

# Your rights as a consumer in Illinois©

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# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such do not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

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Look for these symbols to tell you when to:



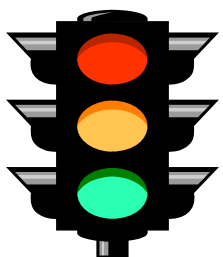
**STOP!**

You need legal representation or advice to continue.



**USE CAUTION!**

This is very important so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.

# Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

## 1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

## 2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

## 3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

### Free sources of legal help

#### Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may

visit their website at:

<http://www.lollaf.org>

#### Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

#### Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

#### Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

## People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

## What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

## Summary of the law in this area

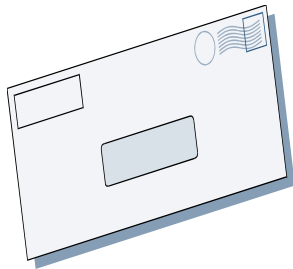
This section contains summaries of important areas of the law that you need to know.

## Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



# Who these people are



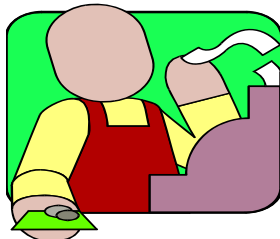
## Creditor

A person or business that you owe money to is called a creditor. If you don't pay a bill on time, if you miss or are late with a payment, or if you owe someone money for some other reason, the creditor will usually be the first person/agency who contacts you.



## Debtor

If you owe a person, business, or agency money, you are in debt to them or are called a debtor.



## Seller/Merchant

The person or business who sold you the item you purchased is called the seller. Sometimes the seller is referred to as a "merchant". It is important that you know whether it is the seller or the manufacturer that is giving you a warranty —if any — on your purchase.



## Manufacturer

The person or business who built or assembled the item you purchased is called the manufacturer. It is important that you know whether it is the seller or the manufacturer that is giving you a warranty —if any — on your purchase.



## Mediator

A mediator is someone who can meet with you and the person with whom you have a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you make a decision. In some counties, mediation is required in certain types of cases.



## Attorney

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.

# Where to go for help

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The following is a list of agencies that routinely receive, collect, and compile lists of complaints about businesses. Some of these agencies may be able to help you with a particular problem simply by contacting the business you are having a problem with on your behalf. None of these agencies, however, are able to file a private lawsuit against the business for you or on your behalf. If you don't have a warranty, however, or if your warranty doesn't cover your problem, these agencies may be the only option you have.



**NOTE:** The amount of time you have to file a lawsuit continues to run while you try to resolve your dispute through an agency. Make sure that you don't wait too long to file your claim or you may lose your right to file it, even if you have a good case. See PAGE 29 for more details.

## Consumer Credit Counseling

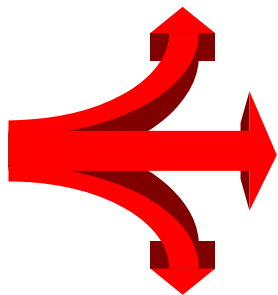
CCCS is a nonprofit community organization dedicated to helping well intentioned people repay their debts in a timely and consistent manner by providing free personal financial counseling. They are not collection agencies or loan companies. Best of all, their services are free. In the Chicago-metro area call 1-866-889-9347. In Southern Illinois, call 1-888-656-CCCS(2227).

## Attorney General of Illinois

If you are having trouble with a collection agency, credit bureau or credit, you should file a complaint with the office of Consumer Protection. You can reach the Attorney General in the Chicago area at 800-386-5438, in the Springfield area at 800-243-0618, and in the Carbondale area at 800-243-0607.

## Federal Trade Commission

If you would like to file a complaint with the Commission, you can visit their website at [www.ftc.gov](http://www.ftc.gov). While the Commission cannot intervene in individual disputes, if a pattern of possible law violations occur, they can take action.



## Chamber of Commerce

Some businesses belong to a local chamber of commerce which can intervene on your behalf. Check your Yellow Pages for the Chamber of Commerce for your town.

## Better Business Bureau

If you would like to file a complaint with the Better Business Bureau, you can contact them at their St. Louis Regional Office: 1-314-645-3300 or their Chicago Regional Office at 1-312-832-0500. In addition to keeping track of complaints about businesses, the Bureau can contact a business for you and try to work out a solution you can both agree with.

## Chicago Department of Consumer Services

For residents in the City of Chicago, you can contact the Department at 312-744-4006 any time you have a problem with a company doing business in Chicago.

## Post Office

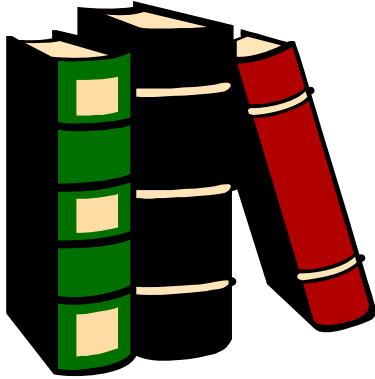
Check your Yellow Pages for the Post Office nearest you. Look under U.S. Government. Call your Post Office if you have a problem with something you received in the mail which you did not order or was damaged.

## State's Attorney

Check your phone book for your county State's Attorney. Call the State's Attorney if you believe a crime -- forgery, fraud, etc. has occurred.

## Local telephone company

Check your phone book for the telephone company which services your area. Call your phone company if you are receiving harrasing telephone calls.



## Disclaimer: Please Read !!!

The following is a list of publications which discuss the issues of consumer rights. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

*Solving Consumer Problems*, Federal Trade Commission

*Service Contracts*, Federal Trade Commission

*Resolving Consumer Disputes: Mediation and Arbitration*, Federal Trade Commission

*The Three Day Right To Cancel*, Consumer Fraud Bureau, Office of the Illinois Attorney General

*Warranties*, Federal Trade Commission

*Credit Billing Errors*, Federal Trade Commission

*Fair Credit Reporting*, Consumer Fraud Bureau, Office of the Illinois Attorney General

*Unwanted Junk Mail and Telemarketing Calls*, Consumer Fraud Bureau, Office of the Illinois Attorney General

*Online Safety Tips Brochure*, Consumer Fraud Bureau, Office of the Illinois Attorney General

*Shopping on the Internet*, Consumer Fraud Bureau, Office of the Illinois Attorney General

*Consumer Tips Brochure*, Consumer Fraud Bureau, Office of the Illinois Attorney General

# What these legal words mean

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## **as-is**

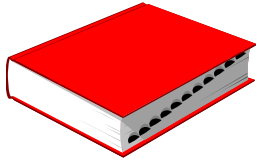
When no warranty, even an implied warranty, is offered with an item, it is sold as-is.

## **credit**

When a person, business, or agency gives you a sum of money or allows you to purchase something in installments, they are giving you credit.

## **creditor**

Any person, agency, or business to which you owe a debt.



## **debtor**

A person who owes money.

## **disclaimer**

A provision in a contract which states that something that usually comes with the purchase — a promise, a warranty, a service — or something that was promised/said to you orally — does not apply or come with the purchase.

## **implied warranty of fitness for a particular purpose**

An applied warranty that is created when your decision whether to buy an item is based on the seller's or manufacturer's advice or statements that it will do what you want it to do. For example, if you buy a drill bit to drill concrete and the seller knowing this, sells you a particular drill bit.

## **implied warranty of merchantability**

An applied warranty that the product will do what similar products in the marketplace do. For example, a hammer will drive nails, a pair of scissors will cut paper.

## **lien**

A lien is a claim that a creditor puts on or attaches to real estate owned by a debtor. If the debtor tries to sell the property, the lien must be paid. In some cases, the creditor can force the sale of the property to pay the lien.

## **pro-se**

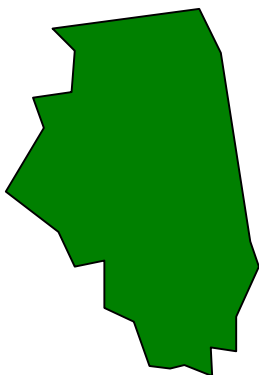
A person who is not represented by an attorney and is involved as a party in a lawsuit.

## **statute**

The law that the state legislature or federal government enacted on a particular subject.

## **warranty**

A promise (oral or spoken) by a manufacturer or a seller that a product will last for a certain period of time or use, be repaired for free or at a lesser charge for a particular period of time, or that it will do a particular task. Warranties can be either implied (come with all purchases automatically by law or custom) or express (given to you specifically in writing or orally).



There are several federal and state laws regarding consumer rights which are discussed in this packet. They are:

## **Magnuson-Moss Act**

The Magnuson-Moss Act is the federal law that governs consumer product warranties. The Act requires sellers and manufacturers of consumer products to provide consumers with detailed information about what warranty they are getting with a product. The Act can be found at Section 2301 of Chapter 15 of the United States Code.

## **Uniform Commercial Code:**

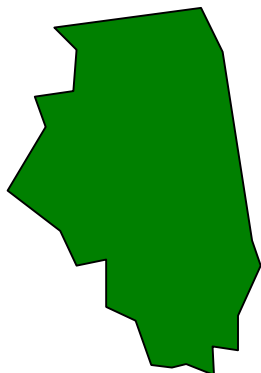
The Uniform Commercial Code is a code which governs business transactions and exists in one form or another in every state in the United States. In Illinois, the Code can be found in Act 5 of Chapter 810 of the Illinois Compiled Statutes. Under the UCC, every purchase made in Illinois comes with implied warranties of fitness for a particular purpose and merchantability. These warranties can be found in Sections 2-314 and 315 of Act 5.

## **Fair Credit Billing Act**

The Fair Credit Billing Act governs how a business must respond to a customer's questions on an item in a bill received when the customer was given credit to make a purchase. Under the Act, a business must investigate disputes over billing and correct errors in bills when notified in writing by the customer. The Act can be found in Section 1666 of Chapter 15 of the United States Code.

## **The FTC Mail or Telephone Merchandize Rule**

The Federal Trade Commission's Mail or Telephone Merchandise Rule can be found in Section 435 of Chapter 16 of the Code of Federal Regulations. The Rule requires that mail order and telephone deliveries be completed within 30 days unless the merchant at the time of the sale provided for a longer delivery period.



## **The Illinois Automotive Repair Act**

The Illinois Automotive Repair Act can be found in Act 306 of Chapter 815 of the Illinois Compiled Statutes. The Rule requires that a repair shop must give an Illinois citizen a written estimate for car repairs that will cost more than \$100.

## **The Illinois Home Repair and Remodeling Act**

The Illinois Home Repair and Remodeling Act can be found in Act 513 of Chapter 815 of the Illinois Compiled Statutes. The Rule requires that a person doing home repair or remodeling must give a written contract or work order to the customer. This work order must state the repair's total cost, including parts, materials, and the price of the estimate itself.

## **The FTC Cooling Off Rule**

The Federal Trade Commission's Trade Regulation Rule Concerning a Cooling Off Period for Door To Door Sales can be found in Section 429 of Chapter 16 of the Code of Federal Regulations. The Rule gives the consumer the right to cancel certain types of purchases within 3 business days when they are solicited at their home.

## **The Illinois Consumer Fraud and Deceptive Business Practices Act**

Similar to the FTC Cooling off rule (see above), a provision of the Illinois Consumer Fraud Act gives Illinois citizens the right to cancel certain purchases made from their home within 3 business days. This provision can be found in Section 2B, Act 505 of Chapter 815 of the Illinois Compiled Statutes.



**The item or service you purchased did not last as long as promised or as long as you thought it should.**

Unfortunately, when an item breaks or a service isn't working, your right to have the item or service fixed, replaced, or return it for a refund depends on whether you have a "warranty". Warranties may just appear as a line in a contract like "parts good for 90 days" or even as an oral promise like "I guarantee this will last for a month". In Illinois, there are 2 implied warranties that can come with a purchase: the implied warranty of fitness for a particular purpose and the implied warranty of merchantability.

If you believe your problem is covered by a promise or warranty, then go to **PAGE 21**. If you did not get any promises when you made your purchase, if all implied warranties were disclaimed, or if your problem is not covered by a promise or warranty given to you, then try one of the agencies listed on **PAGES 7-8**.

## Commonly asked questions about warranties

**Q: So, you're saying that if I don't have a warranty, I am out of luck.**

Not necessarily. For instance, you may have an implied warranty. If you don't have a warranty or if all warranties were disclaimed, there are other options you should try before you give up. Try one of the agencies listed on **PAGES 7-8**.

**Q: The business promised me that this item would last, but did not put it in writing. Am I out of luck?**

No. While oral promises are obviously more difficult to prove in court, that doesn't mean that they are not binding. Go to the section on Making A Claim - **PAGE 21** for more information.

**Q: I have a warranty in writing, but it just ran out. Am I out of luck?**

Maybe. If you can prove that you reported your problem to the business before the warranty expired, you may still have a right to whatever relief the warranty requires. If not, you may be out of luck. Try one of the agencies listed on **PAGES 7-8** for assistance.

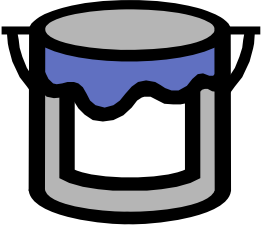
**Q: The business says my warranty does not cover my problem. Am I out of luck?**

Maybe. Some warranties do not cover all parts or all instances. For example, most warranties do not cover a product if you used it for something beyond its' "normal use." (Like using your microwave to hold up your television). If that is the case, you may be out-of-luck. Try one of the agencies listed on **PAGES 7-8** for assistance.

**Q: Wait a minute... Doesn't a store have to take an item back if it doesn't work?**

No. In Illinois there are few laws which regulate store return policies. Consequently most stores can set whatever policy they want to on returns. You may have to make a warranty claim if you want the item fixed or replaced. See PAGE 21 for more details.

**The item or service you purchased works fine, but there is something else about it you just don't like.**



Sometimes, after you have paid for something, you discover that while it works just fine, there is something else wrong with it (like it is the wrong size or the wrong color). You may believe that the law in Illinois gives you the right to return the item or cancel the service and get a refund as long as you return it in the same condition as when you bought it or as long as you return it within a certain period of time. Unfortunately, in most cases, you do not have that right.

In Illinois, there are few laws which regulate business return or refund policies. These laws are discussed below. Consequently, most businesses can set whatever policy they want to on returns. Some stores will allow you to return items within a certain time period if you have a receipt or if you are not "fully satisfied". They are not required by law, however, to do this. Consequently, unless the business promised you that the item or service would be a certain color, size, shape, or that you would be fully satisfied, you probably are stuck with the item.

**Returns which are covered by Illinois law or federal rules are:**



**Door to Door Sales:**

There is an Illinois and a Federal Trade Commission rule which gives consumers a "cooling off" period when it comes to door to door sales. The 2 laws are relatively the same in what purchases they cover and how a consumer enforces his/her "return" rights.

**What door to door sales are covered:**

If you have bought or ordered an item or service from a door-to-door salesperson **and** the bill is more than \$25.00 **and** you did not call the company and request that the salesperson come to your home, then with some exceptions (see below) you have 3 days to cancel the sale.

**What door to door sales are not covered:**

purchases of real estate, insurance, or securities,  
purchases that are a result of prior negotiations made by you at the seller's business,  
purchases made at your home when you called the seller for the purposes of having repair or maintenance work done, or  
if you initiated the contact because of an emergency and waived the right to cancel in 3 days.

To cancel a door to door purchase you must do the following:

## Step 1: Send written notice of your cancellation

When you made your purchase or signed your contract for your door to door sale, you should have been given a notice that you would use if you wanted to cancel the contract. If you were not given such a form, you can write your own notice of cancellation. You must send the notice to the seller within 3 business days after the date of the purchase to cancel your purchase. Keep in mind that the three days starts to run the first day after the date of the purchase and ends at midnight on the 3rd day. The 3 days can include Saturdays if it is a normal business day for the seller. It is a good idea to send your notice of cancellation by certified mail with a return receipt requested so you will have proof that the seller received your notice.

## Step 2: Arrange for a pick up of the merchandise

After you cancel your contract or purchase, you must make any merchandise you received available for pick up in the same condition as when you purchased it. If the merchandise is not picked up within 20 days, it is yours to keep without paying for it.

If you do not make the merchandise available to the seller or if you agree to return the merchandise but fail to do so, you remain obligated under the contract.

## Step 3: Get your money and/or trade-in back:

If you cancel the purchase, the seller must cancel and return any contracts you signed, refund all of your money, arrange for a pick up or return of any merchandise delivered to you, and return any trade-in you made within 10 days.

**Other returns that are covered by Illinois law are:**



**Campground Membership sales:** The 3 day right to cancel described above for door to door sale applies also to campground membership sales but you must deliver the cancellation in person to the camping operator or by certified mail.



**Hearing aid sales:** When you purchase a hearing aid by mail, you have 45 days to cancel your purchase.



**Physical fitness club sales:** The 3 day right to cancel described above for door to door sales also applies to physical fitness services.



**Buyer's clubs sales:** The 3 day right to cancel described above for door to door sales also applies to buyer's club memberships.

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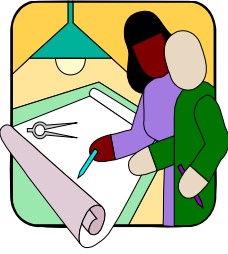
## Commonly asked questions about returns

**Q: So, you're saying that if I don't have something in writing and it is not a door to door sale, I am out of luck.**

Not necessarily. While you probably don't have a legal claim to a refund or a different item, there are other options you should try before you give up. Go to PAGES 7-8 for a list of agencies that may be able to help you.

**Q: The business promised me that this item would be a particular color, but did not put it in writing. Am I out of luck?**

No. While oral promises are obviously more difficult to prove in court, that doesn't mean that they are not binding. Go to the section on Making A Claim on PAGE 21 for more information.



**You simply changed your mind about wanting the item or service.**

Sometimes, after you have paid for something or put a downpayment on it, you decide that, for whatever reason, you do not want it anymore. You may already have one or you just may not need it. You may believe that the law in Illinois gives you the right to return the item or cancel the service and get a refund as long as you return it in the same condition as when you bought it or as long as you return it within a certain period of time. Unfortunately, in most cases, you do not have that right. In Illinois, for instance, there are few laws which regulates business return or refund policies. See pages 13-14. Consequently most businesses can set whatever policy they want to on returns.

**Q: I already put a downpayment on this item, and I want to take it back, can I get my downpayment back if I return it?**

Maybe. Some stores, however, will keep your downpayment for allowing you to return the item. It all depends on what the store's return policy is. If the downpayment is large (like 1/2 the price of the item), you may want to consider just keeping the item instead of returning it.

**Q: I gave the business \$100 to hold the item while I decide whether I want to buy it. Can I get this money back if I don't purchase the item?**

Maybe. Some stores, however, will will keep your "hold" money for allowing you to cancel the sale. It all depends on what the store's policy is.

**Q: I only had this item for 1 day and it is not even opened, doesn't the store have to take it back?**

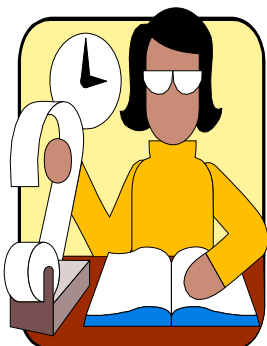
No. Remember, there is no return or refund law in Illinois. Consequently, if a store's policy is "no returns", then unless there is a breach of a warranty, you are probably out of luck. Go to PAGES 7-8 for a list of agencies that may be able to help.

**Q: I don't think that the store is following their own return policy. What can I do?**

If a store is not following their own return policy (for example, it says you can return any item for a full refund and they only want to give you 1/2 of your money back), then you might want to consider making a claim against them. Go to PAGE 21 for more information.

**Q: I already started making payments on this item and I no longer want it. Can I take it back and get my money back?**

Maybe. Some stores, however, will allow you to return an item, but will keep whatever money you have paid for allowing you to return the item. It all depends on what the store's return policy is. Furthermore, taking back (or allowing a store to take back) an item you bought in installments could be viewed as a "voluntary repossession". In these cases, the item is sold and you could be sued for any remaining balance that you owed. Consequently, if you take the item back, you should get something in writing from the store that they are accepting the item as full satisfaction of your account and that they are not going to sue you for the remaining balance owed on your installment sales contract.



## The amount listed on a monthly credit statement is incorrect.

When you make a purchase on credit you often receive a monthly statement in the mail which tells you how you are doing. If you have a credit card, you also will receive a monthly statement which shows what your purchases were and how much your monthly payment is. The company which gave you the money (or credit) to make your purchase is called a creditor. So, if you use a VISA card to make a purchase at Wal-Mart, VISA is the creditor, not Wal-Mart, because VISA is the business giving you the money (credit) to make the purchase.

Sometimes, you will receive your monthly statement of your account and something is wrong. Either there is an item you didn't purchase, the amount of the purchase is incorrect, or maybe the balance owed is wrong. In any case, you should know that while you have certain rights to have errors corrected, the time you have to ask for these corrections is limited.

If you think that something on your statement is wrong, or you want more information about it, you must do the following **within 60 days after the date the statement was mailed to you.**

1. Notify the creditor **in writing** about the error. While it is OK to call the creditor, by law, the creditor only has to respond to written requests. You should write to the address the creditor lists for billing inquiries. In your letter be sure to include the following:

- a) your name and account number;
- b) that you believe the bill contains an error and why you believe it is an error; and
- c) the date and amount of the error.

2. Pay all parts of the bill that are not in dispute.

In 30 days the creditor must either acknowledge your letter or resolve the problem. In 90 days, the creditor must either correct your account or tell you why they believe the statement is correct.

If no error is found, the creditor must send you an explanation of the reasons for their decision and send you a statement of what you owe. You then have 10 days to pay the bill.

**Q: So, if after the business investigates the error they determine that the bill is correct, but I don't agree, am I out of luck?**

**A:** Not necessarily, while you do have to pay the bill, you can still try to get your money back. See PAGE 21 for how to make a claim against the business.

## The amount of a bill is higher than the estimate you received.



Often when you are having an item repaired, you ask for or are given an estimate. Later, when the item is fixed and you receive the bill, the bill may be higher than the estimate. If you refuse to pay the bill, the business may threaten to put a lien on your property or even to keep the property and sell it.

It is important to know, therefore, what your rights are. In Illinois, there is no statute which talks about estimates and whether they are binding or not. As such, whether a court would consider an estimate as binding on a business will likely be determined by whether it believes that the estimate was a "contract" between you and the business. To determine whether a court would find that you had a "contract", ask yourself the following questions. If you can answer YES to most of these, if your case went to court, there is a good chance the court would find that your estimate was a "contract."

- 1) Was the estimate in writing?
- 2) Was the estimate signed and dated by either or both parties?
- 3) Did the estimate itemize prices for parts and labor?
- 4) Did the estimate mention a total amount?
- 5) Were there witnesses to the estimate?
- 6) Did the estimate require your approval for additional costs?

Even if you can't answer YES to any of these questions, it does not mean that your estimate was not binding on the business, it only means that your case will be more difficult to prove if it went to court. **Either way, if you and the business cannot agree on what the final bill should be, the easier route is simply to pay the full bill under protest and later try to get your money back. See PAGE 22 for more details. The reason for this is as follows:**

In Illinois, if a person does repair or improvement work for you and you don't pay them the amount they say they are owed, they can have a lien placed on your property. Having liens removed from your property is difficult, so it is usually easier to just pay the bill (if you can) and sue the business to get your money back.

Even worse, if the repair person **has your property** (for example, when you leave your car at an auto repair shop) and you don't pay the full bill, they can **keep the property, and if you don't pay the bill in 90 days, sell it, and apply the sales proceeds to your bill.**

Of course, if you don't care if you lose the property and/or being sued for what you owe, then you can simply refuse to pay the bill.

**Q: What if I don't want to lose the property and don't want to get sued but I can't pay the full bill, what should I do then?**

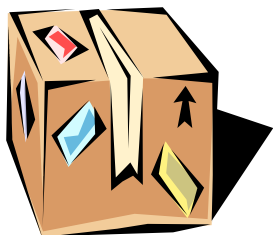
A: Your only option then is to pay the amount you agree to and if you don't get your property back, seek the services of a private attorney, or you can try to file a Small Claims Action to get your property back. For a discussion on Small Claims Court, see Packet #4 of the Court Series. See PAGE 7-8 for a list of agencies that also may be able to help you.



**Q: The business told me this television would cost \$100, but now they say it will be \$125, can I force the business to sell me the television for \$100?**

A: Probably not, your best bet is simply to ask for any downpayment back and shop somewhere else. If the business won't give you your money back, see PAGES 7-8 for a list of agencies that may be able to help you.

# Problems with delivery



## You never received the item or service you ordered.

Shopping by mail, phone, or even the Internet, is easy and convenient. Problems, however, sometimes occur when items you ordered don't show up on time. It is important, therefore, to know what your rights are.

Under the Federal Trade Commission's Mail and Telephone Order Rule, a company must ship your order within 30 days, unless you are promised a different shipping time.

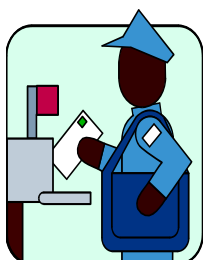
If the company cannot ship your item within 30 days or the promised time, they must give you the opportunity to make the decision to either keep waiting or to cancel the order and get a refund. If they give you the opportunity to make this decision and you don't respond, you are assumed to have agreed to the shipping delay.

NOTE: This doesn't apply to C.O.D. orders, magazine subscriptions (except for the first issue) and book, music, video, or any other clubs in which items are sent to you until you cancel them.

This also doesn't apply when you are applying for credit to make the purchase and the company did not promise a shipping time. In these cases, the business has 50 days after receiving your order to deliver it.

**Q: I have not received my item within 30 days and I want my money back, what should I do?**

A: Contact the company and ask for a refund. If you don't get a refund, see PAGE 21 about making a claim.



## You received an item or service which you did not order.

Sometimes, you will receive items or services you never asked for. You may feel an obligation to either pay for the items or you may think that you have no way of stopping the items or services from coming. It is important, therefore, to know what your rights are and that there are things that you can do to keep unsolicited phone calls, mail, or other items from coming to you.

### Sexually offensive mail:

You can prohibit these mailings by completing and mailing a form that is available at your local post office.

### Unordered merchandise:

If you are shipped a product you did not order, you get to keep it for **free**. This does not include orders, however, which you made but later cancelled or any items you receive due to fraud on your part.

# Problems with delivery

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## **Too much junk mail:**

To have your name removed from the junk mail lists of many companies, write to the following address:

Mail Preference Service  
PO Box 9008  
Farmingdale, N.Y. 11735-9008

## **Unwanted telephone solicitations:**

To have your name removed from the lists of many telemarketers, write to the following address:

Telephone Preference Service  
PO Box 9014  
Farmingdale, N.Y. 11735-9014

# Home Repair and Remodeling

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Prior to initiating home repair or remodeling work for over \$1,000, a person engaged in the business of repair or remodeling is required to give to the customer a written contract or work order that states the total cost, including parts and materials. While the person may charge for this estimate, the charge for the estimate should also be included in the contract.



## CONTRACT TIPS:

- (1) Get all estimates in writing
- (2) Do not be induced into signing a contract by high-pressure sales tactics.
- (3) Never sign a contract with blank spaces or one you do not fully understand.  
If you are taking out a loan to finance the work, do not sign the contract before your lender approves the loan.
- (4) You have 3 business days from the time you sign your contract to cancel any contract if the sale is made at your home. The contractor cannot deprive you of this right by initiating work, selling your contract to a lender, or any other tactic.
- (5) If the contractor does business under a name other than the contractor's real name, the business must either be incorporated or registered under the Assumed Business Name Act. Check with the Secretary of State to see if the business is incorporated or with the county clerk to see if the business has registered under the Assumed Business Name Act.
- (6) Homeowners should check with local and county units of government to determine if permits or inspections are required before the work is started.
- (7) Ask whether the contractor will guarantee his or her work and products.
- (8) Ask whether the contractor has the proper insurance.
- (9) Do not sign a certificate of completion or make final payment until the work is done to your satisfaction.
- (10) Remember, homeowners should know who provides supplies and labor for any work performed on your home. Suppliers and subcontractors have a right to file a "lien" against your property if the general contractor fails to pay them. To protect your property, request lien waivers from the general contractor.

# Home Repair and Remodeling- cont'd

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## BASIC TERMS TO BE INCLUDED IN THE CONTRACT



- (1) Contractor's full name, address, and telephone number. Illinois law requires that persons selling home repair and improvement services provide their customers with notice of any change to their business name or address that comes about prior to the agreed dates for beginning or completing the work.
- (2) A description of the work to be performed.
- (3) Starting and estimated completion dates.
- (4) Total cost of work to be performed.
- (5) Schedule and method of payment, including down payment, subsequent payments, and final payment.
- (6) A provision stating the grounds for termination of the contract by either party. However, the homeowner must pay the contractor for work completed. If the contractor fails to commence or complete work within the contracted time period, the homeowner may cancel and may be entitled to a refund of any down payment or other payments made towards the work, upon written demand by certified mail.

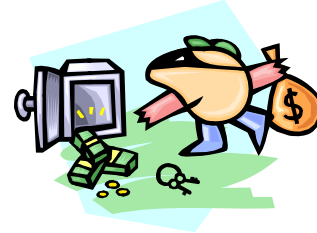
*Homeowners should obtain a copy of the signed contract and keep it in a safe place for reference as needed.*

# Home Repair and Remodeling- cont'd

## HOW TO AVOID HOME REPAIR FRAUD

The following are warning signs of a potential scam.

- (1) Door-to-door salespersons with no local connections who offer to do home repair work for substantially less than the market price.
- (2) Solicitations for repair work from a company that lists only a telephone number or a post-office box number to contact, particularly if it is an out-of-state company.
- (3) Persons offering to inspect your home for free. Do not admit anyone into your home unless he or she can present authentic identification establishing his or her business status. When in doubt, do not hesitate to call the worker's employer to verify his or her identity.
- (4) Contractors demanding cash payment for a job or who ask you to make a check payable to a person other than the owner or company name.
- (5) Offers from a contractor to drive you to the bank to withdraw funds to pay for the work.
- (6) Contractors who fail to provide customers references when requested.



## WHAT SHOULD YOU DO IF YOU THINK YOU HAVE BEEN DEFRAUDED?

If you think you have been defrauded by a contractor or have any questions, please bring it to the attention of your State's Attorney or the Illinois Attorney General's Office.

### Attorney General Toll-Free Numbers

Carbondale (618) 457-3505

Springfield (800) 252-2518

Chicago (800) 243-5377

## THE LAW

The Illinois Automotive Repair Act gives you the right to a written estimate for repairs that will cost more than \$100. The person or company that you take your car to will figure out your car problem and should give you this estimate.



## THE INSPECTION

You should be told, in advance, if there is a charge for looking at your car, and you should authorize this charge. For example, the shop would inform you that they charge a \$60.00/hr. inspection fee and that they will not exceed one hour without the consumer's permission. Before more inspection is done the consumer will be called for permission to proceed and examine the vehicle further. Once a diagnosis has been performed, an estimate should be prepared and the consumer should be called and informed of the information on the estimate. No work should proceed without the consumer's authorization.



## THE ESTIMATE

The shop can use a repair order to fulfill the estimate requirement if the order contains all of the required elements of an estimate.

## WHEN CAN YOU REQUEST A WRITTEN ESTIMATE?

The law gives you the right to:

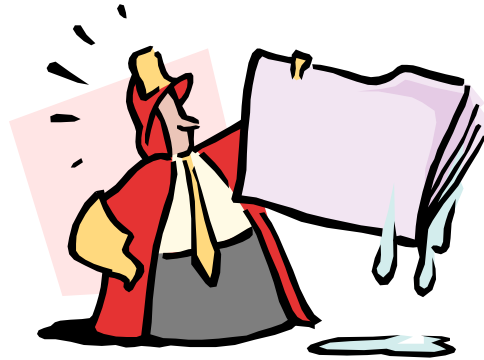
- (1) Request an itemized estimate of parts and labor in writing before the mechanic begins repairs; or
- (2) Allow the mechanic to begin repair work but insist that he call for approval before continuing if the price exceeds a certain amount (you set the amount); or
- (3) Waive your right to the estimate (you must sign a waiver form).

**TIP:** If you leave your car with the repair shop without face-to-face contact between you and the repair personnel, you should authorize any repairs orally or in writing.

# Auto Repair- cont'd

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## TWO TYPES OF ESTIMATES AND THEIR REQUIREMENTS



### 1) Itemized Estimate Requirements (parts and labor)

- Time necessary to complete repairs (if over 1 day)
- Any charges for estimates or diagnostics
- Description of parts (new or used)
- Labor costs and calculation of labor costs
- Whether repairs are required or suggested
- Any disassembly or reassembly charges
- Date of estimate
- Odometer reading
- Consumer must sign the estimate, authorize the work and receive a copy of the estimate

### 2) Price Limited Estimate (states a total price for the repair)

- Time necessary to complete repairs (if over 1 day)
- Any charges for estimates or diagnostics
- Total cost of repair
- Calculation of labor costs
- Whether repairs are required or suggested
- Any disassembly or reassembly charges
- Date of estimate
- Odometer reading
- Consumer must sign the estimate, authorize the work and receive a copy of the estimate.

# Auto Repair- cont'd

## YOUR RIGHTS DURING THE REPAIR

- Additional repairs may NOT be performed by the repair shop without your consent.
- You must authorize orally or in writing any repairs that amount to more than 10% of the estimated total cost (before sales tax) or that exceed the limited price estimate that you set.



## THE BILL

The repair price may be less than the estimate but cannot exceed:

- (1) A price limited estimate by *any amount of money*, or
- (2) A parts and labor estimate by more than 10% (unless you authorized it).

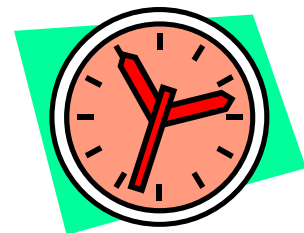


## EXEMPTIONS FROM THE LAW

- (1) The purchase of retail merchandise at a store for a firm price where there is no diagnosis involved.
- (2) Collision repairs
- (3) Repairs under \$100

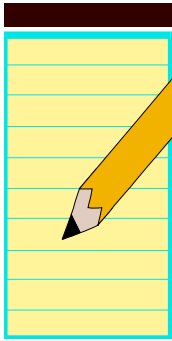
## WHAT IF THE REPAIR ISN'T COMPLETED IN THE TIME PROMISED?

- (1) They must notify you
- (2) You may request return of the car in assembled or unassembled state and pay for work completed; or
- (3) Authorize additional time



## WHAT ABOUT UNFORESEEN REPAIRS?

The shop must get your approval before the work is performed if the estimate is not right because of unforeseen circumstances.



## Step 1: Contact the business

Contact the business or manufacturer in person or by phone to report the problem. Tell whomever you talk to what your problem is and how you want it resolved. Often a store will tell you to talk to the manufacturer and the manufacturer will tell you to talk to the store. In these cases, you should talk to both. If your case later ends up in court, you may have to sue both the store and the manufacturer.

## Step 2: Confirm all contacts and attempts in writing.

Follow up your phone call or in person contact with a certified letter (return receipt requested). This may sound silly, but you will probably need proof later on that you contacted the business and most places do not keep records of in person contacts or telephone calls. Again, in the letter you want to tell the business what your problem is and how you want it corrected.

## Step 3: Be patient, try again.

If nothing has happened, or if the business's attempts at correcting the problem have failed, then you might want to follow up your phone call with another call or another letter.

## Step 4: Take further action:

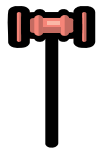
If nothing happens after Steps 1-3 or if the business refuses to do what you want or disagrees with you about whether there even is a problem, then you should:

a) contact one of the agencies listed on PAGES 7-8. While neither of these agencies can file a lawsuit on your behalf, they can contact the company and try to work out a solution for you.

b) If that doesn't work, you can file a lawsuit against the company in court. See PAGE 22. For a discussion on Small Claims Court, see Packet #4 of the Court Series.



**NOTE: If you are considering filing a lawsuit, remember that there are legal limitations on how long you can wait before filing your case. Make sure that you don't wait too long before the time runs out for you to file your case or you may lose your right to file it, even if you have a good case. See PAGE 22.**



While you should never be afraid to stand up for your consumer rights, there are 6 things you should consider before you seek an attorney or file a lawsuit on your own.

## 1. The business has the right to try to fix the problem first.

Under Illinois law, a business or store usually has the right to try to fix an item or service to meet your demands before they have to pay damages. While this right does not apply in all situations, you should give the business the chance to try to remedy your problem before you sue them.

## 2. Your time to file your lawsuit may have run out.

Has the time to file a lawsuit run out? In Illinois, most breach of contract claims must be filed within 2 years of the date of the breach. Often, however, contracts provide for even shorter time-limits. Make sure that you file your claim before the statute of limitations runs out. If you purchased your item or service in another state, the statute of limitations for that state may apply.

## 3. Suing someone in court takes time.

There is no "emergency court" for consumer claims. As such, it could take at least 2-3 months before your claim is even heard in court. Why? In Illinois, the person you sue automatically has 1 month to respond to your complaint. It may take another month to set your case for trial and then there might be continuances, motions, and other items which would delay the final resolution of your claim. So if you need help immediately, you might want to consider another option besides going to court.

## 4: Your case may not be as good as you think it is.

Everyone thinks that their case is a "can't lose" case. They might even have spoken to an attorney or a friend about their case who told them that their case was a winner. Don't be overconfident.

For instance, do you have an expert willing to testify about your problem or do you simply have an estimate. Estimates sometimes are not accepted in court and if you don't have a person willing to testify, the evidence you need to win your case might not even get in.

Furthermore, if the court finds that the attempts to fix the problem were enough, or that the implied warranties in your sale were disclaimed or that you did something to violate your warranty, you may not receive anything in damages.

## **5: It costs money and time to take someone to court.**

Even if you get a waiver of the cost of filing your complaint, there are other costs including your lost time, wages, transportation, postage etc., you should consider. Chances are, you won't be reimbursed for these costs, even if you win. Furthermore, if your case involves an attorney or if you don't receive a waiver the total cost of your case might rise in to the hundreds if not thousands of dollars.

## **6: Even if you win, you may never get the money you are owed.**

A lot of people think that if they win their case, they will receive the money they are owed shortly thereafter. This is incorrect. Collecting your money may be more difficult than winning your case. And if the business you sued files for bankruptcy or goes out of business, you may never see your money. If the business you are suing is on shaky financial ground, you may want to consider an alternative to going to court.

## **Alternatives to court you should consider**

### **Get help from a consumer agency**

If you are concerned that you might not get the relief that you want, even if you went to court and won your case (see above), you may want to get some help from an agency which handles consumer problems. For a list of such agencies, see Page xx.

### **Do nothing**

Finally, you may want to consider doing nothing. While doing nothing may seem like "giving in" or "giving up", as a consumer, your time is valuable and you may end up spending more time and stress fighting over a problem than it is worth, especially if your chances of getting what you want are slim and the amount in dispute is small. Consider, therefore, the option of just "chalking it up to experience" and being a smarter, more experienced, consumer the next time.



## 4 Commonly held beliefs about consumer rights which are not true:

### **You can return anything you don't like**

Consumers often think that just because they don't like something means that they have a right to return it and get their money back. This is a myth. Returns depend upon the store policy as well as the contract you signed (if any) when you purchased the item. Except for purchases which are covered by the 3 day rule (see page 13), there is no state law giving you the right to return items you have purchased just because you don't like them.

### **If I don't (use/open/break) an item, I can return it.**

Consumers often think that just because they did not use an item, they can return it and get their money back. This also is a myth. Returns depend upon the store policy as well as the contract you signed (if any) when you purchased the item. Except for purchases covered by the 3 day rule (see PAGE 13), there is no state law giving you the right to return items you have purchased even if they have not been opened or used.

### **If it is not in writing, you are out of luck.**

Not necessarily, just because a promise or warranty is not in writing, it does not mean that it is not legally binding, it is just more difficult to prove in court.

### **You have a 3 day right to return an item you don't like or cancel a contract you signed**

Wrong. The 3 day right to cancel only applies to a few types of purchases or contracts (see page 13).



## **Get all promises in writing**

While it is not required, you should try to get any promise made to you by a business in writing. While oral promises are still binding, they are more difficult to prove.

## **Put complaint letters in writing.**

While it is not required, if you have a complaint about a particular product, it is a good idea to put your complaint in writing and to send your letter by certified mail, return receipt requested. That way, if there is any dispute as to whether you notified the business about the problem, you will have proof that the business received your letter as well as when it is that you sent the letter.

## **Read the fine print**

While it is time consuming, embarrassing, and even frustrating, it is a good idea to read the fine print of any warranty, promise, contract, or other document you see or sign. It is usually in the fine print where warranties are excluded or promises are changed.

## **Understand your warranty**

Not all warranties are created equal. Just because you have a "warranty" does not mean that your warranty gives you the right to return your item or that it lasts for the lifetime of the product. Your warranty may be a limited warranty or it may require you to do something you had not thought about — like take your product to an authorized dealer or repair shop.

## **Get help if you need it**

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, enforcing your rights may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if representing yourself proves to be too difficult a task for you, talk to an attorney.