reaching a certain age or retiring from the labor force, to reapply for credit, or change the terms of a credit contract.

WHERE TO GO IF YOU HAVE A PROBLEM



- If you believe that you have been a victim of discrimination under the Equal Credit Opportunity Act, contact the company's credit manager and discuss the situation with him or her.
- Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✔ Contact the U.S. Department of Housing and Urban Development (HUD) if you believe you have suffered discrimination in being turned down for a home mortgage:

U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410-2000
1-800-669-9777 (toll-free)
TDD: 1-800-927-9275 (toll-free)
Web: <http://www.hud.gov/complaints>

EXTRA NOTE





Right of Rescission


*New Hampshire does **not** have a law that protects consumers by providing a rescission period on all retail purchases. A few specific types of transactions, however, are subject to a right of cancellation:*

- ✔ **Door-to-Door Sales** – Consumers are entitled to cancel a transaction within three business days of the date of the transaction. Both the Federal Trade Commission (FTC) and New Hampshire Statute RSA 361-B:2 give consumers a “cooling off” period when they purchase goods or services, in their homes, that are worth more than \$25.00. The transaction must have been conducted in a place other than the seller’s permanent place of business. For more information, refer to the **Chapter on Door-to-Door Sales**.

- ✔ **Health or Martial Arts Club Memberships** – Every purchaser of a pre-paid membership to a health or martial arts club is entitled to cancel his or her contract within three business days by notifying the club in writing by midnight of the third business day following the date of purchase of the membership contract. For more information, refer to the **Extra Note on Health Clubs**.

 **Credit Repair Service** – *All credit service organization contracts must contain an explicit statement (printed in at least 10-point, bold-face type and positioned next to or above the customer’s signature line) of the customer’s unqualified right to cancel the contract within five business days after signing. For more information, refer to the Chapter on **Credit Repair**.*

 **Timeshares, Condominiums, and Subdivisions** – *Buyers of timeshares, condominiums of more than 10 units, or lots in a subdivision of 50 lots or more, who enter into a purchase and sale agreement, have an unqualified right to cancel the agreement within five calendar days from the date of disposition, or the delivery of the current public offering statement, whichever is later. For more information, refer to the Chapter on **Condominiums and Timeshares**.*




 **Credit Transactions Involving a Security Interest in Your Home** – *The Federal Truth in Lending Act (TILA) provides an absolute right to rescind credit transactions involving a security interest in your home, such as a second mortgage, home equity line of credit, a refinance of a primary residence, or a home improvement mortgage. The consumer may cancel the transaction until midnight of the third business day after receiving notice or signing the documents, whichever is later, to cancel the transaction without incurring any liability. For more information, refer to the Chapter on **Home Equity Loans**.*

Credit Repair

Consumers with less-than-perfect credit ratings may be tempted to enlist the assistance of a company promising to "clean up" or "erase" bad credit. Credit repair companies can do nothing for you that you cannot do for yourself for free, and they may charge you hundreds of dollars to do it. There are no "loopholes" that credit repair companies can use to remove information from your credit report. Negative credit information can be reported for seven years (bankruptcies for 10 years). The only way to "repair" bad credit is to engage in good credit practices.

In this section, the New Hampshire law regulating credit service organizations will be covered along with information on advance fee loans and credit repair scams.

A credit service organization is defined as any person or entity who represents that he or she can or will sell or provide, for a fee, one or more of the following services for consumers:

-  Improve a consumer's credit record, credit history or credit rating
-  Obtain an extension of credit for a consumer
-  Provide advice or assistance to a consumer related to the consumer's credit record, credit history or credit rating.

This definition includes most loan referral credit counseling services, while excluding banks and other initial lenders.

THE LAW

In 1989, the New Hampshire Legislature enacted the *Credit Service Organizations Act, RSA 359-D (CSO Act)* in response to abuses in the consumer credit services field. The *CSO Act* regulates credit service organizations.

The statute regulates these services in four ways. A credit service organization must:

- Post a bond with the New Hampshire Secretary of State
- Make detailed disclosures to their customers about the services offered

Credit Repair

- ✔ Provide a five-day right to rescind any contract
- ☒ Refrain from engaging in several specifically prohibited practices

The *CSO Act's* **bonding requirement** is intended to ensure that there will be an accessible pool of money available to compensate consumers injured by improper credit service practices. The bond or trust account must be equal to at least 5% of the company's yearly income under credit service contracts, but not less than \$5,000 or more than \$25,000, adjusted annually. If the company establishes a trust account, it must notify the New Hampshire Secretary of State of the name and address of the depository institution, the name and address of the trustee, and the account number or other identifying data. Any person injured by a credit service organization's violation of the *CSO Act* may bring an action for damages against the bond or trust account by suing the company, and any trustee of a trust account.

Like the federal *Truth-in-Lending Act*, the *CSO Act* requires credit service organizations to provide customers with detailed disclosures regarding the nature and costs of their services. (For more information about *Truth-in-Lending*, see ***Loans and Financial Services***.)

A credit service organization is required to provide each customer with an **information statement** prior to executing any contract or taking any payment from the customer. The information statement must include the following:

- ✔ A statement identifying the bond or trust account maintained by the company, with a description of the consumer's right to proceed against the bond or trust account if the consumer is injured by the consumer service organization's violation of the *Act*.
- ✔ A complete description of all services which the credit service organization will offer under the contract, and the total cost of the services.
- ✔ A statement informing consumers of their rights under the federal *Fair Credit Reporting Act* to review any file maintained by any credit reporting agency. Credit reporting agencies must provide a copy of such files free of charge if requested within 30 days after a consumer receives a notice of denial of credit from any person or company, and a statement of approximate charges for such a request under ordinary circumstances.
- ✔ A complete and accurate statement of the consumer's right to dispute inaccuracies in any file maintained by any credit reporting agency.

NOTE: The last two disclosures are intended to prevent credit service organizations from charging for "services" consumers are entitled to under state and federal law. For more information, refer to the section on *Credit Reporting*.

Any contract between a credit service organization and consumer must be in writing and must contain the following **disclosures**:

- ☑ All terms and conditions of payment, including a complete listing of amounts to be paid to the credit service organization and/or to any other party
- ☑ A description of all services to be performed by the credit service organization under the contract, including an estimated timetable for their performance, and any guarantees or refund provisions
- ☑ The credit service organization's business address and the name and address of its "registered agent" (a person appointed by an out-of-state company to receive service of process and court papers within New Hampshire)

All credit service organization contracts must contain an explicit statement (printed in at least 10 point, boldface type (**this size**) and positioned next to or above the customer's signature line) of the customer's **unqualified right to cancel the contract** within five business days after signing. The contract must also be accompanied by a preprinted, multi-part "Notice of Cancellation" which the consumer may use to exercise this right.

To cancel a credit service organization contract, the Notice of Cancellation must be mailed within five business days after signing the contract (the notice is effective when mailed). The credit service organization must refund any money paid by the consumer within five days of receiving the cancellation notice.

The *CSO Act* contains a list of **expressly forbidden acts and practices**. A credit service organization must not:

- ☒ Charge or take any money (or anything else of value) from consumers before fully performing all services promised unless the company has posted the required bond or maintains a trust account as called for by the *Act*
- ☒ Charge or take any money (or anything else of value) from consumers solely for the purpose of providing them with credit applications

Credit Repair

- ☒ Make untrue statements to a credit reporting agency in order to effect a fraudulent "repair" of a consumer's credit rating, or counsel consumers to commit similar fraud
- ☒ Make or use any misleading, untrue or deceptive statement, or engage in any misleading or deceptive act or practice in marketing, advertising or selling their services to consumers.



For Your Information . . .

Correcting Mistakes on Credit Reports

Consumers now have expanded rights in getting a mistake on their credit reports corrected.

- ▶ If a consumer provides evidence of an error, the mistake must be corrected.
- ▶ Providers of credit information are required to investigate disputed charges.
- ▶ Once disputed information is removed from a consumer's credit file, it cannot be reinserted unless the accuracy of the information is certified by the source of the information.
- ▶ Consumers have the right to remove their names from lists to be "pre-approved" for credit card offers.
- ▶ National credit reporting agencies must have staffed, toll-free telephone numbers.

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CREDIT REPAIR SCAMS

A form of consumer credit services fraud may arise in connection with "credit repair" offers. Credit repair services help consumers who have bad credit to improve their credit ratings for a fee. Credit repair services can range from the legitimate to the completely fraudulent.

A credit repair service might issue a "credit card" to the consumer which is really a kind of checking account; this is referred to as a **funded credit card**. The consumer deposits a sum of money with the issuer and signs an agreement giving the issuer a right to seize that money if the consumer falls behind on the "credit card" payments. Theoretically, the

consumer's successful use of the "credit card" will help build up a good credit rating. In its basic form this practice is completely legal. However, failure to disclose material aspects of the transaction to consumers (such as not informing the consumer of the issuer's right to seize the deposited money) may amount to an unfair or deceptive practice under New Hampshire's *Consumer Protection Act*.

Some credit repair services are really nothing more than home equity lines of credit, under which the consumer grants the card issuer a "security interest" in the consumer's home in return for issuance of a "credit card." Failure to fully disclose the details of this kind of transaction may also be an unfair or deceptive practice.

NOTE: Funded credit cards or lines of credit of the kind discussed here are also "consumer credit transactions" subject to all the disclosure requirements of the federal *Truth-in-Lending Act*. For more information, refer to the sections on ***Loans and Financial Services and Home Equity Loans and Second Mortgages***.

Another popular form of credit repair service is provided by an agency which typically provides advice and information, for a fee, to consumers with credit problems. Some of these so-called counselors will also assist consumers to compile their assets and present payment plans to creditors.

The basic service of credit counseling is legal. Problems may arise if the credit repair service misrepresents its services, for example, by promising that its services will result in "repair" of bad credit ratings, or by accepting money and then failing to deliver promised services. If a business offers "counseling service" to provide the consumer with credit (or help the consumer to obtain credit) to pay other

creditors, it may be shading over into an advance fee loan offer subject to both the New Hampshire *Consumer Protection Act* and the federal *Truth-in-Lending Act*. In addition, the Federal Trade Commission's (FTC) telemarketing rule makes it illegal for credit repair companies to accept payment for "repairing" credit until six months after the assistance

EXAMPLE: Jane is finding it difficult to obtain financing for a car loan because she defaulted on an auto loan and voluntarily surrendered her car to a finance company in 2004, a fact which appears on her credit report. One day, she sees an ad in the paper that says: "Bad Credit? Bankruptcy? Foreclosure? No Problem! Clear credit in 60 days. Guaranteed results!!" She contacts the company by phone and is promised that, for a \$400.00 payment, the company will clear the derogatory information and she will be able to qualify for a new auto loan. Under the Fair Credit Reporting Act, there is no way the company can legitimately cause the information concerning Jane's prior default to be erased from her credit report. The company is clearly violating New Hampshire's Consumer Protection Act and CSO Act. In addition, because the company made its promise over the telephone, it also falls under the FTC's telemarketing rules which prohibit any credit repair telemarketer from accepting payment for services until six months after the supposed services have been rendered.

has been rendered. (For more information on telemarketing and the FTC rule, refer to *Telemarketing*)

ADVANCE FEE LOAN SCAMS

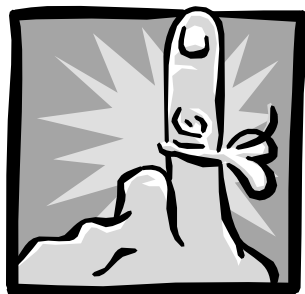
The typical advance fee loan scam usually starts with an ad placed in the classified section of a newspaper or tabloid. Ads may also appear on radio or cable TV, or be included in bulk mail.

NOTE: Illegitimate companies will often avoid the mails to escape notice by U.S. Postal authorities, and broadcast TV to avoid FCC jurisdiction. Typically, the ad will promise "guaranteed credit" or assistance in locating credit and will often contain statements like "Bad Credit? No Problem!!!"

The scam may be as simple as requiring the consumer to call an 800, 888 or 900 number for information without clearly disclosing that charges are assessed for either the phone call or so-called "information services." This practice is almost certainly a violation of New Hampshire's *Consumer Protection Act*.

A more subtle variation arises when the "loan company" requires an up-front cash or credit card payment in return for "guaranteed credit" or assistance in locating credit. Once the "loan company" has the consumer's money, it either fails to deliver promised services or delivers nothing more than a standard credit application. A company that does not comply with the extensive bonding and disclosure requirements for credit service organizations in New Hampshire is in clear violation of the law. In addition, the FTC telemarketing rule makes it illegal for a company to accept any payment before a customer's loan is actually approved by a lender. (For further information on the FTC rule, refer to *Telemarketing*)

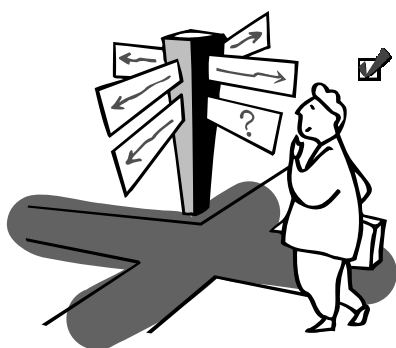
EXAMPLE: Joe needs \$20,000 to start a small business but, because he has numerous other debts, has been unable to secure a bank loan. He responds to an ad in a national newspaper which reads: "Credit for start-up businesses. Over \$10,000,000 in Investment Capital available for immediate disbursement. Call Contact Capital Access, Inc. at 1-800-xxx-xxxx." Joe calls and is assured by the person he speaks with at Capital Access that his business idea is sound and that he will qualify for funding from one of the company's many sources. He is asked for an application fee of \$250 which he charges to his credit card. Two days later, he receives a letter from the company, assuring him that he will receive the loan he needs and seeking another \$100 in processing fees. Accompanying the letter is a so-called "Universal Application for Credit" which Joe completes with his personal financial information and returns. Weeks later, Joe receives another series of turn-downs from banks across the country. He looks back at his paperwork and finds disclaimers saying that Contact Capital Access, Inc. cannot promise that lenders will provide credit to its customers. Contact Capital Access has violated the FTC telemarketing rule which forbids loan brokers, who guarantee or suggest that applicants will receive credit, from accepting payment before credit is secured. In addition, the company may have violated New Hampshire's Consumer Protection Act by leading Joe to believe that he would receive a loan when its own paperwork disclaimed any such guarantee.



POINTS TO REMEMBER

- Be wary of ads that promise easy credit despite a bad credit rating.
- Remember, no credit repair company can do anything for you that you can't do for yourself, for free.
- Never agree to pay money over the phone without demanding to see the offer or agreement in writing and reviewing the offer or agreement carefully.
- Never give your credit card number, checking account number or social security number over the phone to persons or companies that are unfamiliar to you. This information can be used to make unauthorized charges and/or withdrawals against your credit card or bank account.
- Never do business with any credit service organization without first checking to see if the company has posted the required bond with the New Hampshire Secretary of State.
- Beware of any credit repair company that encourages you to omit or lie about bad credit experiences, tells you to use a different name, or says it is legal to establish a new credit identity when you are applying for new credit.
- Always check with the Better Business Bureau and/or the NH Consumer Protection and Antitrust Bureau to see if there are complaints on record against the company.

WHERE TO GO IF YOU HAVE A PROBLEM



- If you want to find out if there are complaints on record against a particular credit service organization or credit repair company, contact the Better Business Bureau:

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991, 603-228-3789, or 603-228-3844
Web: <http://www.concord.bbb.org>

Credit Repair

- ✎ Contact the NH Consumer Protection and Antitrust Bureau if you have a problem with a credit service organization or if you think a credit repair company has taken advantage of you. You will need to provide the Bureau with a written complaint and copies of all documentation provided to you by the company which appears to have pulled a consumer credit scam. The Bureau typically forwards these complaints to the Consumer Protection Bureau in the state where the company is located, and to the FTC and U.S. Postal Inspectors. The Bureau would consider taking action against companies which are preying on a significant number of New Hampshire citizens.

NH Consumer Protection and Antitrust Bureau
33 Capitol St., Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✎ If you have credit problems and want to work them out, a legitimate, nonprofit credit counseling service is available to consumers throughout the state. The Consumer Credit Counseling Service has offices in a number of New Hampshire towns and cities. Look in your local telephone book for the office nearest you.

Consumer Credit Counseling Service of NH and VT
105 Loudon Rd.
Concord, NH 03301
1-800-327-6778 (toll free)
Web: <http://www.CCCSNH/VT.org>

Credit Reporting

We rely on credit to purchase houses, cars, clothing, and even restaurant meals. While we expect credit to be readily available to us, those who lend us money and issue credit cards want to know whether we are good credit risks before extending the credit. Creditors, employers, insurance companies, and landlords can legally gain access to information about our credit histories (who has lent us money or extended credit, how much, our repayment record, and so forth) by businesses known as credit reporting agencies or credit bureaus. A credit reporting agency is essentially an information collector of consumers' credit payment histories, disclosing the data to those businesses or individuals with a legitimate business need for it.

The information that credit reporting agencies collect about us and our credit transactions is, by its very nature, sensitive information. A major concern is that the information collected and disseminated is accurate. An error in a person's credit file can lead to a denial of credit for an otherwise good credit risk, or it can lead to granting credit to someone who is a poor risk. Denying credit to someone who is a good credit risk may result in that person not getting a credit card, being unable to finance a car, or buying a house. Granting credit to someone who is a poor credit risk may result in the credit grantor never receiving full repayment of the debt, which raises the costs to other people borrowing from that lender.







In addition, many people consider their personal financial matters to be private and do not want them disclosed to persons who are not entitled to that information. The questions of who has the right to gain access to the information in our credit files and what protections need to be enacted to preserve the confidentiality of that information have become increasingly important in recent years. For more information on credit records and privacy, see *For Your Information . . . Credit Records*.

THE LAW

Both federal and New Hampshire laws restrict credit reporting agencies' dissemination of consumer credit information to only those persons with a direct and immediate need for it, and require that the credit information be current and accurate.

The federal *Fair Credit Reporting Act* and New Hampshire's *RSA 359-B* are designed to limit the purposes for which a report can be issued to businesses or individuals. A credit reporting agency may furnish a report to a person that the reporting agency reasonably believes has a legitimate need for that information, such as:

Credit Reporting

-  A government agency
-  A person who may hire the consumer or issue an insurance policy to the consumer
-  A person intending to use the information in connection with a credit transaction involving the consumer (collection, review or extending credit)
-  A person intending to use the information to determine whether to issue a license or other privilege to the consumer
-  In response to a court order
-  In response to the consumer's written request for his or her own credit report


EXAMPLE: Allrite Insurance Company has received an application from Rhett Butler for a \$10 million life insurance policy. Allrite wants to know if any of Butler's personal financial circumstances make him a poor risk to put in its life insurance risk pool, so it asks The Grande Credit Bureau for a report on Butler's personal finances. The request is permissible under the law, even if Rhett has not given written permission to issue the information.


The credit reporting laws are intended to make it convenient for consumers to find out what information is in their own credit reports. To get a copy of their own reports, consumers can:


- Appear in person at the local credit bureau with proper identification
- Call the credit bureau by telephone and submit proper identification
- Send a letter to the credit bureau, enclosing proper identification
- Access the credit bureau's website to make the request online.


NOTE: Some people believe it is inappropriate or unlawful for a credit reporting agency to require individuals to disclose their social security numbers in order to get a copy of their own credit reports. Both state and federal laws indicate that a social security number can be one of the required forms of identification requested by a credit reporting agency. For identification purposes, a social security number lessens the risk that the agency will give the wrong credit report to the consumer.

Credit reporting agencies must disclose the following information to the individual:

-  The sources of all information in the report

 The nature and substance of all information in the report at the time of the consumer's request, except medical information

 The identity of all persons who received the report for employment purposes within two years of the request

 The identity of all persons who received the report for any reason within six months of the request.

EXAMPLE: Allrite Insurance Company receives an application from Rhett Butler for a \$10 million life insurance policy. Allrite wants to know if any of Butler's personal financial circumstances make him a poor risk to put in its life insurance risk pool, so it asks The Grande Credit Bureau to issue it a report on Butlers' personal finances.

The Grande issues the report, and Allrite denies the policy when it learns from the report that Always There Finance Co. obtained a \$9.5 million dollar judgment against Butler two months before he applied for the insurance, and Always There has begun proceedings to "execute" the judgment by forcing the sale of Butler's house. Allrite must tell Rhett that it got the report from The Grande, and give him The Grande's address.

To comply with the credit reporting laws, reporting agencies must use reasonable procedures to assure the greatest possible accuracy of the credit report. The reporting agencies report what creditors send so the information they receive may not always be accurate. You should periodically check the credit files that each reporting agency active in your area is maintaining on you to make sure the information is accurate. If a creditor sends inaccurate information, inaccurate information will appear in your file. For example, information may be added to the wrong person's file if the names are similar.

A consumer who is denied credit, insurance, employment or other benefits, based on the information in a credit report, must be given the name of the credit reporting agency issuing the report.

Consumers who are denied credit or other benefits can get a copy of their credit reports without charge from the named credit reporting

EXAMPLE: Rhett Butler applies to the Goodforus Loan Company for a \$45,000 loan. The credit report received by Goodforus on Rhett Butler from The Grande Credit Bureau states that (1) Always There Finance Co. obtained a judgment against Butler for \$9.5 million, (2) Butler has an 8-year-old gambling conviction, and (3) Butler has an unpaid tax lien on his house. Goodforus denies the loan application based on the information in the credit report. Rhett gets a copy of his report and disputes all three pieces of information.

The Grande Credit Bureau investigates and finds: (1) there really is a judgment for \$9.5 million, (2) the gambling conviction is "stale," (past the 7-year limit) and (3) there was no tax lien, simply a notice of a tax "sale" which, under the laws in Rhett's state is not the same as a lien. The Grande removes items (2) and (3), and at Rhett's request, notifies Goodforus of the changes. Rhett adds a statement to his report indicating that a loan from Always There to his business was secured by his personal guarantee, his business failed, and Always There brought suit on the guarantee. Rhett, of course, still may not get the loan.

Credit Reporting

agency. The request needs to be made within 30 days of being notified that credit, or other benefits, were denied on the basis of the report.

The *Fair and Accurate Credit Transaction Act (FACTA)*, an amendment to the *Fair Credit Reporting Act*, allows us to request a copy of our credit report once every 12 months free of charge. A central web site and a toll-free telephone number have been established to facilitate the processing of the free credit reports. You can order your free annual report on line through <http://www.annualcreditreport.com>. Or call toll-free 877-322-8228. You can also write for a free report by mailing the “Annual Credit Report Request Form” to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. The Request Form can be printed from <http://www.ftc.gov/credit>. If you request your report online, you will be able to access the report immediately. If you request your report via the toll-free telephone number or through the mail, your request will be processed and mailed to you within 15 days.

Creditors do not always send credit information to all three credit reporting agencies. Therefore, you may want to request a report from each of the three nationwide agencies: Equifax, Experian, and TransUnion.

To get your free annual report you must prove your name, address, Social Security number, and date of birth. If you have moved recently, you may need to provide your previous address. You will also be asked for some piece of information that only you are likely to know in order to maintain the security of your file.



Be Aware of . . .

PROBLEMS REQUESTING ANNUAL FREE CREDIT REPORT

Con artists will take every advantage to separate us from our money. If you get an e-mail or see a pop-up ad claiming it is from www.annualcreditreport.com or from any of the three major credit reporting agencies (Equifax, Experian, or TransUnion), do not respond or click on the ad. These are scams! No advertising about the free credit report is done in this manner. Neither the central credit report web site nor any of the three national credit reporting agencies will contact you about providing personal information. The Federal Trade Commission (FTC) is interested in stopping con artists that attempt to bilk the public in this manner. Forward any e-mail that you receive claiming to be from www.annualcreditreport.com or any of the three credit reporting agencies to the FTC's data base on deceptive spam at spam@uce.gov.

The Institute of Consumer Financial Education says that we may be better off requesting our annual free credit report using the toll-free number (877-322-8228) than using the Internet web site. Ninety-six imposter websites have been found as of March 1, 2005. The majority of these belong to commercial sites who may charge for this free service. Furthermore, the credit reporting agencies are blurring the lines between their services and the AnnualCreditReport.com website. For example, the TransUnion link on the AnnualCreditReport.com site will automatically have marketing information sent to the consumer as well as sharing the consumer's information with partners and affiliates.

- ✔ When phoning for a free credit report, ask that only the last four (4) digits of your social security number be displayed on any report mailed to you.
- ✔ Have your credit report mailed to a secure mail box.
- ✔ You are not required to provide your e-mail address in order to obtain your free annual report.

If you choose to request your report online, be sure that you have not mistyped the web address. If you see any pop-up ads or see that the site is not secure, close the browser and start over – you have accidentally accessed an imposter or bogus web site. (Secure sites will have a padlock logo in the corner, and the address will read “https://” instead of just “http://”.)

If you access your TransUnion credit report on line at AnnualCreditReport.com, look for any pre-checked marketing or newsletter offers. If you do not want these offers, uncheck the box.

A consumer who gets a report and finds inaccurate information should inform the credit reporting agency (or agencies) of the problem. The agency must investigate the accuracy of the information within a reasonable time. If the credit reporting agency learns that its information was inaccurate, or if the information cannot be verified one way or the other, the information must be immediately removed from the report. The consumer can request that the agency send a revised report to those who had previously received the inaccurate report (for employment purposes within two years, or for any purpose within six months). The agency is obligated to notify the consumer of their right to ask for this notification.

If the agency's investigation of the dispute does not resolve the dispute to the consumer's satisfaction, the consumer can write a brief statement of 100 words or less explaining the situation. This brief statement must be included with the credit report each time it is requested.



For Your Information . . .

More Rights Concerning Credit Reports

We now have some expanded rights in getting mistakes on our credit report corrected:

- ▶ If you provide evidence of an error in your credit report, the mistake must be corrected.
- ▶ Providers of credit information are required to investigate all disputed charges and information.
- ▶ Disputed information, once removed from your credit file, cannot be reinserted unless it is found to be accurate at a later date.
- ▶ You have the right to remove your name from lists to be “pre-approved” for credit card offers.
- ▶ National credit bureaus must maintain staffed, toll-free telephone number services to respond to consumers’ inquiries.

The law restricts credit reporting agencies from using old or stale information in credit reports. The following is a list of some types of information that may not be kept in a credit report:

- Paid tax liens older than seven years
- Bankruptcies older than 10 years
- Accounts placed for collection or written off as a bad debt that are more than seven years old
- Arrest, indictment or conviction of a crime older than seven years, and lawsuits and judgments older than seven years or until the applicable statute of limitations has expired, whichever is longer
- Any other unfavorable information more than seven years old.

Negative information may be reported indefinitely only under three circumstances: if you apply for a life insurance policy with a face value of \$150,000 or more, or if you apply for a job paying \$75,000 or more and the employer requested a credit report in connection with the application, and there is no time limit on reporting information about criminal convictions.



For your information . . .

Credit Records: Privacy and Other Concerns

Potential creditors, landlords, life insurance companies, and employers can access your credit record. Some businesses check a potential customer's credit rating to decide if a deposit will be required. But not everyone has the right to access your credit report. Car dealers may pull your credit records while you are on a test drive. Cellular phone services have been known to check a potential customer's credit ratings before the customer signs any agreements. By law, these businesses really have no right to do this unless you are actually applying for credit. To keep credit record "snooping" to a minimum:

- Never reveal your social security number unless you are actually applying for credit
- Never allow anyone to photocopy your driver's license

Too many inquiries for your credit report can actually lower your credit rating. Multiple inquiries are viewed as a prelude to bankruptcy. Even if your credit record is clear, a flurry of inquiries over a short period of time may be detrimental to you. This is especially true for home mortgage applicants. Therefore, if you plan on buying a home or refinancing your mortgage, be careful about what else you apply for because inquiries on your credit report could act against you.

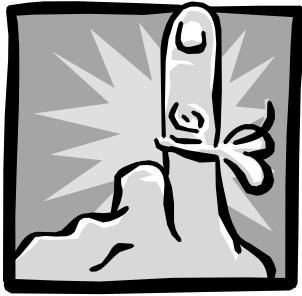
Too much available credit can also be a problem. Even if your credit record is clear, just having access to a large amount of open-ended credit could jeopardize a mortgage or other loan application. For example, if you have a VISA, MasterCard and Discover Card all with \$7500 credit limits, you have access to \$22,500 in credit.

Although lenders will say "good credit leaves you nothing to fear," if your loan application is turned down, look to the causes listed here. You may be able to plead your case with the loan officer.

If you are planning on applying for a home mortgage or other loan, you might consider the following:

- Keep only as many credit cards as you truly need. Do not apply for any new ones.
- Pay all your bills punctually.
- Pay down high credit card balances. Do not charge anything new.

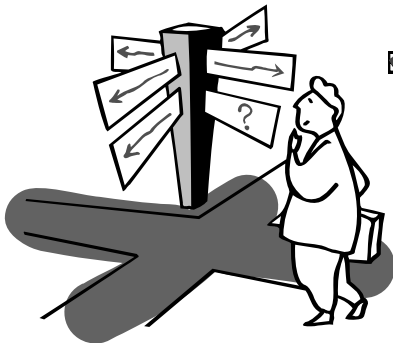
If you want to stop receiving credit card solicitations, contact OptOut, a national service sponsored by the three major credit bureaus, at 1-888-5OPTOUT or 1-888-567-8688 (toll-free). Your name will be removed from the marketing lists of all three major credit bureaus.



POINTS TO REMEMBER

- ✔ Married women should make sure that they have credit in their own names while married. A woman who has not had credit in her own name during her marriage may find it difficult to establish credit quickly if she divorces or if her husband dies.
- ✔ Paying rent and utilities on time by check is one way of establishing a record of repayment.
- ✔ If you apply for credit or insurance, are seeking a job, or trying to rent an apartment, your credit record may be examined.
- ✔ Get a copy of your credit report once a year, or before a major purchase, to check for accuracy. This is especially important if you have a common name or a name that is often misspelled (you might want to check to see if you also have a credit report under your misspelled name).
- ✔ Read the report carefully. If you don't understand the notations, ask the credit reporting agency to explain them.
- ✔ Dispute any inaccurate information by writing to the credit reporting agency. Be specific about what is wrong with the report. Send copies of any documents that support your claims.
- ✔ If the credit reporting agency does not resolve your complaint about the information in your report to your satisfaction, you have the right to include a 100-word statement giving your version of the disputed information.
- ✔ If you find an error on your credit report with one credit reporting agency, the same error may be included in other reporting agencies' reports as well. Contact all three major agencies for copies of your report.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Your annual free copy of your credit report can be obtained in several ways:

Web: <http://www.annualcreditreport.com>.

Phone: 1- 877-322-8228 (toll free)

Mail: send the "Annual Credit Report Request Form" to:

Annual Credit Report Request Service

P.O. Box 105281

Atlanta, GA 30348-5281.

The Request Form can be printed from <http://www.ftc.gov/credit>

- ✍ To get a copy of your credit report, contact the following credit reporting agencies. Include the required identification (photocopy of your drivers license and a current billing statement or other document with your name and address):

TransUnion

P.O. Box 1000

Chester, PA 19022

1-800-916-8800 (toll-free)

Web: <http://www.transunion.com>

Equifax

P.O. Box 740241

Atlanta, Georgia 30374-0241

1-800-685-1111 (toll free)

Web: <http://www.equifax.com>

Experian

P.O. Box 214

Allen, TX 75013-0949

1-888-EXPERIAN (888-397-3742) (toll free)

Web: <http://www.experian.com>

- ✍ The New Hampshire Consumer Protection and Antitrust Bureau is authorized to enforce the state fair credit reporting laws. If a credit reporting agency or user of information “willfully” violates the laws, it is liable for the actual damages, “punitive” damages, and other costs and attorney’s fees incurred by the consumer. If an agency or user of a credit report negligently violates the laws, it is liable for the consumer’s damages, costs and attorney’s fees. Generally, an action under New Hampshire’s Fair Credit Reporting Act must be brought within two years from the day the statute was violated.

NH Consumer Protection and Antitrust Bureau

33 Capitol Street

Concord, NH 03301-6397

603-271-3641 or 1-888-468-4454

Web: <http://www.doj.nh.gov/consumer/index.html>



For your information . . .

Specialty Credit Reports

Credit reporting agencies compile information on consumers over and above credit information. Medical records and payments, rental history, check writing history, employment history and insurance claims are also part of our credit files. The Federal Trade Commission (FTC) requires that any company that collects this kind of information on consumers have a toll-free number for ordering a free copy of a specialty report.

Not everyone may need to check their specialty report every year. A specialty report should be ordered and checked for accuracy before looking for new homeowners insurance or auto insurance, before applying for private health insurance or for life insurance, before opening a new checking account, or before renting a home or apartment.

If you find errors in your specialty report, you have the same rights to dispute as with errors found in a credit report.

For information on specialty reports on-line:

Insurance: <http://www.privacyrights.org/fs/fs26-CLUE.htm>

Medical: <http://www.privacyrights.org/fs/fs8-med.htm>

Employment background checks: <http://www.privacyrights.org/fs/fs16-bck.htm>

Defective Goods

Many consumers assume that they have the legal right to return merchandise to a seller for a full refund shortly after buying it. Generally speaking, that assumption is not true. However, some important exceptions to this rule do exist. Furthermore, consumers often have important warranty rights and may "reject" or "revoke acceptance" of defective merchandise under some circumstances. You may also want to refer to the section on **Warranties** for additional information.

THE LAW

Under New Hampshire law, your right to return merchandise is usually created by a statute, contract, or store policy. If no statute, contract, or store policy creates that right, then a buyer cannot typically return the merchandise to the seller for a full refund.

Remedies do exist for New Hampshire consumers who need to return merchandise that is defective in some way. The

Uniform Commercial Code (UCC) has a somewhat complicated set of rules that govern "acceptance," "rejection," and "revocation of acceptance" of goods. (For more information about the *UCC*, refer to **Warranties**) These rights often include a right to a reimbursement of any payments made, resulting in a remedy that looks like a "refund"

EXAMPLE: Joyce Byer goes to the central New Hampshire outlet for StupendoMart and buys an 8" aluminum skillet. StupendoMart has a sign over its customer service desk that says "Absolutely no returns." Ms. Byer takes the pan home and immediately cooks up her favorite omelette in it. She decides that she really needs a 12" skillet which is only sold by StupendoMart's competitor, Hugestor. Ms. Byer does not have a legal right under NH law to return the pan for a full refund.

to the consumer. Note, however, that slight changes in facts may completely change an outcome under the *UCC*. Several of the more common situations are illustrated below.

Rejection of a Good

A rejection of a good happens when a buyer purchases a good (or merchandise) and finds out that it fails to conform to the sales contract, including all express or implied warranties. You should note that according to the *UCC*, rejection occurs before the buyer actually "accepts" the good.

Accepting a Good Then Revoking the Acceptance

Ordinarily, a consumer goes to the store, inspects a representative sample of a good, selects that sample or a packaged item of the same kind, pays for the good, takes it out of the store and uses it. Under the *UCC*, the buyer's "acceptance" would usually be found to have occurred when the buyer walked out of the store with the good.

EXAMPLE: Joyce Byer goes to the central NH outlet for StupendoMart and selects an 8" aluminum skillet from the shelf. The salesclerk hands her a box that says "8 Inch Scorcheze Aluminum SauceChef Skillet." After paying for the pan and while standing around in the store waiting for her friend to finish shopping, Ms. Byer notices that the box contains a 10" skillet, not an 8" one. StupendoMart has a sign over its customer service desk that states "Absolutely no returns." Ms. Byer probably has a right to reject the 10" skillet and demand a refund.

But what happens when a buyer "accepts" the merchandise and later discovers that it fails to meet the sales contract and warranty requirements? The buyer may be able to revoke acceptance of the merchandise, and, in effect, secure a "refund." Under the *UCC*, a buyer may revoke acceptance of merchandise that fails to satisfy sales contract requirements if:

- ✔ The buyer accepted the merchandise before discovering the defect, and the defect was not readily apparent or easily discovered, or the seller assured the buyer that there was no defect
- ✔ The buyer accepted the merchandise knowing it had a defect and reasonably assumed that the defect would be cured, yet the defect has not been cured

In either case, the consumer's revocation of acceptance must satisfy at least these preconditions:

- ✔ The nonconformity of the good "substantially impairs" its value
- ✔ The buyer notifies the seller within a reasonable time, before the good deteriorates substantially due to causes unrelated to the defect related to the revocation

EXAMPLE: Joyce Byer goes to StupendoMart and selects an 8" aluminum skillet from the shelf. The salesclerk hands her a box that says "8 Inch Scorcheze Aluminum SauceChef Skillet." StupendoMart has a sign over its customer service desk that states "Absolutely no returns." Ms. Byer cannot inspect the pan in the store because the box is securely taped and sealed to prevent shoplifting. When she gets home and opens the box, she discovers that the box contains a 10" skillet, not an 8" one. Ms. Byer already has a 10" skillet and a second one is of no use to her. Ms. Byer probably has a right to revoke her acceptance of the 10" skillet and demand a refund if she does not use the pan, repacks it, and takes it back to the store within a few days.

- ☑ The buyer exercises the proper degree of care to protect the seller's interest in the good

Whenever words like "substantially impair," "reasonable time," and "reasonably assumed" appear in a statute, you may find yourself arguing with a seller over their meaning. As you might expect, courts have often made the final decision as to whether the facts of a case justify finding that something was "reasonable" or "substantial." Fortunately for consumers, many New Hampshire retailers have reasonable return policies when goods are found to be defective. Indeed, retailers will often allow returns even if the product is not defective.

Several state and federal laws give consumers, under specific circumstances, an unequivocal right to cancel a contract within a certain period of time.

DOOR-TO-DOOR SALES

One of the most important exceptions is for door-to-door sales. (For a more extensive explanation, refer to the section on ***Door-To-Door and Home Solicitation Sales***) Under both federal regulations and New Hampshire law, a person who buys any good or service at a place other than the seller's normal place of business has the right to return the good or service for a full refund within three business days after the date of sale.

In addition, if you enter into a "contract for future performance" through a door-to-door sales transaction, you have a right to rescind (cancel) the contract under both New Hampshire and federal laws.

EXAMPLE: Joyce Byer buys an 8" aluminum skillet from Barry Truly, a traveling sales consultant for Pots Unlimited. Truly leaves the skillet with Joyce who immediately cooks her favorite omelet in it. She decides that she really doesn't like the color of the pan, and within 3 business days gives Pots Unlimited written notice that she demands a full refund from Truly, after washing and repacking the skillet (assume that it does not have any marks or stains on it). Joyce has a legal right under NH law to return the pan for a full refund.

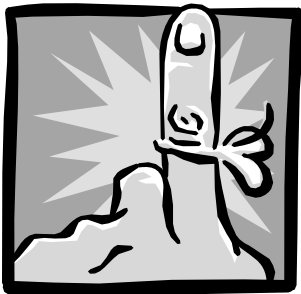
EXAMPLE: Joyce Byer is approached by a door-to-door encyclopedia salesperson. She pays for Volume 1 of the "Encyclopedia of Everything," and signs a contract to accept Volume 1 at the time of the sale and continue receiving Volumes 2-40 of the series, one each month, at a price of \$40 per volume. Joyce has the legal right to return Volume 1 within 3 business days for a full refund and to notify the encyclopedia company that she cancels the contract.

OTHER TYPES OF TRANSACTIONS

Other statutes provide consumers with a right to cancel certain types of transactions without penalty. For more information, refer to *Condominiums and Timeshares* and *Home Equity Loans and Second Mortgages*. For more information about some frauds that consumers experience from scam artists at their doors, refer to the section entitled *Schemes, Swindles and Other Scams*.

UNSAFE GOODS

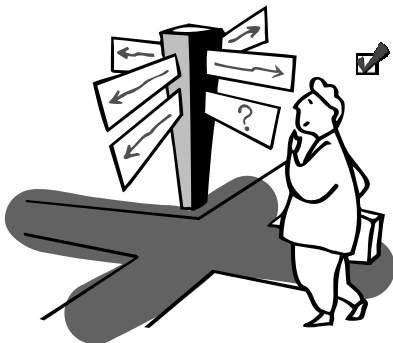
The marketing and sale of unsafe goods probably violates New Hampshire's *Consumer Protection Act*. However, it usually takes scientists, engineers and other technical persons to establish that a product is "unsafe." If you believe a product you own or use is unsafe, you should immediately stop using it and contact the Consumer Product Safety Commission (CPSC), the manufacturer, and the New Hampshire Consumer Protection and Antitrust Bureau. The "hotline" number for CPSC is listed at the end of this section.



POINTS TO REMEMBER

- ☑ Before making a purchase, try to inspect the condition of the actual item you are buying.
- ☑ You should check to see if the store has a return policy posted. If the policy is not posted, inquire about it at the customer service department.
- ☑ For door-to-door sales transactions, keep in mind that you have three business days from the date of sale to return a good or service for a full refund.
- ☑ Remember that under certain circumstances, you have the right to reject or revoke acceptance of a good.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ If you have trouble returning a defective item, contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.us/consumer/index.html>

- ✦ The Better Business Bureau of New Hampshire may also be able to assist in negotiating the return or replacement of defective goods:

Better Business Bureau
25 Hall Street
Concord, N.H. 03301
603-224-1991, 603-228-3789, or 603-228-3844
Web: <http://www.concord.bbb.org>

- ✦ If you think the defective good poses a safety hazard, contact the U.S. Consumer Product Safety Commission:

U.S. Consumer Product Safety Commission (CPSC)
4330 East-West Highway
Bethesda, MD 20814-4408
1-800-638-2772 (toll free)
E-mail: info@cpsc.gov
Web: <http://www.cpsc.gov>


- ✦ You may also want to contact the manufacturer of the product with which you are having a problem and ask about any warranty service or exchange policies. Another, possibly more expedient, procedure would be to negotiate with the manager of the store where you purchased the product to see what can be done in your situation. For pointers on how to negotiate a settlement, refer to the section entitled ***Remedies: Effective Negotiation***. For help in writing a letter of complaint or inquiry to a manufacturer, refer to ***Remedies: Writing A Complaint Letter***.




EXTRA NOTE


900 Numbers

900-numbers have a per-minute price that is set by the business you are calling, not the telephone company. Charges can vary from less than a dollar to more than \$50 per minute!

 *Federal law requires that certain information be given to each 900-number caller at the beginning of every call that will cost more than \$2.00 in a preamble message. You cannot be charged for the preamble message and you must be given three seconds to hang up without incurring any charges after the preamble message is given. The preamble message must:*

 *Describe the service the caller will receive*

 *State the name of the company providing the service*

 *Clearly state that anyone under the age of 18 needs parental permission to complete the call*

 *Give the cost of the call.*

Information about the cost of the call must specify:

1. *How the call will be charged:*

- ▶ *A flat fee, OR*
- ▶ *By the minute.*

2. *If the charges are by-the-minute, then the caller must be given:*

- ▶ *The per-minute rate, and*
- ▶ *Any minimum charges*
- ▶ *OR*
- ▶ *The maximum charges if the length of the call is known in advance, OR*

3. *If the charges can vary, then the caller must be told about the range of rates and any minimum charges.*

4. *If the caller will be switched to another 900 number, the cost of that 900-number call must also be given, with a statement specifying any other fees the service might charge.*

Federal law prohibits companies from advertising or offering pay-per-call services to children under age 12 unless the services are truly educational in nature. Ads for 900-numbers that are directed at young people under age 18 must state that parental permission is required to make the call.



Door-to-Door and Home Solicitation Sales

Many products and services are provided through door-to-door sales or are sold outside a normal retail environment. Some products are ONLY sold this way, such as Avon products. Because many of these companies have well-known reputations, you can benefit from the convenience of shopping at home and from having the opportunity to see or try the product in your home before you buy it. Nevertheless, one disadvantage of buying from a door-to-door salesperson is that you do not have an opportunity to comparison shop.


THE LAW

A New Hampshire statute (*RSA 361-B:2*) and federal law, through a Federal Trade Commission (FTC) rule, both give consumers a "cooling off" period when they purchase goods or services in their homes worth more than \$25. Except where the FTC rule and the New Hampshire statute are different, we will focus on the New Hampshire statute.

According to the New Hampshire statute, a buyer has three (3) business days to cancel a sale (called "the right to rescind") if:

-  Goods or services are worth \$25 or more
-  The transaction was done in a place other than the seller's permanent place of business.

And furthermore:

-  The seller must give the buyer either a written receipt or written contract outlining the right to rescind (cancel) the purchase, and the writing must be in the same language that the sale was made.

What Is a Home Solicitation Sale?

The New Hampshire statute describes several different kinds of sales that can be classified as a home solicitation sale.

Door-to-Door Sales

1. The first is one in which the seller (or any person acting for the seller) engages in the solicitation and sale at a place other than the seller's normal place of business.
2. *RSA 361-B:2* includes sales that are "consummated" at a place other than the seller's normal place of business.
3. "Home solicitation sales" may also include sales made at flea markets, country fairs, hotel rooms, hotel conference rooms and itinerant roadside stands since they occur at a place other than the seller's normal place of business.

EXAMPLE: Salesperson T.P. Vindar goes to Sam Byer's house and gets Byer to order a \$50 set of TryChron Dough sauce pans. Vindar does not have the pans with her so Byer fills out forms to send to the TryChron warehouse to order the pans. Byer has 3 days to cancel the transaction and to demand a full refund.

EXAMPLE: Ace sales maker T.P. Vindar telephones Jim Goodscout at home to sell him a fabulous coupon book good for "hundreds" of dollars of discounts at "hundreds" of local merchants for \$30. Jim agrees to buy the book, and after he hangs up the telephone, Vindar sends her employee to Goodscout's house to deliver the book and pick up a check for \$30. A home solicitation sale within the meaning of the statute has probably occurred here because the sale was "consummated" (money changed hands) at Goodscout's home.

What Is Not a Home Solicitation?

Neither New Hampshire law nor federal law may cover a situation where you seek out a service or product in the seller's normal place of business, negotiate the terms of the sale there, but complete the sale at home. The FTC rule does not cover such sales, and a New Hampshire seller might successfully argue that the New Hampshire statute does not apply either.

EXAMPLE: Hank and Helen Whitebread go to the Miracle Kitchens Showroom to price new kitchen cabinets and appliances. While there, they discuss having Miracle Kitchens install the cabinets and appliances for them. Miracle Kitchens sends its salesperson to the Whitebreads' home to measure the kitchen and quote a final price. A court might find that the FTC rule does not cover this transaction. However, if Miracle Kitchens sold additional services or appliances at the Whitebreads' home, the result might be different.

What Information Must Be in the Home Solicitation Sales Contract

The buyer must receive the following information in a home sales contract:

- ✔ The seller's name and place of business
- ✔ The date of the transaction
- ✔ A description of the goods and/or services purchased

- ✓ The amount of money paid and the value of the goods/services delivered
- ✓ A description of your right to rescind, including the following statement:





ANY BUYER MAY CANCEL THIS TRANSACTION ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

The seller must furnish the buyer with either a written receipt or contract at the time of the transaction. The writing must be in the same language that was used for the oral sales presentation. (For example, if the sales presentation was in French, then the contract or receipt must also be written in French.) If the salesperson fails to provide the contract or receipt, the buyer has the right to cancel the contract at any time until a copy of the contract is finally provided. In other words, the three-day right to rescind renews itself until the seller complies with the notification conditions of the law.


EXAMPLE: A door-to-door sale is "consummated" on Friday, December 24. In deciding when the right to cancel ends, the day of the transaction is not counted because the count starts "after the date" of the sale. Assuming that Saturday, December 25 is a holiday, and Sunday, December 26 is not a "business day," the first day "after the date of" the sale would be Monday, December 27, and the buyer could cancel at any time until 11:59 p.m. on Wednesday, December 29.

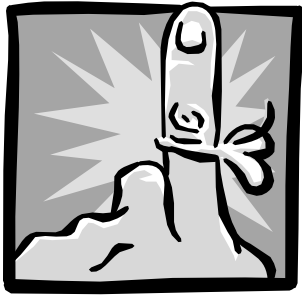
The term "business day" is not defined. FTC regulations state that Sundays and certain major holidays are not "business days." A business that is open on Saturdays may argue that this is one of its "business days." To be on the safe side, consumers should count Saturdays as "business days."

How Does the Buyer Cancel the Sale?

-  Follow the instructions to cancel the contract given on the notice of cancellation. The notice of cancellation will tell you where to call or to send your cancellation notice.
-  Send the cancellation notice to the seller within three (3) business days. Make a photocopy of the notice before mailing it to the seller.
-  If you already have the merchandise, keep it available for pickup by the seller. The seller has 20 days in which to pick it up before you can dispose of the goods in any way you want.
-  The seller has 15 days to refund any deposits or payments that you have made. The law also requires the seller to return any trade-in items.

Door-to-Door Sales

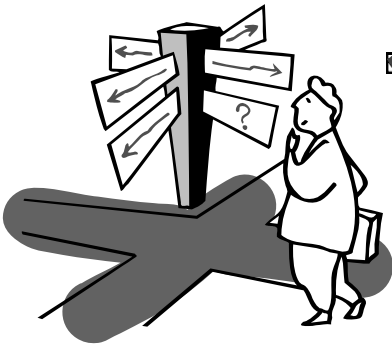
-  Within 15 days, the seller must also return all signed documents marked "canceled."



POINTS TO REMEMBER

- Ask to see the salesperson's personal identification. Make note of the person's name, and the name and address of the company the person represents.
- If at all possible, ask the salesperson to return at a later time to finish the sale. This will give you a chance to do some comparison shopping, either over the phone or in person, to see if the price offered by the door-to-door salesperson is reasonable.
- Make certain that the following information is given on the receipt or contract you receive from the salesperson:
 - ▶ The seller's name and place of business;
 - ▶ A description of the goods and services purchased;
 - ▶ The amount of money paid and the value of the goods/services delivered to you; and
 - ▶ A description of your right to rescind (cooling-off rights).
- On the contract or receipt, check the salesperson's figures for price, service charges, tax and interest if any.
- Never sign a contract with blank spaces; everything should be completely filled in BEFORE you sign.
- If you feel threatened or intimidated, ask the person to leave immediately. Don't leave the person unattended in any room of your home. If you are suspicious, call your local police immediately.
- Remember that these rules do not apply to sale of less than \$25, orders placed at a seller's place of business, mail or telephone order sales, emergency repair services, or real estate, insurance or securities sales.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Contact the salesperson, or if that person cannot be reached, contact the company's headquarters. The seller's name and place of business must be on the contract or sales receipt.
- ✔ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.us/consumer/index.html>

- ✔ Contact the Federal Trade Commission:

Federal Trade Commission
600 Pennsylvania Avenue, NW,
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357
Web: <http://ftc.gov>

EXTRA NOTE



Internet Access Products

We now have choices about how we surf the web or send and receive our e-mail. Wireless phones, hand-held computers or “personal digital assistants,” game consoles, and even televisions can all provide Internet and e-mail access. However, these may not provide the same level of access as your PC or Mac.







- Before you buy something that claims to provide Internet access, find out what this product can and can't do. Decide how you plan to use the Internet access product so you will know what you want your new access product to do.*
- Compare the capabilities of the products you are considering.*
- The limitations of the various products will vary widely. Decide what you will be comfortable with. For example, the small display screen on a cell phone will only let you access text-only formats and you may not be able to receive attachments.*
- Know what service you will be subscribing to for Internet access. Many times the Internet service is “bundled” with the product you buy, in other words, you do not have a choice of services.*
- Be sure that you can access your new Internet service with a local phone call. People who live in rural areas need to be especially aware of this to avoid long-distance charges.*
- Check with your carrier before picking your access number to make sure the dial-in number you pick is a local exchange.*

E-Commerce

The Internet has become a convenient method for doing business for many people. Whether the Internet is used for paying bills, buying items through online catalogs or merchants, trading on the stock market, or just browsing or chatting with others online, the Internet provides the opportunity for big business and for big fraud.

THE LAW

A federal law, the *Electronic Signatures in Global and National Commerce Act (15U.S.C. §7001) (E-Sign Act)*, has created a process for contracts to be signed and other types of business to be conducted electronically, and for these transactions to be legally binding without having to resort to sending paperwork through the mail. Consumers and businesses conducting business online can choose the technology for validating their exchanges. Consumers have the right to decide how they want to complete their electronic business transactions, and how they want records of their transactions made. The *E-Sign Act* requires that:

-  The online consumer be informed of his or her option to have either an electronic or non-electronic record of the transaction
-  The online consumer has the right to change his or her mind about getting an electronic record
-  The online consumer must be informed whether his or her consent to an electronic record applies only to the current transaction, or to subsequent transactions as well
-  The online consumer must be provided with a statement about the hardware and software requirements for accessing and keeping electronic records
-  Online consumers give consent for electronic records electronically (in other words, online consumers need to demonstrate to e-businesses that they can access needed information in electronic form)
-  If the e-business changes how electronic records are accessed, the e-business must inform electronic customers about these changes and any new hardware and/or

¹ This section was revised by Charles T. Putnam, J.D., Co-Director of JusticeWorks at UNH.

E-Commerce

software requirements. Online consumers then reaffirm their ability to continue doing business electronically, or request to switch to paper copies.

There are some types of transactions where the *E-Sign Act* does not apply:

- Wills and family law matters
- Notices to cancel or terminate utility services
- Notices about defaults, acceleration of loan payments, repossessions, foreclosures, or evictions when the credit agreement is secured by a primary residence
- Notices to cancel health insurance or benefits
- Notices to cancel life insurance or an annuity
- Notices about a product recall.

The *E-Sign Act* is not the only protection that consumers have while shopping online.

Any purchase of \$25 or more made online is covered by the Federal Trade Commission's *Federal Mail or Telephone Order Merchandise Rule*. Refer to ***Mail and Telephone Order Sales*** for more information.

If you use your credit card to pay for your online transaction, you are covered by the Fair Credit Billing Act. Refer to ***Credit Cards, Dealing With Errors*** for further information.

The *Electronic Funds Transfer Act (EFTA)* provides some protection if you used your debit card to pay for an online transaction and there was a mistake or an unauthorized withdrawal made from your bank account. See ***Extra Note: Debit (ATM) Cards*** for more information.

Another way to pay for an online purchase is by using a "stored-value card," sometimes called a "cash card" or "electronic money." A predetermined cash value is loaded into the microchip of the plastic card or into your electronic "account." As purchases are made, the cash value declines. The card is either thrown away when the value reaches zero, or a new cash value is loaded in. Neither the *Fair Credit Billing Act* nor the *Electronic Funds Transfer Act* covers problems with stored-value cards. If you are using a stored-value card or other form of electronic money to make online purchases, you need to know exactly what you are responsible for and what the card's, or account's, limitations are:

- ? What is the card's or account's dollar limit?
- ? Is the card disposable or reload-able? In other words, when the cash value runs out, do you throw the card away or can you take it back to the seller to purchase more cash value?
- ? Are there any fees to use the card or account? Any fees to reload the card? Any fees to return the card for a refund, or get an account refund?
- ? Is there an expiration date? In other words, do you have to spend down the card's value, or the account's value, by a certain date?
- ? Does the card issuer (the seller) offer you any protection if the card is lost, stolen, or misused, or if there is a malfunction?
- ? Who do you call if you have a question or a problem?

E-SHOPPING

E-shopping offers 24/7/365 convenience, and it can be fun. You do, however, need to be somewhat cautious in order to have a safe e-shopping experience.

1. Always use a secure browser. Make sure that your browser complies with the industry security standards, such as Secure Sockets Layer (SSL) or Secure Electronic Transaction (SET). These security systems scramble or encrypt your transaction information so that it cannot be easily "read" by an unauthorized person.
 - ▶ Most computers come with browsers installed, and security systems in place. Browsers can also be downloaded, often for free, from the Internet. If you do this, check out the security system before making any e-transactions.
2. Find out what the e-merchant's privacy policy is - you really do want to know who is collecting what information about you and how that information is going to be used. Most reputable e-merchants post their privacy policies on their websites. These policies should describe:
 - ▶ What information is being collected from you when you use the website
 - ▶ Why the information is being collected
 - ▶ How the information will be used
 - ▶ How you can "opt-out" of (or decline) having some of your personal information (for example, your mail address) used, or shared with other e-merchants.

E-Commerce

Some websites' disclosures are easier to find than others. Look at the bottom of the home page, in "about" or "FAQ" sections of the website, or on order forms. If you cannot find the e-merchant's privacy policy, send the company an e-mail asking about the policy and requesting that it be posted on the website, or consider shopping elsewhere.

3. Keep your personal information private. Do not disclose your address, telephone number, social security number, or your e-mail address unless you know who is collecting the information and how it will be used.
4. Shop only with known e-merchants. Anyone can set up a website offering something for sale. A lot of consumers lose a lot of money by "buying" from bogus companies. If you are not familiar with the e-merchant, ask that you be sent a paper catalog or brochure to get a better idea of the type of merchandise the company offers.
 - ▶ Find out what the e-merchant's return and refund policies are before placing any orders.
5. Know what you are buying. Information about products and services should be clear and easily accessible on the website. If you have any questions about what you are buying, ask them before you make your purchase.

EXAMPLE: Marvin Klean has found what looks to be a good deal on a "Vac-Attak" vacuum on-line. Marvin checks out its filtration system and other characteristics, then he price checks it against other similar vacuums sold by other retailers. Before buying the "Vac-Attak" vacuum, he learns the cost of the vacuum, the delivery cost, the seller's policies on return, and whether there is a warranty.
6. You also need to understand the terms, conditions, and costs related to your e-transaction. Before you complete the transaction:
 - ▶ Find out what you are, and are not, getting (this is especially important when purchasing services)
 - ▶ Get an itemized list of all the costs involved in the sale
 - ▶ Understand the terms of delivery of the goods or services that you are purchasing
 - ▶ Understand the terms, conditions and methods of paying for the goods or services. If you are buying from a non-U.S. company, you also need to find out what currency you need to use to pay for the purchase if other than U.S. currency.
7. If you need to have a password to make your e-transaction, choose a password that has no logical connection to you. Also, keep a record of it for later use, so that you

don't forget it. The best passwords have a combination of letters, numbers and symbols. NEVER give out your password.

8. Use your credit card rather than your debit card to make your e-transaction. You have a greater level of protection with your credit card if you need to return the merchandise, or if any bogus charges are made to your account.
9. Keep a record of all your e-transactions. If you have the ability to print out a receipt or confirmation of your purchase, do it! The printed-out receipt should have the seller's name, address, and telephone number. If the date is not on the printed-out receipt, add it yourself.
 - ▶ Read your e-mail, as merchants may send you important information about your purchases.
10. Review your monthly bank and credit card statement promptly and thoroughly in order to find billing errors or unauthorized charges or withdrawals.

ONLINE AUCTIONS

Many people enjoy browsing, selling, and bidding in online auctions while seated at their computers. Online auction sites offer just about everything under the sun - from antiques and collectibles to toys and video games. There are many online auction sites. The most well-known are eBay, Yahoo!Auctions and Amazon's auctions. Although online selling and bidding can be safe and fun, auction sites also attract buyers and sellers who may engage in crooked and underhanded practices. In fact, according to the National Fraud Information Center, online auction complaints made up more than half of the internet fraud complaints in the U.S. in 2005, with the average loss of \$1,155 to each consumer.

Top Ten Tips for Auction Safety

1. Become educated about online auctions. Start slowly, as either a buyer or a seller. Become familiar with the auction site's rules and FAQ pages before listing an item or making a bid (<http://www.AuctionWatch.com> offers information on auction basics, a glossary of terms, tips, and tactics). Browse an auction site thoroughly and try to talk to a friend or relative who uses the site to get the lay of the land. If you switch from one auction site to another, make sure you understand the differences. Start by bidding on or selling relatively inexpensive items to reduce your risks while learning how online auctions work.
2. Check out sellers and buyers. It is worth the consumer's time to find out more about the buyer or seller. Check the other party's ratings -- auction sites allow users to post positive or negative comments about their experiences with other users. When parties

have negative feedback or no feedback, extra caution is advised. Unfortunately, even positive feedback is not always trustworthy, because a user can use a different email address or have a friend pad their feedback with undeserved praise. Generally it is a good idea to avoid transactions with minors (if you can spot them) because courts sometimes refuse to bind minors to their agreements. You should be cautious about dealing with a seller who is a private individual. Many consumer protection laws don't apply to private sales, though government agencies may take action if many complaints have been made against a particular individual or if criminal fraud is involved. Similarly, you should be exceedingly cautious when dealing with sellers in other countries. If you have a problem, the physical distance, difference in legal systems, and other factors could make resolving any problem very difficult.

Ask about delivery, warranties and service before paying. Get a definite delivery time and insist that the shipment be insured. Ask about the return policy. If you are buying electronic goods or appliances, find out if there is a warranty and how to get warranty service.

Look for bonded sellers. Some sellers are bonded through programs that have investigated the sellers' business backgrounds and credit histories, and will give buyers their money back if the sellers don't fulfill their promises.

3. Be wary of untraceable users. Most auction sites require sellers to supply an email address and a physical address. A few require a listing fee up front, but most do not require buyers to put up any funds or credit card information in advance. Without any financial information on a seller, a seller who does not fulfill promises may be difficult to locate, because both e-mail and physical addresses can be faked. Some email services, such as hotmail.com, myownemail.com, Yahoo! and Excite, may require a physical address for registration, but they don't verify either the location or a user's identity.
4. Check retail prices and shipping costs before bidding. Items auctioned online are not necessarily cheaper than the same items bought in traditional stores. Some individuals and stores use online auctions as a kind of "virtual storefront." It is worth the consumer's time to do what we would do in a physical store: check the price of the same or a similar item elsewhere. (Your local newspaper and a variety of online tools help consumers do this.) Buyers usually pay the shipping and insurance cost, and these costs should be figured into the cost estimate. The cost of shipping and insurance may mean that, in the end, buying the item in a local store is less expensive.

Once you have decided to buy an item through an online auction, decide on a fair price. Then the buying rules of normal auctions should take over, that is, decide on your highest offer price and stick to it. Avoid getting caught up in a bidding war -

that's exactly the situation that unscrupulous sellers and their shills are hoping to create.

5. Watch for shills and shields. The Internet can make it difficult to spot when a seller is using a shill, but it's not impossible. Most auction sites allow users to search a seller's past sales. Although some sellers will change shills often, look to see if the same "buyer" has bid on other items the seller has offered. Other warning signs are:

- The shill's email address may have the same domain name as the seller's (or an anonymous domain name)

- The shill may have little or no feedback, or feedback that comes from the same seller.

When any of these warning signs are present, extra caution - or outright avoidance - may be in order.

A similar method can be used to spot a shield. Look in the seller and buyer history to see if the same person has been the winning bidder in other auctions. Has this person ever actually won one of the auctions, or have bids been withdrawn at the last minute? Some sites allow sellers to cancel suspected shield bids. The best strategy is not to get caught up in a bidding war.

6. Contact the other party by phone. Consumers should use the telephone to talk to the other party before completing the deal. Confirm the details of what has been bought or sold, verify the other party's phone number, discuss the payment method and negotiate the shipping method.
7. Choose a safe payment and shipping method.

If you are the buyer: pay in a way that can be traced, such as with a credit card or check. Never send cash no matter what reason the seller gives, and never send payment to a P.O. box. If you wire money, be certain you know with whom you are dealing.

If you are the seller: never send the product unless you have received payment. If you accept personal checks, you should wait until they clear before sending merchandise to the buyer. Sellers should always use a traceable shipping method (such as FedEx, UPS or some types of U.S. Mail), and insist on shipping insurance. With these methods buyers have to sign for their packages and cannot say they never got them.

Cashiers checks and money orders can be counterfeited. Be certain the check has cleared before assuming the money has been deposited.

Another solution for both parties is to use UPS's COD (collect on delivery) system, which costs about \$5 per delivery (in addition to the regular shipping cost). The driver won't release the package until the buyer hands over a money order or cashier's check.

Under federal law, you can dispute the charges if you paid the seller with a credit card and the goods were never delivered or if they were misrepresented. (Refer to ***Credit Cards*** for more information.) If you are paying through an intermediary service, ask what happens if there is a dispute.

Another time-honored method to use, especially for large transactions, is an escrow service. An escrow service lets the buyer inspect the goods for a short period of time. Escrow companies collect and verify payments from buyers, then notify sellers, who ship the purchased items. If the buyer finds the merchandise satisfactory, the escrow company releases the funds to the seller. If the merchandise is not satisfactory, the buyer sends the merchandise back to the seller. Escrow companies charge between 3% and 6% of the sale price for this service. There are several online escrow companies.

Some auction sites provide insurance that covers buyers up to a certain amount if something goes wrong. Other sites may have links to third-party programs that offer insurance for a fee. Read the terms of the insurance carefully. There is often a deductible, and there may be other limitations or requirements that apply. For example, you may not be covered if the seller had a negative feedback rating on the auction site at the time of the transaction.

8. Record every step of the purchase or sale. Buyers should print out the details of every transaction, including the original product description and the bidding history, all email correspondence and the contact information for each buyer or seller. Take pictures of items both sent and received. Print out and save the description and any photos to document the claims that were made about the merchandise because consumers cannot examine the merchandise or have it appraised until after the sale. Be wary of claims about collectibles and other expensive items. Assume that claims about the condition or value of collectibles and expensive items are not necessarily true, and that photographs are not necessarily accurate.
9. Report any problems. Contact the auction site's customer service or administrative department. In addition, you can register a complaint with the National Fraud Information Center (www.fraud.org).

Not all problems are due to fraud. Try mediation to resolve disputes. Sometimes people simply fail to hold up their side of the bargain in a timely manner or there may be a misunderstanding about the terms of the sale. Some auction sites provide links to

third-party mediation services to help people resolve disputes. A small fee may be charged and is usually paid by the party who requests the mediation.

10. Use common sense. As with most consumer transactions, if something is too good to be true, it probably is. Watch out for fakes – online auctions have been known to list counterfeit merchandise. For rare or collectible items, have the seller send you a signed, written statement describing the product and its value before paying for it.



For Your Information . . .

E-Commerce Checklist

The Federal Trade Commission has created a "checklist" for when you e-shop. You should make sure that the e-merchant's website clearly discloses the following information:

About the Company:

- ▶ What kind of business it is and what it sells.
- ▶ Where the company is located, including the country.
- ▶ How the company can be contacted.

About the Product or Service:

- ▶ What exactly is being sold and what exactly you are buying.
- ▶ The cost of the product or service, and the currency used to buy it.

About the Sale:

- ▶ Any additional costs related to the purchase, such as for shipping and handling, taxes, and duties.
- ▶ If there are any restrictions or limitations on the sale.
- ▶ If there are any warranties or guarantees.
- ▶ The availability of convenient and safe payment options.
- ▶ An estimated delivery date for your order.

About Its Consumer Protections:

- ▶ Your ability to print out or save a record of the transaction.
- ▶ The safeguards for protecting any payment information you give on-line.
- ▶ The privacy policy - what information is being collected, what will be done with it, and with whom it will be shared.
- ▶ What you have to do to "opt-out" of having your personal information collected.
- ▶ The e-merchant's policies on sending unsolicited email, and how you can decline the offer.
- ▶ The e-merchant's return, refund, and exchange policies.
- ▶ Where you can write, call, or email with any problems or complaints.

Shills, Shields and Scams

How do legitimate auction users become prey for auction frauds? Some sellers will use a second email address or a friend (called a "shill" in auction lingo) to create an artificial bidding war and pump up the price for a particular item. In another scam the buyer uses a second email address or has a friend (called a "shield") drive up prices and discourage bids on an item the buyer wants. At the last minute, the shield withdraws the high bid, allowing the buyer to win the item at a lower price. While most auction sites forbid retracting bids once they are received by the auction site, shields either exploit the few exceptions to this rule or simply use a phony email address to make and withdraw the bogus bid.

In a more obvious con, the "seller" never ships the goods to the winning bidder. Unfortunately, long distance and lack of contact information can make it very hard for the buyer to get either the goods or the money back. Although most auction sites will not force a sale, some auction sites now guarantee some transactions. This means that some consumers can be reimbursed if their losses are below the limits imposed by the auction site.

Fortunately, auction sites are working hard to defeat fraud. The nature of online commerce, however, makes it virtually impossible to eliminate fraud entirely. As with most things in the world of consumer protection, prevention is the best remedy.

DOT-CONS

The Internet offers a tremendous opportunity to communicate with people all over the world. However, cyberspace scams are common. Since the Internet is international, there are difficult questions to resolve in fighting consumer frauds and abuses in cyberspace. How are scams discovered? Whose laws apply? Where did a fraud occur? Who is the enforcement agency? What are the rules to be followed? To whom does the consumer go upon discovering a scam?

Con artists have found a gold mine in the Internet by creating new and revamped methods of separating people from their money through fraudulent means. E-mail can be used to reach vast numbers of people with false promises, the Internet can be used to hijack people's modems to run up long distance charges, and fraudulent e-businesses can promise the world and deliver nothing. On the positive side, law enforcement officials world wide are working to close down as many of the dot-cons as possible. The following are some of the more common dot-cons and some suggestions about how to safeguard yourself.

Internet Access or Web Services

The bait is literally free money simply by cashing a check. By cashing the check, however, the unwary consumer finds him- or herself trapped into a long-term contract for Internet, or other type of web service, with huge penalties for canceling the contract.

- ✔ If you receive an unsolicited check, read all the small print to find out what happens when you cash the check. If you don't want the services offered, tear up the check.

Credit Card Fraud

The bait is often an offer to view adult websites for free - just for sharing your credit card number to prove that you are over age 18. Then the unwary consumer finds many unauthorized charges on his next credit card bill.

- ✔ Only give your credit card number out when you are buying from a company that you trust. If you find unauthorized charges on your billing statement, dispute them by complaining to the card issuer. For more information, refer to *Credit Cards, Dealing with Errors*.

International Modem Dialing

The bait is getting free access to (usually) adult and pornographic materials over the Internet by downloading a "viewer" or "dialer" program. The problem is that the unwary consumer's modem is disconnected then reconnected to the Internet through an international long-distance number. This means that the unwary consumer's next phone bill has large long distances charges.

- ✔ The best policy is not to download any program to get access to "free" services. Usually the services are anything but free. If you see a dialog box pop-up indicating that your modem is dialing when you did not direct it to do so, cancel the connection and hang-up right away.
- ✔ Read your phone bill carefully every month to catch unauthorized charges.

Web Cramming

The bait is an offer to get a free, custom-designed website for 30 days with no obligation to continue. The unwary consumer then is billed through his or her telephone company for the service, even when he or she never accepted the offer in the first place, or never agreed to continue the service.

- ✔ The only thing you can do here is to check your phone bill closely for charges that you don't recognize.

Travel, Investments, and Health Care

The baits are fairly similar for all of these dot-cons. You are told that you can vacation in an exotic place with luxury accommodations at bargain prices. You can make a small investment of money and expect huge earnings. You can buy a proven cure. The unwary consumer finds that none of these claims are true. The vacation is more expensive and decidedly less luxurious than advertised. The investment yields little or no return. The cure doesn't cure.

EXAMPLE: Heloise Flite sees an ad on-line for a "Fun-Filled Vacation for 2 in Beautiful! Sun-Drenched Aruba!" with hotel and dance classes included in the price. Before she signs up and must pay for the vacation, she gets the full details of the trip sent to her in writing, along with an explanation of the cancellation and refund policies. She checks with the Better Business Bureau to see if any complaints have been filed against the company. She finally decides that this may not be the great bargain she thought it was going to be, and continues her search for a vacation package.

- ✔ Know with whom you are dealing. Reputable travel agents, investment brokers, and health-care services won't promise what they know they can't deliver.
- ✔ Get details of a trip in writing, including the cancellation policy, before you sign up.
- ✔ For investments, check out the promoter with state and federal securities regulators. Talk to others who have made this investment and get all promises in writing.
- ✔ For a business "opportunity," talk to others that have taken this "opportunity," and get all promises in writing. Review the "opportunity" with an attorney or accountant. For additional information about business opportunities, refer to Extra Note: Business and Franchise Opportunities.
- ✔ Be very careful about submitting personal financial information online.

Credit Repair

The bait is an offer to erase negative information from your credit file so that you can qualify for a credit card, auto loan, mortgage, or a job. Credit repair services cannot "clean" your credit record. Legitimate, current credit information about you cannot be removed. Only time and deliberate effort will improve your credit. For more information, refer to ***Credit Repair***.

- ✔ You can (and should) get a copy of your credit report every year to make certain that the information in it is correct. You can have any old or inaccurate information removed.

Phishing

"Phishing" is the fastest growing form of identity theft, and is the fourth most common Internet scam.

What is phishing? Identity thieves trick unwary consumers into providing personal information by pretending to be someone or some business that they are not. The personal information that is most often requested is the consumer's Social Security number, financial account number, user name, password or PIN number. In addition, it appears that some scams target online auctions, such as E-Bay. Some very sophisticated schemes can even load small computer programs called "key loggers" into your system to steal account information from you when you use online accounts.

How does phishing work? The most common form of phishing is by e-mail. The scammer pretends to be a legitimate company such as a financial institution (bank, etc.) or government agency seeking the verification of some personal information. The "hook" usually is some exciting or alarming claim, such as a special "offer," a "problem" with your last payment or that your account is about to be closed if you do not respond.

A real life example: A phisher pretended to be from the Massachusetts State Lottery Commission sending thousands of emails that claimed the recipient had won the lottery. The recipient was asked for his/her bank account number so that the winnings could be deposited directly into the account. Once the phisher got the account number, the phisher accessed the account and removed money!

Tips to avoid getting hooked by a phisher:

- ✔ Immediately be suspicious if you are contacted unexpectedly by e-mail and asked for any of your personal and/or financial information. Legitimate companies do not do this.
- ✔ If you get an email or a pop-up message asking for personal and/or financial information do not reply or click on the link.
- ✔ Regularly log into any online accounts that you own and check your statements for suspicious activity.
- ✔ Review all printed credit card and bank statements as soon as you get them to see if there are any errors.
- ✔ Many anti-virus programs now filter out or warn you of potential phish attacks. Use anti-virus software and keep it up-to-date.

E-Commerce

- ✔ Ensure that your browser is up to date and security patches applied. In particular, people who use the Microsoft Internet Explorer browser should immediately go to the Microsoft Security home page -- <http://www.microsoft.com/security/> -- to download a special patch relating to certain phishing schemes
- ✔ Report any suspicious activity to the FTC (http://www.antiphishing.org/report_phishing.htm); the Internet Fraud Complaint Center of the FBI (www.ifccfbi.gov/) and to the Anti-Phishing Workgroup (http://www.antiphishing.org/report_phishing.htm).

Phishing attacks can be very difficult to detect. As a result, you may get fooled into giving out your personal information. If you have been tricked this way, the best course is to assume that you are likely to become a victim of credit card fraud, bank fraud, or identity theft. Fortunately, there are a number of steps that you can take to protect yourself. (note - some of this information is specific to United States federal laws):

- ✔ Report the theft of this information to the bank, credit card issuer, or company as quickly as possible.
 - ▶ Many companies have toll-free numbers and 24-hour service to deal with such emergencies.
 - ▶ Ask them to notify you of any unusual activity on your account.
 - ▶ Cancel your account, close any set up by others using your personal information, and open a new one.
 - ▶ Review your billing statements carefully after the loss.
- ✔ Your maximum liability under federal law for unauthorized use of your credit card is \$50. If the loss involves your credit card number, but not the card itself, you should have no liability for unauthorized use
- ✔ ATM: Your liability under federal law for unauthorized use of your ATM or debit card depends on how quickly you report the loss. If your ATM card was stolen, get a new card, account number and PIN. You risk unlimited loss if you fail to report an unauthorized transfer within 60 days after your bank statement containing unauthorized use is mailed to you
- ✔ If you download a "key logger," virus or other malicious code:
 - ▶ At work: contact your IT department immediately [even if the attack resulted from personal use of a company computer]

- ▶ At home: Install and/or update anti-virus and personal firewall software, update all virus definitions and run a full scan, confirm every connection your firewall allows and then change your password again
- ▶ Both at home and work: Check every account that asks you for an online password (including eBay, PayPal, email ISP, online bank accounts, online trading accounts, and e-commerce accounts).
- ☑ Report the theft to the three major credit reporting agencies, Experian, Equifax and TransUnion Corporation, and do the following:
 - ▶ Request that they place a fraud alert and a victim's statement in your file
 - ▶ Request a FREE copy of your credit report to check whether any accounts were opened without your consent
 - ▶ Request that the agencies remove inquiries and/or fraudulent accounts stemming from the theft.
- ☑ Contact your local police department to file a criminal report.
- ☑ Contact the Social Security Administration's Fraud Hotline to report the unauthorized use of your personal identification information.
- ☑ Notify the Department of Motor Vehicles of your identity theft and check to see if an unauthorized license number has been issued in your name.
- ☑ Ask for a free copy of "Take Charge: Fighting Back Against Identity Theft," a guide that will help you guard against and recover from your theft. This guide is available at www.ftc.gov/bcp/online/pubs/credit/idtheft.htm.

CHILDREN ON LINE

Parents who are concerned that their children might be taken advantage of when the children are shopping and surfing online, have a way of ensuring some privacy. The Federal Trade Commission has established rules for website operators to ensure children's privacy under *The Children's Online Privacy Protection Act (COPPA)*. This federal law assists parents in protecting their children who go online in a number of ways.

- ☑ A privacy policy **MUST** be available through a link on any website's homepage that caters to, or has a section devoted to, children under age 13 **AND** this privacy policy must be linked at each part of the website where personal information is collected from kids. If the website is for the "general audience" but has a section for kids, the privacy policy must be posted on the kids' pages.

E-Commerce

- ▶ Parents should look for the privacy policy at any website that their children are visiting.
- ✔ The privacy policy will tell parents the kinds of personal information that is being collected from their children, how this information will be used, AND if the information will be passed on to any third parties.
- ✔ The website must provide notice to parents, and, with only a few exceptions, must obtain verifiable parental consent before collecting personal information from children.
- ✔ Parents can decide whether or not to give consent for information to be collected from their children. A parent has the right to give consent for information to be collected from his or her child, but also has the right to block that information from being passed on to any third party.

NOTE: Parental consent is NOT required when a site collects the child's email address to:

- ▶ Respond to a one-time request from a child
 - ▶ Provide a notice to the parent
 - ▶ Ensure the safety of the child or the site
 - ▶ Send a newsletter or other information on a regular basis as long as the site notifies the parent, giving the parent the opportunity to decline the service.
- ✔ Parents have the right to ask to see the information that their children have submitted. Parents will have to provide proof of their own identities to ensure the privacy of the information.
 - ✔ Website operators must also inform parents when the information collected from children is going to be used differently than originally stated on the website.
 - ✔ Parents have the right to revoke their consent at any time and to have the information already collected from their children deleted.

Example: Minnie's daughter loves jelly beans and often visits ilovejellies.com to get the latest information about new flavors and so forth. Minnie gets an e-mail message from the ilovejellies.com WebMaster informing her that the website will be sharing her daughter's information with a manufacturer of stuffed bunny rabbits who is starting a new website. Minnie decides that she does not want her daughter's information given to the new website, and asks that all of her daughter's information be deleted.



For Your Information . . .

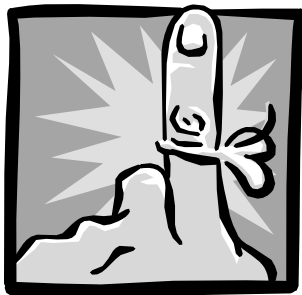
Cyber-Traveling with Children

Teach your children the meaning of privacy and personal information. Tell them never to meet an on-line pal or send a picture without your permission.

Filters can be used to put certain sites and subjects off limits to your children. These controls are available through your Internet service provider (ISP), or through special software you can buy. Remember, however, that filters are not fool-proof.

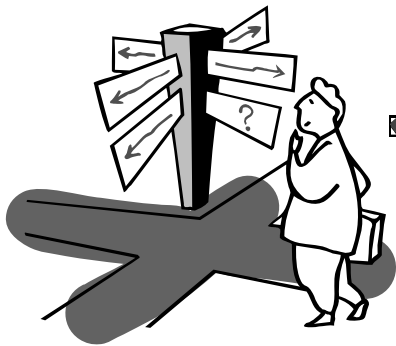
Some ISPs also offer filters to control the amount of unsolicited e-mail you and your children receive.

For more information about *COPPA* and what website operators are required to do, visit the FTC's website "KIDZ privacy" at <http://www.ftc.gov/bcp/online/edcams/kidzprivacy/adults.htm>



POINTS TO REMEMBER

- Know the e-businesses with which you do business.
 - Check out the e-business's privacy policy.
 - Be sure that your browser encrypts or scrambles your financial information.
- If an e-promotion sounds too good to be true, then it probably is! Dot-cons abound on the Internet.
 - To do a quick search to see if an e-merchant is legitimate, check <http://www.deja.com> to see what others have said about a company, or check the Better Business Bureau website at <http://www.bbb.org> which also collects information and comments about e-businesses.
 - Parents should check out the privacy policies of any website visited by their children. Parents need to know what information is being collected about their children and how that information will be used.
 - The American Bar Association offers tips about online shopping security at <http://www.safeshopping.org>.



WHERE TO GO IF YOU HAVE A PROBLEM

- ✓ The Federal Trade Commission is leading the way in fighting e-fraud.

Federal Trade Commission
1-877-FTC-HELP (1-877-382-4357) (toll-free)
Web: <http://www.ftc.gov> for an online complaint form

- ✓ You should also report any frauds to the National Fraud Information Center (NFIC). NFIC will answer questions about online scams and provide information on how and where to report fraud.

National Fraud Information Center
1-800-876-7060 (toll-free)
e-mail: nfic@internetmci.com
Web: <http://www.fraud.org>

- ✓ If the e-business with which you are having trouble is a New Hampshire business, call the Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General's Office.

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.us/consumer/index.html>

Failed Businesses

One of the most difficult and frustrating situations for consumers happens when a business closes its doors while owing goods, services, refunds or other amounts of money to consumers. A consumer may have a legal right to reimbursement, goods or the performance of services, but practically speaking, enforcing payment or performance from a defunct business may be difficult. Although a consumer may simply want to be reimbursed, all too often no entirely satisfactory remedy can be found. This section explores the mechanics of this situation as well as the benefits and drawbacks of four remedies: private lawsuit, filing a proof of claim in bankruptcy, private settlement, and walking away.

PRIVATE LAWSUIT

Usually when a business defaults on its obligation to a consumer, the consumer has the right to sue the business for a full or partial refund, and sometimes for other damages too. If the amount in dispute is more than \$5000, the claim would be filed in **Superior Court**. If the amount is less than \$5000, it may be filed in **District Court** as a "Small Claim." Often a business that has stopped operating will no longer defend itself against legal actions. When a business does not appear to defend itself, the consumer may ask the court to enter a "default judgment" against the business. A judgment is, in practical terms, an order by a court for one party to pay another party a sum of money. The order does not "enforce itself," therefore, judgments often require further legal proceedings to turn the right to payment into cash. Neither does a judgment create the money to pay it, which means that some judgments cannot be enforced against a failed business because the business has no money to pay it. Bringing a lawsuit in Superior Court (even one that ends in a default judgment) can cost a lot of money, and the cost may outweigh the benefit received from a favorable judgment. Moreover, the judgment against the failed business may not be enforceable if the business has no money or assets that can be turned into money.

An extremely frustrating problem occurs when a failed business is a corporation. Under New Hampshire laws, and those of most states, a corporation is a legal fiction: an entity separate and distinct from its owners (shareholders), officers, employees, and board of directors, as if it were a separate "person." In most instances the officers, employees, shareholders, and directors of a corporation are not liable for its debts. In many cases, therefore, the owners, directors, or shareholders of a failed corporation are legally free to either work for another business or start a new one. The new business usually does not

Failed Businesses

have to fulfill the old business's obligations to consumers or other creditors. As a practical matter, however, they may not be able to get financing because of their connection to the failed business.

Some exceptions to this rule exist. A court may decide that the officers and directors of a corporation are to be held liable for the corporation's debts to consumers under a legal doctrine sometimes called "piercing the corporate veil." This doctrine allows a court to "look past" the usual protection of the corporation to the owners if the owners are simply using the corporation to fraudulently evade creditors.

A lawyer usually must help you decide whether there is a factual basis for seeking to hold corporate officials personally liable for corporate debts. Facts to look for include:

- ? Was the business actually registered as a corporation, or was it simply a trade name (where personal liability is the general rule)?
- ? Did just one or two people control the corporation? Or were corporate directors appointed? Were shareholders or directors meetings held? Were notes/minutes of directors meetings made?
- ? Were separate corporate bank accounts kept from the accounts of the business's principals?

It is worth noting that New Hampshire's *Consumer Protection Act* gives important protections in this area. Corporate officers and directors may be liable to you if they personally participated in or were aware of, and authorized, actions that violate the *Consumer Protection Act*.

Bringing a suit in **Small Claims Court** is relatively inexpensive and does not necessarily require that you be represented by a lawyer. However, the same problem exists in enforcing a judgment that exists in Superior Court: if the business does not have enough money to pay it, then you may never actually receive your money. For more information about the procedures for bringing a small claims action, refer to ***Remedies: Small Claims Court***.

EXAMPLE: Donna goes to Big's Furniture looking for a new sofa. Barry Big, the president of Biger, Inc., the corporate owner of Big's Furniture, personally takes a \$500 deposit from Donna toward her new sofa. Barry Big signs a purchase order, a copy of which is given to Donna acknowledging the \$500 deposit and promising "delivery within 5 days." Big's Furniture closes the next day. If a court finds that Barry Big violated the NH Consumer Protection Act, then Barry Big may be personally liable to Donna for the return of her \$500.



BANKRUPTCY

Often, businesses in financial difficulty will file for protection from creditors under the federal bankruptcy law in the **U.S. Bankruptcy Court**. Bankruptcy offers businesses and their creditors an orderly process and a reasonably concrete set of rules to follow in deciding how much the various creditors of a failed business may receive from the business. The end result of a bankruptcy proceeding is either a "reorganization" of the business or the "liquidation" of the business. In a "reorganization," the business is allowed to continue to operate and attempts to create a payment plan which satisfies creditors. In a "liquidation," the assets of the business are sold off to satisfy creditors' claims to whatever extent possible and the business ceases to exist. In either case, many, but not necessarily all, of the business's debts are "discharged" or forgiven. Therefore, when a business files for bankruptcy, a consumer who is owed money or services by the business should check the company's filing to see if his or her deposit has been listed as a debt of the business. If not, the consumer should complete and file a "proof of claim," a document that notifies the business, its creditors, and the bankruptcy court of the consumer's claim.


While filing a "proof of claim" with the bankruptcy court does not guarantee you will be reimbursed, it is the only way you can hope to receive satisfaction from a bankrupt business. Consumers' claims for retained deposits of up to \$2100 do get special priority – they get paid before some creditors – but they come after wage claims, tax claims, and claims by banks, equipment suppliers, and other "secured" creditors who have certain long standing and legally protected rights to payment from the business.


PRIVATE SETTLEMENT

Occasionally a business will have neither enough money to keep operating, nor enough money or the right incentives to file for bankruptcy. A business may, however, have some money available to provide some or all of the goods or services owed to its customers. In these cases, a business may be able to settle consumer claims informally. Settling a claim may allow a consumer and a business to avoid legal proceedings while giving the consumer some satisfaction. The private settlement approach is not without its drawbacks:

-  The business's financial position may be difficult to assess (thus making it hard to evaluate its settlement offers).
-  The person within the business with authority to make promises on behalf of the business may not be easy to identify.

Failed Businesses

 Business people in financial difficulty can be evasive about when and how promises will be performed; informal settlement agreements are often broken because the business continues to disintegrate and/or the promises were unrealistic or made in less than complete good faith.

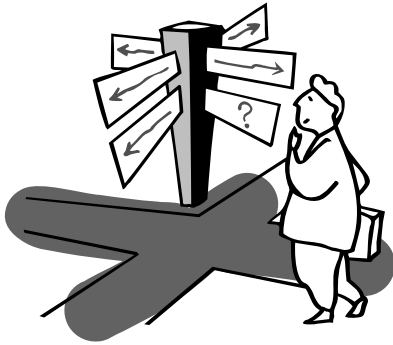
 Finally, informal agreements are difficult to enforce in court when they are broken.

If you are able to negotiate an informal settlement with a failed or failing business, you should try to get the agreement in writing, with clear, realistic dates for the business to perform.

WALKING AWAY

Walking away from a transaction with a failed, nonperforming business is never pleasant. Sometimes, however, this is the most reasonable thing a consumer can do when dealing with a failed business. This action may result in less stress than any of the remedies discussed above, especially if the sum of money or the value of the goods or services involved is small. None of the remedies described guarantees that the consumer will gain satisfaction. On the other hand, a consumer can rarely expect to obtain any satisfaction simply by walking away from a transaction with a failed business. Moreover, when the consumer does not attempt to collect, there is no way of knowing whether the business had any assets with which it could have fulfilled its obligations.

WHERE TO GO IF YOU HAVE A PROBLEM



- Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street

Concord, NH 03301-6397

603-271-3641 or 1-888-468-4454

Web: <http://www.doj.nh.gov/consumer/index.html>

- Contact the U.S. Bankruptcy Court in Manchester:

U.S. Bankruptcy Court
100 Elm Street, Suite 1001
Manchester, NH 03103
603-222-2600







Funerals

Each year in the United States, family members and friends spend approximately \$5 billion to arrange more than two million funerals. Today the cost of a funeral averages more than \$5000, making it the largest consumer purchase after a home and car. The funeral industry includes cemeteries and more than 22,000 funeral providers encompassing funeral homes, mortuaries, and memorial societies.

People are usually grieving and under time constraints when making funeral arrangements. Individuals responsible for the arrangements are not in the best frame of mind to make rational decisions. In addition to the stress, most people in the U.S. lack experience in making funeral arrangements and do not know what services are available, how much they cost, and which services, if any, they are required to purchase. The Federal Trade Commission's (FTC) *Funeral Rule* requires all funeral providers to give information to consumers to help them choose the services and products they want for their deceased relatives or friends.

THE LAW

The primary intention of the FTC *Funeral Rule* is to provide information on the cost of funerals to consumers to enable them to make informed decisions. Funeral providers are required to furnish:

-  A price list of services and products, including caskets and burial vaults, upon request
-  Price information over the telephone
-  Information about embalming, including when a body must be embalmed
-  A written disclosure about the "cash advance" items the funeral provider will pay on the consumer's behalf (such as flowers)
-  A simple, low cost casket for cremations
-  An itemized list of products and services that were purchased.

Funeral providers must give you a general price of products and services when you ask in person about funeral arrangements, and you have the right to keep this list. Furthermore, funeral providers must make price information available over the phone

Funerals

upon request. The funeral provider must give you any other information that is reasonably needed to select the funeral provider and funeral items you want, need, and are able to afford.

If the funeral provider charges a fee for buying "cash advance items," this must be disclosed to you in writing. Cash advance items are those goods and services paid for by the funeral provider on your behalf, such as flowers, obituary notices, pallbearers' and clergy honoraria. You must also be notified if a service fee is added to the price of cash advance items, and if the funeral provider gets a refund, discount or rebate from the supplier of any cash advance item.

The FTC rule prohibits funeral providers from requiring you to buy certain products or services that you may not want in order to buy the products or services you do want. When state law requires a particular product or service (such as embalming under specified circumstances), the itemized price list goods and services must identify the law requiring the purchase of that particular item or service.

Funeral providers are also required to give information about embalming that can help you decide whether to purchase the service. Funeral providers must disclose in writing that embalming is not required by New Hampshire law unless the body is exposed for public viewing for more than 24 hours. Embalming may be required if the body is being transported to another state either by the shipping company or by the state to which the body is being sent. Certain arrangements may make embalming a practical necessity and, consequently, a necessary purchase. The written information about embalming obtained from the funeral provider must explain these circumstances. Funeral providers cannot claim that embalming prevents or delays decomposition nor can they charge a fee for any unauthorized embalming. You always have the right to choose direct cremation or immediate burial which do not require embalming.

Direct cremation is cremation of the deceased without a viewing or other ceremony at which the body is present. The funeral provider cannot imply that state or local law requires a casket for direct cremation and must inform you of your right to buy an alternative container for a direct cremation. An alternative container is usually an

EXAMPLE: Biff and Stella Lowman go to Angels Funeral Home and talk to Mr. Gabriel about arrangements for the funeral of Biff's father. The Lowman's tell Mr. Gabriel that Biff's father wanted a simple funeral. Mr. Gabriel shows them several elegant caskets and quotes them a price for a "package" funeral. When Mrs. Lowman inquires about the availability of a less elegant casket, Mr. Gabriel expresses dismay that she would be willing to expose her "dear father-in-law, loved by all" to public viewing in anything less than the finest. Mr. Lowman replies that his father wanted "something simple" and wants to know what is included in the package deal. "Everything we can possibly do for your dear departed loved one," is Mr. Gabriel's response. The Lowman's ask to see a price list for caskets and services and are told "Angels Funeral Home doesn't do business that way." Both the refusal to provide price information and to price funeral products and services separately violate the FTC Funeral Rule.

unfinished box or plain wood coffin. Funeral providers must make at least one type of alternative container available. In New Hampshire, bodies cannot be cremated until at least 48 hours after death.

Additionally, funeral providers are prohibited from claiming that a particular item, such as a casket or vault, will prevent or retard decomposition, that embalming will indefinitely preserve the deceased's body, or that caskets or vaults will keep out water, dirt and other substances. The FTC has found all these claims to be untrue.

Finally, the funeral provider is required to give you an itemized statement with the total cost of the funeral goods and services you have selected. Disclosed in this statement will be any legal, cemetery or crematory requirements that oblige you to buy specific funeral goods or services. Violation of any part of the Funeral Rule carries a fine of \$10,000.


MEMORIAL SOCIETIES AND PREPLANNING

Memorial societies are nonprofit organizations whose purpose is to help their members plan simple, dignified memorial services. When you join, the society will inform you of all funeral services locally available and their cost. Religious practices and family traditions, as well as legal questions and requirements, are taken into consideration.

Many people are now trying to spare their survivors some of the burden and cost of funeral arrangements by preplanning. Planning ahead can include expressing your wishes in a letter of last instruction for funeral services, burial, cremation, and so forth. Or it may involve discussing your wishes with the executor or executrix of your estate and prearranging the details with a funeral provider.


Some funeral providers offer the opportunity to pay funeral and burial costs in advance, allowing you to decide what you want for your funeral and pay for it, relieving your survivors of this burden.

New Hampshire law (RSA 325:46) requires the funeral provider to:

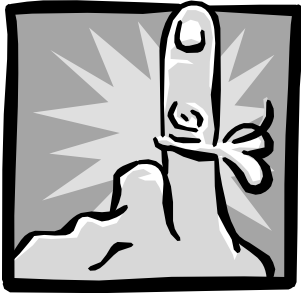
 Either deposit the money paid for preplanned funeral services in a New Hampshire bank; or put funds into a licensed insurance company, or bonded, registered broker-dealer, or trust company

EXAMPLE: Mrs. Kim purchases a prepaid funeral plan for her husband Bill, who has just been diagnosed with Alzheimer's, from Happy Rest, a local funeral home. She signs a written agreement with Happy Rest that describes what services will be provided when Bill dies. Happy Rest deposits the money she pays in a New Hampshire bank under the name "Happy Rest, as mortuary trustee for Bill Kim." Happy Rest also gives the bank a copy of the agreement with Mrs. Kim. The money can be taken out only with Mrs. Kim's written consent or at Bill Kim's death when Happy Rest will provide the services requested.

Funerals

 Give the bank a copy of the prepaid services agreement

The money may only be withdrawn either with written instructions from the person signing the contract or at the death of the person for whom the funeral or other services was arranged.

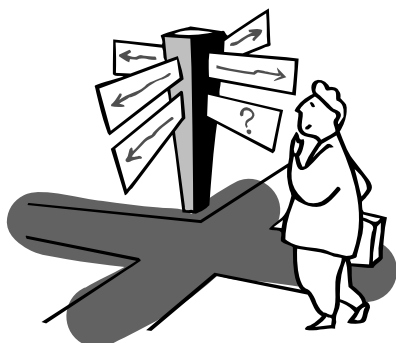


POINTS TO REMEMBER

- Funeral providers must give you price information over the telephone so you can compare costs and services to select the arrangements you want.
- In New Hampshire, embalming is not required unless the body is held for public view more than 24 hours.
- In New Hampshire, if the body is to be cremated, 48 hours must elapse before cremation. The law also requires that the body be cremated in a suitable solid container, such as a simple wooden coffin.
- If you select direct cremation, consider using an alternative container which will be less costly than traditional burial caskets. Any container you buy will be destroyed during the cremation.
- Consult your local cemetery officials to determine if grave liners or vaults are required for burial.
- Ask a friend or cleric to assist you in making the arrangements and accompany you to the funeral home. This person should be someone who will be able to ask questions for you if you become distressed.
- Do not accept any services or products that you do not want.
- Remember that an itemized list of all the charges must be given to you to help you plan the funeral and you must be given an itemized list of all products and services you purchase.
- Don't feel you must choose the most expensive services and/or casket. Your emotional and social needs do not depend on how much money you spend.
- Preplanning your funeral eliminates the need for your family to make many of the arrangements while they are grieving. All your wishes about your funeral will be observed because you have done all the planning in advance.

- ✔ Memorial societies can assist you in preplanning your funeral.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ If you have any problems or questions concerning funeral practices, contact the New Hampshire State Board of Registration of Funeral Directors:

NH State Board of Registration of Funeral Directors
6 Hazen Drive
Concord, NH 03301-6507
603-271-4648

- ✔ The FTC has a free "Consumer Guide to the FTC Funeral Rule." Write to:

FUNERALS, FTC
Box 37078
Washington, DC 20013.
Web: <http://www.ftc.gov/bcp/online/pubs/services/funeral.htm>

- ✔ The NH Consumer Protection and Antitrust Bureau can also assist you with any problem you have with a funeral provider:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

EXTRA NOTE



Consumer Information on the World Wide Web

New Hampshire's Consumer Protection and Antitrust Bureau provides a variety of useful consumer information on the World Wide Web (www) through Webster, the New Hampshire State Government Online Information Center. The address for Webster is www.nh.gov.

Another free public service site on the World Wide Web called "Consumer World" provides easy access to more than 60 money-saving, educational, and entertaining consumer-related links on the www.







Consumer World is the brainchild of Edgar Dworsky, lawyer and former Director of Consumer Education at the Massachusetts Executive Office of Consumer Affairs and Business Regulation (Consumer World is NOT a service of the Commonwealth of Massachusetts). Divided into 10 topical areas, Consumer World connects users to state and federal consumer offices; Better Business Bureaus; company customer service departments for product information and inquiries; investment and credit information sources; consumer resource directories covering product recalls, insurance company ratings, toll-free numbers, consumer laws, and computer support lines; on-line searches for low airfares, entertainment reviews, previews and links; a comprehensive bargain shopping guide including on-line discounters, factory outlets and electronic coupons; news sources, Internet references and computer product buying and pricing guides. The address for Consumer World is <http://www.consumerworld.org>.

Home Equity Loans and Second Mortgages

Home equity loans have become a popular way for homeowners to access the equity in their principal dwellings. A federal law now gives consumers more information, and more protection, when they enter a home equity line of credit transaction. Creditors must give certain information to you during the application process. The law also limits the creditor's ability to change the conditions of the loan. Most importantly, this type of consumer credit transaction, involving a consumer's principal residence, can be rescinded (or canceled) within three business days. This protection does NOT apply to first mortgages in which the credit is used to buy the residence (or any extension or renegotiation of the mortgage). The rescission remedy only applies to second mortgages, home improvement loans, and home equity loans or lines of credit.

THE LAW

The federal *Truth-in-Lending Act (TILA)* requires that the creditor give the consumer specific information during the application process for a home equity loan, second mortgage or home improvement loan where the creditor takes a security interest in the consumer's home:

-  How the annual percentage rate (APR) is determined
-  For variable rate loans, what the maximum APR will be, including:
 - ▶ How and when the interest rate may change
 - ▶ How and when payments may change
-  Notice of the consumer's right to a refund of fees if terms change during the application process, causing the consumer not to enter into the contract
-  Notice that a default on the loan could cause the consumer to be at risk of losing his or her dwelling
-  A list of the conditions and circumstances under which the creditor can terminate the contract or suspend future advances of credit
-  An example of a payment plan with minimum monthly charges (if the creditor offers more than one payment option, all must be outlined).

Home Equity Loans

If the consumer applies for credit through the mail or over the telephone, the disclosures must be mailed to the consumer within three business days.

TILA also provides an absolute right to rescind credit transactions involving a security interest on your home, such as a second mortgage, home equity line of credit or home improvement mortgage. The right to rescind means that the consumer could cancel the contract within three days of signing this type of credit contract. The three-day right to rescind must be disclosed in the application documents. The right to rescind extends, or continues, if the creditor violates *TILA* by failing to make the required disclosures at the time of the loan.

The rescission disclosure information must include a clear and conspicuous notice to the consumer, stating that the consumer has three full business days to cancel the transaction, no questions asked. The consumer has until midnight of the third day after receiving the notice or signing the documents (whichever is later) to simply cancel the transaction without incurring any liability. During this “cooling-off” period, the creditor may not provide the consumer with any money, credit or anything of value. The right may only be waived by the consumer in writing and in the case of a genuine personal emergency.

In addition, the consumer may rescind the entire loan or credit transaction for up to three years after entering it if the creditor fails to correctly provide any of the following “material” information in the disclosure notice:

- ☑ The notice regarding the “cooling-off” period
- ☑ The amount financed
- ☑ The finance charge
- ☑ The number and amount of payments under the loan
- ☑ The due dates for payments
- ☑ The APR.

The consumer may rescind the credit contract by writing the creditor stating an intention to rescind the contract and the grounds for rescission. The consumer must give back any monies received from the lender. If good grounds to rescind are found later due to a violation, the creditor:

- 👉 Immediately loses any security interest it may have in the consumer’s home
- 👉 Loses any right to collect further interest or finance charges

- 👉 Becomes liable to the consumer for the total of all interest payments and other charges already paid to the creditor or any assignee.

Within 20 days of receiving a valid notice of rescission, the creditor must pay all that is owed to the consumer. Failure to do so could make a lender liable for interest on this amount. Typically, creditors pay the amount owed by permitting consumers to reduce or “offset” the amount of the loan principal which a consumer may be required to repay to the creditor. In addition, the creditor must also take steps to eliminate any record of a security interest in the home within the 20-day period.

A creditor may not change the terms of the contract once the account is open, unless the changes unequivocally benefit the consumer, such as more payment options, lower monthly payments, extending the length of the plan, etc.

Finally, the law requires that the creditor outline the conditions under which credit can be suspended or the credit limits reduced, which are as follows:

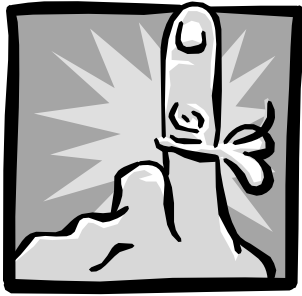
- 👉 The value of the dwelling declines significantly below the property’s appraised value used as basis for the line of credit. Federal Reserve Board rules define a “significant decline” as a decrease in the value of the dwelling such that the initial difference between the credit limit and the available equity is reduced by 50%.

EXAMPLE: Edna Greenhouse’s home is appraised at \$100,000 with a first mortgage of \$60,000. The credit limit of her home equity line of credit is \$24,000 (60% of the \$40,000 worth of equity in her house). The difference between the credit limit and the available equity is \$16,000 (\$40,000 equity minus \$24,000 credit limit). If the appraised value of Edna’s home were to fall below \$92,000, the creditor could prohibit further advances of credit as the difference between the credit limit and the available equity would fall to \$8,000 which is a 50% reduction in the available credit.

- 👉 The creditor reasonably believes the consumer will be unable to fulfill the repayment obligation due to material changes in the consumer’s circumstances (for example, a significant decrease in the consumer’s income due to a layoff).

- 👉 The consumer is in default.

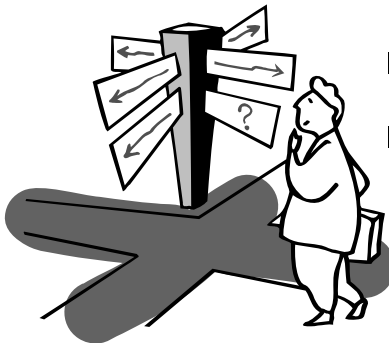
- 👉 The maximum APR is reached.



POINTS TO REMEMBER

- ✓ Any home equity loan, second mortgage or home improvement loan in which the lender gains a security interest in your home must include a conspicuous declaration of your three-day right to cancel the contract.
- ✓ Home improvement loans arranged through contractors are also subject to *TILA*'s three-day right to cancel if a creditor is given a security interest in your home.
- ✓ If you are contemplating a home equity loan, here are some questions to ask when comparing offers:
 - ✓ How large a credit line will the lender extend to me?
 - ✓ How long is the term of the loan?
 - ✓ What is the minimum monthly payment? Is there a maximum?
 - ✓ What is the annual percentage rate (APR)?
 - ✓ If the interest rate is adjustable, how much can it increase at any one time? Is there a maximum rate? A minimum rate?
 - ✓ Are there any annual or transaction fees?
 - ✓ Remember, you are giving a security interest in your home to the lender, and, if you default, you could lose your home. Use the three-day cooling off period to carefully review the contract and your ability to repay. Make sure that you can afford the payments before you risk your house.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✓ Attempt to resolve any problem with the creditor first.
- ✓ If you need further assistance, contact the creditor's primary regulator.
- ✓ Contact the Federal Deposit Insurance Corporation (FDIC) if the problem is with a FDIC-insured bank:

FDIC, Division of Compliance and Consumer Affairs
550 17th St., NW
Washington, DC 20429-9990
1-202-736-0000
E-mail: consumer@fdic.gov
Web: <http://www.fdic.gov>

FDIC- Boston
15 Braintree Hill Office Park
Braintree, MA 02184-8701
1-866-728-9953 (toll free)

- ✎ Contact the Comptroller of the Currency if the problem is with a federally chartered bank (one that has “national” in its name):

Comptroller of the Currency, U.S. Department of the Treasury
Consumer Assistance Group
1301 McKinney St., Suite 3450, Houston, TX 77010
1-800-613-6743 (toll free)
Fax: 1-713-336-4301
E-mail: customer.assistance@occ.treas.gov
Web: <http://www.occ.treas.gov>

- ✎ Contact the Federal Reserve if the problem is with a state-chartered bank that is a member of the Federal Reserve System:

Federal Reserve, Division of Consumer and Community Affairs
20th & C Streets, NW, Stop 801
Washington, DC 20551
1-202-452-3693
Web: <http://www.federalreserve.gov>

- ✎ Contact the NH Bank Commissioner if the problem is with a New Hampshire bank:

NH Bank Commissioner:
64B Old Suncook Road
Concord, NH 03301
271-3561
Web: <http://www.nh.gov/banking/>

- ✎ Contact the Federal Trade Commission if the problem is with a loan company or a retailer:

Home Equity Loans

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

☑ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://doj.nh.gov/consumer/index.html>



EXTRA NOTE

Rental Referral Agencies

A “rental referral agency” is a business that will, for a fee, assist people who are searching for a place to rent by providing listings of available rental units. All rental agencies operating in New Hampshire must post a surety bond with the New Hampshire Attorney General’s Office.

☞ *Rental referral agencies may not charge more than \$10 for their services unless a property is obtained by the prospective tenant through the direct services of the agency.*

☞ *A contract between the agency and the consumer-client must be signed by both parties before any deposit or fee is paid.*

☞ *The agency cannot state or imply that any rental property is available unless its availability has been verified within the previous 48 hours.*

If you have any problems with a rental referral agency, contact New Hampshire’s Consumer Protection and Antitrust Bureau at 603-271-3641 or 1-888-468-4454.

Identity Theft

Having one's credit identity stolen is not a new crime. However, identity theft has been increasing rapidly over the past few years, to the tune of 500,000 new victims every year. Identity theft is more than just having your credit card stolen - it is having your entire credit identity taken over by another person. A victim typically finds out that his or her identity has been stolen when he or she receives a call from a collection agency about a past due loan about which the victim knows nothing.

How does this happen? The thief steals something from the victim that helps him or her begin to re-establish the victim's credit identity as the thief's. The thief might take a credit card solicitation out of the trash, or out of the mail box; or might steal credit card receipts that have been discarded or left behind; or simply might steal the victim's wallet or purse. In the worst case, the thief manages to get hold of the victim's Social Security number. Our Social Security numbers are often used as identifiers: by colleges, the military, and by some states as drivers license numbers (fortunately, New Hampshire does NOT do this). Social Security numbers are also needed for a variety of investment and other types of commercial transactions, and may appear on quarterly statements. When the statements are discarded, the thief can get the statements, and information, out of the trash. Social Security numbers can even be purchased on the Internet!

The thief uses the stolen information to set up new credit in the victim's name, changing the victim's address to a new one. The thief charges up a storm, may even take out a loan in the victim's name, but, of course, never pays the credit card bills or never makes any loan payments. The victim usually finds out about the theft when a debt collection agency or credit card company demands payment of the past-due debts. There are some laws that can help the victim of identity theft. But it will take the victim a lot of time and energy to remedy the damage done to his or her credit identity by the thief.

THE LAW


In 1998, Congress passed the *Identity Theft and Assumption Deterrence Act (Identity Theft Act)*. The purpose of this federal law is to help deter identity theft by making it a felony. Furthermore, identity theft investigations are done by the U.S. Secret Service, the FBI, the U.S. Postal Inspection Service, and are prosecuted by the U.S. Department of Justice. The *Identity Theft Act* also required the Federal Trade Commission (FTC) to set up an identity theft unit to assist victims in clearing up their credit reports, and to improve law enforcement by tracking cases on a national scale.


Identity Theft

Several other laws can also be helpful to the victim of identity theft. The *Fair Credit Reporting Act* (refer to the section on **Credit Reporting**) provides the victim with a procedure for correcting, and removing, the adverse information from his or her credit report. The *Fair Credit Billing Act* (for more information, refer to the section on **Credit Cards**) provides a process for resolving unauthorized charges on credit card bills. The *Electronic Funds Transfer Act* limits liability when unauthorized withdrawals are made using a debit or ATM card (refer to **Extra Note: Debit (ATM) Cards** for more information). And lastly, when the debt collectors are knocking on the victim's door and calling on the phone, the *Fair Debt Collection Practices Act* can protect the victim from over-enthusiastic debt collectors (see the section on **Debt Collection** for more information).


WHAT AN IDENTITY THIEF DOES

According to the FTC, here are some of the ways that identity thieves work:

 An identity thief will open a new credit card account in the victim's name, date of birth, and Social Security number (if the thief got a pre-approved credit card solicitation out of the trash, all he or she has to do is change the address). He or she uses the card, but doesn't pay the bill. The delinquent account information shows up on the victim's credit report.

 The thief will call the victim's credit card issuer, pretending to be the victim, and change the mailing address on an existing credit card account. The thief then runs up charges on the account. Because the address has been changed, the victim is not getting the bills, so may not realize there is a problem for a couple of months.

 The identity thief establishes cellular phone service in the victim's name.

 The thief opens a checking account in the victim's name and writes bad checks on the account.

EXAMPLE: Tom Dearheart receives a pre-approved credit card application in the mail. He absent-mindedly tosses it out, un-opened, into his uncovered outside trash bin which is sitting at the end of his driveway because it is trash-pick-up day. Don Devious walks by and snatches the application out of the trash, fills it out (changing the address to his own), signs Tom's name and mails it off. Don receives "Tom's" credit card several weeks later and goes on a shopping spree, charging over \$25,000 to the card. Of course, Don does not pay the bill when he gets it.

Tom learns of the theft of his credit identity when he gets a copy of his credit report while he is in the process of applying for a mortgage to buy a new home. Tom immediately calls the credit bureau and the credit card company about the problems, and calls the local police, too.

The Privacy Rights Clearinghouse web site at <http://www.privacyrights.org> has a lot of information about identity theft, how thieves operate, and how to protect yourself.

WHAT TO DO IF YOU DISCOVER THAT YOU ARE A VICTIM OF IDENTITY THEFT

According to the FTC, a victim of identity theft should do three things immediately:

1. Contact the fraud department of each of the three major credit bureaus to report that your identity has been stolen. Ask that a "fraud alert" be placed on your file and that no new credit be granted in your name without your specific approval. Request a FREE copy of your credit report to check whether any accounts were opened without your consent. Finally, request that the agencies remove inquiries and/or fraudulent accounts stemming from the theft. The toll-free, fraud hot-line numbers and web sites are listed below:

Equifax

- ▶ Web: <http://www.equifax.com>
- ▶ To order a credit report, call: 1-800-685-1111 (toll-free) or write: P.O. Box 740241, Atlanta, GA 30374-0241
- ▶ To report fraud, call: 1-800-525-6285 (toll free) and write: P.O. Box 740241, Atlanta, GA 30374-0241
- ▶ Hearing impaired call 1-800-255-0056 (toll free) and ask the operator to call the Auto Disclosure Line at 1-800-685-1111 (toll free) to request a copy of your report.

Experian

- ▶ Web: <http://www.experian.com>
- ▶ To order your report, call: 1-888-EXPERIAN (397-3742) (toll free) or write: P.O. Box 2002, Allen TX 75013
- ▶ To report fraud, call: 1-888-EXPERIAN (397-3742) (toll free) and write: P.O. Box 9530, Allen TX 75013 TDD: 1-800-972-0322

Trans Union

- ▶ Web: <http://www.transunion.com>
- ▶ To order your report, call: 1-800-888-4213 (toll free) or write: P.O. Box 1000, Chester, PA 19022
- ▶ To report fraud, call: 1-800-680-7289 (toll free) and write: Fraud Victim Assistance Division, P.O. Box 6790, Fullerton, CA 92634 TDD: 1-877-553-7803



For Your Information . . .

Free Credit Report

The federal *Fair Credit Reporting Act* requires each of the nationwide consumer reporting companies – Equifax, Experian, and TransUnion – to provide you with a free copy of your credit report, at your request, once every 12 months.

The three nationwide consumer reporting companies have set up one central website, toll-free telephone number, and mailing address through which you can order your free annual report. To order, go to www.annualcreditreport.com, call 1-877-322-8228, or complete the form at <https://www.annualcreditreport.com/cra/requestformfinal.pdf> and mail it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA, 30348-5281.

It's important that consumers understand www.annualcreditreport.com is only **one** on-line source authorized to provide free credit reports under the federal law. Also, beware of other sites that may look and sound similar. Consumers who order their free annual credit reports on-line must be sure to spell www.annualcreditreport.com correctly to avoid being misdirected to other websites that supposedly offer free reports, but require the purchase of other products.

2. Contact any credit card company, banks and/or lenders where credit has been fraudulently opened or used in your name. Ask to speak with someone in the security or fraud department. Close the fraudulent accounts, and the legitimate accounts that have been fraudulently used. Put a password on any new account that you open (don't use anything that a thief could easily determine, like your birth date or mother's maiden name). Follow up each telephone conversation with a letter, outlining the extent of the fraudulent activity, and reiterating your closure of the account.
3. Ask that you be sent a copy of the fraudulent contracts or applications. This is key to proving that the person who signed the form is not you. You may need persistence to find the right person to talk to about getting this - ask for the supervisor.
4. File a police report. You can file with your local police, or with the police where the fraudulent activity took place. For example, you live in Derry, but the address given by the thief is Manchester, so you could file a report in Manchester or Derry. Get a copy of the police report just in case a bank or credit card company needs proof of the crime at a later date. This can also help you in dealing with debt collectors.

You should also file a complaint with the FTC. The FTC is the federal clearinghouse for complaints by victims of identity theft. The FTC can offer information to you on dealing with the aftermath of having your identity stolen:

1-877-IDTHEFT or 1-877-438-4338 (toll-free)

TDD: 1-202-326-2502

Web: <http://www.ftc.gov/ftc/complaint.htm>

The FTC has a publication that may help you dealing with the aftermath of having your credit identity stolen: "Take Charge: Fighting Back Against Identity Theft." This is available online at <http://www.ftc.gov/bcp/conline/pubs/credit/idtheft.htm> or you can request a copy be mailed to you by calling the FTC (toll free number given above).

Additionally, if the thief has stolen your mail to get access to a credit card solicitation, or mailed a fraudulent credit card application, or given a false change of address, then the thief has committed mail fraud. So you should also file a report with your local postal inspector.

You may also want to contact your bank if you have reason to suspect that the thief might have access to your bank account. Close any accounts that have been illegally accessed immediately. Stop payment on any checks that have been stolen or misused. Have password protection on any new accounts. Get a new PIN number for your new debit/ATM card.

If the thief has your Social Security number, get in touch with the Social Security Administration. You will want to make sure that your earnings are being accurately credited to you. The Social Security Administration may issue you a new Social Security number if you continue to have problems stemming from your identity being stolen, but this is a last resort:

Social Security Administration - Personal Earnings and Benefit Estimate

1-800-772-1213 (toll-free)

If the thief has used your Social Security number, you might also want to check with the NH Department of Motor Vehicles to see if the thief used your identity to get a driver's license. Fortunately, in New Hampshire, we use another number for our license ID rather than our Social Security number.

The Privacy Rights Clearinghouse can provide you with information on dealing with identity theft, including how to network with other victims:

1-619-289-3396

Finally, the U.S. Secret Service has jurisdiction over cases involving financial fraud. Practically speaking, the Secret Service only investigates cases where the dollar loss is substantial. However, your information may assist the Secret Service in proving a pattern of fraud against a particular thief. Contact the local field office in Manchester at 603-626-5631.



For Your Information . . .

Identity Theft – New Legislation

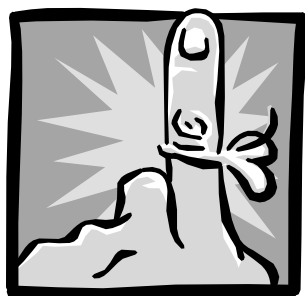
Two state laws will go into effect on January 1, 2007 related to identity theft:

Security Freeze: Any New Hampshire resident may request that a credit reporting agency put a freeze on their credit reports. A security freeze means that neither the consumer-victim's credit report nor credit score will be released without written authorization, nor can changes be made to the official information in the report (such as name, address, social security number) without written permission of the consumer-victim. The security freeze will prevent identity thieves from getting loans, credit cards, cell phones, etc. using the names and credit information of their victims because creditors will no longer be able to get access to the consumer-victims' credit files without the authorization of the consumer-victim. Someone who has not been a victim of identity theft may also request a security freeze, but will be charged a fee (about \$10). The freeze will be placed on the credit report within 5 business days of the request.

Within 10 business days of the request, the credit reporting agency will send a personal identification number or password to the consumer-victim so that he or she may access the credit report or to request a release of the freeze. To lift the freeze, the consumer must:

- Provide proper identification
- Provide the personal identification number or password
- Provide information about to whom the report should be released
- Make any payments required by the credit reporting agency for unfreezing the file.

Notice when personal information has compromised: If the electronic personal, confidential information that a business or agency keeps is compromised through hacking, theft, or an error, and the business determines the information has been or will likely be misused, then the business or agency must inform the affected individuals of this breach. Notice can be provided in a number of different ways, such as in writing or electronically. Notice can even be posted on the business or agency's web site, and/or sent to newspapers, and radio and television stations. The notification of the breach of confidential information must include a general description of what happened, approximate date of the breach, the type of information that was obtained due to the breach, and how to contact the business or agency for more information.



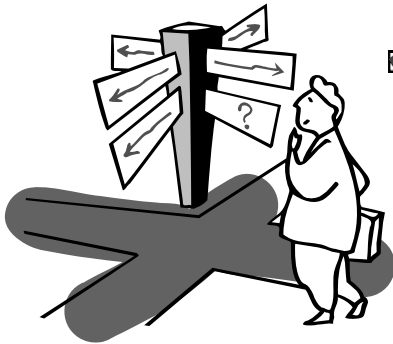
POINTS TO REMEMBER

- ✔ Never reveal personal identifying information to anyone without knowing why it is needed, how it will be used, and if it will be shared with others. Ask to have this information kept confidential.
- ✔ Never carry your Social Security card in your wallet. Never have your social security number printed on your checks or anywhere else.
- ✔ Never give your Social Security number to anyone unless absolutely necessary: guard your Social Security number closely. Give it out only when you know how it will be used by businesses that you know and trust. Ask that some other type of identifier be used when possible.
- ✔ Never carry your passport or birth certificate in your wallet or purse.
- ✔ Do not post personal information on the Internet, such as at genealogical sites, or class reunion sites.
- ✔ Pay attention to the billing cycles for your credit card accounts. If bills do not arrive when expected, give the creditor a call.
- ✔ Carry only the credit cards that you absolutely need. Keep the amount of other identification you carry to a minimum.
- ✔ Get a copy of your credit report every year to make sure that the information in the report is accurate and includes only the credit activities that you have authorized. Remember, you will probably want to contact each of the three credit reporting agencies to ensure that you have checked your entire credit history.
- ✔ Tear up or shred all unwanted credit card solicitations. Get off mailing lists for pre-approved credit cards by calling the OptOut Request Line at 1-888-567-8688.
- ✔ Shred all old credit card receipts, insurance forms, bank checks and statements, and investment statements before you throw them out. Cut up any expired credit cards into as many pieces as you can manage!
- ✔ Check all bank and credit card statements carefully every month to make sure that there is nothing that you cannot identify.
- ✔ Contact the credit reporting agencies at their special toll free line (1-888-567-8688) to request that your credit header not be sold.

Identity Theft

- ✔ If your wallet or purse is stolen, notify all your creditors by phone immediately, call the three credit reporting agencies to ask that a "fraud alert" be placed on your file, and file a report with your local police.
- ✔ Keep a list of all your credit cards and their phone numbers in a secure location so that you can contact the issuers in case your card is lost or stolen.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Contact the three credit reporting agencies to put a fraud alert on your file:

Equifax: 1-800-525-6285 (toll-free)

Experian: 1-888-EXPERIAN or 1-888-397-3742 (toll-free)

TransUnion: 1-800-680-7289 (toll-free)

- ✔ Contact the Federal Trade Commission's identity theft hot-line:

1-877-IDTHEFT or 1-877-438-4338 (toll-free)

TDD: 202-326-2502

Web: <http://www.ftc.gov/ftc/complaint.htm>

- ✔ For more information about privacy, visit the Privacy Rights Clearinghouse website.

Web: <http://www.privacyrights.org>.

- ✔ The following Web sites are good resources concerning identity theft:

<http://www.consumer.gov/idtheft>

<http://www.identity-theft-help.us/>

<http://www.identitytheft.org/>

<http://www.usdoj.gov/criminal/fraud/idtheft.html>

<http://www.ifccfbi.gov/index.asp>

<http://www.ftc.gov/bcp/online/pubs/alerts/phishingalrt.htm>

Licensed Professions and Regulated Activities

Many professions, activities and businesses are regulated by the state or local government. Occupations and businesses may be licensed, certified, registered, accredited, or inspected. Moreover, many professions are regulated by professional associations in addition to, or instead of, the state.

People who serve on state boards and commissions that license or otherwise certify those in a regulated profession or activity are generally nominated by the Governor and confirmed by the Executive Council. Board appointees are practitioners, individuals with certain expertise, and interested consumers representing the general public.

Regulation of businesses and professions ranges from simple certification of credentials to strict policing of business and ethical practices. The powers of the boards and commissions vary. If you have a complaint about a business, activity or profession, you can contact the appropriate licensing or regulating board or commission to find out what it can do to help you get your complaint resolved. Sometimes the board or commission can provide extensive help, but sometimes it may have to refer you to another agency, small claims court, or advise you to contact a lawyer.

The following is a listing of the activities and professions regulated in some way by the state of New Hampshire.

**THESE
PROFESSIONS OR
BUSINESSES ARE
REGULATED . . .**

BY THIS BOARD OR COMMISSION

Accountants, Certified
Public

NH Board of Accountancy

78 Regional Drive
Concord, NH 03301-8518
603-271-3286

Web: <http://www.state.nh.us/accountancy/index.html>

Licensed Professions

Acupuncturist	Board of Acupuncture Licensing Department of Health and Human Services 129 Pleasant Street, Brown Building Concord, NH 03301-3857 603-271-0277
Alcohol and Drug Abuse Counselor	NH Board of Licensed Alcohol and Other Drug Abuse Professionals 105 Pleasant Street Concord, NH 03301-3861 603-271-6107
Ambulance Attendants	Bureau of Emergency Medical Services 33 Hazen Drive Concord, NH 03301 603-271-4569 Web: http://www.nh.gov/safety/ems/index.html
Amusement Park Rides	Bureau of Tramways and Amusement Parks Division of Safety Services NH Department of Safety 31 Dock Road Gilford, NH 03246-7626 603-293-0091 Web: http://www.nh.gov/safety/ss/index.html
Animal Shelters	NH Department of Agriculture, Animal Industry 25 Capitol Street, 2 nd floor Concord, NH 03301 603-271-3551
Architects	Joint Board of Engineers, Architects, Land Surveyors and Natural Scientists 57 Regional Drive Concord, NH 03301 603-271-2219 FAX: 603-271-6690 Web: http://www.nh.gov/jtboard/home.htm

Asbestos Abatement
Contractors and
Inspectors

Division of Public Health Services
29 Hazen Drive
Concord, NH 03301
603-271-4609

Athletic Trainers

Athletic Professional Trainers Governing Board
2 Industrial Park Drive
Concord, NH 03301
603-271-8389
Web: <http://www.state.nh.us/alliedhealth/index.htm>

Attorneys

NH Supreme Court
1 Noble Drive
Concord, NH 03301-6160
603-271-2646
Web: <http://www.nh.gov/judiciary/committees/attydiscip/#discipline>

Auctioneers

NH Secretary of State
107 North Main Street, Room 204
Concord, NH 03301
603-271-3242
Web: <http://www.sos.nh.gov/handplaw.html>

Audiologists

NH Board of Hearing Care Providers
8 Fillmore Road
Portsmouth, NH 03802-0418
603-433-7512

Bail Bondsmen

Bureau of Securities Regulation
25 Capitol Street, Rm. 204
Concord, NH 03301
1-800-994-4200 or 603-271-1463
Web: <http://www.sos.nh.gov/securities/infoprobond.html>

Licensed Professions

Bakeries	Bureau of Food Protection Licensing and Regulation Services NH Department of Health and Human Services 129 Pleasant Street Concord, NH 03301 603-271-4814 Web: http://www.dhhs.nh.gov/dhhs/foodprotection/default.htm
Banks, State-Chartered	NH Banking Department 64B Old Suncook Road Concord, NH 03301 603-271-3561 FAX: 603-271-0750 Web: http://www.nh.gov/banking/
Barbers	Barbering, Cosmetology and Aesthetics Board 2 Industrial Park Drive Concord, NH 03301-8512 603-271-3608 Web: http://www.nh.gov/cosmet/
Bars or Taverns	Liquor Commission 50 Storrs Street PO Box 503 Concord, NH 03302 603-271-3755 Web: http://www.state.nh.us/liquor
Bars or Taverns (Food)	See Bakeries
Beauticians	See Barbers
Bed and Breakfasts	See Bakeries
Beverage and Bottled Water Products	See Bakeries

Bingo Halls	NH Sweepstakes Commission 14 Integra Drive Concord, NH 03301 603-271-3391 Web: http://www.nhlottery.org/statelottery/
Body Art Practitioners	Health Facilities Administration Department of Health and Human Services 129 Pleasant Street Concord, NH 03301 603-271-3021
Bricklayers	Division of Safety, NH Department of Labor 95 Pleasant Street Concord, NH 03301-3836 603-271-3176
Carnivals	See Amusement Park Rides
Caterers	See Bakeries
Certified Public Accountants	See Accountants
Child Care Providers and Teachers	Bureau of Child Care Licensing Department of Health and Human Services 129 Pleasant Street, Concord, NH 03301 603-271-4624 or toll free 1-800-852-3345 Web: http://www.dhhs.nh.gov/dhhs/bccl/default.htm
Child Care Facilities	See Child Care Providers
Chiropractors	Chiropractic Board of Examiners 29 Hazen Drive Concord, NH 03301 603-271-4560

Licensed Professions

Contractors	NH Builders and Remodelers Association (Professional Trade Association) 119 Airport Road Concord, NH 03301 603-228-0351 FAX: 603-228-1877 Web: http://www.hbranh.org E-mail: info@hbranh.com
Cordwood Sales	Bureau of Weights and Measures NH Department of Agriculture 25 Capital Street P.O. Box 2042 Concord, NH 03301 603-271-3551 FAX: 603-271-1109 Web: http://agriculture.nh.gov/divisions/weights_measures/index.htm
Cosmetologists	See Barbers
Dental Hygienists	Board of Dental Examiners 2 Industrial Park Drive Concord, NH 03301-8520 1-800-852-3345 (toll free) or 603-271-4561 FAX: 603-271-6702 Web: http://www.nh.gov/dental/
Dentists	See Dental Hygienists
Detectives, Private	NH State Police, License and Permits Division 33 Hazen Drive Concord, NH 03305 603-271-3575 Web: http://www.nh.gov/safety/nhsp/pluda.html
Dieticians	Board of Licensed Dieticians 129 Pleasant Street Concord, NH 03301 603-271-5127 or toll free 1-800-852-3345 ext 5127

Dog Trainers, Greyhound	NH Pari-Mutuel Commission Carrigain Commons, Third Floor 244 North Main Street Concord, NH 03301-5041 603-271-2158
Driver Education Instructors	NH Department of Safety - DMV 33 Hazen Drive Concord, NH 03301 603-271-2485
Drug Abuse Counselors	See Alcohol Abuse Counselors
Electricians	Electricians Licensing Board Office of the Fire Marshall 2 Industrial Park Drive, Building 2 PO Box 646 Concord, NH 03302-0646 603-271-3748 Web: http://www.nh.gov/electrician
Electric Utility Companies	NH Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301 1-800-852-3793 (toll free) Web: http://www.puc.state.nh.us/ E-mail: puc@state.nh.us
Electrologists	Licensing and Regulative Services Office of Program Support Department of Health and Human Services 129 Pleasant Street Concord, NH 03301-6527 603-271-5127
Embalmers	Board of Registration of Funeral Directors and Embalmers 29 Hazen Drive Concord, NH 03301 603-271-4648

Licensed Professions

Emergency Medical Technicians	See Ambulance Attendants
Engineers	See Architects
Esthetician	See Barbers
Explosive Workers/Blasters	NH State Police, Permits and License Unit 33 Hazen Drive, Room 16 Concord, NH 03301 603-271-3575 Web: http://www.nh.gov/safety/nhsp/plu.html
Finance Companies	See Banks, State-Chartered
Firefighters	NH Division of Fire Standards and Training NH Department of Safety 33 Hazen Dr. Concord, NH 03301 603-271-2661 Web: http://www.nh.gov/safety/fst/index.html
Fireworks Display Specialist	See Explosives Workers/Blasters
Food Scales	See Cordwood Sales
Food Service Establishments	See Bakeries
Foresters	See Architects
Funeral Directors	See Embalmers
Gas Stations/Pumps	See Cordwood Sales
Gas Utility Companies	See Electric Utility Companies
Geologist, Professional	See Architects

Grocery Stores	See Bakeries
Guards	See Detectives, Private
Guides, Hunting and Fishing	Fish and Game Department 11 Hazen Drive Concord, NH 03301-6500 603-3129 Web: http://wildlife.state.nh.us/
Hair Stylists	See Barbers
Hawkers	See Auctioneers
Hazardous Waste Management	Environmental Services, Waste Management Division 29 Hazen Drive Concord, NH 03302-0095 603-271-2900 FAX: 603-271-2181
Health Facilities	Bureau of Health Facilities Administration Department of Health and Human Services 129 Pleasant Street Concord, NH 03301-3857 603-271-4592 FAX: 603-271-4968 Web: http://www.dhhs.nh.gov/DHHS/BHFA/default.htm
Hearing Aid Dealers	See Audiologists
Home Food Manufacturers and Processors	See Bakeries
Insurance Adjusters	NH Insurance Department 56 Old Suncook Road Concord, NH 03301 603-271-0203 FAX: 603-271-1406 Web: http://www.nh.gov/insurance/index.htm

Licensed Professions

Insurance Agents and Brokers	See Insurance Adjusters
Interpreters for the Deaf and Hard of Hearing	NH Board of Licensure of Interpreters for the Deaf and Hard of Hearing 78 Regional Drive Concord, NH 03301 603-271-3471
Investment Brokers	See Bail Bondsmen
Itinerant Vendors	See Auctioneers
Justices of the Peace	NH Secretary of State 107 North Maine Street Concord, NH 03301 603-271-3242 Web: http://www.sos.nh.gov/
Land Surveyors	See Architects
Lay Midwives	See Alcohol Abuse Counselors
Liquor Stores, Sellers	See Bars, Taverns
Lottery Ticket Sellers	See Bingo Halls
Manicurists	See Barbers
Marital Mediators	Marital Mediator Certification Board 25 Capital Street, Rm. 424 Concord, NH 03301 603-271-6593
Marriage and Family Therapists	Board of Psychology and Mental Health Practice 49 Donovan Street Concord, NH 03301 603-271-6762

Massage Practitioners	Office of Program Support NH Department of Health and Human Services 129 Pleasant Street Concord, NH 03301 603-271-5127 Web: http://www.dhhs.state.nh.us/DHHS/OPS/default.htm
Medical Examiners	See Chiropractors
Mental Health Counselors	See Marriage and Family Therapists
Midwives	NH Midwifery Council 585 Hopkinton Road Hopkinton, NH 03229 603-224-0049
Mobile Food Units	See Bakeries
Mortgage Companies	See Banks, State-Chartered
Naturopaths	See Massage Practitioners
Notaries Public	NH Secretary of State 107 North Main Street Concord, NH 03301 603-271-3242 Web: http://www.sos.nh.gov/notary.htm
Nurseries	NH Department of Agriculture P.O. Box 2042 Concord, NH 03302 603-271-3351 FAX: 603-271-1109

Licensed Professions

Nurses	Board of Nursing 21 South Fruit Street Concord, NH 03301-2431 603-271-2323 FAX: 603-271-6599 Web: http://www.nh.gov/nursing/
Nursing Assistants, Certified	See Nurses
Nursing Home Administrators	Board of Examiners of Nursing Home Administrators 2 Industrial Park Drive, Suite 8 Concord, NH 03301 603-271-4728
Occupational Therapists	See Athletic Trainers
Occupational Therapist Assistants	See Athletic Trainers
Oil Burner Servicers and Installers	See Bricklayers
Ophthalmic Dispenser	Licensing and Regulative Services Department of Health and Human Services 129 Pleasant Street Concord, NH 03301 603-271-5127
Opticians	Board of Registration in Optometry 2 Industrial Park Drive, Suite #8 Concord, NH 03301 603-271-2428
Optometrists	See Opticians
Osteopaths (D.O.)	See Chiropractors
Paramedics	See Ambulance Attendants

Pastoral Counselors	See Marriage and Family Therapists
Pawnbrokers	See Auctioneers
Peddlers	See Auctioneers
Pesticide Dealers and Manufacturers	Division of Pesticide Control NH Department of Agriculture 25 Capital Street, 2 nd floor Concord, NH 03301 603-271-3551 Web: http://agriculture.nh.gov/divisions/pesticide_control/index.htm
Pet Stores, Sales	See Animal Shelters
Pharmacists	Board of Pharmacy 57 Regional Drive Concord, NH 03301-8518 603-271-2350 FAX: 603-271-2856 Web: http://www.nh.gov/pharmacy/ E-mail: nhpharmacy@nhsa.state.nh.us
Physical Therapists	See Athletic Trainers
Physical Therapist Assistants	See Athletic Trainers
Physicians	See Chiropractors
Physician Assistants	See Chiropractors
Plant Dealers	See Nurseries

Licensed Professions

Plumbers	Plumbers Licensing Board 21 South Fruit Street, Suite 24 Concord, NH 03301-2452 603-271-3267 FAX: 603-271-6656 Web: http://www.nh.gov/plumbing/ E-mail: info@plumbers.state.nh.us
Podiatrists	Board of Registration in Podiatry 2 Industrial Park Drive, Suite #8 Concord, NH 03301 603-271-1203 Web: http://www.nh.gov/podiatry/index.html
Private Investigators	See Detectives, Private
Psychologists	See Marriage and Family Therapists
Radiologists	See Chiropractors
Real Estate Appraisers	NH Real Estate Appraiser Board 25 Capitol Street, Room 426 Concord, NH 03301-6312 603-271-6186 Web: http://www.nh.gov/nhreab/
Real Estate Brokers, Salespersons	Real Estate Commission 25 Capital Street, Room 434, Concord, NH 03301 603-271-2701 FAX: 603-271-1093 Web: http://www.nh.gov/nhrec/
Respiratory Therapists	See Athletic Trainers
Restaurants	See Bakeries
Restaurants with Liquor Licenses	See Bars, Taverns

Retail Food Stores	See Bakeries
Scales, Food	See Cordwood Sales
School Cafeterias	See Bakeries
Securities Salespersons/Dealers	Bureau of Securities Regulation Department of State State House Annex, Suite 317A, 3rd Floor Concord, NH 03301 603-271-1463 Web: http://www.sos.nh.gov/securities/
Security Guards	See Detectives, Private
Shellfish Processors	See Bakeries
Social Workers	See Marriage and Family Therapists
Speech Pathologists	See Athletic Trainers
Stock Brokers	See Bail Bondsmen
Surgeons	See Chiropractors
Tattoo Practitioners	See Health Facilities
Teacher Certification	Bureau of Credentialing Department of Education 101 Pleasant Street Concord, NH 03301 603-271-3494 FAX: 603-271-1953 Web: http://www.ed.state.nh.us/education/doe/organization/programsupport/boc.htm
Telegraph Companies	See Electric Utility Companies
Telephone Companies	See Electric Utility Companies

Licensed Professions

Truck Scales	See Cordwood Sales
Veterinarians	Board of Veterinary Medicine 25 Capital Street/P.O. Box 2042 Concord, NH 03302 603-271-3706 FAX: 603-271-1109 Web: http://www.state.nh.us/veterinary
Veterinary Hospitals	See Veterinarians
Water Pump Installers	Water Well Board 29 Hazen Drive P.O. Box 95 Concord, NH 03302 603-271-3503 FAX: 603-271-2867 Web: http://www.des.state.nh.us/WWB/index.asp
Water Treatment Plant Operators	Water Supply and Pollution Control Division 29 Hazen Drive Concord, NH 03301 603-271-3503 FAX: 603-271-2867 Web: http://www.des.state.nh.us/
Water Utility Companies	See Electric Utility Companies
Weights and Measures	See Cordwood Sales
Well Drillers	See Water Pump Installers
Worker's Compensation	NH Department of Labor 95 Pleasant Street Concord, NH 03301-3836 603-271-3176 or toll-free 1-800-272-4353 Web: http://www.labor.state.nh.us/workers_compensation.asp

Loans and Financial Services

The use of credit is part of everyday life for the majority of Americans. Consumers are extended credit by retailers and lending institutions to purchase goods, services, appliances, automobiles and residential real property through credit cards, installment loans, home mortgages, and home equity lines of credit. Both federal and New Hampshire laws provide important safeguards and remedies for consumers in their credit transactions and consumer leases. Some of these laws require that certain information be given to the consumer before or during the credit transaction. Others relate to problems which can occur later in the process. Consumer credit transactions are complex and technical, and the laws that apply to them can be rather technically daunting as well. Nevertheless, these laws do provide some powerful remedies to consumers who may find themselves in difficulties either through unfair lending or leasing practices or through their own financial mismanagement. This section provides a brief summary of the federal *Truth-in-Lending Act (TILA)*. The other sections on credit deal with specific issues and the relevant state and federal statutes.

Consumer credit transactions fall into two categories: closed-ended credit and open-ended or revolving credit. Closed-ended credit occurs when the consumer borrows a specific amount of money and repays it over a definite period of time. Installment contracts, car loans, and mortgages are typical closed-ended credit transactions. A credit transaction is open-ended if the consumer is issued a line of credit that can be used at the consumer's discretion and repaid within the terms of the contract. A credit card is an example of open-ended credit. A credit card typically has a "credit limit" meaning the consumer can charge up to that amount on the card. The "loan" is paid off either in full or partially upon receipt of the monthly statement. A home equity line of credit is another form of open-ended credit. The information presented in this section, while applicable to both open- and closed-ended forms of credit, is primarily focused upon closed-ended credit. For more information about credit cards, refer to the section on *Credit Cards*.

In recent years, sellers of appliances, furniture and automobiles have introduced the long term lease as a method of financing these high-ticket items. For more information, see *Auto Leasing And Consumer Leasing*. Another way for consumers to obtain household appliances, furniture and the like is through rent-to-own agreements. The rent-to-own furniture or appliance contract where the consumer "rents" goods for a specified period of time with an option to purchase the goods at the end of the "lease"

Loans and Financial Services






term is not covered by *TILA*. For further information on this type of transaction see *Rent-To-Own*.

NOTE: New Hampshire has no specific statutory limits on how much interest can be charged on either credit card balances or any other type of debt. Interest rates are not regulated by federal law either. Consumers may be shocked to learn that there is nothing illegal about a New Hampshire retailer or lending institution charging 20% or 30% interest on a consumer debt. All that is required by both federal and state laws is that information about the interest rate be given as described below.

THE LAW

The primary source of consumer protection in consumer credit transactions is the federal *Truth in Lending Act (TILA)* (15 U.S.C. §1601 *et seq.*). The New Hampshire *Regulation of Consumer Credit Transactions Act (RSA 358-K)* imposes some technical requirements on lenders regarding the timing and method for computing interest on consumer debts which essentially parallel federal law and will not be discussed. The New Hampshire Consumer Protection and Antitrust Bureau takes the position that a violation of any part of either state or federal law regarding consumer credit may also violate the New Hampshire *Consumer Protection Act*.

Typical consumer credit transactions subject to *TILA* include store credit purchases, credit card agreements, installment loans, automobile financing plans, and some real property transactions secured by a consumer's principal dwelling place, such as mortgages, home equity or home improvement loans. *TILA* applies to loans or other extensions of credit by creditors (banks, retailers, finance companies, etc.) or individuals if:

-  The credit is offered to a consumer
-  The credit is primarily for personal, household or family purpose
-  The creditor offers or extends credit regularly to the public (which is defined as 15 or more times in a year, or, for mortgage or home equity lenders, five or more times in a year)
-  The credit is either subject to a finance charge (such as interest) or repayable by written agreement in more than four installments
-  The credit is for an amount less than \$25,000.

NOTE: This limit does not apply to credit transactions secured by real property or by personal property used as a consumer's principal dwelling, such as a mobile home.

A few consumer transactions are NOT covered by *TILA*. Those that are exempt from coverage are: student loans (GSL, PLUS, NDSL), public utility payment plans, and home fuel budget plans.

The Federal Reserve Board (FRB) is authorized to administer and interpret *TILA*. FRB's *Regulation Z (12 C.F.R. 226 et seq.)* explains and defines the scope and workings of *TILA*. This discussion is largely drawn from *Regulation Z*.



Watch Out For . . .

PAY-DAY LOANS

Check cashing businesses and others are exploiting some workers by offering so-called “pay-day loans.” These kinds of loans are sometimes called “cash advances,” “check advance loans,” “post-dated check loans,” or “delayed deposit loans.” The borrower/worker is getting an advance on his or her wages. The problem is that the interest rates on these types of loans tend to be exorbitant!

For example, a worker writes a check to the so-called lender for \$115 on the 7th of the month, dating the check for the 21st when he or she gets paid. The worker is given \$100 in cash from the so-called lender. On the 21st of the month, the lender cashes or deposits the worker's check for \$115. The worker has paid \$15 in interest charges for a 14-day loan on \$100 at an Annual Percentage Rate (APR) of 391%!

While high interest rate loans are not illegal in New Hampshire, several courts across the country have said that these pay day loans are credit transactions and therefore must follow the *TILA* requirements. The attorneys at the NH Consumer Protection and Anti-Trust Bureau believe this also. These requirements include:

- ▶ The total amount financed
- ▶ The finance charge
- ▶ The Annual Percentage Rate (APR)
- ▶ The terms of repayment.

Initial Disclosures

Creditors and lenders are required to furnish a clear description of all the important terms and requirements relating to any credit transaction. Creditors and lenders must furnish the detailed information to consumers before extending credit. This requirement extends to all credit transactions covered by *Truth-in-Lending*, including installment loans, credit cards, and home equity lines of credit.

The following information must be given to the consumer prior to entering into an installment credit contract or closed-ended credit transaction.

- ✔ The total sales price of the goods purchased. This is the price of the item purchased plus interest and any other charges imposed by the seller as a condition of granting credit to the consumer, including any down payment or trade-in value.
- ✔ The amount financed. This is the total amount borrowed plus any other amount advanced by the lender to the consumer. For example, the cost of an extended warranty purchased by the consumer might be included.
- ✔ The finance charge. This is the dollar cost of the credit transaction, which includes the dollar cost of all the interest to be paid over the term of the loan and the cost of all other charges imposed by the creditor as a condition of extending credit to the consumer. “Other charges” may include points (prepaid interest), service charges, appraisal fees, credit report fees, and/or charges for any credit insurance purchased. Application fees are not part of the finance charge for any consumer credit transaction.

EXAMPLE: Hilda Homeowner enters into a 5-year home improvement mortgage with First Bank for \$10,000 at 10% interest, payable monthly. (This translates to approximately \$4,000 in interest over the life of the loan.) First Bank charges Hilda two “points” or \$200 for the loan and Hilda buys the so-called “credit life insurance” from the Bank for another \$500. Hilda’s “amount financed” is \$10,000. Her “finance charge” is \$4,700. Her APR is 16.35%

NOTE: Special rules apply to mortgage transactions which exclude many of these “other charges,” such as title examination fees, credit report fees, escrow payments for taxes and insurance, and reasonable attorneys’ fees, from the finance charge.

- ✔ The Annual Percentage Rate or APR. This is a complex calculation designed to provide a uniform “true cost of credit” which the consumer can use to comparison shop. Basically, the APR assumes that the total finance charge (which, remember, is equal to total interest on the debt plus other charges, such as points and fees) is paid in equal installments over the term of the loan and then calculates the amount paid

each year as a percentage of the amount financed. This number will almost always be higher than the so-called base interest rate on a loan.

NOTE: A different APR calculation applies to open-ended transactions such as credit cards. The details on that are covered in *Credit Cards*.

- ✔ The total of payments. This is the total of all payments the consumer must make under the agreement, and equals the amount financed plus the finance charge.

EXAMPLE: In Hilda's case from the previous example, the "total of payments" would be the \$10,000 amount financed plus the \$4,700 finance charge, for a total of \$14,700.

- ✔ The payment schedule and amounts of each payment. The schedule of monthly (or periodic) payments must be clearly set out in the contract. This includes the due date for each payment (for example, the 1st of each month), the number of payments required and the size of each payment. If any payment is for a different amount, this must also be clearly indicated (for example, in some credit agreements, the last payment may be larger than the regular monthly payment).

EXAMPLE: In Hilda's case, the loan may have been structured to be repaid in 60 monthly installments of \$245 (\$14,700 divided by 60) due on the 5th of each month. This schedule must be disclosed.

In addition, lenders are required to disclose the following general information about any credit transaction:

- ✔ Whether the loan agreement grants the lender a security interest in any property of the consumer. A security interest is a priority claim on property, such as a mortgage on real property. If a consumer defaults (fails to repay) on the loan, the lender would have the right to repossess the property (or foreclose the mortgage) without going to court. Retailers that issue their own credit cards often take a "security interest" in merchandise bought from them with the card. Check your fine print.
- ✔ Under what circumstances late payment fees are assessed and what the fees are.
- ✔ Any penalty for prepayment of the loan must be disclosed.

- ✔ If the loan is subject to a “variable rate” of interest, a clear description must be given of the calculation used to vary the rate, including the “index” used to base interest rate changes, such as the Prime Rate or 30-year Treasury Note, as well as the periods when the rate may be adjusted.

EXAMPLE: Hilda Homeowner’s mortgage loan could have been structured as a variable rate loan, with the interest rate set at 3% above the Prime Interest Rate. The Bank could insist that the rate be reset every three months. There might also be a provision that Hilda’s rate could not go below 5% or above 10% no matter what the Prime Rate does. All these terms would have to be disclosed.



Watch Out For . . .

LATE CREDIT CARD PAYMENTS

Credit card companies have been reducing the “Grace Period” on credit card statements, and increasing the late-fee charges. High “penalty interest rates” may also be charged when the bill is paid late. In some cases, the credit card holder has paid the bill well in advance of the due date, but the account has not been credited in a timely fashion, resulting in the late fees and penalties.

What you can do:

- ☞ While the U.S. Postal Service indicates that 90% of domestic mail arrives at its destination within three mailing days, the credit issuers may need additional time to process the payments, sometimes up to a week. The best idea may be to pay the bill within days of receiving it.
- ☞ If the due date is inconvenient for you (for example, the bill arrives after all your other bills have been paid), call the credit card issuer and have your due date changed.
- ☞ While federal law requires that credit card payments be credited to the account on the day it was received, there are loopholes. Any payment does not conform to the requirements set by the issuer (for example, payment by check or money order, inclusion of the payment coupon, posted in the envelope provided, etc.) can be posted late. As of now, federal law does not cover payments made electronically.
- ☞ To protect yourself, read those pesky inserts! Notice of changes in fees, interest rates, and other things often go unnoticed by consumers because the announcement is part of a packet of solicitations that comes with the statement.

If a Lender Fails to Make Required Disclosures

TILA allows the consumer to bring a lawsuit if a creditor fails to correctly provide the required information. Generally you would be entitled to any actual damages (any monetary loss) suffered as a result of a violation of the *TILA* disclosure rules. You may also ask for “statutory” damages (*TILA* has set limits) and if you win the lawsuit, you would also be entitled to court costs and attorneys’ fees.

If a consumer is delinquent in repaying his or her loan and discovers a violation of *TILA* in his or her credit documents, reporting the violation to the lender may serve to forestall any collection or foreclosure actions. In some cases, the total of the monetary damages in a lawsuit due to a *TILA* violation may be equal to or exceed the amount still owed on the delinquent loan, allowing the consumer to, in effect, cancel the debt.



Watch Out for . . .

BALLOON LOANS

From time to time you may find a lender offering a particularly attractive loan with very low monthly payments. This could be a “balloon loan,” one which has a very large final payment (a “balloon” payment is generally thought of as any payment that is more than twice the amount of any other payment). With these types of loans, little or none of the monthly payment goes to reduce the principal (the amount borrowed); only the interest is repaid during the term of the loan. The principal is mostly or entirely paid off in the final payment.

Balloon loans can be difficult for consumers who are unprepared for the large final payment. Borrowers who are “surprised” by final balloon payments, thinking they were going to be all paid up, may find themselves needing to refinance their loans because they do not have the financial resources to pay the balloon.

The information about the final balloon payment must be given to the borrower during the loan application process. Balloon loans are prohibited by federal law when the length of the loan is less than 5 years.



For Your Information . . .

Private Mortgage Insurance

Since July 1998, the Homeowners Protection Act requires that private mortgage insurance (PMI) be terminated automatically when a homeowner's equity reaches 22% of the proper value at the time the mortgage was signed. Homeowners can ask that the PMI be canceled earlier if they can provide proof that their home's equity is 20% greater than current market value. PMI protects the lender against default when a down payment of less than 20% is made on a home.

The rules differ slightly depending on when your mortgage was signed:



If your mortgage was signed on or after July 29, 1999, the private mortgage insurance must be automatically terminated (ended) once you reach 22% equity in your home, based on the original property value. You may, under some circumstances, be able to request cancellation of the private mortgage insurance, after you reach 20% equity.

There are three reasons that the private mortgage insurance coverage would not be automatically canceled when you reach 22% equity:

- ▶ If your loan is "high risk"
- ▶ If you are delinquent on any of your mortgage payments
- ▶ If you have other liens on your property.



If your mortgage was signed before July 29, 1999, you have the right to ask your lender to cancel the private mortgage insurance once you reach 20% equity in your home. The law does not require the lender to automatically terminate the insurance.

A new borrower must be told about the cancellation provision at the closing, and once a year thereafter.

Mortgage lenders must provide a telephone number for borrowers to call for information about canceling their private mortgage insurance.

Mortgage lenders are required to tell borrowers not covered under the law about their right to cancel the private mortgage insurance.

So... if you are currently paying for private mortgage insurance, and have more than 20% equity in your home, you might want to contact your mortgage lender to find out about terminating your private mortgage insurance.

Other Protections

Many loans, including most home mortgage loans, are sold by the initial lender into what is called the “secondary market.” Consumers may discover problems with their credit documents only to find that their loans are now owned by an institution other than the one which originally extended the credit or made the loan. This problem is addressed by requiring that all actions for violating *TILA* disclosure rules are valid against so-called “assignees” (or the company now holding the loan or credit contract). In other words, all *TILA* disclosure requirements also apply to businesses and financial institutions which buy loans from other lenders. This would also include, for example, a car dealership which provided a consumer with third-party financing for a new car purchase but failed to disclose the correct finance charge or APR.



For Your Information . . .

No-Signature Transactions

One of the newest types of transactions related to credit and debit cards are no signature (or PIN) transactions. Consumers are able to make small purchases, typically less than \$25, with no signature or PIN number required. The purpose of these types of transactions is to reduce the time for a transaction and to reduce the amount of paper. No-signature transactions are limited to a small number of retailers, such as video stores, parking lots and casual restaurants. Many fast food restaurants have been reluctant to accept credit cards because of the cost. This will change with no-signature transactions.

The downside for consumers is that we tend to spend more when we put purchases on our credit or debit cards than when we pay cash.

Credit card companies believe that the amount of fraud (unauthorized transactions) will be minimal since most credit card thieves tend to buy big-ticket items, not Big Macs or a coffee from Starbucks.


E-MONEY AND E-BANKING


More and more of us are forsaking cold hard cash, folding money, even checks that come in every color and design for electronic transactions. Making purchases with electronic transfers, using cash cards, and paying bills and banking online are incredibly convenient, fast, and increasingly secure. Consumers do need to be careful and cautious, however, because electronic money and banking have pitfalls.

Internet Banking


Internet banks are governed by the same laws and regulations that regulate brick and mortar banks. Banking on the Internet, however, does pose some risk if the consumer is not cautious about choice of Internet banks. Fraudulent web sites seek to confuse new customers by using a bank name that is similar to a legitimate financial institution. The intent is to lure the unsuspecting consumer into accepting the bogus financial institution as real and get the consumer to provide personal and financial information so the con artist can get access to the consumer's money.

Many traditional banks and credit unions also offer online banking as a service to customers. New online financial institutions have no physical offices, but offer many of the same services that traditional banks offer. The consumer who is interested in banking electronically can do several things to ensure that the financial institution is legitimate and that his or her money is safe:

 Verify the bank's insurance status. Most bank websites have an "About us" section that describes the institution. Look for a history of the bank, the names of the officials, the address of the bank's headquarters, and its insurance coverage. Federal banks must be insured by the Federal Deposit Insurance Corporation (FDIC). Look for the FDIC logo or the words "Member FDIC" or "FDIC Insured."

 You can also go online to the FDIC website to find if the bank you are interested in is FDIC insured. Go to <http://www.fdic.gov> and select "Is My Bank Insured?" You will need to enter the official name, city and state of the online bank, and then click on "Find My Institution." If the bank is FDIC insured, the date it became insured, and its insurance certificate number will be displayed.

Not all Internet banks are insured by the FDIC. Many of those that are not, are chartered overseas. Those banks that are not FDIC-insured, do not have the protections offered to customers of FDIC-insured banks, primarily, insuring the total of all accounts up to \$100,000 against bank failure.

 Make sure that your transactions are secure. Look on your bank's web site for information about security practices.

- ▶ Your transactions should be encrypted. Encryption is the process of scrambling private information to prevent unauthorized access. Some browsers will show a "key" or a "lock" symbol to indicate when your transactions are being encrypted. Be very wary of sending personal and financial information through e-mail or a web site that is not secured.

- ▶ You should have a password or a PIN (personal identification number) to access your bank account through the Internet. As with all passwords or PINs, the numbers or words should be unique to you and not easily guessed by someone else. For example, birth dates should not be used as a PIN or password since that kind of information is easily accessible. To ensure security, you should change your password or PIN periodically, and never give your password or PIN to anyone else.
- ▶ Keep the general security of your computer up-to-date. Install virus protection on your computer, download new up-dates when available, and scan for viruses on a regular basis.



Be Aware of . . .

UNIVERSAL DEFAULT

Universal default is a fine-print item that is part of many credit card contracts. The universal default clause is triggered when a credit card customer who has otherwise had a good credit rating, has a negative show up on his/her credit report (such as a late payment). One late or missed payment may trigger not only late fees for that account, but may trigger increased interest rates on other credit accounts. In essence, the universal default clause means that if you are in default on one account, you are in default with other accounts too.

The universal default clause typically appears in credit card agreements under the section titled “Other APRs” as the default rate. One credit card agreement states: “Your APRs may increase if you default under any Card Member Agreement you have with us for any of the following reasons: we do not receive at least the minimum payment due by the date and time due as shown on your billing statement for any billing cycle for which a payment is owed, you exceed your credit line on the account, you fail to make payment to another creditor when due, you make a payment to us that is not honored by your bank.”

In order for payments to be processed on time, you should mail in your monthly obligations at least a week prior to the due date so that the payment can be processed by the due date.

The Office of the Comptroller of the Currency, a federal agency that regulates banks, has labeled the practice of universal default to be “unacceptable.”



For Your Information . . .

Co-Signing a Loan

It is not unusual to be asked by a relative or friend to co-sign a loan for him or her. You need to know what you are getting into before you agree to be a co-signer on a loan, however.

Federal law requires that a lender give you a notice that explains your responsibilities as a co-signer before you sign the credit agreement. As a co-signer:

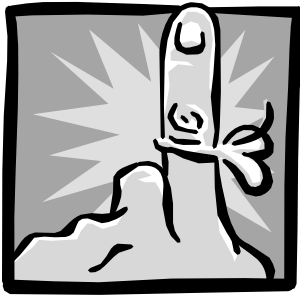
- You are guaranteeing the debt. In other words, if the borrower does not pay the loan as agreed, then you will be obligated to pay it.
- If the borrower defaults on the loan, you may be required to pay off the loan in full. You may also be responsible for paying late charges and possibly collection costs.
- If the borrower defaults on the loan, the lender may come to you for repayment without first trying to collect from the debtor. The creditor can sue you, garnish your wages, and so forth to collect on the debt. This will also become part of your credit record.

Studies have shown that about 3 out of every 4 co-signers are asked to repay some portion of the loan. So...before you co-sign a loan, even for a close relative, consider the following:

- ? Can you afford to pay off the loan?
- ? Will your liability for this loan keep you from getting a loan that you need?
- ? Do you understand the consequences of pledging any of your own property as security for the loan?

If you decide to be a co-signer you might considering doing the following:

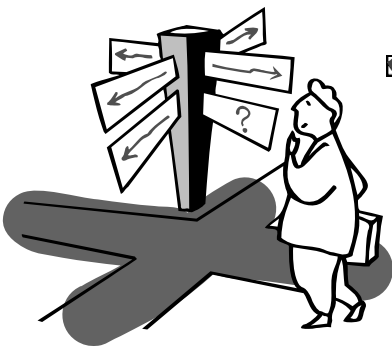
- ? Ask the lender if you can limit your liability to the amount borrowed.
- ? Ask the lender to agree in writing to notify you if the borrower misses a payment. This way you will be able to deal the problem or make payments right away.



POINTS TO REMEMBER

- ✓ Late charges can be imposed if your payment arrives after the due date.
- ✓ A co-signer is a “contingent obligor,” in other words, the cosigner is as equally obligated to repay the loan as the person taking out the loan. For more about co- signers’ obligations, see *For Your Information...Co-Signing a Loan*.
- ✓ A “balloon” payment on an installment or loan contract is a final payment that is much larger than the other payments. Be sure to look at the credit contract carefully, making special note if the final payment is not the same (or nearly the same) as the other payments. If a lender is willing to lend you money at what appears to be very low monthly payments, there may very well be a large balloon payment as the final payment. Refer to *Watch Out For...Balloon Loans* for more information.
- ✓ Be suspicious of loans requiring you to pay a fee in advance.
- ✓ Be alert and wary of any lender who:
 - ▶ Asks you to sign papers with blanks not filled in
 - ▶ Requires more than one promissory note to be signed
 - ▶ Refuses or is reluctant to give you copies of all papers signed or receipts for payments made
 - ▶ Offers loans through the mail, especially from an out-of-state company.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✓ Attempt to resolve any *TILA* problem with the creditor first. If you feel you need further assistance, contact the creditor’s primary regulator.
- ✓ Contact the Federal Deposit Insurance Corporation (FDIC) if the problem is with a FDIC-insured bank or savings-and-loan institution:

Loans and Financial Services

Federal Deposit Insurance Corporation,
Division of Compliance and Consumer Affairs
550 17th St., NW
Washington, DC 20429-9990
1-202-736-0000
E-mail: consumer@fdic.gov
Web: <http://www.fdic.gov>

- ☑ The FDIC has an office in the Boston area:

Braintree Hill Office Park
Braintree, MA 02184-8701
1-866-728-9953 (toll free)

- ☑ Contact the Comptroller of the Currency if the problem is with a federally chartered bank (one that has “national” in its name):

Comptroller of the Currency, U.S. Department of the Treasury
Consumer Assistance Group
1301 McKinney St., Suite 3450
Houston, TX 77010
1-800-613-6743 (toll free)
Fax: 1-713-336-4301
Web: <http://www.occ.treas.gov>
E-mail: customer.assistance@occ.treas.gov

- ☑ Contact the Federal Reserve System if the problem is with a state-chartered bank that is a member of the Federal Reserve System:

Federal Reserve, Division of Consumer and Community Affairs
20th and C Streets., NW, Stop 801
Washington, DC 20551
1-202-452-3693
Web: <http://www.federalreserve.gov>

- ☑ Contact the NH Bank Commissioner if the problem is with a New Hampshire bank:

NH Bank Commissioner
64B Old Suncook Rd., Concord, NH 03301
271-3561
Web: <http://www.nh.gov/banking>

- ✔ Contact the Federal Trade Commission if the problem is with a loan company or a retailer:

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

- ✔ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>



For Your Information . . .

Check 21

A federal law that went into effect in October 2004 is reducing the time that it takes for a check to be processed. For some check-writing consumers, this will cause them to bounce a few checks.

The Check Clearing for the *21st Century Act*, or Check 21, allows banks to process more checks electronically, and therefore faster. This means several things for the check-writing consumer.

1. The “float” between the times the check is written and when it is processed will be dramatically reduced. Essentially, this means that no one should write a check against his or her checking account now unless funds are in the account to cover the check. Any consumer who tries to use the “float” may find that the float no longer exists, and will be bouncing the check.
2. Because checks will be processed at a faster rate, the consumer will have a much shorter time to place a “stop payment” on a check.
3. Consumers will not get their original cancelled checks returned to them but will receive a “substitute check” which is a digital copy of the original. If for some reason, a consumer needs a copy of their original check, the bank will be able to provide this (for a fee).

EXTRA NOTE



Unordered Merchandise

You may occasionally receive free items through the mail that you have not ordered. Federal and state laws protect consumers from being billed for unordered merchandise.

Federal law requires that unordered merchandise be clearly marked by the sender as a "free sample." Charities are allowed to send greetings cards and such and ask for a donation from the consumer. Any merchandise received through the mail in this manner can be considered a gift and the consumer neither has to pay for it nor make a donation.

New Hampshire law, RSA 339:2-a, allows anyone who receives unsolicited merchandise to either refuse delivery or accept the merchandise as a gift without any legal obligation to the sender.

*Some frauds are carried out when a company purposely sends unordered merchandise to unsuspecting consumers (or businesses) then sends a bill or invoice demanding payment. This could be mail fraud which is a federal crime. For more information on this type of fraud, see **Extra Note: Office Supply Scams**.*

Be suspicious of:

- "free gifts" requiring a "tax payment" or "registration fee"; and*
- mailings that look like they are from official government agencies when they are not.*

If you find yourself being harassed to pay for unordered merchandise, contact the U.S. Postal Service's Postal Crime Hotline (1-888-877-7644) or the NH Consumer Protection and Antitrust Bureau, 33 Capital Street, Concord, NH 03301-6397 or call the Consumer Protection Hotline at 603-271-3641 or 1-888-468-4454.




Mail and Telephone Order Sales

Consumers can buy many items, even costly items, from "direct merchandise" catalogs, placing the order over the telephone or through the mail. Ordering merchandise through the mail or over the telephone is not only convenient but may give you access to specialty items not available through local retailers. Although the risks to the consumer when dealing with large, well-established catalog retailers are fairly small, the risks can become quite large when dealing with unscrupulous or financially troubled retailers. The Federal Trade Commission (FTC) *Mail Order Merchandise Rule* (16 C.F.R. part 435), the New Hampshire *Retail Sales Act* (RSA 361-B) and the New Hampshire *Consumer Protection Act* (RSA 358-A) give consumers legal protection when ordering over the telephone or through the mail.

THE LAW

FTC Mail Order Merchandise Rule

The Federal Trade Commission (FTC) has established a rule that protects consumers when we buy by mail or telephone.

-  If a catalog or advertisement states that the goods will be sent within a certain period of time, then the business must send the goods within the stated time. If no date or time is mentioned, the item must be shipped within 30 days.
-  If the item cannot be shipped within the time stated in the catalog or advertisement, the consumer must be notified and given the opportunity to choose whether or not to cancel the transaction. A toll-free telephone number or postage-paid postcard must be provided to the consumer for this purpose.
-  If there is going to be a shipping delay, the consumer may either cancel the order or agree to a new shipping date. If the order is canceled, the consumer must receive a refund within seven (7) business days. If the consumer does not reply to the company's notification of a shipping delay, and the delay will be less than 30 days, the company may assume that the consumer has agreed to the new shipping date.

NOTE: These rules do not apply to magazine subscriptions, photo finishing services, plants and seeds, and C.O.D. orders.

Mail and Telephone Sales

A company may send substitute goods to you, but you are under no obligation to accept them. You have the right to refuse to accept the substituted goods and to send them back to the company and ask for a refund. If you keep the substituted goods, and the company does not offer them at a reduced price, you must pay the normal price.

Retail Sales Act

When a seller solicits a consumer's mail order purchase during a door-to-door sales program, the consumer has the right to cancel the transaction within three business days. The contract for the sale of the goods or services involved must clearly state this right. In addition, the name and address of the seller must be spelled out. This topic is covered under *Door-To-Door & Home Solicitation Sales*.

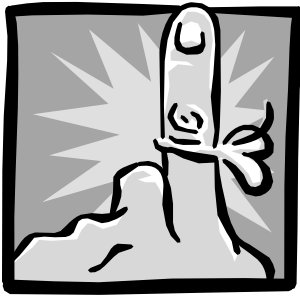
A consumer may also be entitled to receive the notices required by *RSA 361-B* if the seller contacts the consumer by telephone to sell goods or services to the consumer. In this situation, the consumer may be entitled to cancel the transaction within three business days of the sale just as if the sale were consummated in a face-to-face transaction at the consumer's home. More information about this situation can be found in *Door-To-Door & Home Solicitation Sales*.

Consumer Protection Act

Sellers could also violate New Hampshire's *Consumer Protection Act (CPA)* if, in the course of a telephone solicitation, they commit acts that a court might find unfair or deceptive. For example, a seller could violate the *CPA* by making material misrepresentations about the substance, quality or characteristics of the goods or services being sold over the telephone or through the mail. Similarly, a seller who claims that the person called has won a prize but is actually selling a product or service, may also be in violation of the *CPA* and/or New Hampshire's *Prizes and Gifts Act*. For more information, refer to *Prizes and Sweepstakes*.

Enforcing New Hampshire's *Consumer Protection Act* against an out-of-state seller can be troublesome. A company not interested in its long-term reputation with its New Hampshire customers may not voluntarily settle complaints. Furthermore, customers who have to sue to enforce their rights under the *Consumer Protection Act* may have difficulty enforcing the order or judgment against an out-of-state defendant.

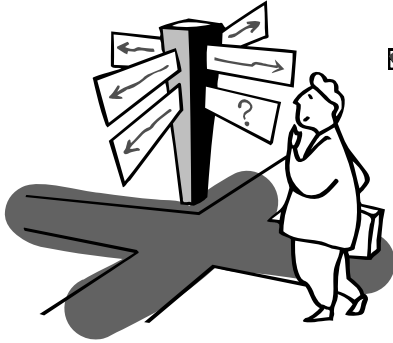
EXAMPLE: Corntact Inc. advertises "GENUINE IBM Greased Lightning Computers, \$500" in its fall catalog. The Greased Lightning is a popular computer that normally sells for \$1000. John Consumer buys one of these computers from the catalog and finds out that "IBM" means Intertech Buyers' Market, not International Business Machines, and the computer does not have the features nor characteristics of the IBM machine of the same name. It is likely that Corntact Inc. has violated the Consumer Protection Act.



POINTS TO REMEMBER

- ✔ Comparison shop. Catalogs and other mail and telephone order retailers may, in some cases, charge more for what they sell than a local retailer. Compare prices at local retailers as well as among mail order companies.
- ✔ Read the description of what you are planning to order carefully. Beware of exorbitant or unreasonable claims. While reputable companies describe their merchandise as accurately as possible, pictures may be somewhat misleading. If you are ordering by telephone, you may be able to get additional information at that time.
- ✔ Read the warranty information carefully. If you are dissatisfied with your purchase, will you get a cash or credit card refund, or a merchandise credit? Are shipping and handling charges also refunded? Who pays for shipping returned items?
- ✔ If the catalog or advertisement states that the merchandise will be sent within a certain period of time, then that is when the goods must be sent. If no date or time is mentioned, the item must be shipped within 30 days. If there is going to be a shipping delay, you are entitled to a notification and an opportunity to either cancel your order or agree to a new shipping date. If you cancel, you must receive any refund owed to you within seven (7) business days.
- ✔ A company may send substitute goods, but you are under no obligation to accept them. You have every right to send the substituted goods back to the company and ask for a refund.
- ☒ The above rules do not apply to magazine subscriptions, photo-finishing services, plants and seeds, and C.O.D. orders (although unfair or deceptive sales practices in most cases may still be covered by the *CPA*).
- ☒ **NEVER SEND CASH.** Always pay by check, credit card or money order.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✔ For mail order delays and unordered merchandise problems, contact the Federal Trade Commission:

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

- ✔ Many direct marketers are members of the Direct Marketing Association (DMA) which promotes ethical business practices among its members. For problems with a mail order company contact the DMA's Mail Order Action Line:

Mail Preference Service, Direct Marketing Association
P.O. Box 9008
Farmingdale, NY 11735-9008
Web: <http://www.the-dma.org>
E-mail: consumer@the-dma.org

Mobile Home Parks

Mobile homes can be substantially less expensive than traditional houses because they are constructed in a factory rather than built on-site. A mobile home, also referred to as "manufactured housing," may not be very "mobile" once it is installed on a site. A mobile home owner can be in the odd position of owning his or her home but renting the land upon which it sits if the home is located in a mobile home, or manufactured housing, park. Manufactured housing parks straddle a complex intersection of statute, common law, zoning laws, and economics. Legal questions involving manufactured housing parks can be complicated because of competing, and seemingly irreconcilable, legal doctrines. The purpose of this section is to outline the New Hampshire statute that regulates manufactured housing parks.

THE LAW

RSA 205-A defines a manufactured housing park as any parcel of land under common ownership or control that contains, or is designed to contain, two or more manufactured housing units such as mobile homes. Owners and operators of manufactured housing parks are prohibited from:

- ☒ Requiring more than three months' rent as an entry fee, or charging any fee unless services are rendered
- ☒ Limiting whom current residents can sell their manufactured housing to, other than requiring new owners to meet park rules
- ☒ Discriminating against prospective buyers of manufactured housing on the basis of age or family status
- ☒ Requiring tenants to purchase goods or services from a particular person or business, such as requiring residents to purchase skirting and tie downs from a particular person or business
- ☒ Preventing a person or business from selling or supplying goods or services to park residents
- ☒ Requiring that prospective residents purchase their housing from a particular person, except when the park is newly constructed
- ☒ Charging residents for the maintenance and repair of underground systems, such as fuel tanks.

Mobile Home Parks

In addition, owners and operators of manufactured housing parks must:

- Disclose, in writing, all the terms and conditions of tenancy
- Provide a written copy of the park rules and residents' rights to each tenant
- Be available to residents
- NOT require tenants to get permission for overnight guests
- NOT impose rental surcharges for children or pets.

The law also outlines the legally allowable reasons for eviction from a mobile home park. Park residents have specified periods of time available to them to "correct" the reason for the eviction. Before a tenant can be legally evicted from a manufactured housing park, the resident must be notified that she or he has:

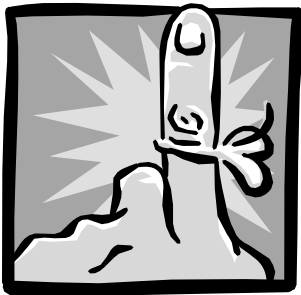
- 30 days to pay any rent owed
- 60 days to comply with any local, state or federal law that has been violated
- 60 days to repair any damages to the leased property
- 60 days notice for repeated "breaches of the peace"
- 60 days to comply with park rules
- 18 months to vacate due to a condemnation or a change in the use of the park's land.

Park owners are required to fully disclose to a prospective tenant in writing all rent, and utility and service charges before the tenant signs the lease agreement. Once the lease agreement is signed, rents and fees cannot be increased without a minimum of 60 days written notice to the tenant.

The New Hampshire Board of Manufactured Housing (the Board) can also be a significant source of protection for manufactured housing park tenants. The Board provides a low-cost and efficient alternative to the courts for a wide range of tenant grievances. The Board is an administrative panel made up of housing park tenants, owners, two members of the NH House of Representatives, and a consumer representative, empowered to "hear and determine" disputes between park tenants and management concerning illegal or unreasonable park rules. The Board conducts informal evidentiary hearings and makes decisions, which are reviewed by the Superior Court, and can be adopted as enforceable court orders. The Board's jurisdiction extends to all of the prohibited practices listed in *RSA 205-A: 2, 7 and 8*. The Board does not, however, have authority to hear matters directly involving rent increases or evictions, nor can it rule on

health and safety issues. These matters must be dealt with in district court. Information about the Board, its rules, as well as complaint forms, can be found at the Board's website at <http://www.state.nh.us/nhmhb/index.html>.

New Hampshire's *Landlord-Tenant Law (RSA 540)* also generally applies to mobile home parks (for more information on this statute, refer to ***Renting, Security Deposits and Evictions***). Park residents have the right to enforce their rights to live in a safe and healthy environment in accordance with state and local health codes. Furthermore, mobile home park residents have special rights and protections if the park is sold.



POINTS TO REMEMBER

- You have the right to buy your mobile home from any dealer or private party.
- You may not be charged more than 3 months' rent as an entry fee into a manufactured housing (mobile home) park.
- Your written rental agreement must include all the terms of the tenancy including the obligations of both the tenant and the owner.
- You must be given a copy of the park rules and residents' rights.
- A park owner may not charge for overnight guests.
- A park owner may not charge extra for children and/or pets.
- A park owner may not charge tenants extra for the upkeep and repair of park systems, such as fuel tanks, sewers, and such.
- A park owner must give tenants 60 days' notice of any rent increase and an explanation for the increase.
- A park owner must comply with all building, housing, zoning and health codes.

WHERE TO GO IF YOU HAVE A PROBLEM



- Contact the NH Consumer Protection and Antitrust Bureau if you have a problem with a mobile home or other manufactured housing park:

Mobile Home Parks

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✎ You may also find the Manufactured Home Owners and Tenants Association (MOTA) to be a valuable resource:

MOTA
P.O. Box 998
Concord, NH 03302-0998
603-224-0408
Web: <http://www.mota-NH.org>

- ✎ The Board of Manufactured Housing will accept complaints involving manufactured housing park rules, excluding rent and eviction issues:

Board of Manufactured Housing
117 Pleasant St., Dolloff Bldg., Room 418
Concord, NH 03301
603-271-1468
Web: <http://www.state.nh.us/nhmhb/index.html>



Prizes and Sweepstakes

"**Y**ou have won a free trip to the Caribbean!" And, when the snow is deep on the ground and the wind-chill factor is minus 20 degrees, we could all believe that this is a gift from above. Unfortunately, the old saying "There's no such thing as a free lunch" usually applies to prizes and sweepstakes gimmicks. Announcements of prizes and contests may disguise the real purpose of the notice – to sell you products or services. Offers, cleverly disguised to look like a real prize announcement, can come through the mail or over the telephone usually from sellers located in a state other than New Hampshire. Several laws help protect consumers from fraudulent acts.

THE LAW

The New Hampshire *Prizes and Gifts Act (RSA 358-O)*, the federal *Telephone Consumer Protection Act*, the federal *Fair Credit Billing Act*, and other laws all protect consumers from unscrupulous prize promotion schemes.




The *Prizes and Gifts Act* requires that any business that implies that you have won anything of value, or have won a contest, must:

-  Give you the prize without obligating you to purchase anything
-  Deliver the prize, at no expense to you except for reasonable shipping and handling costs that have been clearly disclosed, within ten days of announcing your winning

The language used in the "prize" announcement is not limited to "You have won," "Congratulations," or "You are the winner of." Any language that would lead a reasonable person to believe he or she has been specially selected would constitute a declaration that the consumer has indeed won something. Phrases such as "Carefully selected," "You have been selected to receive," or "You have been chosen" all imply "winning." This type of language should lead you to a careful evaluation of the conditions of the sweepstakes before committing your time and money to fulfill the conditions of winning a prize.

Certain information must be included in any notice that you have won something of value. If a promoter solicits you over the telephone, the following disclosures must be made to you prior to asking you to enter any "contest." The notice must disclose:




Prizes and Sweepstakes

-  The name of the contest's promoter
-  Any conditions that you have to fulfill to receive the prize
-  The prize's retail value, the actual number of each prize being awarded, and the odds of receiving each prize in a section clearly titled as "Consumer Disclosure."

Your "winning notice" or the promotion information must clearly disclose any fees (such as shipping and handling charges, or charges for a 900-number call to find out about your prize) associated with claiming your prize. Any attempt to collect a fee that has not been disclosed may violate the *Prizes and Gifts Act*. Any fees for shipping or handling charged to you must be "reasonable" according to the *Prizes and Gifts Act*.

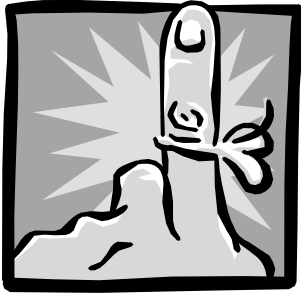
One gimmick used by promoters is to issue a "check" to the consumer that, when cashed, enrolls the consumer in some service. A failure to clearly disclose the true value and purpose of the check may also violate the *Prizes and Gifts Act*. Another ruse is to issue the consumer an invoice demanding payment for goods or services that were never ordered. This "game" is more often played with businesses or non-profits than individual consumers (for more information refer to ***Watch Out For. . . Office Supply Scams***). A third ploy is to send the consumer documents that look like court or legal papers, or that appear to be from a governmental entity. All these practices violate the statute.

If you receive a sweepstakes or prize solicitation by phone, the promoter must comply with specific Federal Trade Commission regulations under the *Telephone Consumer Protection Act of 1991*. A telemarketer must give you:

-  His or her name
-  The name of the company for which the telemarketer works
-  The company's telephone number or address.

Telemarketing calls can only be made between 8:00 a.m. and 9:00 p.m. (your local time). Any calls outside these hours are illegal. If you are involved in a transaction that involves a company that violates this Act, a court may award you the greater of \$500 or your actual monetary loss. For more information on telemarketing, refer to the section on ***Telemarketing***.

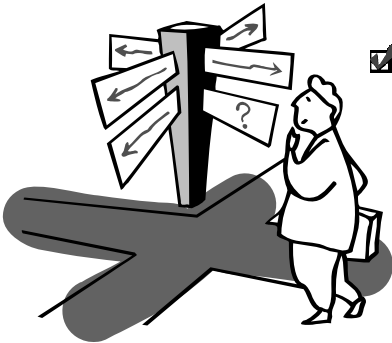
If you charged any fees on your credit card related to receiving your prize, and you do not receive the goods, or the goods you receive are different from what you were told, you have some protection under the federal *Fair Credit Billing Act*. For information on how to proceed, refer to the section in ***Credit Cards, Dealing with Errors***.



POINTS TO REMEMBER

- ☑ Always read the rules when getting involved with a prize or contest promotion. The contest rules should clearly state the following:
 - ▶ The entry procedures
 - ▶ The eligibility requirements
 - ▶ The number, retail value, and complete description of all prizes
 - ▶ The odds of winning
 - ▶ The method of selecting winners
 - ▶ The geographic area covered and where the offer is void.
- ☑ Remember, rarely do we get something for nothing. Be skeptical of grandiose promises. You should not allow yourself to be lured into entering a sweepstakes or contest if it means buying something you would not normally buy.
- ☑ Be suspicious of a sweepstakes requiring an entry fee or purchase.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ Contact the NH Consumer Protection and Antitrust Bureau if you receive a prize or contest promotion that you believe might be in violation of the NH statute:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>
- ☑ Contact the Federal Trade Commission if a telemarketer has violated the federal law:

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

EXTRA NOTE



Student Loans

Having trouble with your student loans? The U.S. Department of Education's web site has information that can help you with repayment: <http://www.ed.gov>

Different agencies deal with different types of student loans in default:

- Federal Family Education Loans (FFEL), including some Stafford and PLUS loans, are turned over to a New Hampshire state agency for collection.*
- For direct loans under the William D. Ford Direct Loan Program, which can also include some PLUS and Stafford loans, the collection agency is the U.S. Department of Education's Debt Collection Service.*
- Federal Perkins Loans in default are either collected by the school or assigned to the U.S. Department of Education for collection.*

If you are not sure which type of loan you have, check your promissory note (the loan contract). If you have been receiving collection notices, the name of the collection agency should be provided on the notice. Or you can call the Federal Student Aid Information Center at 1-800-433-3243. If your loan is a William D. Ford Federal Direct Student Loan, contact the Direct Loan Servicing Center for information.

- One thing to remember is that, as of October 1998, some types of student loans cannot be discharged or forgiven through bankruptcy.*

Remedies: Effective Negotiation

Everyone purchases a defective product or is dissatisfied with a business's service at some time. While we all complain about it to our friends and relatives, in reality, few of us actually complain to the retailer or manufacturer. Sometimes, people who do complain may not express their concerns in the most effective way possible to the retailer or manufacturer. This section provides some tips on helping you state your case to the business's representative in order to maximize the likelihood that the problem will be satisfactorily resolved. Resolving consumer problems is not always simple, but can be very rewarding both for the consumer and for the business. Consumers tend to frequent businesses they know will pay attention to their occasional problems.

To Begin

Before approaching the business, take a few minutes to collect information you may need and to decide on what resolution would satisfy you.

- ✔ First, gather all the relevant information about the product or service, such as sales receipts, credit card slips, canceled checks, and warranty documents. Also, it is helpful to know the date of purchase and the product's model number.
- ✔ If the product has a warranty, read the warranty card or pamphlet to see if the problem is covered. If it is, the steps you need to take are usually outlined in the pamphlet.
- ✔ Decide what you want to have done about the problem. Should the product be repaired or replaced? Should the seller make a refund? If the problem is with a service, should the work be redone? The business may offer a solution you had not thought of, so it is important to stay flexible.
- ✔ Recall the name of the salesperson who sold you the item, or who performed the service. Did this person say anything about the product or service that would be helpful now in fixing the problem?

Negotiating







When something goes wrong with a product or service you purchased, it is natural to feel upset or even betrayed if the salesperson made promises about the product's or service's performance. The best way to negotiate a good resolution to a problem, however, is to

Remedies: Effective Negotiation




proceed with self-assured good manners rather than anger. A good attitude and pleasant manner will probably get you better, faster results than irritation and belligerence.

Call the business where you purchased the product or service. Find out who is authorized to deal with customer problems. Many large retailers have customer service departments, which is a good place to start. If the business does not have a customer service department, find out the name of the person who has authority to help customers with their problems and write it down so you won't forget it. You will want to speak directly with this person either over the phone or in-person at the store.

Whether negotiating in person or over the telephone, here are a few tips to keep in mind.

-  Introduce yourself pleasantly to the person helping you with your problem.
-  Keep the tone of your voice pleasant. You may be upset or angry about the problem but it probably is not the fault of the person with whom you are speaking.
-  Keep a positive attitude in your mind as well as in your voice. Be optimistic about the ability of this person to assist you in resolving your problem. Courtesy goes a long way, too. You want business people to be polite to you, and they should be shown the same courtesy.
-  State your problem and what you want done concisely. A simple, clear statement of the problem and your proposed remedy is an effective approach.
-  The person who is assisting you may be authorized to offer you certain options. If these are consistent with what you wanted, then your problem has been successfully resolved. If the solution offered is not what you had in mind, you should consider it as an alternative. If you do not wish to accept that offer, you may want to take your complaint to a higher level of authority.
-  If this person cannot help you, find out who can and write the person's name down and find out how to contact him or her. Repeat these steps with that person.

If you find the business's representative is unable to help you resolve your problem, you can try another approach. This one is called "problem solving."

-  Identify the problem in terms of needs not solutions.
-  Ask the person assisting you to suggest some possible solutions. Work together to brainstorm some solutions that you had not thought of.
-  Select one of the solutions that fits both your needs and the business's.

When a solution to the problem has been agreed upon, both you and the person assisting you need to be sure that you are clear on what that solution is. Repeat the agreed upon solution to the person exactly as you understand it, including dates by which work is to be completed and who is responsible for what costs.

If the plan is complex or involves more than one person to implement, it is a good idea to write out the agreement. Be sure that you write down the name of the person assisting you so that if the proposed solution is not carried out as planned, you can refer to the same person.

Sometimes, the person you are dealing with may attempt to sidetrack you in your quest to have a problem resolved. A technique referred to as "broken record" can come in handy.

This is not an appropriate tool when negotiating a settlement; you do not want to ignore a seller's good faith argument or settlement. However, when you find roadblocks being thrown up, this technique might be useful. You simply refuse to be sidetracked by repeating your concern, problem, or solution until the person gives up on the sidetracking. Robert Bolton, in his book *People Skills*, presents some steps to help you use the broken record response:

EXAMPLE: Molly Tyme needs to have her old watch repaired. She goes to her local jewelry store where she knows she can get the work done. Molly talks to Sid Sails, the salesperson.
Molly: My old 17-jewel watch needs to be cleaned and repaired.
Sid: Our repair person has been out sick and has a tremendous backlog.
Molly: That's OK, I don't mind the wait. I want my watch cleaned and repaired.
Sid: It's an old watch. He may not be able to repair it.
Molly: I still want to try to get it repaired.
Sid: There's a \$5 appraisal fee.
Molly: Fine, here's \$5. I want my watch repaired.
Sid: You may never come to pick the watch up. Look at all those little bags on the shelf - those are watches that have never been picked up.
Molly: I want my watch cleaned and repaired and I will pick it up.
Sid: Ok here's your receipt. We'll call you when your watch is ready.
Molly: Thank you.

- ✔ Select a simple one-sentence statement and use that statement, no matter what the other person says or does.
- ✔ Repeat your one-sentence statement after each statement made by the other person. Don't respond to any other issues raised by the other person, or, if you do, respond only briefly.
- ✔ Maintain a calm, pleasant voice during the exchange.
- ✔ Remember, silence is golden! By repeating only your one-sentence statement, the other person will eventually realize any further talking on his or her part is futile.

Remedies: Effective Negotiation

If you have attempted to negotiate in person or over the phone, and have not achieved a reasonable result, you may want to write a letter of complaint. Refer to ***Remedies: Writing a Complaint Letter***.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ If you have tried everything on your own and have not reached a reasonable solution, contact the NH Consumer Protection and Antitrust Bureau. They offer a mediation service to help consumers and businesses resolve disputes:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street

Concord, NH 03301-6397

603-271-3641 or 1-888-468-4454

Web: <http://www.doj.nh.gov/consumer/index.html>

- ✔ The Better Business Bureau also mediates disputes between consumers and businesses.

Better Business Bureau

25 Hall Street, Suite 102

Concord, NH 03301

603-224-1991, 603-228-3789, or 603-228-3844

Web: <http://www.concord.bbb.org>

Remedies: Small Claims Court

Legal disputes can be very frustrating for consumers. The cost of hiring a lawyer is often greater than the amount in dispute, making a lawsuit unreasonable from a monetary standpoint. What, then, are consumers to do when they feel they have been wronged? The small claims court is one place that minor legal disputes can often be resolved with relatively little time and expense. In New Hampshire, small claims court is not a separate court. Rather, it is a procedure available in district courts throughout the state and is sometimes referred to as a small claims session.

THE LAW

What Is a Small Claim?

A small claim in New Hampshire is any claim that an individual may have against any person or business in which the debt or damages do not exceed \$5000. Interest due on the debt and court costs are not included within the \$5000 limit. The small claims court has neither the authority to resolve a dispute involving title to real estate nor "equitable power," i.e., the authority to order a person to do or not do certain acts.

The Small Claims Procedure

The small claims procedure In New Hampshire is regulated by *RSA 503*. It is a simple, speedy, and informal method by which an individual appears before a judge of the district or municipal court, presents his or her claim, and explains why another person or business owes money to him or her. small claims court can award up to \$5000 in damages (larger claims can be heard, but the maximum that can be awarded is \$5000).

EXAMPLE: Lois Dandy lost a \$6000 deposit on a house when her financing did not come through in a timely manner. Lois may decide to take the seller to small claims court to get her deposit back -- even though the maximum she could be awarded would be \$5000 -- because it is easier and less expensive to do so than to hire a lawyer and sue in superior court.

Although not required in small claims court, any persons or businesses involved in the proceedings may be represented by a lawyer if they wish. Another aspect of a small claims proceeding is that a judge may ask to hear any evidence deemed relevant and proper since the technical rules of evidence do not apply in a small claims proceeding.

Remedies: Small Claims Court

If the small claim exceeds \$1500, the person or business being sued has a right to a jury trial. The defendant must file a written request for a jury trial within five business days of the filing of the small claim, unless the municipal or district court grants more time where the defendant has shown good cause. The small claim will then be transferred to the superior court for resolution.

How to File a Claim

The procedure is straightforward. A claim may be filed either in the district court where the plaintiff lives, where the defendant lives, or where the legal wrong arose. The small claim is filed with the district or municipal court clerk. District courts are usually open Monday through Friday from 8:00 a.m. to 4:30 p.m., but you may want to call the court to find out the hours before making the trip. You must file a statement about your claim called a "complaint" which includes the amount in dispute and the defendant's name and address. An application fee must accompany the claim. The clerk will mail a notice of the claim to the defendant directing the defendant to respond to the complaint within thirty days and to request a hearing if desired. The hearing is scheduled at least fourteen days after the defendant responds to the complaint. You, as the complaining party, must make certain that before you appear in court there is a return receipt showing that the defendant received the notice at least fourteen (14) days before the hearing.

Even after a complaint has been filed, you and the defendant may still try to settle the dispute yourselves. As a courtesy to the court, you should always advise the clerk's office whenever a settlement is reached. If you reach a settlement, you will need to find out if the clerk's office requires any additional documents be filed to close the case.

The Hearing

On the day of the hearing, the parties appear in the court and tell their stories to the judge. Both you and the defendant must be sure to give the judge all documents and correspondence relating to the dispute (such as copies of warranties, receipts, leases, written correspondence, etc.). Also, any other persons who are witnesses (those who know about the transaction prompting the dispute) should be available in court. Based on the statements of the witnesses and other evidence, the judge will enter a judgment for one of the parties. (The "Judge Judy" television show is a very good example of how most courts handle small claims cases.)

If a defendant who has received proper notice does not appear in court, the plaintiff is usually entitled to a judgment in his or her favor. Also, a defendant with a claim against the plaintiff arising from the disputed transaction may raise that claim in court. The judge will award court costs when the plaintiff wins. On the other hand, the court will not necessarily award costs to a prevailing defendant. Furthermore, the judge's decision is final and no appeal from that decision is permitted unless an objection is raised about








the interpretation of the law. Such an objection is appealed directly to the state Supreme Court.

Enforcing a Judgment

Once a judge makes a decision in the plaintiff's favor, the defendant may pay immediately. However, if the defendant does not have the ability to settle the claim immediately, the judge can order payment in installments.

If the defendant refuses to pay or engages in delaying tactics, you should ask either the county sheriff or a member of the sheriff's office about the enforcement of court judgments. One way to enforce payment is to ask the court to "attach" property belonging to the defendant. An attachment is a court order which permits the sheriff to sell the defendant's property to satisfy a judgment. Procedures for obtaining an attachment vary from county to county, so you may find it helpful to consult a lawyer.


Whether or not payment is ever actually collected, most people who have sued in Small Claims Court are satisfied. Having aired their grievances in court makes most people feel as though they have done their best, whether they win or lose legally.

-  In New Hampshire, disputes of less than \$5000 and not involving real estate may be resolved in small claims court.
-  You file a small claim in district or municipal court with the court clerk.
-  If there are multiple persons involved, there may be additional filing charges.
-  Before going to court you should attempt to collect what is owed to you on your own. Sending a written notice to your adversary may be enough to force settlement. Showing the judge that you gave the defendant a reasonable chance to resolve the problem may even help your case.
-  Before you get into court, be sure you have all your facts straight. Organize all documents relating to your case (written warranties, canceled checks, receipts, leases, copies of your written requests for payment, etc.).
-  If you have witnesses, tell them about the hearing date far enough in advance so that they can arrange to attend the hearing. Although witnesses are not necessary, having them may strengthen your case. One or two witnesses will likely be adequate to support your case. Be sure your witnesses know all the ramifications of the suit and that they are prepared so their testimony will be brief but complete.
-  Take time to think about how you will present your case. Write down the order in which you plan to state the facts. Planning before helps to prevent rambling later.

Remedies: Small Claims Court

Organization and brevity are important, but you will want to tell the judge the complete story. Details that you feel may be unimportant may help the judge to decide the case. Tell the whole story.

 Finally, if you feel the need, see a lawyer before going to court to help straighten out the facts.

 Bringing a suit in small claims court has both advantages and disadvantages for the consumer:

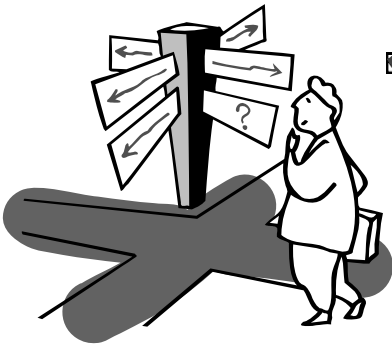
Advantages:

- ✔ In New Hampshire, lawyers are not required in small claims court, and formal rules of evidence are not followed. Consumers are encouraged to prepare and present their own cases, which minimizes the overall costs.
- ✔ The simplicity of small claims court is an advantage. Complicated legal forms and language are kept to a minimum. As mentioned earlier, to get your case started, you only have to fill out a few lines on a simple form explaining your problem and identifying the parties involved.
- ✔ The most important advantage is that legal decisions are made quickly. Most disputes are heard within a month or two from the time the complaint is filed. The judge will make his or her decision on the basis of what is presented in the courtroom and normally will deliver a decision within a few days.

Disadvantages:

- ✔ Small claims courts operate only during normal business hours. Consequently, people may have to take time off from work to attend court hearings.
- ✔ Some people may feel uncomfortable standing up in court and telling their stories to a judge. Small claims court should not frighten a person with no previous legal knowledge. It was designed to help you, not hurt you. The judge will not expect you to know legal jargon. She or he has been trained to speak in plain English and to ask questions to get the whole story.
- ✔ Winning your case does not always guarantee payment. If the defendant does not pay you immediately or does not pay in installments as ordered by the judge, the court can issue an order called an "execution of judgment" that will allow the local sheriff to attempt to collect the judgment for you, for a small fee. The court allows sheriffs and marshals the right to attach property or cash as collection and will do so if necessary.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ A number of good books are available at your local library or bookstore on small claims courts and how to prepare your case. These books are "how-to" books and will explain, in general terms, what you need to do to file a claim and prepare for court.
- ✔ To file a small claim, contact the municipal or district court clerk nearest where you live.
- ✔ If your problem is worth more than \$5000, you may want to discuss with an attorney whether it would be easier to simply file a small claims suit for the \$5000 maximum rather than going to "real" court.
- ✔ If you have a problem with filing a small claim, contact the clerk of court where you filed the claim.

EXTRA NOTE



Business and Franchise Opportunities

Not every business or franchising opportunity is a multi-level marketing scheme. Many are legitimate opportunities for people with the entrepreneurial spirit to own their own businesses. The Federal Trade Commission requires those who are selling franchises and other business opportunities to provide certain information to the potential buyers.

At least ten business days before a potential buyer signs any contracts or pays any money, the franchise seller must provide a detailed disclosure document outlining 20 important items of information about the business. This disclosure document gives the potential buyer information about the business and can be helpful in comparing business opportunities. The information must include:

- ✔ *The names, addresses, and telephone number of other purchasers*
- ✔ *A fully-audited financial statement of the seller*
- ✔ *The background and experience of the business's key executives*

- ☑ *The cost required to start and maintain the business*
- ☑ *The responsibilities the buyer and the seller will have to each other once the buyer buys*

The Federal Trade Commission recommends that the following steps should be taken by anyone considering buying a franchised business:

- ☞ *Study the disclosure document and proposed contracts carefully, because they alert you to terms that are not to your benefit.*
- ☞ *Talk to current owners. The disclosure document must list names and addresses of people who currently own and operate the franchise or business opportunity. Call several of the people listed as they are likely to be good sources of information. Ask if the information in the disclosure document matches their experiences with the company.*
- ☞ *Investigate earnings claims, since those in the disclosure document are only estimates. The seller must tell you in writing the number and percentage of other owners who have done as well as they claim you will do. Remember, once you own the business you will be competing with other franchise owners and independent business people with more experience.*
- ☞ *Shop around and compare franchise opportunities. The Franchise Opportunities Handbook, published annually by the U.S. Department of Commerce, describes more than 1400 companies offering franchises. Get disclosure documents from several companies to compare offerings. (To obtain a copy of the Handbook, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 at 1-202-783-3238, or e-mail at orders@gpo.gov or on the Web at <http://www.access.gpo.gov>.)*
- ☞ *Listen carefully to the sales presentation. Tactics such as pressuring you to sign immediately should signal caution. Remember, you must have the disclosure document for ten business days before signing any legal documents or paying any money.*
- ☞ *Get the seller's promises in writing. If a seller balks at putting verbal promises into the contract, you should take this as a warning signal.*
- ☞ *Consider getting professional advice. You may want to consult with a lawyer, accountant or business advisor to help you find the best deal. A little money spent on professional assistance could prevent a major loss due to a bad investment.*

Distributorship opportunities for products sold in vending machines, racks or display cases are specifically regulated under New Hampshire law, RSA 358-E.

Remedies: Writing a Complaint Letter





Handling your own complaints can be a very easy process. If you are dissatisfied with a product or service, a fast and efficient way to get your complaint resolved is to express this dissatisfaction to the retailer or the manufacturer. Refer to the section on ***Remedies: Effective Negotiation*** to help you with that method. You may also need to write a letter explaining the problems to the company. The following are suggestions on how to write an effective letter of complaint.

Before You Begin



Check to see if the company has a toll-free 800, 888 or 877 number for its customer service department. Look on the package labeling, in the toll-free number directory (available at your local library) or call the toll-free number directory assistance (1-800-555-1212). If there is a customer service toll-free number, follow the suggestions in ***Remedies: Effective Negotiation*** when talking with the service representative.

Sometimes a letter of complaint is the best route to achieve your goal. Check the product label or warranty for the name and address of the manufacturer. Also, your local library might have reference manuals listing corporate addresses and officers, such as *Standard & Poor's Register of Corporations, Directors and Executives*, which lists 37,000 American business firms. If you have the brand name but not the manufacturer, your local library may have the *Thomas Register of American Manufacturers*, which lists product lines and their manufacturers. The *Thomas Register* can also be accessed online at <http://www.thomasregister.com> (you will be asked to complete a free registration to search). You should direct your letter either to the customer service department or to the company's president.

A complaint letter is important because it:








-  Puts your complaint on record with the company
-  Helps preserve any legal rights you may have in the situation
-  Ensures that the company knows your side of the story
-  Helps to get government agencies involved in your case, if it becomes necessary, and can alert the agencies to any questionable business practices that the company may have

Remedies: Writing a Complaint Letter

-  Can lay the foundation for any future legal case and help you in drafting later letters, if you need to write more than one
-  Lets the company know you are serious about pursuing your complaint (some businesses may ignore your complaint unless they see something in writing).

What to Say

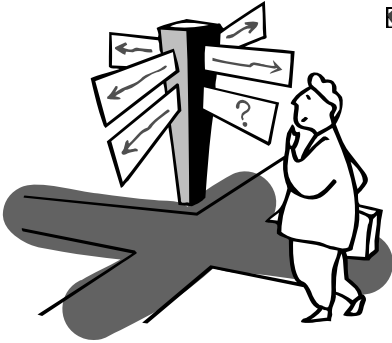
There are some important points to cover in writing your letter:

-  Include your name, address and phone numbers at home and work.
-  If it is not possible to type your letter, be sure your handwriting is easy to read.
-  Make your letter brief and to the point. The letter should contain all the important facts about your purchase. First describe your purchase including any information you can give about the product or service such as serial or model numbers or specific type of service. Be sure to include the date you made your purchase and the location of the store, if appropriate.
-  State what you feel should be done about the problem and how long you are willing to wait to get the problem resolved. Make sure that you are reasonable in requesting a specific action.
-  Include copies of any documents regarding your problem, such as receipts, warranties, repair orders, contracts and so forth.
-  Be reasonable, not angry or threatening, in your letter. Remember, the person reading your letter may not be directly responsible for your problem, and can possibly help resolve it.
-  Finally, keep copies of your complaint letter and all related documents for your own records and you may want to send a copy of the letter to the Consumer Protection and Antitrust Bureau, 33 Capitol Street, Concord, NH 03301.

A sample letter appears on the last page of this chapter.

If you are unsuccessful in getting your complaint resolved directly with the company and must contact other sources for assistance, refer to your letter. Remember that if you have to contact other sources such as the New Hampshire Consumer Protection and Antitrust Bureau, the Better Business Bureau, or a trade association, be sure to give information about what you have done thus far to get your complaint resolved.

WHERE TO GO IF YOU HAVE A PROBLEM



- ✓ The NH Consumer Protection and Antitrust Bureau has a mediation program and is willing to assist consumers with their disputes with businesses:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street

Concord, NH 03301-6397

603-271-3641 or 1-888-468-4454

Web: <http://www.doj.nh.gov/consumer/index.html>

- ✓ The Better Business Bureau offers help with filing a complaint through its website. Or you can contact the local office. You can file a complaint with the BBB regarding a business, a charity, or about a new scam:

Better Business Bureau

25 Hall Street, Suite 102

Concord, NH 03301

603-224-1991 or 228-3789 or 228-3844

Web: <http://www.concord.bbb.org>

Click on "file a complaint"

SAMPLE COMPLAINT LETTER

(Your Street Address)
(Your City, State, ZIP code)
(Date)

(Name of Contact Person, or Consumer Complaint Division [if no contact person])
(Title of contact person, if known)
(Company Name)
(Street Address)
(City, State, ZIP Code)

Dear / To Whom It May Concern:

RE: (account number, if applicable)

On (date), I (bought, leased, rented, or had repaired) a (name of the product with serial or model number or service performed) at (location, date and other important details of the transaction).

Unfortunately, your (product or service) has not performed well (or service was inadequate) because (state the problem). I am disappointed because (explain the problem. For example, the product does not work properly, the service was not performed correctly, I was billed the wrong amount, something was not disclosed clearly or was misrepresented, etc.).

To resolve the problem, I would appreciate (state the specific action you want - money back, charge card credit, repair, exchange, etc.). Enclosed are copies of my records (include receipts, guarantees, warranties, canceled checks, contracts, etc.).

I look forward to your reply and a resolution to my problem, and will wait until (set a time limit) before seeking help from the New Hampshire Consumer Protection & Antitrust Bureau or the Better Business Bureau. Please contact me at the above address or by phone at (home and/or office numbers with area code).

Sincerely,

Your Signature

Your name, printed

Enclosure(s)

cc: NH Consumer Protection & Antitrust Bureau

Rent-to-Own

Businesses that rent appliances, furniture, and other consumer goods, giving consumers the option to own the product, are commonplace in many communities. These businesses offer low weekly or monthly payments in addition to the option to purchase either at the end of the contract or after some other specified time. Other incentives may include immediate delivery, no down payments and no credit check. Because rent-to-own is not "credit" in a technical, legal sense, neither a credit application nor a credit check is necessary. Someone who has a poor credit rating, low earnings, or sporadic income may find it difficult to qualify for installment credit with many retailers making rent-to-own a reasonable alternative. Rent-to-own differs from consumer leasing. For more information on leasing, refer to *Auto Leasing* and *For Your Information . . . Consumer Leasing*.

Despite the advantages, rent-to-own transactions also have disadvantages. In many cases, by the end of the rental contract, the consumer has paid substantially more than the actual value for the product, and thus in the practical economic sense, paid a high rate of "interest" to acquire the item. While rent-to-own transactions may have flaws, some consumers may find it a sensible choice.


EXAMPLE: Janet Viewer goes to Lester's RentYourOwn store to rent a TV. The TV she chooses is valued at \$500. Her rental payments are \$12.00 per week for 78 weeks (18 months) for a total of \$936. One year into the rent-to-own contract, Ms. Viewer stops making the payments, deciding to no longer rent the TV. Not only have her payments thus far exceeded the TV's value by \$124 (\$624-\$500) but she also has to return the TV to Lester's.


THE LAW

Because a rent-to-own contract is NOT a credit agreement but a rental contract, it does not come under the federal *Truth-in-Lending Act's* interest rates and finance charge disclosure requirements. This has made it difficult for consumers to accurately compare the costs of a rent-to-own transaction with traditional credit financing or purchase agreements. As a result, many states, including New Hampshire, now have laws to help consumers who enter into rent-to-own transactions. New Hampshire's *Rent-to-Own Agreement Act (RSA 358-P)* became effective in January 1996 and governs any rent-to-own contract in New Hampshire. The act defines a rent-to-own agreement as covering property for personal or household use where, for an initial period of four months or less, the goods are rented and, following this initial period, the consumer may buy the goods. Dealers who offer rent-to-own contracts are required to disclose certain information to a consumer before the agreement is signed. Eleven disclosures are required:

Rent-to-Own

-  The exact dollar amount of each payment, when the payment is due (weekly or monthly), the total number of payments and the total dollar amount necessary to own the goods under the contract.
-  A statement of the consumer's liability for the goods under the contract where the goods are lost or damaged prior to ownership.
-  A brief and accurate description of the goods covered by the contract (and identification number if applicable), including whether the goods are new or used.
-  A statement that the consumer cannot own the goods until the consumer has made the required total payments.
-  A statement of the cash price of the goods (i.e., the price at which the goods would have been sold for cash on the contract date), and if two or more items are covered under the agreement, an aggregate cash price can be given. The price disclosure must also include the following statement:

"If you want to purchase this or similar property now, you should consider cash or credit terms that might be available to you."
-  Disclosure of the amount of any down payment or deposit, which must be made either before the agreement is signed or when the goods are delivered.
-  A statement that the disclosure of the total payments does not include other charges, such as late fees, default fees, pickup and/or reinstatement fees. These fees must be identified separately in the agreement.
-  A statement that both describes the consumer's option to purchase (including a statement that the consumer has the right to exercise an early purchase option) and indicates the price, formula, or method for determining the price at which the goods can be purchased.
-  Identification of whether the consumer or the dealer is responsible for maintaining or servicing the product while it is being rented, a description of the extent of the responsibility, and what part of the responsibility is covered by a manufacturer's warranty.
-  Clear identification of the dealer and the consumer, as well as the date of the agreement.

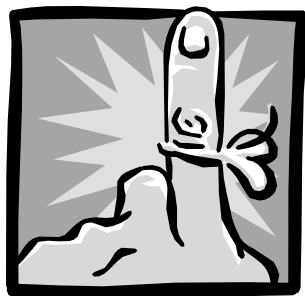
 A statement explaining that the consumer can terminate the agreement without a penalty by voluntarily returning the property in good repair (reasonable wear-and-tear excepted) at the end of the rental term along with any past-due payments.

One major drawback to rent-to-own agreements has been that consumers who fail to make one or more weekly (monthly) payments could face repossession of the rented property. In the worst case, the consumer would lose all right to purchase the item and all money paid toward the rental contract. New Hampshire's law addresses this problem by providing consumers with a mechanism to reinstate the rent-to-own agreement after default.

A consumer can reinstate a rent-to-own agreement after failing to make payments, after repossession, or after voluntary return of the goods, under certain circumstances. If you have paid less than two-thirds of the amount required to own the goods, you have 21 days after the return of the property to reinstate the agreement. If you have paid more than two-thirds of the total payments required to own the goods, you have 30 days in which to reinstate the agreement. The contract can be reinstated without losing any rights or options by doing the following:

- Making all past-due payments
- Paying all reasonable pickup and/or redelivery charges if the property has already been picked up
- Paying applicable late fees within two days (for weekly payments) or five days (for monthly payments) of the renewal date.

Nothing prevents the dealer, however, from trying to repossess the goods during the reinstatement period if the goods have not already been returned by the consumer. If the agreement is reinstated, the dealer must return the same goods or substitute goods of comparable quality and condition to the consumer.



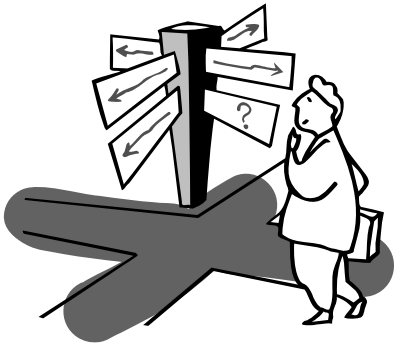
POINTS TO REMEMBER

- Comparison shop among several rent-to-own merchants before signing a contract.
- Read the contract carefully before you sign.

Rent-to-Own

☑ The following is a list of things to look for in a rent-to-own contract:

- ? What is the cash price of the item to be rented?
- ? What is the price of the rental option?
- ? What is the total price (cash price + rental price)?
- ? What are the requirements to purchase the item? When can the item be purchased?
- ? What happens if you are late with a payment or miss a payment? What are the fees for late or missed payments? Is there a limit on the number of late or missed payments prior to the item being repossessed?
- ? Can you get this item for less by paying cash or by buying it from another retailer with a traditional installment credit contract?



WHERE TO GO IF YOU HAVE A PROBLEM

- ☑ Contact the NH Consumer Protection and Antitrust Bureau if you have a problem with a rent-to-own agreement.

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

Renting, Security Deposits, and Evictions

Leases are important legal documents governing the rights and duties of renters of any type of housing. Leases are usually prepared by landlords. The terms of the lease, therefore, are often written in the landlord's favor. A prospective tenant needs to read the lease carefully before signing it. A lease is a legally binding contract so the tenant must understand and agree with the terms of the lease. A prospective tenant should find out who pays for the hot water, utilities, parking, snow removal, trash removal, and other costs before the lease is signed. If the landlord and tenant agree to change anything in the printed lease, the change should be made in writing and both tenant and landlord should put their initials beside the change. All promises to make repairs to the leased property should be made in writing. Keep a copy of the lease so that you can refer to it if a problem arises. New Hampshire law requires that the landlord give a copy of the lease to the tenant within 30 days after the signing. Tenants should always get receipts for what they pay to the landlord (although canceled checks often are adequate to prove payment).

Beware of "waivers" in a lease in which the tenant gives up rights under certain conditions. For instance, an automatic renewal clause renews an expired lease automatically unless you notify the landlord in writing that you do not intend to renew the lease. The maximum occupancy clause limits the number of people who can live in the apartment. A landlord can also include a clause to force a mid-lease rent increase if property taxes are increased.

THE LAW




New Hampshire's law on security deposits (*RSA 540-A*) defines a **security deposit** as any money that a tenant gives to his or her landlord other than the monthly rental payment. The name given to the payment – cleaning deposit, last month's rent in advance, etc. – does not matter. The amount is a "security deposit" if it is anything other than the monthly rent.

In New Hampshire, a landlord who owns more than six units can ask for **no more than one month's rent or \$100**, whichever is larger, as a security deposit. The landlord must keep security deposits in a special escrow account or post a bond with the local municipality to secure repayment.

Renting

The tenant is entitled to a **receipt for the deposit**. The receipt must indicate the bank in which the deposit is being held, or state that there is a bond posted with the town clerk, and must state that the tenant has five (5) days to give the landlord a list of defects and damages in the apartment when she or he moved in. If the security deposit is held for more than 12 months, the landlord must pay at least the amount of interest she or he has actually earned on the money.

RSA 540-A:5 defines the legal relationship between landlords and tenants so that both will be treated fairly. It applies to all tenants except:

-  Tenants who rent a single family home from a landlord who owns no other property
-  Tenants under the age of 60 who live in a building with less than six apartments and whose landlord lives in the same building
-  Tenants renting business, vacation or recreational property (but the law may cover some mobile homes and mobile home spaces).

If the leased property is not covered by *RSA 540-A:5*, then the terms of the lease regulate the landlord/tenant relationship.

Tenant Responsibilities

The list of defects and damages in the rental unit that should be given to the landlord within the 5-day period is to protect tenants from being charged for damages done by previous tenants. Every new tenant should make a thorough record of defects in the rental unit when moving in. You should include the condition of the walls, floors, carpets, windows (screens, molding, sills and curtains), appliances and fixtures in your inspection. Note any cracks, holes, worn places, stains, dirt, and so forth. This inventory should be signed and dated by both you and your landlord. Make a copy of this inventory before you return it to your landlord within the 5-day time period to keep with the copy of your lease.

EXAMPLE: Martha signs a 2-year lease agreement to rent an apartment in one of the large apartment complexes owned by Mr. Buck. Martha pays her security deposit, equivalent to one month's rent, when she signs the lease. Mr. Buck's agent gives her a receipt indicating that the security deposit funds are held in an account at the 2nd National Bank in Concord.

Martha moves into her new apartment on the first of the month and before her friends help her move her furniture in, she goes through the unit looking for preexisting damages. She finds a big stain on the carpet in the dining area, along with some slightly worn spots on the linoleum in the kitchen, and a couple of small holes in the bedroom window screen. When she finishes making the inventory, she signs and dates it. The next day, she makes a copy of the inventory and sends the original to Mr. Buck's office, keeping the copy for her own files.

Tenants have additional responsibilities which are not part of New Hampshire's landlord/tenant law but are governed by contract law. Tenants have the responsibility to abide by the agreements specified in the lease. Tenants are also responsible for maintaining the landlord's property in an acceptable manner. In most cases, tenants have the responsibility to give the landlord at least 30 days notice of plans to leave the rental unit, unless the lease states some other time period.

Tenants are also responsible for insuring their own personal property. The landlord will usually have insurance coverage for the building, but this insurance does not cover the tenant's personal belongings. It is a good idea for tenants to invest in renters' insurance to make sure their possessions are protected against theft, fire damage and a number of other perils.

Landlord Responsibilities

A landlord is responsible for providing his or her tenants with a safe and sanitary dwelling. In New Hampshire, building codes set the standards for construction and maintenance of the building, including protection against fire hazards. Housing codes set standards for adequate light, air, heat, ventilation, sanitation, and space for tenants. A tenant may contact local housing officials to learn more about whether the apartment where he or she lives meets applicable requirements.

RSA 48-A:14 sets minimum health and safety standards for rental property in towns that do not have ordinances that establish housing standards. An apartment does not meet these minimum standards if:

- It is infested by pests and the landlord does not conduct regular inspections and pest exterminations
- There is defective plumbing or faulty septic/sewage system
- There is unsafe wiring
- The walls or roof leak
- The plaster is falling from walls and ceilings
- The floors, walls or ceilings have unsafe holes
- The porches, stairs or railings are not sound
- There is trash and garbage in the common areas when the landlord has the responsibility for trash removal
- There is not enough water or the hot water system does not work

Renting

- ☒ The gas lines leak or pilot lights are faulty
- ☒ The heating system is not working properly.

A landlord who fails or refuses to maintain an adequately safe and sanitary dwelling may be forced by the courts to reimburse tenants. You should report any defects in your dwelling which violate any of the housing or building codes which your landlord refuses to repair to your local code enforcement officer and/or to the New Hampshire Division of Public Health in Concord.

To provide further protection for tenants, New Hampshire law also requires landlords to provide smoke detectors for their rental units. *RSA 153:10a* requires every rental unit to be equipped with at least one automatic smoke/fire warning device located in each hallway or area adjacent to a sleeping area. The law also requires multi-unit dwellings to be equipped with automatic smoke/fire warning devices on every floor level, in each common stairway and in each common hallway. The landlord is responsible for maintaining these smoke/fire detectors in suitable working condition.




If a rental unit is not equipped with a smoke/fire detector, or the building's hallways or stairways are not equipped with smoke/fire detectors, the tenant should contact the landlord and request the devices be installed and to contact local fire officials to encourage the landlord to comply with this state law.

Under some conditions, tenants may stop paying rent in order to compel the landlord to comply with health codes or with *RSA 48-A* (see *RSA 540:13-c and d*). Because failure to pay rent can be grounds for eviction, tenants need competent legal advice before they withhold rent. The New Hampshire Consumer Protection and Antitrust Bureau would refer any tenants thinking of taking this action to New Hampshire Legal Assistance or to a private attorney for help.

MOVING OUT

When the tenant moves out of a rental unit, the landlord has thirty (30) days in which to either return the entire security deposit plus interest if appropriate, or send a written statement of any deductions made from the deposit for repairs, cleaning, etc., the cost of each repair (supported by copies of appropriate receipts, estimates, contracts, etc.) along with the remaining amount of the deposit (*RSA 540-A:7*). The tenant needs to notify the landlord of his or her new address within 30 days of moving out. The notice must be in writing, but need not be formal.

The landlord may deduct from the security deposit:

-  Rent that is still owed
-  The tenant's share of increased real estate taxes if the lease or other written agreement permits it
-  The cost of repairing damage other than normal wear and tear.

Note: As you might expect, the meaning of the term "normal wear and tear" can be the subject of dispute. Crayon marks, holes in the wall, broken windows, battered doors and so forth probably will be called "damages." Worn carpets, worn floors, damage caused by pipes accidentally breaking or by leaking roofs probably will be called "wear and tear." The hardest damages to categorize are those caused by a tenant's alleged failure to adequately maintain the apartment.

EXAMPLE: Martha writes to her landlord's agent two months before her lease ends to state that she does not wish to renew her lease. After Martha moves her furniture out of the apartment, the agent for Mr. Buck, the building's owner, comes over to inspect the apartment before Martha leaves. The agent finds a big stain on the carpet in the dining room, some very worn spots on the linoleum in the kitchen, several small holes in the screen in the bedroom window, and a cracked window in the kitchen. Martha produces her copy of the inventory that she made when she moved in, showing that the carpet stain and holes in the screen existed when she moved in. Both Martha and the agent agree that the worn linoleum is normal wear-and-tear. The agent does inform Martha that the cost of replacing the cracked window pane in the kitchen will be deducted from her security deposit.

Three weeks after Martha moves out, she receives a check from Mr. Buck. The check is for the amount of her security deposit, plus the interest earned on the deposit, minus the cost of replacing the cracked kitchen window. Attached to the check is an itemized statement of the cost of the window and the amount of interest.

EVICCTIONS

New Hampshire has a special process for eviction. No landlord can lawfully evict a tenant without following the steps set out by state law (*RSA 540*). A tenant can be evicted for violating the lease. If the tenant has no written lease, she or he can be evicted for a variety of reasons. In New Hampshire, tenants renting part of a privately owned and owner-occupied home can be evicted for almost any reason.

In New Hampshire, there are five "good" causes for eviction:

- Failure to pay the rent
- Substantial damage to the premises
- Behavior that affects the health and safety of others
- Violation of the lease
- Other good cause.

Renting

"Other good cause" may include legitimate business reasons of the landlord. If, however, the "other" cause is something that the tenant did or did not do, then the landlord must first give the tenant a written warning that in the future the action or inaction will be grounds for eviction.

The tenant can reverse the order for eviction in the first three causes by "remedying" the situation, that is, paying the rent, repairing the damage, and so forth.

A landlord can legally evict a tenant only by sending a written notice to the tenant. This written notice must be in the form of a "written notice to quit or leave" which is a legal document. Eviction for not paying rent, damages to the property or danger to the health or safety of others require seven days' notice. All other grounds for eviction require 30 days' notice.

In the case where a tenant has not paid rent, the landlord must make a written demand for payment of the money before issuing the notice-to-quit. The notice-to-quit for nonpayment of rent must explain the tenant's right to defeat eviction by paying the rent owed plus \$15 before the last day of the notice-to-quit (*RSA 540:3,IV*). If the payment is made, then eviction for nonpayment of rent is no longer possible (*RSA 540:2-5,9*). However, tenants can only avoid eviction by "curing nonpayment" three times during one calendar year.

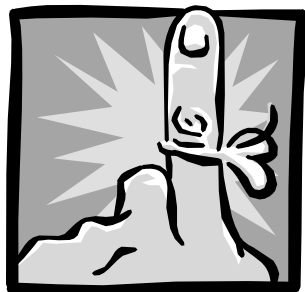
The landlord may NOT break into the dwelling, may NOT move a tenant's belongings out, and may NOT turn off the heat and utilities. The sheriff is the only person who may remove property from the premises and this can be done only after the landlord has been awarded a court judgment called a "writ of possession" (*RSA 540-A:3,III-IV*).

A landlord cannot evict a tenant for reporting a building or housing code

EXAMPLE: Petey rents an apartment from Mr. Buck in a large complex. Petey has not paid his rent for the last three months, although Mr. Buck's agent has sent Petey several reminder notices. Mr. Buck decides that he is going to have to start eviction proceedings against Petey for nonpayment of rent. Mr. Buck sends a letter demanding that Petey pay his overdue rent within two weeks or Mr. Buck will have Petey evicted. Petey does not respond to the letter. Mr. Buck issues a notice-to-quit which informs Petey that he has to pay the rent owed plus \$15 within seven days or he will be evicted. Petey does not respond.

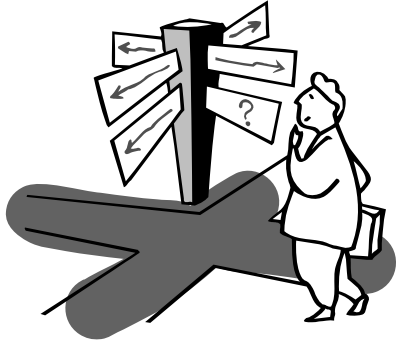
Mr. Buck files a landlord-tenant complaint in court to start the eviction proceedings. At the court hearing, Petey tells the judge that he can't pay his rent, and that he won't pay his rent. Mr. Buck is issued a "writ of possession" and has a deputy sheriff execute the writ to remove Petey from the apartment. Petey finally removes his belongings from the apartment under the watchful eye of the deputy.

violation to the authorities, lawfully withholding rent, filing a complaint in court asking for an order to stop certain practices, or meeting with or organizing other tenants (RSA 540:13-a).



POINTS TO REMEMBER

- ✓ Read the lease very carefully before you sign. Make special note of clauses which outline what you are responsible for and what your landlord is responsible for.
- ✓ Note any clauses that limit what you can or cannot do in the unit and that limit who can live in the unit (including pets).
- ✓ All changes to the printed lease should be made in writing on the lease and initialed by both you and the landlord.
- ✓ Anything that you pay to a landlord in excess of one month's rent is a security deposit. In New Hampshire, a landlord can require no more than \$100 or one month's rent as a security deposit.
- ✓ The landlord must give you a receipt for your security deposit. The following information must be given on that receipt:
 - ▶ The name of the bank where the deposit is being held OR a statement that the landlord has paid a security bond with the town/city clerk.
 - ▶ A statement that you have 5-days in which to give the landlord a copy of a list of damages in the rental unit when you moved in.
- ✓ Make an inventory of preexisting damages in the unit and send a copy to your landlord. Keep a copy of the inventory with your copy of the lease.
- ✓ If a landlord fails to provide adequate heat, water or other utilities, you can file a petition in District Court to force the landlord to provide these services.



WHERE TO GO IF YOU HAVE A PROBLEM

- ✓ A good source of help for landlord-tenant problems is New Hampshire Legal Assistance. There are several branches of New Hampshire Legal Assistance around the state:

Manchester: 603-668-2900 or 1-800-562-3174

Claremont: 603-542-8795 or 1-800-562-3994

Portsmouth: 603-431-7411 or 1-800-334-3135

Littleton: 603-444-8000 or 1-800-548-1886

- ✓ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau

33 Capitol Street

Concord, NH 03301-6397

603-271-3641 or 1-888-468-4454

Web: <http://www.doj.nh.gov/consumer/index.html>

- ✓ If you are a student, you also may be able to find assistance through your college or university. Several campuses have either a lawyer on staff for student consultation or off-campus housing offices that are skilled in assisting students with these types of problems.
- ✓ Complaints about health and safety violations should be made either to your local health department or housing authority. Problems regarding smoke detectors should be directed to your local fire chief.
- ✓ Housing code violations can also be reported to the New Hampshire Division of Public Health Services:

NH Division of Public Health Services

29 Hazen Drive

Concord, NH 03301

603-271-4501

EXTRA NOTE






Protecting Your Financial Privacy

Banks and other financial institutions now have to give you the opportunity to decide what information about you that the institutions will be allowed to share or sell to other companies that are not a part of the same “parent organization.” The Gramm-Leach-Bliley Act of 1999 applies to all sorts of financial institutions, including banks, savings and loans, credit unions, insurance companies, and brokerage firms. It can also apply to retailers and automobile dealers that collect information about customers to whom they extend credit.



Financial institutions that extend us credit, loan us money, or sell us insurance routinely collect information about our bill-paying habits; how much we borrow, save, and buy; and where we like to shop (for a credit card issuer). And they often share this information with other businesses.

According to the Federal Deposit Insurance Corporation (FDIC), there are several things that you should know:

How does this federal law protect my financial privacy?

-  *You must be told by each of the financial institutions with which you do business, what kinds of information it collects and the types of business that may be provided with this information.*
-  *If a financial institution intends to share your information with anyone or entity outside the “corporate family” then it must give you the chance to “opt out” or “say no” to having your information used in this way.*
-  *Financial institutions must describe how they protect the security and confidentiality of your financial information.*

What should I look for in this privacy notice?

-  *These notices are mailed out annually.*
-  *Look for:*
 - ▶ *The kinds of information the institution shares with other parts of the corporation (“members of our corporate family” or “our affiliates”).*
 - ▶ *The kinds of information shared with other institutions (“nonaffiliated third parties”).*
 - ▶ *What information you can block from being shared.*
 - ▶ *How you go about “opting out” if that is what you wish to do.*

NOTE: The privacy notice will NOT list precisely what information it shares. It must simply describe the general categories, and give examples.

What kinds of information can I NOT prevent from being shared?



You have what is called a “general right” to block non-public personal information with outside companies and organizations, but there are some exceptions. The following is a list of the major exemptions:

- ▶ Information needed to help conduct normal business (like a bank sending loan information to an outside firm that does its data processing or accounts mailings).
- ▶ Information needed to protect against fraud or unauthorized transactions, or is provided in response to a court order.
- ▶ Information the institution believes to be “publicly available,” such as your name, address and telephone number as they appear in the phone book; information about your mortgage that is recorded in county records; etc.
- ▶ Information that is part of a “joint marketing agreement,” for example if your bank and an insurance company agree to promote joint products or services.

How do I decide if I should opt out?



You need to decide how you feel about your information being shared with other institutions. If your information is widely shared, it may mean that you will get more unsolicited promotions.

- ▶ If you want the convenience of having information about financial products and services coming to you via mail or telephone, you probably do not want to opt out.
- ▶ If you want to reduce the number of mail and telephone solicitations, then perhaps you do want to opt out.
- ▶ If you do not want a lot of other businesses knowing about your finances and spending habits, then you probably do want to opt out.



If you decide you want to opt out, you will have about 30 days to reply to the opt-out notice. The financial institution may require you to call a certain phone number or complete a form and return it through the mail by a certain date in order to opt out.



You can always change your mind at a later date – to either opt out, or to “opt back in.”



If the account is a joint account, and only one person responds to opt out, the institution may continue to share the information of the second person. For joint accounts, make sure that you talk over the opting-out decision and make sure that the institution gets the appropriate notice.

Schemes, Swindles, and Other Scams

Each year, thousands of consumers fall victim to one of the many varieties of fraudulent schemes or con games, losing anywhere from a few dollars to thousands of dollars. Con artists are skilled at preying on both our fears and our best instincts: we want to help someone in a jam, we don't want to get someone into trouble, we want to be able to provide for our families. Swindlers may offer a "great deal" that "won't be available tomorrow," or the investment opportunity that is "too good to pass up," or the chance to split a large sum of money they just found. The old saying "better safe than sorry" is a good one to follow. The best way to avoid being scammed is to treat any offer of a "wonderful opportunity" with a great deal of skepticism. If the "deal" will not be available tomorrow, then it probably is not much of a deal, because any reputable business will allow you the opportunity to shop around and compare prices.


Common frauds include pyramid schemes, ponzi schemes, phony job offers, false billings, bogus investment opportunities, and fraudulent home repair services just to name a few. Several specific deceptive business practices are covered elsewhere in this guide. A complete overview of New Hampshire's *Consumer Protection Act*, the primary statute governing unfair and deceptive business practices, is given in the **1st WORD** section. Information on deceptive advertisements is given in the section entitled **Advertising**. Telephone solicitations are covered in **Telemarketing**. Contests and charitable solicitations are in the **Prizes and Sweepstakes** and **Charitable Solicitations** sections respectively. Some of the new scams that are perpetrated on the Internet are described in **E-Commerce**. Presented below are descriptions of several of the "old standards" in hope that recognizing the basic elements of a fraudulent scheme will help you to avoid it.


PYRAMID SCHEME


Pyramid schemes are also referred to as "chains" or "referrals" and are simply a variation on the chain letter. No matter what this scheme is called, the basic premise is the same: the buyer or participant buys the right to enlist others to also enter into the "marketing process," i.e., to buy a franchise or whatever. These types of sales schemes are prohibited in New Hampshire (*RSA 358-B*) as they are in all states.


Schemes

This is how a pyramid scheme works:

 A seller or recruiter offers the opportunity to invest in a "distributorship," franchise, or other business opportunity for a specified sum of money.

 Your "investment" gives you the right to sell similar distributorships (and so forth) to other "investors." The selling of actual products may or may not be involved but is usually incidental to the rewards for recruiting new "investors." Because more money can be made from selling the distributorships (or whatever), investors typically concentrate on recruiting more investors.

 The money that you bring in through recruiting new "investors" is split with the one who recruited you, usually 50-50.

 Each person you recruit, in turn, shares with you the "investment monies" received from those they recruit (and then you split that money with your recruiter). And so on down the line.

If you are fortunate enough to be one of the early (top of the pyramid) investors, you may actually make some money. But the scheme is doomed for failure because with each "layer" of recruits, more and more people have to be found. For example, if each investor enlists 10 new investors, in ten "rounds" the entire world population would be recruited.

EXAMPLE: Daisy Lou receives an invitation to attend a seminar on a FANTASTIC business opportunity for those with the entrepreneurial spirit. Daisy goes to the seminar and is told by Mr. E. Figg that if she acts "right now" she can get in on the bottom floor of this incredible franchising opportunity. For an initial investment of merely \$2500, she will have her own vending machine franchise. But that's not all! She will also be able to franchise parts of her franchise. She can get her friends to benefit from this GREAT opportunity by investing a mere \$2500 with her. She then gives Mr. Figg a 50% commission on whatever she receives. And the people she recruits can franchise off part of THEIR franchises for \$2500. They will give Daisy a 50% commission on each \$2500 they bring in, and she gives Mr. Figg a 50% commission on that amount. Daisy won't be able to lose! If she gets just five people to buy franchises from her, and they each get five people to buy from them, why! within a matter of a few weeks she could make almost \$50,000!

1	(you)
10	(your 10 investors)
100	(their 10 investors)
1,000	
100,000	
1,000,000	(about the population of New Hampshire)
10,000,000	
100,000,000	
1,000,000,000	(more than the entire U.S. population)
10,000,000,000	(more than the world's population)

The pyramid scheme is not limited to a particular type of product or service. According to the Better Business Bureau, in recent years pyramid scheme promoters have been targeting social and religious organizations as a method of fund-raising.

Note: While multi-level marketing formats in which participants receive a percentage of the actual sales from their recruits may not be strictly illegal, the promises of potential earnings by some multi-level marketers should be viewed with skepticism.

Tip Offs

- ☒ Unbelievable claims about the potential return on your investment.

- ☒ The profits gained from the sale of products or services are minor compared to the profits to be earned from selling franchises or recruiting new investors or members.

PONZI SCHEME

Ponzi schemes are named after Charles A. Ponzi who defrauded hundreds of investors during the 1920s. A ponzi scheme is similar to a pyramid scheme, but offers investment opportunities rather than business opportunities.

The "promoter" enlists investors by promising an extraordinarily high rate of return over a relatively short period of time. At the end of the "investment period," the promoter offers to pay the investor his or her initial investment plus the promised rate of return, or the investor may reinvest the total amount. More investors are recruited because the "investment" appears to be legitimate and highly profitable. How the investors are paid off is the problem. No actual "investments" are made by the promoter/swindler. Investors who want to pull out are paid off with funds from other investors. The "chain" works until the promoter/swindler disappears either because a number of investors decide to take their earnings (and the scheme begins to collapse), or the swindler decides he or she has made enough profit.

Tip Offs

- ☒ Unbelievable return rates on investment over a short period of time.

- ☒ Vague description of the actual investment offering (no prospectus, or only a very sketchy one, etc.).

THE BANK EXAMINER SCHEME

At least two people are needed to pull off the bank examiner swindle. One person will stand near a customer (the potential victim) in a bank and secretly get his or her name, account number and account balance. Only those with sizable bank accounts become victims. One of the swindlers will contact the victim either as the victim leaves the bank or later at home. The swindler poses as a bank official, police officer, or FBI agent who is trying to trap a bank teller suspected of embezzling. The victim is asked to assist by going to the particular teller's window to withdraw a specific large sum of money. The victim is then instructed to bring the cash to a "bank official" (who is the swindler's partner) who will be waiting outside the bank. The "bank official" will supposedly redeposit the money into the victim's account when the suspected embezzler is arrested. Once the victim has handed over the cash, the "bank official" thanks the victim profusely and disappears with the victim's money. No bank official, police officer, or FBI agent would ever ask a person to withdraw money from his or her account under any circumstances.

Tip Off

- ☒ A person who introduces him or herself as a bank official, or other person of authority, who asks you to help "catch a thief."



For your information . . .

Deceptive Mail Prevention and Enforcement Act

This federal law is designed to protect people, especially the elderly, from sweepstakes scams. Sweepstakes sponsors are prohibited from implying that buying a product will increase one's chances of winning a big prize. Standards have been established for sweepstakes mailings, skills contests, and facsimile checks related to contests.

THE PIGEON DROP SCHEME

The pigeon drop is a variation on the bank examiner swindle. The swindler convinces the victim that he or she has just found a large sum of money (in a bag on the street, left behind on a park bench, etc.) with no way to identify the owner. The swindler is willing to share the money with the victim if the money is not claimed. Both the victim and the swindler agree to withdraw a substantial amount of cash from their respective bank accounts as a gesture of "good faith" to the other which will be held by a "trusted third

party," usually a "lawyer friend" of the swindler. After the victim and swindler give the withdrawn cash to the "trusted lawyer," the swindler allegedly heads off to take the "lost money" to the police. The victim never sees the swindler nor the cash again. And the "trusted lawyer" has disappeared, too.

Tip Off

☒ A person who wants to share with you some cash that he or she found.

HOME IMPROVEMENT SCHEME

Every homeowner knows that eventually something around the house will need to be fixed. Most plumbers, electricians and contractors are legitimate, providing the service or repair promised. However, occasionally someone who is little more than a rip-off artist will bilk a homeowner out of hundreds or thousands of dollars. Scams may involve roof or driveway repairs, plumbing or electrical repairs, or siding installation, or any number of other possibilities.

The most typical scenario involves a salesperson or "contractor" coming to the victim's door saying something like: "We were repaving a driveway on the next block and have some hot-top left. We can repave your driveway for a very low price if we do it right now." Or, an "inspector" will come to the door and insist on "inspecting" after which something is found to need immediate repair.

Because the work must be done "immediately" the victim is coerced into having that particular repair crew do the work, with no opportunity to compare prices. The victim may also be required to give a substantial down payment for the work to begin. The victim gets substandard materials and shoddy workmanship. Repairs may be started but never finished. When the victim tries to contact the "contractor" to finish the job (or repair the repair), he or she finds that the contractor has left the state.

EXAMPLE: Mr. Homoner, who is 82 years old, is raking his leaves. A dump truck drives slowly past, stops and backs up. The driver, a burly man who says his name is "Jay," says: "Me and the boys was just up the street aways fixing your neighbor's driveway. We got some hot top left over and we'll fix them holes in your driveway for a buck a foot." Mr. Homoner, who has been meaning to get his driveway fixed, agrees. When half his driveway is torn up, Mr. Homoner learns that the price is \$10 a square foot. "Jay" and three massive "helpers" crowd around him telling Mr. Homoner that he must have misunderstood the price and demanding payment in cash. They offer to drive him to the bank to get it. Mr. Homoner should call the police and the Consumer Protection Bureau immediately before he pays "Jay" and associates any money.

Sometimes people will find that they have been charged many times the true cost of the materials and labor for work that was done. Sometimes people find that the contract they signed for the repairs gives a finance company a security interest in their homes.

Tip Offs

- Any contractor who stops by your house unannounced because he or she "just happened to be in the neighborhood" and noticed that your house, driveway, chimney, etc. needs repair. He or she can give you a really good price, because some materials are left over from a job just finished.
- A contractor who arrives in an unmarked truck or van, with little equipment, and/or out-of-state license plates. A contractor who is unable to give you a business card with an address and telephone number.
- A contractor that will give you an unbelievable low price for the work so that he or she can use your house as a "model."
- A contractor who will not give you time to get other estimates. Or who tells you that he or she cannot come back another time because of another job in another town.



Watch out for . . .

Office Supply Scams

Businesses, churches, municipal governments, and other users of office supplies like copy toner, cleaning supplies, and stationery complain from time to time about companies that call by telephone, posing as the user's regular product supplier, and claim that it is time to "reorder" the product. These callers often claim to offer a "special price" for the product that is good for "today only." The company then sends the product (usually at a greatly inflated price) to the user, who discovers that the product has not been ordered from the regular supplier.

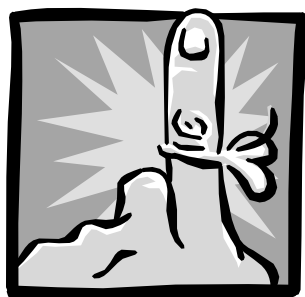
Where it may be argued that your business or organization has "ordered" a product, but did so because it was given misleading information, you should:

- Contact the company in writing and cancel any "order"
- Refuse delivery or try to return the product
- Refuse to honor invoices for the product
- Determine whether the person who placed the "order" actually had authority to make such a purchase
- Educate everyone in your business or organization who may receive such calls about the nature of this scam.

Be suspicious of phone calls about reordering supplies that are inconsistent with your regular supplier's normal methods.

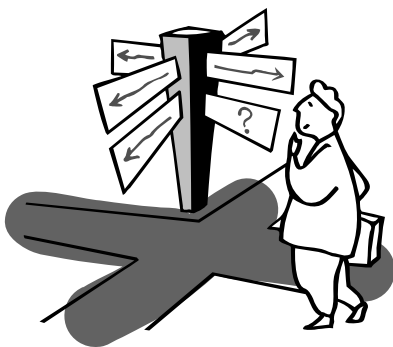
If you find your office has fallen victim to this type of fraud, contact the National Fraud Information Center at 1-800-876-7060 (toll free) or online at <http://www.fraud.org>.

The Better Business Bureau has information about Office Supply Scams available through its website: <http://www.concord.bbb.org> and click on "consumer guidance."



POINTS TO REMEMBER

- ☑ If a deal sounds too good to be true, then it probably is. Be skeptical of get-rich-quick offers, even those coming from friends or relatives.
- ☑ Always get competitive bids when you are planning a home repair or improvement project.
- ☑ Insist on a written contract which details the work to be done, the materials to be used, the total price for the job and schedule of payments.
- ☑ Remember you have cancellation rights in many home improvement contracts, either under the Door-to-Door Sales Rules or under Truth-in-Lending (if the lender is given a security interest in your home) if not both. (For more information refer to the sections entitled *Door-To-Door and Home Solicitation Sales* and *Home Equity Loans and Second Mortgages*)
- ☑ If you are suspicious of what someone is telling you, call the police. It is better to be safe than sorry.



WHERE TO GO IF YOU HAVE A PROBLEM

- ☑ As stated above, if you are suspicious of someone, call your local police.

Schemes

- ✍ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✍ Contact the Better Business Bureau for information on contractors (they can tell you if they have received a complaint about a business), or to report a complaint:

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991 or 603-228-3789 or 603-228-3844
Web: <http://www.concord.bbb.org>

Service Contracts and Extended Warranties

Consumers are often given the opportunity to purchase a “service contract” or “extended warranty” when buying a major appliance (such as a refrigerator) or a motor vehicle (new or used). While these types of “durable goods” typically come with manufacturers’ warranties, the warranties may not be “full” warranties (refer to the section on **Warranties** for more information). A service contract or extended warranty may cover parts and labor not included in the manufacturer’s warranty and may even extend the manufacturer’s warranty for a longer period of time. Buying a service contract or extended warranty is an optional purchase. Whether or not you buy the service contract or an extended warranty depends on how reliable you believe the item you have purchased will be.

Some consumers purchase this extra warranty protection to discover that the service insurance acquired was less than represented. This problem sometimes arises when the retailer of the merchandise sells the service contract or extended warranty but the actual performance under the warranty is provided by some other company. New Hampshire law provides consumers some level of assurance regarding the scope of coverage of so-called “third party” extended warranties.

EXAMPLE: Chuck buys a new ArcticAire refrigerator with a 1-year parts and labor manufacturer’s warranty from Kumongos, a local appliance store. The salesperson at Kumongos persuades Chuck to buy a 3-year extended warranty for \$250. The extended warranty contract is issued by Soongon Co. of Kansas. Two years later, Chuck is dismayed to learn that his refrigerator needs a new compressor. He is even more unhappy when he discovers that the manufacturer’s warranty is expired, Kumongos has closed its doors and Soongon Co. has filed for bankruptcy.

THE LAW

RSA 407-A and *RSA 415-C* govern service contracts or extended warranty agreements. A service contract or an extended warranty can be set up either as a “contract of insurance” or a “non-insurance” warranty.

The New Hampshire statute requires that an extended warranty agreement which is a so-called “**contract of insurance**” be offered only by a licensed insurance agent. This type of contract is further subject to a broad range of regulations and bonding requirements through the New Hampshire Insurance Department.

Service Contracts

A “contract of insurance” operates very much like a regular insurance policy, such as a car insurance policy, which spreads a particular risk of loss among a pool of people. The pool would consist of all those insured by the issuer who pay into the pool to cover those who have losses. Therefore, if 30 people buy the same extended warranty from a single issuer, the issuer should pool money from those 30 people into a trust. This trust would pay any individual who suffered a loss. In theory, individual claims (losses) would never exceed the total of the pooled funds. If this does happen, the insurance company is liable for the excess (insurance companies are usually required to either post a bond or otherwise satisfy the Insurance Department that they can meet any anticipated obligations of this kind). This “sharing of risk” approach, together with state review of the financial status of insurance companies, is intended to ensure that money is available to pay consumers’ claims under the “contract of insurance” type of service contract or extended warranty.

Some extended warranty agreements, however, are not insurance contracts. Under New Hampshire law, dealers and manufacturers may issue **“non-insurance” extended warranties** through agents. The issuing company absorbs all the money paid by consumers for their contracts and no payment pool is ever created, so that the “risk of loss” is not shared by anyone other than the issuing company. *RSA 415-C* recognizes that this type of contract poses a greater risk to consumers. The primary risk is that issuing company will either go out of business or be unable to pay claims for some other reason. For this reason, the New Hampshire statute requires dealers who issue any warranty agreement that does not qualify as “insurance” through a shared loss pool to post a \$50,000 bond with the New Hampshire Insurance Department before any service contracts or extended warranties can be offered or sold in New Hampshire.

If the issuer of a “non-insurance” warranty contract breaks any promises that it has made in the extended service contract, the consumer may sue for damages, costs and attorney’s fees and may call upon the New Hampshire Attorney General to bring legal proceedings for the bond to be used to pay the damages. Unfortunately, where there are many consumer claims against a single bond, there may not be enough money from the bond to pay off all the claims.

In addition to licensing and bonding requirements, *RSA 415-C* requires that any person or company issuing an extended service contract must file a copy with the New Hampshire Insurance Department. The department can rule that any term in an extended warranty or service contract, whether or not it qualifies as “insurance,” or is “unjust, misleading or deceptive.”

When an issuer of an extended warranty contract fails to pay on a contract, you should first check the contract to see if there are any “deductibles” (i.e., an amount you pay

before the insurance coverage begins). If the issuer will not pay for a claim, address your problem first to the issuer's customer service department. Explain the situation to the customer service representative, providing the name, address, and telephone number of the dealer or any other person who sold you the warranty. (For tips on presenting your case effectively, refer to *Remedies: Effective Negotiation*)

SHOULD YOU BUY AN EXTENDED WARRANTY FOR YOUR NEW OR USED CAR?


When you purchase a car, especially a used car, the dealer may ask if you wish to purchase an extended warranty. Before you decide whether to do so, you should get as much information as you can about the warranty itself. Here are some things you should know about extended warranties in general.


1. What is routinely called an "extended warranty" **is not really a warranty**, but is what is properly referred to as a "service contract." The difference is technical, but it is also important. A **warranty** has two parts:
 - A) A statement by the seller or the manufacturer that the car is free from defects in materials or workmanship.
 - B) A statement that in the event such a defect should become evident within a defined period of time, the manufacturer will **repair the defective part for free**.
2. **A service contract is not a warranty at all.** No service contract makes any statement relating to the condition of the car, and no service contract makes any mention of defective parts. It is simply an insurance policy that is meant to pay the repair bills when your car breaks. That is why a service contract is also sometimes referred to as "breakdown insurance."
3. Like all insurance policies, service contracts have conditions attached. Typically, your health insurance company requires you to go through certain steps before it will pay for your trip to the doctor and it may not cover all visits to the doctor's office. Similarly, your service contract may require you to go through specific steps before the company will pay for the repairs to your car, and it may not cover everything that goes wrong with your car.

You should not buy a service contract without reading it carefully!

 Some expensive parts may not be covered by the contract, or there may be "escape clauses" which allow the service contract company to avoid paying for an expensive repair.

Service Contracts

 Contracts which require you to prove that you have kept up with an unusually rigorous maintenance schedule before it will pay for the repairs should be avoided.

 Another common “escape clause” is one which covers “internally lubricated parts,” but only so long as all seals, gaskets, etc., remain intact. This way, if a \$4.00 transmission seal leaks oil and you do not see it and fix it before the transmission is damaged, the service contract company may not pay for your \$1500 (or more) transmission repair.

EXAMPLE: Betsy has just bought a 2005 Porcine Excellante SUV. Tina, the salesperson, tells Betsy that she really needs to get the service contract to protect herself. Betsy reads the service contract that Tina gives her and discovers that the service contract requires her to:

- ▶ *Get her oil changed at the dealership every 3,000 miles or the coverage is void*
- ▶ *Prove in advance of any covered repairs that she has kept up the required maintenance schedule.*

She also discovers that replacement of damaged or defective seals and/or gaskets is not covered. Finally, the contract will cost her \$2400 per year. Betsy declines to buy the service contract.

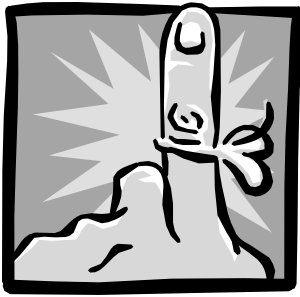
Price is another big factor to consider. Weigh the cost of the service contract against the likelihood you may have to pay for an expensive repair. Service contracts frequently cost as much as \$1500. Before you pay that much money for an insurance policy for your car, you should think long and hard about how much you are likely to have to pay for repairs on the car. If your car costs \$7000 or so, and the service contract raises the price to \$9500, this may not be the best use of your money. Also remember, the dealer is making money on the service contract, i.e., the dealer’s cost will always be well below what you are being charged for the contract.

A service contract is an insurance policy, therefore, you should think about it the same way you would any other insurance policy.

 The dealer or service contract company is betting that your car will not break (or at least that any part covered by the policy will not break) and you are betting that it will.

Be wary of any dealer telling you that you have to buy the service contract in order to get financing. If the dealer tells you this, be sure to look the service contract over with especially great care. Whether you buy a service contract or not is purely up to you!

A good service contract can be an excellent investment. A poor one is nothing more than a waste of your money.

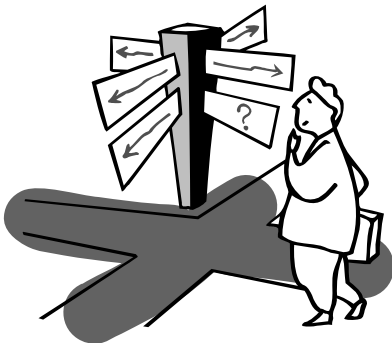


POINTS TO REMEMBER

Check with the New Hampshire Insurance Department to find out:

- ☑ Whether the contract is “insurance” or not
- ☑ Whether the issuer of an insurance contract is licensed to sell insurance in New Hampshire
- ☑ Whether the issuer of a non-insurance contract has filed a bond
- ☑ Whether there are any outstanding claims against the bond
- ☞ In most cases, the type of contract you are purchasing is not a matter of major concern, provided that the issuer has complied with the New Hampshire Insurance Department’s bonding and registration requirements.
- ☑ Before you purchase an extended warranty or service contract, read the terms carefully so that you will know exactly what is and what is not covered. This is particularly true for automobile extended warranty and service contracts where the systems or conditions excluded from coverage may be the systems or conditions, such as brakes or transmission, that are most likely to experience problems as your car ages.
- ☑ Consider carefully whether you really need the extended service. You may end up paying a fair amount of money for “repair insurance” that you don’t need and won’t use. Many brand name durable goods, such as stoves, refrigerators, and washing machines, provide years of trouble-free service. If a particular unit is defective, problems usually arise soon after the purchase and will be covered by the manufacturer’s warranty.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ Contact the New Hampshire Insurance Department for information about the issuers of extended warranties and service contracts:

Service Contracts

NH Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
603-271-2261
Web: <http://www.nh.gov>

- ☑ Contact the New Hampshire Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/pdf/conscomp.pdf>

- ☑ The Federal Trade Commission has several free pamphlets on service contracts:

Federal Trade Commission
Public Reference Section
600 Pennsylvania Avenue, NW, Room 130
Washington, DC 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

Telemarketing

Most consumers have received, at one time or another, an unsolicited call from some marketer selling products or services. For the purposes of this section, "telemarketing" means an unsolicited telephone call from a seller to a prospective buyer that is intended to close with a sale of goods or services to the prospective buyer.


For many people, "telemarketing" has become synonymous with "telemarketing fraud." Although a large number of legitimate businesses use telemarketing to promote and market their goods and services, you should be aware of telemarketing abuses and their warning signs. Telemarketing is most often abused in connection with prizes and sweepstakes giveaways, but telemarketing fraud takes many forms.

Easy and open access to consumers makes it difficult to control telemarketing fraud. With a cheap commercial lease, a modest investment in furnishings, a phone system, and a crew of low wage workers armed with scripts, a telemarketer can reach all 50 states. Moreover, telemarketers not only buy, sell and trade phone lists, but use them to find out how recently individual consumers have received telemarketing calls. The small capital investment makes it easy for a telemarketer who is running a scam to shut down and move to a different state under a different name when law enforcement authorities take action. Law enforcement officials and legislatures are coordinating their efforts to control telemarketing practices, but consumers should still be very cautious of sales or investment opportunity "cold calls."







EXAMPLE: Ms. Elder receives a phone call from Duke O'Fearl stating she has "just won" one of four prizes: 1) a 9" color TV, 2) a brand new Warp D 6000 automobile, 3) a \$2000 "savings certificate," or 4) a Crayfish 8000 SuperMini computer. Ms. Elder suspiciously asks how much she has to pay to win her prize. Duke tells her that she need not pay anything but a "small shipping and handling fee" for sending her prize. Duke gets Ms. Elder's credit card number. Her next monthly statement shows a \$36.95 fee from Excellent Jewelers. When Ms. Elder receives her prize, she finds that she won \$2000 in coupons redeemable only for imitation jewels from the Excellent Jewelers' catalog.

THE LAW

The Federal Trade Commission (FTC) has adopted strict rules that offer protection against telemarketing fraud. These rules require that certain information be given to consumers and prohibit telemarketers from engaging in certain actions.

 A telemarketer may not call you if you have previously asked not to be called.

Telemarketing

-  A telemarketer may only call between 8:00 a.m. and 9:00 p.m.
-  Before starting a sales pitch, the telemarketer must tell you that the call is a sales call, the name of the seller and what is being sold. If it is a prize promotion, the telemarketer must tell you that no purchase or payment is necessary to enter the contest or win the prize.
-  Telemarketers may not misrepresent any information. All facts must accurately represent the goods or services, investment opportunity or prize.
-  Before you pay for anything, the telemarketer must tell you the total cost of the goods, any restrictions on getting or using them, and whether the sale is final. In a prize promotion, you must be told the odds of winning and that no purchase or payment is necessary to win. The telemarketer must also inform you of any restrictions or conditions for receiving the prize.
-  It is illegal for a telemarketer to withdraw money from your checking account without your written, verifiable authorization.
-  A telemarketer cannot lie to get you to pay.

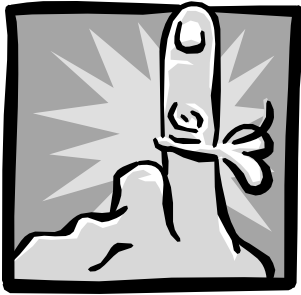
You can now register with a federal "no-call" list which will reduce the number of telephone solicitations you receive. You will need to register each phone number you have separately. Commercial telemarketers are prohibited from calling any registered no-call phone number. Many non-profit telemarketers are exempt, so you may still get these types of calls. The non-profit telemarketers are required to follow the FTC rules stated above.

In addition, consumers have several other types of protection against telemarketing fraud, including law enforcement agencies which have joined together to combat it.

Because the elderly are targeted by telemarketers, there are stronger penalties for telemarketers who victimize older Americans. The Federal Bureau of Investigation (FBI), the U.S. Justice Department and a number of states' Attorneys General have coordinated enforcement activities. State law enforcement officers now have the power to prosecute fraudulent telemarketers who operate across state lines.

EXAMPLE: This is a real-life example. In 1994, the New Hampshire Consumer Protection & Antitrust Bureau filed a suit against a so-called "recovery room" operating in Portsmouth. The business solicited amounts ranging from \$300 to \$500 from past victims of telemarketing fraud, claiming that it could recover the amount they had lost to earlier scams. Many of the targets were the telemarketing firm's "customers" from a few months prior when it was doing business under a different name in an adjoining state.

The New Hampshire Legislature has passed a law strictly regulating prizes and sweepstakes promotions. (For more information, refer to *Prizes and Sweepstakes*) It is illegal to help deceptive telemarketers if you know they are breaking the law.



POINTS TO REMEMBER

The following are tip offs that a telemarketing sales pitch or charitable solicitation may not be legitimate:

- High-pressure sales tactics
- Insistence on an immediate decision

- An offer that sounds too good to be true

- A request for your credit card number for purposes other than making a purchase, or for your savings or checking account numbers for any reason

- An offer to send someone to your home or office to pick up the money, or some other method such as overnight mail to get your funds more quickly (this can be a sign that the telemarketer wants to avoid inspection under federal mail fraud law)

- A statement that something is "free" followed by a requirement that you pay something like shipping and handling charges

- An investment that is "without risk"

- Unwillingness to provide references, such as a bank or names of satisfied customers in your area whom you can contact

- A suggestion that you should make a purchase or investment on the basis of "trust"

- When you place an order over the phone, always keep a record of the name, address and telephone number of the company, the goods or services ordered, date of order, amount paid (including shipping costs) and method of payment

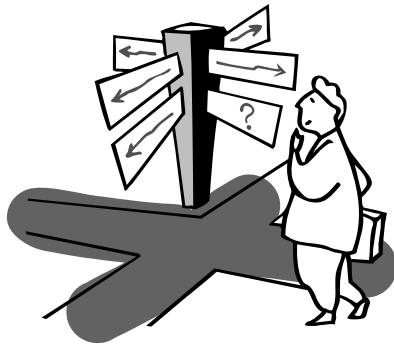
- Keep a record of any promised delivery date

- Remember, you can tell a company not to call you any more. The company must then refrain from contacting you in the future

Telemarketing

- ☒ A telemarketer must disconnect your line from a prerecorded machine-delivered message within five seconds after you hang up
- ☑ Remember, you only have to pay for credit repair, recovery room, advance-fee loans, or credit services when you receive these services. (For more information, refer to *Credit Repair*)
- ☒ Telemarketers may not call before 8:00 a.m. or after 9:00 p.m. or send you unsolicited ads by fax
- ☑ Only give your credit card number, checking account number, or other personal information to a telemarketer if you are familiar with the company or organization, and the information is necessary to make your purchase.

WHERE TO GO IF YOU HAVE A PROBLEM



- ☑ If you feel you have been a victim of telemarketing fraud, call the NH Consumer Protection and Antitrust Bureau. The Bureau can determine whether it or the Federal Trade Commission can help you:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
<http://www.doj.nh.gov/consumer/index.html>

- ☑ The Federal Trade Commission also wants to know about telemarketing frauds:

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
TDD: 1-202-326-2502
Web: <http://www.ftc.gov>

- ☑ To reduce the number of telemarketing calls you receive, register with the Do Not Call Registry either online or by phone:

<http://www.donotcall.gov>
1-888-382-1222

- ☑ If you made a telephone transaction in response to a postcard or other mailing, contact either the U.S. Postal Inspection Service or Postal Crime Hotline:

Chief Postal Inspector
475 L'Enfant Plaza, SW, Rm. 3100
Washington, DC 20260
1-202-268-4298 or -4299 or 1-888-877-7644 (toll-free)
Web: <http://www.usps.gov>

OR

Postal Crime Hotline
1-888-877-7644 (toll free) (live coverage 11:00 a.m. to 3:00 p.m. Eastern time,
Monday through Friday)
Web: http://www.uspsoig.gov/hotline_contact.aspx
TTY: 1-866-644-8398
e-mail: hotline@uspsoig

Warranties

A warranty is a promise by a maker, distributor, or seller of a product that the product will have specific characteristics or will suit specific uses. Warranties can be either written or oral, although written warranties are more common. Consumers usually receive written warranties with the purchase of new cars, televisions, appliances, and electronic equipment. Some sales contracts may already incorporate a warranty.

An express warranty arises out of an agreement between the seller and buyer and can be either written or oral. An incorporated or implied warranty is never in writing. An implied warranty is imposed by law.

You are entitled to protection under Federal and state laws when you purchase certain goods. The primary statutes governing warranties are the *Uniform Commercial Code (UCC) RSA 382-A:2-316* and *RSA 382-A:2-329* and the federal *Magnuson-Moss Warranty Act*.

THE LAW

The *Uniform Commercial Code* is a "model" law governing numerous commercial transactions. All fifty states have enacted versions of the *UCC*, with some variations from one state to another. New Hampshire's version of the *UCC* is codified at *RSA 382-A*. Article 2 of the *UCC* governs the sale of "goods" and is the part of the *UCC* most often involved in consumer sales.

The *UCC* defines a warranty as a promise or affirmation made by the seller to the buyer of goods that is relied on by the buyer in making a decision to buy a product, and so becomes part of the sales contract between the buyer and seller. Under both the *UCC* and common business practice, warranties can be either express or implied.

Express Warranties

In a sales transaction, consumers should carefully read all documents provided with the merchandise to see whether there is an express written warranty.

EXAMPLE: Polly Pasta goes to her local StupendoMart and buys an aluminum saucepan set made by the HotStuff Manufacturing Company. Polly takes the pans home and immediately cooks all her favorite dishes in them. To her amazement and horror, the handles of all the pans break, through no fault of hers. She looks at the box in which the pans were packed and finds a "limited warranty" which promises that the company will replace defective pans at no cost. Polly has the right to replacement pans in accordance with the terms of the written express warranty.

Express warranties can also be oral, where a seller's oral statement to a buyer concerning the sale of a particular good can trigger an express warranty. This is, however, difficult to prove. For an oral express warranty to arise out of a sales transaction, the seller will have had to include in the sale pitch statements such as promises or factual statements about a particular product's ability to satisfy certain requirements.

EXAMPLE: Sammy Smallton purchases a used car from Swifty's Used Cars. During the sales pitch, Mr. Swifty tells Sammy that the oil spot under the transmission was "nothing to worry about" and that Swifty's would fix the leak "if it becomes a problem." After 100 miles, the car will not stay in gear, and Mr. Swifty refuses to fix it. Mr. Swifty's oral statements could be construed as an express warranty to repair that transmission problem. On the other hand, had Mr. Swifty merely stated to Sammy that the car "was a beaut" or that he thought the car was a "great bargain," it is unlikely that any warranty was created.

For an oral express warranty to take effect, it requires neither the seller's use of explicit words such as "warranty" or "guarantee" nor the seller's intent to make a warranty. On the other hand, was the seller to merely state an opinion about a particular good to the buyer, this alone would not trigger an express warranty. The same is true of standard sales embellishments.

The *UCC (RSA 382-A:2-329)* requires that manufacturers who provide an express warranty also provide warranty services if the consumer goods have a retail value greater than \$100. The services must include:

- ☑ An address or toll-free number for information on warranty service
- ☑ "Adequate" direct factory service
- ☑ At least one service representative in New Hampshire to provide services or repairs under the terms of the express warranty

When a manufacturer designates a service representative, it must make parts available to the service representative within 30 days of receiving an order (some exceptions apply) and must pay the service representative the amount for parts and labor that the representative normally and reasonably charges for like service and repairs. A court may order persons or companies failing to comply with this law to provide warranty service, to pay a civil penalty of \$25 for each day of noncompliance, or to replace the item under warranty.

Implied Warranties

Some warranties are "implied" by law. An implied warranty is a promise that the good will have characteristics or uses that the maker, distributor, or seller do not expressly state. An implied warranty assumes that the product is fit, safe and will perform the

Warranties

function for which it was intended. For example, if you rely on a seller's skill or judgment to select a suitable product and the seller knows your purpose for buying the product, then there is an implied warranty that the product sold will suit the intended purpose.

The implied warranty most useful to consumers is the "implied warranty of merchantability." It requires that goods be of "fair-average quality," and adequately packaged. Moreover, the goods must conform to promises or statements of fact made on the container or label, and must suit their intended use.

EXAMPLE: Polly Pasta buys a Miraco Food Mixer. She unpacks the mixer from its box when she gets it home and tries it out; the mixer, however, will not mix food. In addition to any express warranties made by the manufacturer or seller of the mixer, Polly can rely on the implied warranty of merchantability. This warranty may become important in cases where the manufacturer or seller of the product makes no express warranties and unsuccessfully tries to disclaim implied warranties.

A seller, distributor, or manufacturer will often try to "disclaim" a warranty to modify or limit its protection. In New Hampshire, the *UCC (RSA 382-A:2-316)* provides that a merchant who sells a consumer good may not disclaim the warranty of merchantability or fitness unless the merchant gives the buyer a "conspicuous writing" disclaiming the warranty. Furthermore, the written disclaimer must disclose:

- ☑ That the goods are sold "as is" or "with all faults"
- ☑ The buyer assumes the entire risk as to the goods' quality and performance
- ☑ If the goods prove defective after purchase, the buyer, not the manufacturer, distributor or retailer, must assume all service or repair costs

EXAMPLE: Sammy Smallton purchases a used car from Swifty's Used Cars. During the sales pitch, Mr. Swifty tells Sammy that the oil spot under the transmission is "nothing to worry about" and that Swifty's would fix the leak "if it becomes a problem." After 100 miles, the car will not stay in gear, and Mr. Swifty refuses to fix it. The bill of sale says "As Is As Shown" on its face, but does not contain the other statements required by RSA 382-A:2-316. The disclaimer of warranty is probably ineffective, and Sammy may persuade a court to order Swifty's Used Cars to repair the car. Also, as stated before, Mr. Swifty's oral statements could be construed as an express warranty to repair transmission problems.

Finally, the buyer must sign the disclaimer document. This statute can be particularly important in the sale, and purchase, of used cars. (For more information about used cars, refer to the section entitled **Autos: Used**.)





Magnuson-Moss Warranty Act

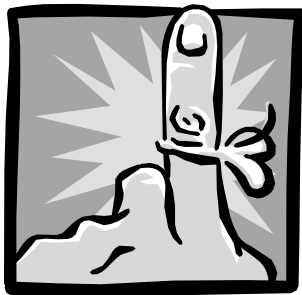
The *Magnuson-Moss Warranty Act (MMWA)*, a federal law passed by Congress in 1975, standardized written express warranties to prevent consumers from being confused or

misled about what consumer product warranties cover. *MMWA* is essentially a disclosure act requiring sellers of goods to clearly disclose the terms of any written warranties provided to consumers.

Under *MMWA*, a written warranty is either a "full" or a "limited" warranty. A full warranty must guarantee that during a specified period of time any defective parts will be repaired at no charge. If the defect cannot be repaired, the manufacturer must replace the item or give the consumer a refund. On the other hand, if the warranty contains any "exclusions" or parts not covered, then the warranty is a limited warranty. Most consumer product warranties are limited warranties.

Whether full or limited, each warranty must provide the following information in plain language:

-  A description of what the warranty does and does not cover
-  A step-by-step procedure the consumer must follow to obtain services
-  A description of what repairs or replacements will be made if the product is faulty
-  A description of what expenses the consumer, and the manufacturer, will pay on a faulty product.



POINTS TO REMEMBER


- Read a warranty carefully to find out what is, and is not, covered.
- Comparison shop for warranties as you would for products because warranties vary widely in what they cover.

To compare warranties, ask the following questions:

- ? Is there a parts manual for do-it-yourself repairs and are parts available locally?

Warranty service requirements are important:

- ? Does the product have to be packaged in its original materials?
- ? Is there a local repair shop?
- ? If not, where will the product have to be shipped?
- ? How long will the repair servicing take?

 Warranties may not be transferrable to other owners, so make sure you know who is covered. (For example, if you want to sell your lawn mower that is still covered

under its manufacturer's warranty, the warranty would extend to the next owner only if allowed by the warranty.)

WHERE TO GO IF YOU HAVE A PROBLEM



- ✔ If you have a problem with a product, check to see if its warranty is still in effect. Next, call the store where you purchased the product to see if it will either replace or repair the item for you. If the store is unable to assist you, contact the manufacturer (ask the retailer or look on the warranty card for the address or telephone number). The manufacturer may refer you to an authorized service center. (For information on

negotiating for repairs, refer to ***Remedies: Effective Negotiation***) If you are unsuccessful in getting your problem addressed, the following agencies may be of assistance:

- ✔ Contact the NH Consumer Protection and Antitrust Bureau:

NH Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, NH 03301-6397
603-271-3641 or 1-888-468-4454
Web: <http://www.doj.nh.gov/consumer/index.html>

- ✔ If a warranty does not follow the guidelines stipulated by the Magnuson-Moss Warranty Act, contact the Federal Trade Commission:

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
1-877-FTC-HELP or 1-877-382-4357 (toll-free)
Web: <http://www.ftc.gov>

- ✔ Contact the Better Business Bureau of New Hampshire.

Better Business Bureau
25 Hall Street, Suite 102
Concord, NH 03301
603-224-1991, 603-228-3789, or 603-228-3844
Web: <http://www.concord.bbb.org>

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