


Consumer Law

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Avoid Scams

- "Work at Home"
 - Never negotiate a check for someone and give them cash
- "Problems with your account"
 - Don't go to a website from an email to check or repair your account
- "Help me transfer money"
 - No one ever needs your help to get money out of a foreign country



Know Your Rights!

- As Texas law becomes less friendly to consumers it is more important that you know your legal rights and how to assert them



Texas Deceptive Trade Practices Act

- Applies to consumers
 - Any individual
 - Business with less than \$25 million
- Types of liability
 - Laundry List
 - Unconscionability
 - Warranty
- Remedies
 - Damages
 - Three times damages
- Notice
 - 60 days before filing

Who Can Be Sued

- Business
 - Business is liable
 - Officer or agent may also be liable
- Individual
 - Selling through want ads or garage sale is same as any business



Notice

- Before filing a claim, even in small claims court, you must send written notice
 - Send 60 days in advance
 - Send certified mail
 - State what you believe person did wrong
 - Give amount of damages
- Defendant may offer to settle

Laundry list

- Any Misrepresentation
 - Saying or implying anything about goods or services that is not true
 - No need to show person knew it was false, or intended to do anything wrong
- Failure to Disclose
 - Known material information must be disclosed
- Misrepresenting Legal Rights
 - Saying you have legal rights when you don't

Warranty

- Any breach of warranty is violation of DTPA
- Express warranties
 - Affirmation of fact or promise about the good
- Implied warranties
 - Arise as a matter of law
 - Merchantability-goods are fit for ordinary purpose
 - Good and workmanlike manner-services performed as a reasonably competent person would perform

Examples

- Seller says car "has rebuilt engine."
 - Express warranty
- Label says product is "100% cotton."
 - Express warranty
- Sole comes off shoe after one week.
 - Implied warranty of merchantability
- Plumber improperly repairs pipe and next day it leaks.
 - Implied warranty of good and workmanlike performance

“As Is”

- Be careful, buying something “as is” may result in no legal rights if something goes wrong.
- No implied warranties
- Possibly no damages if you didn't rely on seller

Damages

- Economic damages
 - Pecuniary loss (money you lost)
- Mental anguish damages
 - Must show acted knowingly
 - Very difficult to prove
- Punitive damages
 - 3X economic if knowingly
 - 3X mental anguish if intentionally

Attorneys' Fees

- Consumer who prevails is entitled to reasonable and necessary attorneys' fees
- Defendant can recover attorneys' fees if lawsuit was groundless, brought in bad faith or brought for the purpose of harassment



Banking Law—Know Your Rights

- A bank may pay a post-dated check before its date—Be careful
- Check your bank statements carefully- Waiting a week or more may prevent you from asserting your legal rights when your signature is forged
- You have no liability on a check where your signature is forged—No need to pay for a stop payment order, just inform bank

Home Builders-Remodelers

- Law is very favorable to builders
- Damages are very limited
- Must file with Texas Residential Construction Commission before filing suit
- Usually you must arbitrate

Arbitration

- If your contract requires arbitration you cannot sue and must arbitrate
- Arbitration is final and may not be appealed to a court
- You are not entitled to a jury
- You must pay the arbitrator
- Arbitrators are not bound by the procedures and laws that control in court

More Information

- www.peopleslawyer.net