



## Purchases And Returns

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### Background

Just about everyone has purchased something that looked like a bargain but proved to be an unfortunate mistake. Nearly all of these poor purchasing decisions do have a remedy. It is not necessary that the purchase involves a great deal of money, but there must be a genuine, serious, and material error. In these cases, the reason is clear: the parties somehow made a mistake as to what was being purchased. This general principle applies any time a merchant sells a **TANGIBLE** piece of property to an amateur consumer, even if the dealer claims the product is offered "as is."

What are the consumers' options? First, they should consider whether the merchant has any of the following policies:

- Returns: These are policies that allow buyers to bring the product back to the merchant and get their money back for the product.
- Exchanges: These policies allow buyers to bring back a product to the merchant and exchange it for a different product.
- Refunds: This kind of policy allows buyers to get their money back from an unsatisfactory product; these almost always accompany return policies.

If the product itself is somehow defective, buyers should try to discover the warranties or guarantees that cover the product (if any). The product's manufacturer rather than the seller usually offer warranties, except of course in cases where the manufacturer is also the seller of the product.

But before buyers try to return their products or make a claim under its **WARRANTY**, there are preventive measures they can take to protect their rights as consumers.

- Particularly for more expensive items, consumers should insist on a signed, written, or printed receipt describing the product and the price that they are paying for it. The seller's business name, address, and the date of purchase should appear on the receipt. Most store cash register receipts contain this information.
- In some cases, it is reasonable to request the right to submit the product to a third party for an independent evaluation. For example, if customers are buying a car, they can ask the dealer to permit a mechanic look at it. They can ask for a refund from the seller if the item is not as described. They

can add this provision to the invoice. It will contain words similar to this: "Buyer has the right to submit this item to [EXAMINATION](#) by a third party within five business days and to return to seller for a full refund if not as described."

Ultimately, it can be expensive, time-consuming, and a hassle to take a merchant to court, even small claims court. In many cases, a simple complaint letter may do the trick.

## Warranties

In most cases, any item purchased is covered by some kind of warranty. A warranty (also known as a guarantee) is a type of assurance from the manufacturer or merchant about the quality of goods or services purchased. A warranty gives consumers recourse if something they buy fails to live up to what they were promised.

Warranties take two forms: implied or expressed. A seller may also sell a product "as is," meaning that the product comes with no warranty at all. Implied warranties are just that; they are not written or stated, but exist nonetheless. Almost everything customers buy comes with two implied warranties:

1. The [IMPLIED WARRANTY](#) of merchantability: The implied warranty of merchantability warrants or guarantees that a new product will work correctly as long as customers use it for a reasonably expected purpose. For used products, the warranty of merchantability warrants or guarantees that the product will work as expected, considering its age and condition.
2. The implied warranty of fitness: The implied warranty applies when customers buy a product with a specific purpose in mind. If they explained their specific needs to the merchant, the implied warranty of fitness guarantees them that the product will meet their need.

In contrast to implied warranties, expressed warranties are usually written and included with the product. An expressed warranty may be part of an advertisement or included on a sign or display in a store (e.g. "genuine full lead crystal"), or it may even be an oral description of a product's features. Most typical expressed warranties contain words to the effect that "this product is warranted against defects in materials or workmanship" for a certain time. Expressed warranties are not automatic. Most expressed warranties come directly from the product's manufacturer, although some are included in the merchant's sales contract.

In most states, implied warranties last indefinitely. In a few states, however, implied warranties last only as long as any expressed warranty that comes with a product. In these states, if there are no expressed warranties, the implied warranties last forever.

### ***Enforcing a Warranty***

If a product is defective, the defect will show up immediately in most cases. When it does, customers can request that the seller or manufacturer fix or replace the defective merchandise. If the seller or manufacturer refuses, or if any repair work fails to fix the defect in the product, customers may have to take additional steps in order to resolve the problem.

If the product has not been completely paid for (e.g. something purchased on an [INSTALLMENT](#) plan), customers may choose to withhold payment. If they made the purchase with their credit card, they can call the credit company and instruct them to refuse payment for the purchase. Customers should use this strategy with care because not every problem or defect is serious enough to permit them to stop payment. It may be best to try to work out a compromise with the seller. If the seller refuses to cooperate, it may be helpful to seek

assistance or mediation services through the local Better Business Bureau mediation program.

If informal means do not work, customers may have to resort to [LITIGATION](#). In most states, there is a [STATUTE OF LIMITATIONS](#) on breach of warranty lawsuits. Typically, the [STATUTE](#) tolls within four years of when customers discovered the defect.

### ***Remedies After the Warranty Expires***

If an item fails to perform or otherwise gives customers trouble while it is under warranty, and they have it repaired by someone authorized by the manufacturer to make repairs, the manufacturer must extend the original warranty for the time the item was in the repair shop. This rule applies in most states. In addition, customers can call the manufacturer and speak to the department that handles warranties. If the product was trouble-free during the warranty period, the manufacturer may offer to repair for a problem for free if the problem arose after the warranty expired. This may happen if the problem is a common one. Many manufacturers have fix-it lists — items with defects that do not cause a safety hazard and do not require a recall. Sometimes the manufacturer will repair these types of defects for free. Customers will not know of this remedy, though, unless they call and ask.

### ***Extended Warranties***

When customers purchase a vehicle, appliance, or an electronic item the merchant may try to encourage them to buy an extended warranty (also known as "service contracts"). These are legitimate contracts. They are intended to extend the period of warranty coverage in the other manufacturer warranties that come with the product. These contracts can be a source of significant profit for stores, which get to keep up to 50% of the amount customers pay for the warranty.

Rarely will customers need to exercise their rights under an extended warranty or service contract. Quality vehicles, electronic equipment, and appliances do not usually experience problems during the first few years of their use. If they do experience problems during this time, they are usually covered by the original warranty. Besides, such merchandise often has a useful life well beyond the length of the extended warranty.

## **Returning Consumer Purchases**

It is not true that consumers have a right to return almost anything they buy in a store. Although there are laws to protect consumers who buy defective products or who are led to make purchases based on misleading advertising, there is generally no rule or law that absolutely requires merchants to offer refunds, exchanges or credits on the items they sell.

There are four basic principles customers should know about returning goods they purchase in a store:

1. Merchants can set their own policies on refunds and exchanges. Generally, consumers are not entitled to either a refund or an exchange.
2. Although merchants are not required to do it, many of them will exchange non-sale items whether customers paid for them with cash, check, or credit.
3. Sale items are commonly exempt from merchants' refund and exchange policies.
4. If customers exchange a product for another one that costs less, the store can require the customers to spend the difference in cost in their store.

Because it makes their stores more attractive to customers, most retailers do offer refunds, exchanges, or

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credits voluntarily, although they usually impose a "reasonable time" condition for these refunds, exchanges, or credits. These kinds of policies have become so common that people have come to expect them. When retail sellers fail to post notices to the contrary, consumers often wrongly assume that the return, refund, or exchange policy exists. Therefore, before customers make a purchase at a store, try to determine the store's refund policy because these exchange privileges vary from merchant to merchant. A copy of a store's return policy should be posted near cash registers; they are also frequently printed on sales receipts.

Before making a retail purchase, it is a good idea to find out the following:

- The store's return policy
- The store's exchange policy
- Whether the store will refund customers' money if they return a product
- Whether sales are final (this is especially important for goods that have been marked down)
- How the store's normal return policy is affected if customers have to sign a contract to buy the product,
- If customers are prevented from returning a damaged product if the product came with a separate written warranty.

Most stores that have a refund and/or exchange policy require that the item be returned within a specific time. These periods vary considerably from one merchant to the next, but most will be in the range of about seven to 90 days. The product usually must be in new condition, with the original packaging, and with the original sales receipts. There are a few retailers that will accept goods returned in any condition, at any time, and with no questions asked, but liberal return policies like these are very rare.

### ***Mandatory Policy Posting***

In the past, some retailers did not post their policies reflecting imposed conditions or limits on accepting returned merchandise, and some did not accept returns at all. Naturally, this policy caused a great deal of frustration for consumers. Consequently, some states have enacted laws that require merchants or retailers to post their refund policies if they do not meet certain common expectations, such as the following:

- The store gives a full refund, an equal exchange, or some combination of these
- The customer may return the merchandise within seven days of the purchase, as long as it is returned with proof of purchase

Basically, if a merchant does not follow a typical return policy, the merchant must post the alternate return policy so that its customers are aware of the return policy.

## **Responses to Dishonest or Unfair Merchants**

If a dishonest or unfair merchant has victimized buyers, but they do not relish going to court for a remedy, they have several alternatives. If the merchant is clearly the party at fault, there are many assistants whose aid buyers can enlist. Before taking action, however, they must be sure that they are completely truthful and accurate in their claims. Here are some suggestions to alternative measures to litigation:

- Try to learn whether the offending merchant is a member of a trade organization (most belong to at least one trade group); buyers can complain to the organization.
- If customers paid for the item or service with a credit card, they can refuse to pay the bill when they get their statement from the credit card company. When they dispute a bill, their credit card company

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will usually give them an immediate credit for the amount in question and then reverse the credit it gave the merchant for their purchase. It will then ask for an explanation from the merchant. In some cases, a merchant will give up rather than take the time to write letters and participate in a credit dispute. If they claim they never received the merchandise for which they were charged, or that it was damaged or defective and they sent it back, the credit card company may refuse payment completely, regardless of what the merchant claims.

- Customers can contact the local Better Business Bureau or the Federal Trade Commission.
- Customers can contact their state, county, or municipal consumer affairs department. A telephone call followed by a letter to these organizations can be very effective at getting action from a recalcitrant merchant.

Most merchants just want to do business. They do not want to lose business. They want to make money on sales, not by cheating customers. Likewise, most merchants will not stand to be taken advantage of, so customers need to be sure they have their facts straight and that the disagreement is not merely a misunderstanding. But a merchant who refuses to adjust the matter or even to be reasonable about it may have an ulterior motive.

Before customers take these steps, it is a good idea for them to inform the merchant about what he intends to do. Sometimes, just informing the merchant of his intentions to pursue the matter is enough. But sometimes it is not, in which case the customer should be ready to follow through on the plan of action. Before the customer sends a complaint letter to a consumer or regulatory authority, the customer might want to consider sending a copy of the letter to the merchant, in advance. They can advise the merchant that the letter will be sent in five business days if the matter is not resolved. Sometimes, the mere threat of action can bring about resolution.

### The Cooling-Off Rule

If customers buy a product at a store and later change their minds, they may not be able to return the merchandise. However, federal and state laws provide certain protections for consumers who purchase items sold outside the vendor's usual place of business. For example, under the Federal Trade Commission's (FTC's) "Cooling Off Rule," consumers have until midnight of the third business day after signing a contract to cancel the contract. This rule applies when a consumer has entered the following deals:

- A door-to-door contract involving a sale over \$25
- A contract for more than \$25 made at a place other than the seller's regular place of business. There are similar laws in every state

The fact is the FTC's Cooling-Off Rule only applies to purchases made at a place that is not the seller's permanent place of business. For example, the law would apply to goods customers buy in their own homes, their workplaces, in a student's dormitory, or at spaces temporarily rented by the seller, like hotel or motel rooms, convention centers, fairgrounds, and community centers.

The Cooling-Off Rule guarantees the customer's right to cancel a sale and to receive a full refund. This right extends only until midnight of the third business day after the sale. If the customer notifies the seller of the intent to cancel the purchase within the COOLING-OFF PERIOD, the customer is entitled to a full refund, and any contract that the customer signed must be rescinded without further obligation.

Under the FTC's Cooling-Off Rule the seller must inform customers about their cancellation rights; this should happen at the time of the sale. Additionally, the seller is obligated to provide customers with two

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copies of a cancellation form. One the customer can keep for his records and one to send with the returned merchandise. The seller must also provide the customer with a copy of the contract or receipt. The contract or receipt must be in the same language that was used in the sales presentation. For example, if the presentation was made in Chinese, the contract or receipt must also be in Chinese.

The contract or receipt must contain the following information:

- Date of the sale
- The seller's name and address
- An explanation of right to cancel the sale

### ***Exceptions to the Cooling-Off Rule***

Some types of sales cannot be canceled even if they do occur in locations normally covered by the rule. The cooling off rule does not cover sales that have the following conditions:

- The goods or services are intended for commercial purposes
- The goods cost less than \$25
- The goods are needed for an emergency
- Part of the buyer's request is that the seller perform maintenance or repairs on the buyer's personal property
- The purchase results from negotiations whereat the site where the seller's goods are regularly sold.

Many states have similar [CONSUMER PROTECTION](#) statutes that contain similar exceptions to the federal cooling-off rule.

## **Other Kinds of Contracts**

In addition to the consumer protections outlined above for typical consumer products, there are also protections for other kinds of purchases. The Truth in Lending Act is a federal law that permits individuals to cancel a home improvement loan, a second [MORTGAGE](#), or other loan when the home has been pledged as security for the loan. This law does not apply to first mortgages. The law allows borrowers to cancel one of these contracts until midnight of the third business day after signing the contract. In some cases, the three-day period may be extended for up to three years. The Act requires the lender to inform borrowers about their right to cancel such contracts. Additionally, the borrower must provide a cancellation form when the borrower signs the loan documents.

Many states have enacted laws that allow consumers to cancel written contracts covering the purchase of certain goods or services within a few days of signing. Some of these include contracts for the following:

- Dance or martial arts lessons
- Memberships in health clubs
- Dating services
- Weight loss programs
- Time share properties
- Hearing aids

State consumer protection agencies have a complete listing of the kinds of contracts covered in their state.

## Additional Resources

*Consumer Rights Law (Oceana's Legal Almanac Series. Law for the Layperson)*. Jasper, Margaret C. Oceana Publishers, 1997.

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*Law and Changing Society: Administration, Human Rights, Women and Children, Consumer Protection, Education, Commercial Contract*. Eds. Saxena, Manju, and Harish Chandra, eds. Deep & Deep Publishers, 1999.

*Understanding Consumer Rights (Essential Finance)*. Parisi, Nicolette, and Marc Robinson, DK Publishers, 2001.

*Your Rights as a Consumer: Legal Tips for Savvy Purchasing of Goods, Services and Credit*. Lieberman, Marc R., Career Press, 1994.

## Organizations

### ***Council of Better Business Bureaus (CBBB)***

4200 Wilson Blvd., Suite 800  
Arlington, VA 22203-1838 USA  
Phone: (703) 276-0100  
Fax: (703) 525-8277  
URL: <http://www.bbb.org/>

### ***Federal Trade Commission (FTC)***

600 Pennsylvania Avenue, N.W.  
Washington, D.C., DC 20580 USA  
Phone: (877) 382-4357  
URL: <http://www.ftc.gov/index.html>

### ***National Association of Attorneys General (NAAG)***

750 First Street, NE, Suite 1100  
Washington, DC, DC 20002 USA  
Phone: (202) 326-6000  
Fax: (202) 408-7014  
URL: <http://www.naag.org/>

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