

# **CONSUMER LAW**

**Things You Should Know – If  
You Listened to Your  
Mother!**

# ABOUT SCDCA

- Licenses several types of businesses – such as pawn shops, mortgage brokers, consumer credit counselors, physical fitness facilities
- Handles complaints for family, household or personal goods or services
- Ask Consumer Affairs – live chat on the website

# CONSUMER LAW INFORMATION

Department of Consumer Affairs

[www.sccoconsumer.gov](http://www.sccoconsumer.gov)

National Consumer Law Center

[www.consumerlaw.org](http://www.consumerlaw.org)

Consumer World

[www.consumerworld.org](http://www.consumerworld.org)

Federal Trade Commission

[www.ftc.gov/consumer](http://www.ftc.gov/consumer)

# WHAT WE WILL COVER:

- Vehicles
- Debt collection
- General credit issues
- Identity theft and credit reports
- Consumer law myths and scams

**MOM SAYS – WHEN LIFE  
GIVES YOU LEMONS,  
MAKE LEMONADE!!!!**



# LEMON LAW

**Defined:** A new passenger motor vehicle (car, van or truck) that has a defect that impairs its use or will lower its market value substantially; and which the manufacturer cannot repair within a reasonable time. Nonconformity must appear within the first 12 months or 12,000 miles.

# LEMON LAW

- **Consumer should:** Notify the manufacturer of the defect during the term of the express warranty. The manufacturer must make any repair efforts at no cost and within a reasonable amount of time: three repair attempts for the same defect or thirty days out of service for repairs (not necessarily consecutive).

# LEMON LAW

- **Manufacturer must:** Replace the vehicle or rescind the agreement and refund the money. If the manufacturer elects to rescind and refund, the refund must be for the full purchase price of the vehicle, less a reasonable allowance for use. Full purchase price includes applicable finance charges and all governmental fees, such as sales tax, license fees and registration fees.

**MOM SAYS - DON'T BELIEVE  
EVERYTHING YOU ARE  
TOLD!!**

# USED - “AS IS”

Generally, used vehicles are sold “as is”: **no promise** is made as to the vehicle condition. Each used vehicle is to be sold with a **Buyer’s Guide** that states

- whether the vehicle is being sold "as is" or with a warranty;
- what repair costs a dealer will pay (if any);
- to get all promises in writing;
- some of the major problems you should look out for; and
- to have the car inspected by an independent mechanic before you buy.

# USED VEHICLES

Warranties can be written or oral.

“Puffing” vs. specific promises

Hard to prove that things were said

Contract usually states that oral representations are not a part of the contract or the warranty.

# ANOTHER “WARRANTY”

**Extended Service Contract:** a separate contract sold for an additional price.

Warranty or contract purchased to cover all or a part of repairs on a used vehicle.

**Read carefully for limitations and exclusions.**

MOM SAYS PAY YOUR  
BILLS – BUT YOU CAN'T  
GET BLOOD OUT OF A  
TURNIP!!

# DEBT COLLECTION

**Collector defined:** Any person who collects, attempts to collect, directly or indirectly, debts due or asserted to be owed or due to another. Includes creditor who collects or attempts to collect own debt.

**Collector cannot:** Collect using unconscionable means, including but not limited to: threats or use of force or criminal prosecution, communicating at frequent intervals or at unusual hours, publish list of consumers who allegedly refuse to pay, use obscene language, advertise for sale any debt to coerce payment.

# THIRD PARTY - FAIR DEBT COLLECTION PRACTICES ACT

**Collector defined:** Any person, *other than the original creditor*, who regularly collects debts owed to others. Includes attorneys who collect debts on a regular basis.

**Collector can:** Contact in person, by mail, telephone, telegram, or FAX.

**Collector cannot:** Contact at unreasonable times or places, such as before 8 a.m. or after 9 p.m., unless agreed. A debt collector also may not contact at work if the collector knows that the employer disapproves.



# HARASSMENT

Collectors may not harass, oppress, or abuse any person, falsely imply that they are attorneys or government representatives, falsely imply that consumer committed a crime, falsely represent that they operate or work for a credit bureau, misrepresent the amount of debt, indicate that papers being sent are legal forms when they are not or indicate that papers being sent are not legal forms when they are, state that consumer will be arrested if the debt is not paid, that they will seize, garnish, attach, or sell property or wages, unless the collection agency or credit intends to do so and it is legal to do so.

# HARASSMENT, PART II

Collectors may not give false credit information, send anything that looks like an official document from a court or government agency, use a false name.

Collectors may not engage in unfair practices in attempting to collect a debt. For example, collectors may not collect any amount greater than the debt, unless allowed by law, deposit a post-dated check prematurely, make consumer accept collect calls or pay for telegrams, take or threaten to take property unless this can be done legally, contact by postcard.

MOM SAYS TO TREAT  
OTHERS THE WAY YOU  
WOULD LIKE TO BE  
TREATED.

# ADVICE TO CONSUMERS

Write a letter to collection agency telling them to stop. Once the agency receives the letter, they may not contact again except to say there will be no further contact, and to notify that the debt collector or creditor intends to take some specific action.

# THIRD PARTY CONTACT

Collector may contact other people, but only to find out where consumer lives and works. Collectors usually are prohibited from contacting such permissible third parties more than one. In most cases, the collector is not permitted to tell anyone other than consumer that money is owed.

# GARNISHMENT

Generally, creditors may not garnish wages for a consumer debt. However, **IF** the debt arose in a state where garnishment is allowed, **IF** the creditor obtained a valid judgment in that state and **IF** the order is domesticated, the creditor may be able to garnish a debtor's wages to satisfy the judgment.

# REPOSSESSION

- Creditor must have valid security interest
- Nonpayment or significant impairment of collateral
- Notice of Right to Cure must be sent once during life of closed-end contract, but not necessary for voluntary surrender of collateral
- Self-help repossession allowed as long as no breach of peace

# NOTICE OF RIGHT TO CURE

- Consumer must be at least 10 days in default
- Gives 20 days to bring current
- Only one notice required
- Certified mail NOT required
- Federal credit unions not required to provide notice

# RIGHT OF REDEMPTION

- Consumer has right to redeem after repossession
- Usually must pay the unpaid balance plus repossession costs
- Once property is sold to 3<sup>rd</sup> party, consumer loses right to redeem

# CREDIT ISSUES

## INTEREST RATES

**Maximum rates:** Creditor who charges more than 18% must file with the Department of Consumer Affairs and post in its place of business the maximum rate that it will charge. Except for restricted lenders, supervised lenders and oral agreements, no limit on the rate that can be charged when the creditor files and posts its maximum rate.

**MOM SAYS – KEEP YOUR  
EYES AND EARS OPEN –  
AND READ BEFORE YOU  
SIGN!!**

# **PREDATORY LENDING**

**Pay Day Loans**

**Title Loans**

**Flipping**

**Mortgage Fraud – beware of inflating  
income, home value, incomplete contracts**

**MOM SAYS – SHRED FIRST  
AND ASK QUESTIONS  
LATER!!!**

# IDENTITY THEFT

**First Step:** Call the toll-free fraud number of any one of the three major credit bureaus to place a fraud alert on credit report. As soon as the credit bureau confirms fraud alert, the other two credit bureaus will be notified to place fraud alerts on credit report, and all three reports will be sent to consumer free of charge.

# ID THEFT, continued

Review credit reports carefully. Look for inquiries you didn't initiate, accounts you didn't open, and unexplained debts on your true accounts. Where "inquiries" appear from the companies that opened the fraudulent accounts, request that these "inquiries" be removed from your report. You also should check that information such as your SSN, addresses, name or initial, and employers are correct. Whether inaccuracies are due to fraud or error, notify credit bureau as soon as possible by telephone and in writing. Continue to check reports periodically, especially in the first year after the theft.

# AND MORE

## Second Step

- Close any accounts that have been tampered with or opened fraudulently. If closing existing accounts and opening new ones, use new Personal Identification Numbers (PINs) and passwords.

# AND MORE

## Third Step

- **File a report with local police or the police in the community where the identity theft took place. Keep a copy of the report. It may be needed to validate claims to creditors.**

## Fourth Step

- **File a complaint with the FTC.**

# CREDIT FREEZE

- New SC law allows South Carolinians to freeze and thaw credit report for FREE
- Must contact each credit reporting agency
- Allow time for “thaw” – so plan ahead if you need new credit
- Can still use credit cards, have access to lines of credit, etc.

MOM SAYS TO DO IT  
RIGHT THE FIRST TIME  
SO YOU WON'T HAVE TO  
SPEND TIME FIXING  
THINGS!!

# TO AVOID ID THEFT

Shred unnecessary documents and account information and discard old receipts, files, and records after a few years.

Check your credit report at least once a year for inaccuracies, new accounts, and changes of name or address.

Don't give your information to unfamiliar people or businesses – no matter how official they seem.

Ask inquirers about the information they need: why do they need it? What will they do with it and how will they protect it? With whom will they share?

Don't use private information (e.g. your birthday, SSN#, etc) as identifiers (PIN number, etc.).

# AND.....

**Don't give out personal information** on the phone, through the mail or over the Internet unless you've initiated the contact or are sure you know who you're dealing with. Identity thieves may pose as representatives of banks, Internet service providers (ISPs) and even government agencies to get you to reveal your SSN, mother's maiden name, account numbers and other identifying information.

# AND...

Before you share any personal information, confirm that you are dealing with a legitimate organization. You can check the organization's Web site as many companies post scam alerts when their name is used improperly, or you can call customer service using the number listed on your account statement or in the telephone book.

# AND...

**Guard your mail from theft.** Deposit outgoing mail in post office collection boxes or at your local post office, rather than in an unsecured mailbox. Promptly remove mail from your mailbox. If you're planning to be away from home and can't pick up your mail, call the U.S. Postal Service to request a vacation hold.

**To thwart an identity thief who may pick through your trash** or recycling bins to capture your personal information, tear or shred your charge receipts, copies of credit applications, insurance forms, physician statements, checks and bank statements, expired charge cards that you're discarding, and credit offers you get in the mail.

# AND...

If you receive pre-screened credit card offers in the mail (based on your credit data), tear them up after you decide you don't want to accept the offer.

To opt out of receiving pre-screened credit card offers, call: 1-888-5-OPTOUT (1-888-567-8688).

# AND...

**Secure personal information in your home**, especially if you have roommates, employ outside help or are having service work done in your home.

**Pay attention to your billing cycles.** Follow up with creditors if your bills don't arrive on time. A missing credit card bill could mean an identity thief has taken over your account and changed your billing address to cover his tracks.

**Be wary of promotional scams.** Identity thieves may use phony offers to get you to give them your personal information.

**MOM SAYS BE AWARE!!**

# CREDIT REPORTS

**General:** South Carolinians can get a free credit report from each of the three major credit reporting agencies (Equifax, Experian, TransUnion) annually. Reports should be reviewed regularly (at least annually) for suspicious activity.

Consumers have **two years** from the date the incorrect information was placed on the report in which to bring an action in court for removal.

# REVIEWING CREDIT REPORTS

Consumer should review report carefully. Look at:  
Date of Last Activity - should reflect last payment made by consumer - is it correct; is it more than seven years old. Accuracy of information - amount owed, when last payment made, status (settled, paid in full, charged off, etc.), payment history (# times delinquent, days delinquent)

Is it consumer's debt?

Are there other issues/disputes with any of the debts (consumer was co-signor, joint account that other party was responsible for, problems with services/property, etc)?

# CORRECTING CREDIT REPORTS

Tell the reporting company, in writing, what information is inaccurate. Include copies (NOT originals) of documents that support the position. Keep copies of dispute letter. Consumer reporting companies must investigate the items in question within 30 days. When investigation is complete, reporting company must give written results and a free copy of the report if the dispute results in a change. If an investigation doesn't resolve dispute, ask that a statement (100 words or less) of the dispute be included in file and future reports.

Also tell the creditor or other information provider, in writing, that item is disputed.

# STUDENT LOAN ISSUES

Generally, the usual consumer protections (for example: statute of limitations, garnishment) do not apply to U.S. Department of Education student loans.

However, if the school closed prior to completing a program, a U.S. Department of Education loan obtained to pay the cost of attendance at that school can be discharged. See DOE for eligibility requirements. ***Note that the loan cannot be discharged because the consumer was not satisfied with the school's services.*** The loan can't be discharged solely because the school provided poor training or had unqualified instructors or inadequate equipment, did not provide job placement or other services that it promised, or engaged in fraudulent activities.

**YOUR MOM WAS RIGHT –  
IF IT'S TOO GOOD TO BE  
TRUE, IT PROBABLY IS!!**

# MYTHS AND SCAMS

**THREE DAY RIGHT OF RESCISSION:** Generally, once a contract has been signed, the consumer is bound by its terms. South Carolina law does not provide a right to cancel the contract, so unless the terms include a right to rescind, **the consumer is bound by the contract.**

## Exceptions

- Home solicitation sales - consumer is given a three day right to rescind the contract.
- Health facilities - Prepaid or credit contracts for physical fitness facilities must allow consumer three business days to cancel.
- Refinance of real estate mortgage - Consumer has three days to rescind a refinance of the mortgage on his home, or a home equity loan that is secured by a mortgage of his home.

# NIGERIAN FRAUD

Claiming to be Nigerian officials, businesspeople or the surviving spouses of former government officials, con artists offer to transfer millions of dollars into a bank account in exchange for a small fee. If the consumer responds to the initial offer, he may receive "official looking" documents. Typically, he is then asked to provide blank letterhead and his bank account numbers, as well as some money to cover transaction and transfer costs and attorney's fees.

# CANADIAN/INTERNATIONAL LOTTERY

Scam operators often based in Canada — are using the telephone and direct mail to entice U.S. consumers to buy chances in high-stakes foreign lotteries from as far away as Australia and Europe. These lottery solicitations **violate U.S. law**, which prohibits the cross-border sale or purchase of lottery tickets by phone or mail.

There are no secret systems for winning foreign lotteries. Your chances of winning more than the cost of your tickets are slim to none. If you purchase one foreign lottery ticket, expect many more bogus offers for lottery or investment "opportunities." Your name will be placed on "sucker lists" that fraudulent telemarketers buy and sell. Keep your credit card and bank account numbers to yourself. Scam artists often ask for them during an unsolicited sales pitch.

# MONEY LAUNDERING SCHEME

- Certified check is sent to consumer
- Consumer cashes and sends most of the money to scammer
- Check eventually bounces and bank looks to consumer for the money
- Many variations, same idea

# RESOURCES

- South Carolina Department of Consumer Affairs:  
[www.sccoconsumer.gov](http://www.sccoconsumer.gov)
- South Carolina State Code:  
<http://www.scstatehouse.net/code/statmast.htm>
- National Consumer Law Center:  
<http://www.nclc.org/>
- Consumer World:  
<http://www.consumerworld.org/>
- Federal Trade Commission:  
<http://www.ftc.gov/consumer>

# AND...

<http://www.naca.net/>

<http://www.pueblo.gsa.gov/>

<http://www.blawg.com/>

[www.scambusters.org](http://www.scambusters.org)

[www.internetfraud.usdoj.gov](http://www.internetfraud.usdoj.gov)

[www.onguardonline.gov](http://www.onguardonline.gov)

# AND...

- <http://money.cnn.com/>
- <http://moneycentral.msn.com/home.asp>
- [www.bankrate.com](http://www.bankrate.com)
- <http://www.responsiblelending.org/>