

AS A CONSUMER

Consumer Protection

New Hampshire's Regulation Of Business Practices For Consumer Protection and the Federal Unfair Trade Practices Act prohibit the use of unfair or deceptive acts, practices or unfair methods of competition in trade or commerce in New Hampshire. New Hampshire law specifically identifies a number of practices as unfair or deceptive, which include, but are not limited to: (a) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand; (b) disparaging the goods, services, or business of another by false or misleading representation of fact; (c) advertising goods or services with intent not to sell them as advertised; (d) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and (e) pricing of goods or services in a manner that tends to create or maintain a monopoly, or otherwise harm competition. These are just a few of the practices that are considered deceptive or unfair under the law.

If you think an unfair or deceptive act, or an unfair method of competition has victimized you, you should address your complaint to the seller, individual or business that sold you the item or service. You should speak with the manager, president or owner of the business. Often this will get the results you want. If you are unable to obtain a reasonable resolution, you may sue the business directly, file a written complaint with the Consumer Protection and Antitrust Bureau of the New Hampshire Department of Justice, or both. The Bureau will evaluate your complaint and advise you of what action, if any, it will take. You also may want to report the incident to the Better Business Bureau.

Contracts

A contract is any agreement between two or more people or entities, such as businesses or corporations. Individuals, under the age of 18 **can** make contracts, but generally the courts do not enforce them. For protection, many businesses will require an adult to "co-sign" a contract if you are under 18 years old. Some types of contracts that you may see, if you have not already seen them, include: employment contracts, sales contract for a car, loan contract from a bank or credit union, apartment or house lease agreement, student loan agreements, credit card agreements, and medical care contracts.

Many contracts, such as an employment contract, are rarely in writing, but are valid and enforceable. Other contracts **must** be written to be valid, such as a contract to buy real estate, a contract to purchase goods for more than \$500.00, and any lease in which the lease term is more than one year. Below are some general rules to follow before signing a written contract:

- Read the entire contract before signing it;
- Do not sign any contract until you are certain that you understand all terms of the contract.

- Ask questions about anything in the contract that you do not understand, or seems unreasonable;
- Cross out those sections of the contract with which you cannot agree. If you do this, draw a single line through the section, initial it and date it. Then have the other party review the contract and initial the change.
- Write in any parts of your agreement that are not in the written contract, initial and date the additions. Then have the other party do the same.
- Do not sign a contract that contains blank spaces. Either fill in the blanks with the appropriate data, or if the blank does not apply, write in “not applicable” or “N/A”.
- Do not assume that a pre-printed contract (such as a lease agreement) is acceptable. All sections of a contract are negotiable.
- Do not be afraid to try and negotiate changes to provisions in the contract that seem unreasonable. If the other party refuses to make any changes, and you still feel that the contract is unreasonable, **DO NOT SIGN IT**.
- If you have **any** doubts, do not sign the contract until you have an attorney review it and advise you. It costs far less to have an attorney look at the contract and make the necessary changes before it is signed. Once signed, it will be costly and may be very difficult to make changes or get you out of the contract.
- Make sure you get a complete, accurate, legible and signed copy of the contract for your records.

Although in **some** consumer credit transactions there is a right to rescind or cancel the contract for up to three days after it has been signed, most contracts are valid and enforceable as soon as they have been signed by both parties. Do not rely on any perceived right to rescind or cancel the contract – make sure the contract is right before you sign it.

If you fail to perform your obligations under the contract, you “breach” the contract, and are liable for damages. For example, if you lease an apartment and “promise” to make monthly payments, failure to make a monthly payment is a breach. The other party may sue you if you breach and refuse to pay the assessed damages. If you are sued, and either fail to defend against it, or lose, you will be ordered by a court to pay the reasonable damages claimed by the other party.

Warranties

A warranty is part of every commercial sale and specifies the quality and dependability of the product or service purchased. You should notify the seller of a defect or problem as soon as you are aware of it because your warranty has a time limit. The warranty tells you what you can

expect from the product, what you must do if you have a problem and what the seller will do to remedy the problem. Warranties establish your right to have defects in the product or service fixed. You should always ask for a copy of the warranty.

There are three types of warranties: oral, written (or express) and implied. An oral warranty is the seller's spoken promise about the product or service. Although oral warranties are binding, they are very difficult to prove, and therefore are seldom enforced. If a seller makes an oral "promise" about a product or service, get it in writing. A written warranty is a written promise about the service or product. Although easier to enforce than an oral warranty, the seller is not obligated to provide a written warranty.

An implied warranty comes with all products sold by a merchant. The most important implied warranty for consumers is the implied warranty of merchantability. This warranty assures the consumer that the product purchased at least will do what it is supposed to do. For example, your toaster will toast, your recliner will recline, and your can opener will open cans. This type of implied warranty covers new and used products purchased from a merchant (not from a garage sale) and may entitle you to repairs at no cost.

Closely related to the warranty of merchantability, is the implied warranty that a product will serve a particular purpose. If the seller knows why you are purchasing a product, and that the buyer is relying on the seller's expertise, there is an implied warranty that the product sold to the buyer is "fit" for his or her purposes.

The seller of products for personal, family or household use can disclaim the implied warranties, and limit its liability by providing you with a disclaimer prior to the sale. The disclaimer should inform you that the product is being sold with a limited warranty, "as is" or "with all faults". If these disclaimers appear on a product you are considering purchasing, be aware that you assume the risk of any problems if you make the purchase.

Mail Order Disorder

If you receive goods in the mail that you did not order, the law allows you to keep them as a gift. However, if something is delivered to you by mistake, such as something with another person's name or address on it, you must return the item to the post office or the correct recipient.

Mail order clubs, such as books, videos and music clubs, generally require you to purchase a certain number of items within a specified time frame. Usually, in addition to sending you a merchandise catalog every few weeks, the club also may send you the "selection of the month" unless you notify the club that you do not want that selection. You must either return the item within a certain time period, or pay for it. Because your membership in the club is a contract, the terms and conditions of that contract bind you. As we said before, you can be sued for breaching the contract. Before joining one of these clubs, make sure you read and understand all provisions of the contract.

For more information, see “Consumer Protection in New Hampshire” by the New Hampshire Bar Association and “You Rights as a Consumer” by New Hampshire Legal Assistance.

Small Claims Court

Small claims court provides a simple and informal procedure for you to sue someone, without hiring an attorney. You, as the plaintiff, may sue anyone who owes you up to \$5,000.. Small Claims Court does not have authority to resolve a dispute involving titles to real estate, nor can it order a person to do or not do certain acts.

To start a suit in small claims court, you must fill out a complaint. You can obtain the complaint form from any municipal district court, and when completed, the complaint may be filed with the municipal district court where you live, or where the defendant lives. If the party you are suing is not a New Hampshire resident, you may file your complaint in the town or district where the act you are complaining about occurred, or in any district or town where the defendant owns property or does business. Always ask the court clerk if you are in the correct court.

You should call the court clerk to find out how much it costs to begin or file a complaint, and legally notify the other party (serve) of the small claim complaint. There is an additional charge for each additional defendant you sue on the same complaint. You must pay this money to the court clerk when you file your complaint. If you win the suit, you are entitled to reimbursement of the court costs from the defendant.

The court will notify you and the defendant by mail of the hearing date. If you, as the plaintiff, do not show up for the hearing, the court usually will dismiss the case, and you will get nothing. If the defendant does not show up, he or she will generally lose by default. At the hearing, the technical rules of evidence will not apply, but the judge may limit the evidence and testimony to only that which is material and proper. Judgment shall be entered for the prevailing party. If you win, as the plaintiff, you will also be reimbursed for your costs and interest. The judge may allow the defendant to make installment payments, rather than a lump sum award.

For more information, see “How to Sue in Small Claims Court” by New Hampshire Legal Assistance, and “How to File a Small Claim” by the New Hampshire Administrative office of the Courts.

Bank Accounts

Banks and credit unions hold your money and pay it out to you on your instructions. Some bank accounts, such as certificates of deposit, require you to keep your money in the account for a specified period of time. If you withdraw the money before the end of the specified period, you must pay an early withdrawal penalty. There may be a period of time that deposits are held before the funds are available for withdrawal. This usually occurs when you deposit checks into a checking or savings account, and the deposited check must be cleared

through other banking institutions. Check with your bank or credit union for their specific policies.

Accounts may be opened in your name alone, or you may open a joint account with another person. Be aware that either party on a joint account can make deposits and withdrawals. This means that no matter how much you have contributed to the balance in an account, the person identified as a joint owner of the account can withdraw the entire balance. When you open a joint account, make sure that you trust the other person with whatever money you deposit. If a joint account is overdrawn, both parties can be held liable, regardless of who overdrew the account.

Credit

Sooner or later, you will want, or need, to borrow money for some purpose. Your ability to borrow depends on your credit rating. Your credit rating is determined by whether you have made prompt and full payments on past bills and loans in the past. Often, creditors will deny a loan to a new loan applicant if he or she does not have a credit history, or has not had a steady job for at least one year. Someone with established credit, who knows and trusts you, may volunteer to “co-sign” a loan for you. Doing this makes that person liable for the debt in the event that you do not make timely payments, as required. You cannot be denied credit because of your race, sex, color, religion, national origin, marital status, age (unless you are under 18 years old) or because you are receiving public assistance.

In most cases, a creditor must notify you within thirty days whether it has accepted or rejected your application for a loan. If a creditor rejects your application, it must either give you a written statement of its reason for denying your application, or inform you that you can request the specific reasons by contacting the creditor within sixty days. A creditor then has thirty days to respond to your request. If your loan application is denied, it is a good idea to find out why. The creditor may have made a mistake, or relied on erroneous information regarding your credit history. Additionally, knowing why your application was denied, may help you make a better application next time.

Your credit history is maintained by one or more consumer credit reporting agencies, and most of your credit transactions, including your payment history, will be reported by these agencies. The consumer reporting agencies release this information to prospective lenders when you apply for a loan. If you co-sign a loan, or are listed on someone else’s credit card, and that person fails to make appropriate payments, you will have to pay and your credit report will be affected.

You may check your credit rating by contacting a credit-reporting agency. There will be a fee if you request a report, unless you have been denied credit recently, based on their report. If you dispute the completeness or accuracy of any item contained in your credit report, and you report the discrepancy to the credit-reporting agency, the agency must re-investigate the matter, free of charge. The fact that you dispute an entry in your credit report must be included in future credit reports. If the agency finds an error, it must correct the error within 30 days.

“Community Resources” at the end of this booklet list the three largest credit-reporting agencies and their phone numbers.

Collateral

Collateral is anything, which has value that a lender can take if you fail to repay a loan. The lender wants property identified as collateral, which has value at least equal to the amount of the loan. If you fail to meet your obligations on the loan, the lender can use the collateral to pay off your remaining debt. Often the collateral for the loan is the item that you bought with the money lent to you. For example, on most car loans, the car is the collateral. If you fall behind in payments, or fail to make payments on time, even for a legitimate reason, you may be in default. Once you have defaulted, the creditor may take certain actions to collect the debt, including taking the collateral. The collateral would be sold and the proceeds used to satisfy your debt. If the proceeds are more than you owe, you will be given the balance, minus reasonable costs incurred by the lender to satisfy the debt. If the proceeds are less than you owe, you will be responsible for the shortfall, plus reasonable costs of the lender.

Credit Cards

Credit cards are, in essence, a pre-approved loan for a set amount. When you use a credit card to make a purchase, you have already promised to repay the “loan” in accordance with the credit card agreement that you signed in order to obtain the card. The credit card agreement specifies, among other things, the interest rate of the loan, whether there is any grace period before interest accrues, and minimum payments required, based on the remaining balance owed. Credit card companies make money by charging interest and finance charges on the money you have borrowed. Most credit cards will inform you of both the total balance you owe each month, and a minimum payment which is necessary. As long as you pay at least the minimum payment, you will be meeting your obligation and your credit report will reflect that you pay your bills on time. However, if you do not pay your balance in full, your outstanding balance will increase each month as interest is added.

Generally speaking, credit card interest rates will be higher than most other types of loans. This is because the credit card company does not have any collateral to secure the loan, and it is at a greater risk of losing money. You are, however, responsible for paying for all items you charge on a credit card.

Many people make the mistake of overextending themselves financially by charging many purchases, which they cannot pay off for a long time. To prevent this problem, many financial advisors recommend that a consumer charge only necessities and items that can be paid off the month that they are purchased. This keeps the balances low, and reduces the interest that you must pay. Although credit cards are very common, they differ greatly in terms and features. Shop around to find the card that has only the features you want and need. For example, a low interest rate may not be important to you if you pay off the balance each month, and the card has a 30 day grace period before interest accrues.

If you lose your credit card, the law limits the maximum amount you must pay for unauthorized use to \$50.00, regardless of how much someone who finds or steals your card may purchase with it. If you immediately notify the bank or company issuing the card that it has been stolen or lost, you will not be responsible for any charges made with your card after that point. For this reason, it is a good idea to keep your card numbers and the phone numbers of the issuers handy, so that you can notify the issuers immediately if your card is lost or stolen.

Debt Collection

A debt collector may not make harassing telephone calls, use profane, obscene or vulgar language, communicate with a debtor at the debtor's place of employment unless special circumstances exist, or refuse to disclose the name of the debt collector or the name of the person for whom the debt collector is attempting to collect the debts. Also, a debt collector cannot use or threaten to use force or violence, take any unlawful action or communicate or threaten to use force or violence, take any unlawful action, or communicate or threaten to communicate the debt to another person who is not connected to the debt.

A creditor or debt collector may not enter your home and take (repossess) collateral unless there is a court order to do so. Your car may be repossessed wherever it is parked, as long as no breach of the peace or forced entry takes place. If your car is sparked in a locked garage, a court order must be obtained before it can be taken away. All items in the car at the time of repossession still belong to you, and you are entitled to get them back undamaged.

Usually, if a creditor repossesses the collateral and you do not repay the unpaid balance on the loan or contract (plus reasonable repossession costs), the creditor will sell the repossessed goods. If the goods are sold for less than you owe on the loan or contract, you are liable for the difference. If the goods are sold for more than you owe, the creditor must refund the surplus to you, minus reasonable repossession costs, and if provided in the contract, reasonable attorney's fees.

A creditor also may go to court and get an order to garnish your wages. This means that a portion of your income will be sent to the creditor to pay off your debt. Creditors, legally, cannot take any of your wages before taking you to court and getting a court order. A court should not allow a creditor to take so much of your earnings that you would not be able to meet your basic living expenses.

After getting a judgment against you, a creditor can obtain a court order to make you pay off the order in weekly or monthly installments, called periodic payments. Once a periodic payment is ordered, you must pay it. If you do not have the money, or have some other legitimate reason for not continuing the periodic payments, you must go back to court to have the payment order reduced, or temporarily stopped. Otherwise, you may be found in contempt of court.

For more information see "When the Bill Collector Knocks" by New Hampshire Legal Assistance.

Bankruptcy

Bankruptcy is a procedure established by federal law allowing a person or business, under certain circumstances, to be relieved of debt. There are several different types of bankruptcy proceedings. Bankruptcy should be a last resort, since it will affect your ability to obtain credit in the future. Bankruptcy is not a cure for an inability to meet day to day living expenses, and it does not discharge debts, which may arise, such as medical or hospital expenses, after the date you file for bankruptcy.

For more information, see “Should I Declare Bankruptcy” by the New Hampshire Bar Association.