

# *Understanding Basic Consumer Rights*



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## Fair Debt Collection Practices Act (FDCPA) Summary

Fair Debt Collection Practices Act - (15 U.S.C. §§ 1692-1692p, as amended)

### What Is Required?

The Fair Debt Collection Practices Act (FDCPA) protects consumers by regulating the actions of certain debt collectors in their attempts to collect a consumer debt.

### Who Is Regulated?

Common examples of debt collectors which tend to be regulated by this law include collectors who are hired by credit card companies or large retail stores to collect a debt which the company decided was on its books too long, collection agencies who purchase debts from the original creditor, collectors who bought a debt from a bank or a finance company, law firms which were hired to collect a debt for a company, and collectors which use a different name than the company you originally owed the debt to.

### When Does The Law Apply?

The FDCPA applies when these third-party debt collectors attempt to collect a consumer debt from a person. A consumer debt is a debt which was incurred for personal, family or household services. This includes a wide variety of debts such as one created when a person purchases a computer on a credit card or buys insurance for a home. The law applies to debt collection phone calls, written communication or reporting the debt to a credit reporting agency.

## For Example:

- If a debt collector calls you to attempt to collect a debt, the laws dictate they must tell you that the call is from a debt collector. This also applies if the collector leaves a voice message.
- If you have disputed the debt in writing, it is required to report that the debt is disputed to the credit reporting agency.
- The debt collector is required to give you certain notices in its initial communication or send it within five days afterwards. This information includes:
  - The amount of debt
  - The creditor's name (the name of the company, etc. who the debt is owed to).
  - A notice that they will assume the debt is valid (real, not already paid, etc.) if you don't dispute the validity of the debt within thirty days after you receive their notice
  - A notice that they will send you verification (proof) of the debt or a copy of a judgment against you if you write them within thirty days after you receive their notice to tell them that you dispute the debt.
  - A notice that they will give you the original creditor's name and address if it is different from the creditor who currently owns the debt (if you write them within thirty days after you receive their notice to request this).

## The Debt Collector Is Not Allowed To:

- Lie or deceive you when it tries to collect a debt.
- Call you repeatedly with the intent to harass you.
- Threaten violence or use profane language which would naturally "abuse" you.
- Tell your friends, neighbors, or employers that you owe a debt.
- Threaten to sue you when they do not intend to do so.
- Charge you interest or fees that are not expressly authorized by the agreement that created the debt (such as the credit card agreement) or permitted by law.
- Threaten to deposit or actually deposit a post-dated check before the date you wrote on the check.
- Contact you at an unusual place or time that the collector knows or should know to be inconvenient (such as a call at 5am).
- Send you information on a postcard.
- And More...

# Telephone Consumer Protection Act (TCPA) Summary

The Telephone Consumer Protection Act (47 U.S.C. §227)



## What Is Required?

The Telephone Consumer Protection Act (TCPA) protects consumers by regulating telemarketing calls, **auto-dialed “robo” calls** and text messages to a cell phone, and unsolicited junk faxes. It also prohibits a telemarketer from calling a consumer if the consumer’s phone number is listed on the National Do-Not-Call List.

## Who Is Regulated?

Essentially, any entity that utilizes an auto-dialer to place phone calls in a manner prohibited by the statute. Common examples of entities which tend to be regulated by this law include debt collectors, creditors, telemarketers, companies who are hired to advertise, service providers, and solicitors.

## When Does The Law Apply?

When these persons or agencies contact you, without your permission, through the use of an automated dialing system or by using a pre-recorded or artificial voice, or by sending an unsolicited text message it is possible that your rights under the TCPA are at risk.

## For Example:

If you have not given your permission (such as when applying for a loan or in a conversation with them), your TCPA rights may be violated if they:

- ❖ Call your cell phone using an auto-dialer;
- ❖ Call your cell phone and use a pre-recorded voice;
- ❖ Auto-dial your residential phone to deliver certain types of telemarketing calls;
- ❖ Call your residential line using a pre-recorded voice with certain types of telemarketing calls;
- ❖ Send a junk fax to your fax machine without properly identifying themselves and their number.

# Electronic Fund Transfer Act (EFTA) Summary

Electronic Fund Transfer Act (15 U.S.C. §§ 1693-1693r, as amended)



## What Is Required?

The Electronic Fund Transfer Act (“EFTA”) protects consumers by regulating banks and others that collect payments through electronic transfer or charge fees for the use of debit cards and ATMs. The EFTA also requires prompt investigation of consumer complaints and errors regarding electronic debits or credits from the consumer’s bank account.

## Who Is Regulated?

Common examples of entities which tend to be regulated by this law include banks, credit unions, service providers such as a cellular providers or a utility company, credit card companies, debt collectors, payday lenders and companies to which automatic monthly payments are made by a consumer (such as a lender for a car loan).

## When Does The Law Apply?

When entities such as cellular providers or debt collectors call you to arrange a payment by phone, there are certain things that the entity must do such as get your permission in writing for certain types of payments. There are many types of electronic payments that are regulated by the EFTA. Examples include:

- **Payments using a check over the phone**
- **Automatic bill pay**

The EFTA also regulates banks that charge ATM and debit card overdraft fees. There are certain disclosures that the bank is required to make before it can lawfully:

- **Charge an overdraft fee**
- **Charge a fee for using an ATM**

This Act also provides you with certain rights when you make a consumer complaint such as a complaint that you were charged a fee which you did not agree to pay or a complaint that money was taken out of your account which you did not agree to have taken out. The financial institution is required to promptly investigate your consumer complaint and any errors that you complain about in regard to an amount of money that was electronically debited or credited from your bank account.

# Lemon Law Summary

Magnuson-Moss Warranty Act, 15 U.S.C. §2301 et. seq.



## What Is Required?

The **Magnuson-Moss Warranty Act (MMWA)** is the federal **Lemon Law** and was enacted in 1976 to end warranty abuses. The Act, along with state lemon law counterparts, impose a duty of “reasonableness” on standard repair warranties, and provide for compensation to owners of consumer products that just cannot be repaired within a reasonable opportunity. This could be too many repairs, too many days at the shop, or both. The Act also requires complete and clear disclosure of all warranty terms.

## Who Is Regulated?

Anyone providing a warranty on a consumer product (e.g., a vehicle, boat, RV, consumer appliance) is regulated by the MMWA. Only vehicles are regulated by state lemon laws.

## When Does The Law Apply?

The law applies after a warrantor has been provided a reasonable opportunity to cure a defect and has failed to do so.

## For Example:

- If your vehicle has been in for repair three or more times for the same problem, the manufacturer may have violated your rights under the lemon law.
- If your vehicle has been in the repair shop for thirty days or more for any and all problems, that too may be a violation of your lemon law rights.
- If you have any other consumer product with an unreasonable repair history, your lemon law rights are likely being violated.
- If you are having problems with your vehicle, you should take it to the manufacturer’s authorized dealership for repair. The dealership should work to correct the problem.
- If the dealer fails to resolve your problem you should talk to the service manager. The service manager might be able to give you a clearer understanding as to what is wrong with your vehicle.
- Always get repair orders from each and every visit, even if the dealer tells you the problem “could not be duplicated” or that there was “no problem found.”

# Why Debt Settlement?



## Consumers In Need!

Debt settlement is a legal process of debt reduction in which the creditor and debtor negotiate and agree on a reduced balance for an outstanding amount of unsecured debt. Once settled and paid off, this reduced balance will be regarded as settled in full. Our experienced team of debt help lawyers will negotiate with your creditors or collection agencies on your behalf so YOU don't have to!

## Did You Know You may be able to:

- Reduce or eliminate your debt in a shorter period of time
- Reduce late fees and penalties your debt may have incurred
- Lower your interest rate on all unsecured debts
- Hire an experienced attorney with years of legal knowledge to act as your negotiator
- Lower your monthly payments
- Avoid filing bankruptcy
- Gain greater control over household finances and budget

## The Debt Settlement Process

1. Our team of experienced attorneys will help you select the debt settlement plan that is right for you.
2. Once you have agreed to proceed with a recommended debt settlement plan, our debt help lawyers will negotiate with your creditors and collectors.
3. During this process you will begin to accumulate a fund.
4. Your creditors and collectors may continue to pursue collection tactics during this time.
5. Our debt help lawyers will enforce your rights under the Fair Debt Collection Practices Act and other federal and state debt and credit laws should creditors or collectors commit any violations!
6. When your creditors agree to a debt settlement plan, you can begin to pay off your debt in monthly installments.





## Fair Credit Reporting Act (FCRA) Summary

The Fair Credit Reporting Act- (15 U.S.C. §§ 1681-1681u, as amended)

### What Is Required?

The Fair Credit Reporting Act (FCRA) regulates the information collected by consumer reporting agencies. In addition, it requires that the information supplied to consumer reporting agencies is accurate. The FCRA also give a consumer the right to learn about the information contained in a consumer report.

### Who Is Regulated?

The FCRA applies to consumer reporting agencies, for example Transunion, Equifax, and Experian. It also applies to companies furnishing information to credit reporting agencies and the users of a consumer report, such as a lender making a credit decision.

### When Does The Law Apply?

The FCRA applies when a consumer reporting agency collects information, a creditor provides information to the consumer reporting agency, or a creditor uses a consumer report to make a credit decision.

### For Example:

- If a consumer applies for credit and is denied and that creditor used a consumer report in making that decision, the creditor must provide a notice to the consumer stating that the creditor used a consumer report in its decision and give the consumer the opportunity to request the consumer report from the consumer reporting agency.
- If a company reports incorrect information about a consumer to a consumer reporting agency, the consumer has the right to dispute the information with the consumer reporting agency.
- If a credit card company sends a consumer a “pre-approved” credit card solicitation, the solicitation must include a firm offer of credit, meaning that the offer included in the solicitation must be the credit the consumer will receive if she accepts the offer.
- If a consumer is a victim of identity theft, the consumer can request that any debts incurred as a result of that identity theft be blocked from a consumer report.



## Truth in Lending Act (TILA) Summary

The Truth in Lending Act - (15 U.S.C. §§ 1601-1667f, as amended)

### What Is Required?

The Truth in Lending Act (TILA) protects consumers by requiring creditors to disclose certain information about finance charges, annual percentage rates, payment amount, and fees that may be charged to the consumer.

### Who Is Regulated?

TILA regulates most creditors. Common examples of creditors regulated by this law include banks, credit unions, finance companies offering car loans, credit card companies, and home mortgage lenders.

### When Does The Law Apply?

When these companies make a loan, it is likely that they are regulated by TILA. TILA covers most types of credit transactions including car purchases and leases, home mortgages and refinancing, personal loans and lines of credit, credit cards, private student loans and payday loans.

### For Example:

- If a creditor extends a loan to a consumer who is buying a new car, it is required to properly disclose, among other things, the APR (annual percentage rate) and finance charge of the loan. This allows the consumer to better understand the terms of the loan and make an informed decision when comparing it to other loans. These requirements apply to other common loans such as personal loans, home loans, etc.
- When you open a credit card, you are entitled to certain disclosures such as the APR, finance charge and other fees such as late fees. This allows the consumer to make an informed decision about whether to open a credit card.
- Additional disclosures are required for loans and credit cards when the APR on the loan or account can change or is a variable rate. The disclosure must explain how and when the rate will change and give information regarding the basis for the rate change.
- A credit card company or other lender of open-end credit, such as a line of credit, must send a billing statement each month containing information such as your balance, any transactions on the account, your payment amount and the finance charges assessed during that month on the account. The statement must be sent at least 21 days before the due date of the payment.



## State Unfair & Deceptive Practices Acts (Consumer Fraud)

State Unfair and Deceptive Acts or Practices Statutes (UDAP)

### What Is Required?

Many states have enacted laws to protect consumers from unfair or deceptive practices by businesses. The requirements of the Unfair and Deceptive Acts or Practices Statutes (UDAP) vary from state to state. Generally speaking, UDAPs protect consumers from businesses that seek to deceive or take advantage of the consumer.

### Who Is Regulated?

Common examples of entities which tend to be regulated by this law include retail stores, car dealerships, cellular service providers, utility companies, credit card companies, stores that rent furniture, electronics, etc. and other businesses.

### When Do Consumer Fraud Laws Apply?

Although it varies from state to state, UDAPs generally apply to many types of everyday consumer transactions including:

- Purchasing a new car or leasing a car
- Leasing or buying furniture, electronics or other items
- Various credit transactions
- Certain types of insurance coverage

# Equal Credit Opportunity Act (ECOA) Summary

The Equal Credit Opportunity Act - (15 U.S.C. §§ 1691-1691f, as amended)

## What Is Required?

### The Equal Credit Opportunity

(ECOA) prohibits discrimination in credit transactions on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public benefits (such as Social Security), or because a person exercises his or her rights under a consumer protection statute.

ECOA applies to both the original extension of credit and to actions taken after the credit is extended, such as the termination of an account.

## Who Is Regulated?

ECOA applies to any entity which regularly extends credit, such as a **bank, mortgage lender, or finance company**. It also applies to an individual or entity which regularly arranges for the extension of credit, such as a mortgage broker or car dealership.

## When Does The Law Apply?

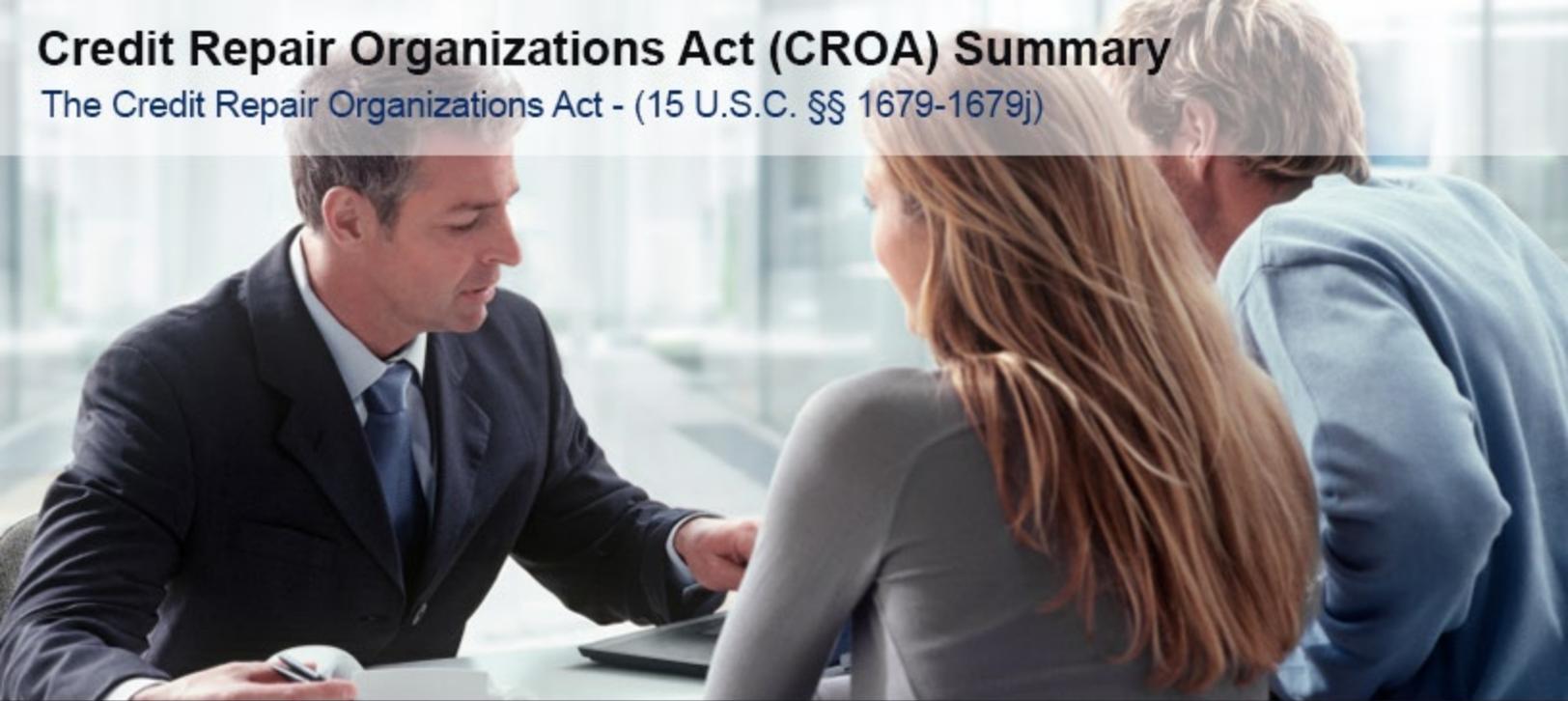
ECOA applies when a lender or broker takes an application for credit and makes a decision as to whether or not to extend credit to the applicant.

## For Example:

- If a consumer applies for credit and that credit is denied, the creditor must provide the applicant with a notice giving the reason for the credit denial.
- In certain circumstances, if a credit card company cancels a credit card account, it must send the cardholder a notice giving the reason for terminating the card.
- If a consumer requests an increase in a credit limit on a credit card or other type of loan and is denied, the lender must send a notice giving the reason for denying the request.
- If a consumer applies for credit, a creditor cannot ask for more information from the consumer than it would ask from any other consumer solely because this consumer is, for example, African-American or elderly.
- A creditor cannot request the race, color, religion or national origin of the applicant, except for monitoring purposes for home loan applications.
- If an applicant applies for individual, unsecured credit, a creditor may not ask about the applicant's marital status unless:
  1. The applicant resides in a community property state;
  2. The credit involves a regulated utility company, such as an electric or gas company;
  3. The information is sought solely to determine eligibility and premium rates for insurance; or;
  4. The creditor is asking solely to determine the applicant's eligibility for a special credit program.
- A creditor cannot require a spouse to be a co-signer on an application for credit.
- If an applicant applies for credit to purchase a house or to refinance a house, the creditor must provide the applicant with a notice of the applicant's right to receive an appraisal report on the house that is being purchased or refinanced.

# Credit Repair Organizations Act (CROA) Summary

The Credit Repair Organizations Act - (15 U.S.C. §§ 1679-1679j)



## What Is Required?

The Credit Repair Organizations Act (CROA) ensures that companies offering credit repair services comply with specific rules. The Act requires that certain disclosures be made prior to signing a credit repair contract, that any contract be in writing and that a credit repair companies may not charge any fees prior to performing any work.

## Who Is Regulated?

CROA applies to credit repair companies. These are companies that promise to improve a consumer's credit report, credit history or credit rating.

## When Does The Law Apply?

CROA requires credit repair companies to provide disclosures to consumers prior to signing a credit repair contract, allows for a 3-day right to cancel the contract and prohibits up front fees.

## For Example:



- ❖ If a company promises to improve a consumer's credit score, it must provide the consumer with certain information about CROA and credit reporting prior to the consumer signing a contract for credit repair services.
- ❖ If a consumer signs a credit repair service contract, that contract must include the option to cancel within 3 business days of signing.
- ❖ If a company promises to improve a consumer's credit score or credit history, it cannot charge any fee until it has performed work – no prepayment is allowed.

# Wage Garnishment / Collection Lawsuits



## What Does the Law Do?

**Federal Wage Garnishment Law, 15 U.S.C. §§1671 et. seq.**

The federal wage garnishment law, found within title III of the Consumer Credit Protection Act (CCPA), strictly regulates wage garnishments. The Act provides a maximum allowable amount for garnishments and acts to discourage the predatory extension of credit and excessive credit payments. The Act also provides for exemptions to garnishments in situations where a debtor is head of household or has exempt funds, such as social security income. The Act further regulates the procedures by which wages may be garnished, and also restricts an employer's ability to terminate an employee being garnished. Where state garnishment laws differ from the CCPA, the law resulting in the smaller garnishment must be observed.

## Who Is Regulated?

Creditors and debt collectors are regulated by the federal wage garnishment law, as are employers.

## When Does The Law Apply?

The law protects anyone with personal earnings, e.g., wages, salaries, commissions, bonuses, or other income—including earnings from a pension or retire-

## Important Facts:

- The amount subject to garnishment is based on "disposable earnings" (the amount remaining after legally required deductions such as federal, state, and local taxes, the employee's share of State Unemployment Insurance and Social Security are made).
- The law sets the maximum amount that may be garnished in any workweek or pay period. For ordinary garnishments, the weekly amount may not exceed the lesser of two figures: 25 percent of the employee's disposable earnings, or the amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage.
- The maximum garnishment allowed is a constant amount, regardless of the number of garnishment orders received by the employer, but the maximum permitted does not include garnishments for support, bankruptcy, or any state or federal tax.
- Deductions not required by law, for example, voluntary wage assignments, union dues, health and life insurance, charitable contributions, retirement plan contributions (not required by law) and repayments of payroll advances are not generally allowed to be subtracted from gross earnings for purposes of calculating disposable income.

# Bankruptcy Chapter 7 & 13



## What is Bankruptcy?

“Bankruptcy” is the official legal status of a person who cannot repay debts owed, and is generally considered the “financial-wellness tool of last resort.” Bankruptcy is governed by 11 U.S.C. §§ 101-1532, and the two most common forms of consumer bankruptcy are Chapter 7 and Chapter 13. For those who qualify, a Chapter 7 bankruptcy wipes out many debts entirely. Whereas a Chapter 13 bankruptcy reorganizes the debt, allowing repayment of some debts and wipes out a portion of the debt. When filing for bankruptcy, one will enroll in two education courses designed to provide credit counseling and an “instructional course in personal financial management” to help begin the fresh start on the right foot.

## Who Is Regulated?

All creditors are regulated in some way by the Bankruptcy Code, including (but not limited to) debt collectors, credit card companies, mortgage holders, vehicle lien holders, and judgment creditors.

## When Does The Law Apply?

Upon the filing of Bankruptcy, an “automatic stay” stops all creditors from attempting to collect until discharge is received. After discharge, all general unsecured creditors are legally stopped from trying to collect.

## Benefits of Bankruptcy:



### Chapter 7

A Chapter 7 allows you to discharge your general unsecured debt so that your creditors can't try to collect from you. Debts that are dischargeable include:

- ❖ Credit Card Debt
- ❖ Medical Debt
- ❖ Personal Loans.
- ❖ Defaulted or repossessed car loans.
- ❖ Defaulted or foreclosed mortgages, including second and third mortgages.
- ❖ And in some cases, tax debt.

### Chapter 13

A Chapter 13 is a reorganization of your debt resulting in one payment every month. Some of your debts, such as your vehicle payments, are paid through your bankruptcy and your general unsecured creditors receive a percentage of what they are owed.

Possible benefits of a Chapter 13 include:

- ❖ Paying less than you owe on a financed vehicle based on its value.
- ❖ “Stripping” a second mortgage while remaining in the home.
- ❖ Catching up on missed mortgage payments and stopping foreclosure.
- ❖ Paying off tax debt, including liens.
- ❖ Catching up on missed support payments.
- ❖ Paying your unsecured creditors what you can afford to pay.

# Fair Credit Billing Act (FCBA) Summary

The Fair Credit Billing Act - (15 U.S.C. §§ 1666-1666j)

## What Is Required?

The Fair Credit Billing Act (FCBA) protects consumers by requiring creditors to investigate and respond to billing disputes as well as requiring prompt crediting of refunds.



## Who Is Regulated?

The FCBA applies to open-end credit. Credit card companies are the most common examples of an open-end creditor. However, the provisions of the FCBA will apply to banks, credit unions, and other lenders when an open-end loan, such as a line of credit, is made.

## When Does The Law Apply?

The FCBA will generally apply when a consumer discovers a credit card billing statement error or other open-end loan billing statement error.

## For Example:

- When a consumer discovers an error, he or she has 60 days from the first date the error appeared on a bill to notify the creditor of the error.
- The notice must be in writing and allow the creditor to identify the consumer's name and account number. The notice must also include a description of the error and why the consumer believes an error was made.
- After receiving the error notice, the creditor must acknowledge receipt of the notice within 30 days.
- Unless the creditor is going to correct the error reported by the consumer, it must conduct a reasonable investigation. The investigation must be completed no later than 90 days after it receives the error notice.
- During the time the creditor is investigating the reported error, it cannot attempt to collect the amount that is in dispute.
- If the creditor determines that an error has occurred, it must correct the error and credit the account with the disputed amount and any related charges. It also must mail a correction notice to the consumer.
- If the creditor determines that no error occurred, or a different error than the one reported occurred, it must mail an explanation of the reasons for its determination to the consumer, give the consumer evidence of its determination, if requested, and correct any other error which it may have discovered.



# Consumer Leasing Act (CLA) Summary

The Consumer Leasing Act - (15 U.S.C. §§ 1667-1667f, as amended)

## What Is Required?

Automobile and car dealer would be a common example of a company which the CLA would regulate.

## When Does The Law Apply?

The CLA requires lessors to give certain disclosures to a consumer in connection with the lease of an automobile or other personal property.

## For Example:

A lessor must disclose, among other things:

- The amount due at lease signing;
- The payment schedule for the lease and the total amount of payments;
- Other charges in connection with the lease;
- The residual value of the lease (how much the item will be worth at the end of the lease);
- The amount and method of determining any penalty or charge for early termination of the lease;
- A statement about who is responsible for maintenance;
- Penalties and other charges for delinquency; and
- Information about any purchase option on the lease.

If a lessor advertises a consumer lease, such as in a newspaper, on television, or through the mail, and if the advertisement includes information about the payment amount or any down payment required, additional information must be included, such as:

- The fact that the advertisement is for a lease;
- The total amount due prior to delivery;
- The number, amount, and due dates of scheduled payments; and
- A statement as to whether or not a security deposit is required.

## Legal Disclaimer



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