

## Consumer Law

Richard M. Alderman  
University of Houston Law  
Center  
[www.peopleslawyer.net](http://www.peopleslawyer.net)  
alderman@uh.edu

---

---

---

---

---

---

---

---

## 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 of 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](http://www.peopleslawyer.net)



---

---

---

---

---

---

---