

South Dakota Consumer Protection Handbook

A Message From Attorney General Larry Long

Dear South Dakotans,

As Attorney General of South Dakota, one of my most important responsibilities is to protect consumers' rights. Fraud against consumers is much more widespread than most realize. Last year alone, my Consumer Protection Division recovered over \$1.8 million for consumers and handled over 26,000 phone calls.

In an effort to minimize fraud my office routinely issues consumer alerts on current scams, publishes educational materials for distribution and conducts fraud presentations throughout the state. This handbook is an example of our continuing effort to educate consumers against fraud. It is filled with an enormous amount of information on recognizing scams, preventing loss and consumer rights. The handbook also serves as a valuable resource for state and federal contacts. I hope that you will refer to this book often.

If you have questions or would like additional information, please contact my office by calling 1-800-300-1986 or logging on to our website at www.state.sd.us/atg.

Very Truly Yours,

Larry Long
Attorney General



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Consumer Education

HOW TO PROTECT YOURSELF

It is easier to educate and protect yourself against fraud than to repair the damage after it is done. Always be careful of anything that sounds too good to be true. Consumers across the country have learned far too often that this is true. Save yourself time and money by doing a thorough check before making purchases. Become an informed consumer and always:

- Decide in advance exactly what you want and what you can afford. Do not buy on impulse or because of pressure.
- Carefully investigate offers made to you as a contest “winner.” Such offers are usually gimmicks to persuade you to buy expensive products or services.
- Refuse to give your credit card number, card type or expiration date to an unfamiliar company.
- Solicitations sometimes come in the form of a bill. Make sure you only pay bills for merchandise you’ve ordered and received.

Many problems commonly encountered by consumers can be avoided if the consumer will remember the following when purchasing items or services:

- Take the name of the salesperson and write it on your receipt. If it is a purchase with a salesperson over the phone, make sure you have the business’ address, phone number and the extension number of the salesperson.
- Keep all receipts until the product has proven satisfactory.
- Deal with established, reputable firms.
- Ask to have old and/or damaged parts returned when having them replaced with new parts.
- Read and thoroughly understand everything before you sign.
- Check guarantees to ensure what parts are guaranteed for a lifetime.
- Don’t be pressured; ask questions.
- In most cases, oral contracts are binding.
- Check refund and return policies.

COMPLAINT PROCESS

To resolve consumer frustrations, we recommend the following action when a problem arises:

- Take your complaint to the company where you purchased the product or service. Very often they can resolve your problem.
- If you do not get satisfaction from the first person you see, ask to speak with a supervisor or manager.
- Ask for the name and position of all persons you spoke to regarding your complaint.
- Allow the company time to resolve your complaint. If there is no response, write a letter to the company president or customer service department.
- Save copies of all correspondence.

SAMPLE COMPLAINT LETTER

Your Name
Your Address
Date

Appropriate Person
Company Name
Street Address
City, State, Zip Code

Dear (Appropriate Person)

Last week I purchased (or had repaired) a (name of product with serial or model number or service performed). I made this purchase at (location, date and details of transaction).

Unfortunately, your product (or service) has not performed satisfactorily (or the service was inadequate because of (state your problem)).

To resolve the problem, I would appreciate (state the specific action you want). Enclosed are photocopies of my records (receipts, guarantees, warranties, canceled checks, contracts, model and serial numbers, and any other documents).

I look forward to your reply and the resolution of my problem, and will wait two weeks before contacting my Attorney General's Division of Consumer Protection. Contact me at the above address or by telephone at (home and office numbers here).

Sincerely,

Your Name

WHERE TO GO FOR HELP

If, after a reasonable length of time, you have not received a satisfactory response to a complaint, gather your facts and call Consumer Protection at 1-800-300-1986. Have copies of bills, contracts, canceled checks, warranties and correspondence you have sent or received regarding the problem. Once we receive your complaint, the following steps are taken:

- Your complaint is reviewed by an investigator.
- Occasionally, a complaint is referred to another agency that can better handle the problem.
- Generally, both you and the business are contacted for further information. The business is given 20 days to reply or resolve the complaint. The consumer is kept informed of developments throughout the process.
- The Division of Consumer Protection may begin an investigation or mediation between yourself and the business.
- Complaints may require private legal action by a consumer. Information on Small Claims Court or retaining a private attorney is provided through our office. Consumers should always consider legal assistance to protect their legal rights.

The law can provide only so much protection. The rest is up to you. Know your rights ahead of time. Wise buying can prevent consumer problems. Remember that the best consumer protection against fraud is an alert, informed consumer.

The Division of Consumer Protection has been given specific responsibilities by the South Dakota Legislature. The Division acts as a mediator in disputes in an attempt to protect the rights of consumers and the rights of businesses. Resolution in these cases saves needless cost for both parties.

The Division of Consumer Protection aids the consumer in many specific ways, including:

- Investigating and mediating consumer complaints.
- Taking action against companies allegedly engaging in unfair business practices.
- Advising consumers and distributing consumer education materials.
- Assisting in the preparation of consumer protection legislation.
- Cooperating with federal and other state consumer protection agencies.

The Attorney General's Office, cannot represent consumers in court, but can ask the court for restitution for consumers who have been defrauded. While the powers are broad, there are some activities where involvement is limited including:

- acting only in cases where the deceptive trade act or practice occurred in trade and commerce;
- acting only in the name of the State of South Dakota. The Division cannot act as a consumer's private attorney in legal action against merchants;
- informing consumers if the Division has received a complaint against a business or whether the complaint has been resolved.

SMALL CLAIMS COURT

The Small Claims Court is an informal court which allows people to sue for losses of money or property. The procedures are simple enough so that an individual can file and handle his own claim in court.

A Small Claims lawsuit may be initiated anytime within six years of the loss. The recovery limit set by law for such actions is currently \$8,000.00. The parties (plaintiff and defendant) must be at least 18 years old. If one of the

parties is under the age of 18, his parent or guardian may represent him. If there are a number of plaintiffs bringing action against one defendant, one of the plaintiffs may be authorized to act for all of them.

The Small Claims action must be filed either in the county where the defendant lives or in the county where the loss occurred. In some cases, this may mean that the plaintiff is required to start the small claims action by mail, and travel to another county for the trial. The clerk of courts in your own county is your best contact throughout this process.

To start the action, the plaintiff or his attorney, on a form issued by the clerk, must provide a written and signed statement describing how the loss or damage occurred. This statement, along with supporting documents (receipts, cost estimates, etc.) and the business address of the plaintiff and defendant, must be filed with the clerk of courts. The fee for starting the action, postage and service costs may be added to the claim.

When the clerk accepts the statement of damages claimed and the necessary fees, the case will be entered on the small claims docket. The clerk will assign the date by which the defendant must answer, or the date and time of the hearing.

WHAT HAPPENS AT THE TRIAL?

Both the plaintiff and the defendant should be certain of the date, hour and place of trial and should be there on time. Some judges allow special arrangements for an absence, but failure of either party will result in a judgment for the other side. If unable to attend, contact the clerk of courts to reschedule the proceedings.

Either party may bring witnesses or other evidence in support of his/her claim. In some cases, it may become necessary to subpoena unwilling witnesses to appear. The clerk of courts will advise about the process and cost.

NOTE: The award of a judgment does not guarantee payment. The court makes the judgment, it does not enforce collection. While the entry of the judgment on the court documents does create a recorded lien against the debtor, it does not guarantee payment of the debt.

State Consumer Protection Laws

The following are laws and regulations that South Dakota consumers can look to for protection of their consumer rights.

DECEPTIVE PRACTICES 37-24-6

It is a violation of state law:

1. To knowingly and intentionally act, use or employ any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived or damaged.
2. To engage in referral sales where a gift, offer of money, rebate or discount for providing names of prospective purchasers are contingent on an event that occurs after the names are given.
3. To engage in chain letters or other types of pyramid schemes.
4. To advertise a "going out of business sale" and after the sale remain in business, under the same, or substantially the same ownership or trade name, or continue to offer for sale the same type of merchandise at the same location for more than 120 days.
5. To advertise price reductions without including in the advertisement the basis for the claimed price reduction or without offering the advertised merchandise at the

price from which the claimed reduction during the 60 days prior to the advertisement.

6. To send or mail unordered consumer goods, services or invoices for those unordered items.

If you encounter what you believe to be an advertisement or practice that may violate the above provisions, you should report this to the Division of Consumer Protection at 1-800-300-1986.

UNORDERED MERCHANDISE

Many consumers receive unordered property or services through the mail or by personal delivery. Unfortunately, many people accept and pay for the property or service before they realize it.

Under South Dakota law, it is a violation to mail or deliver unordered consumer property or services to individuals. The unordered merchandise is to be considered an unconditional gift and the consumer has no obligation to return it to the sender. The only exception is if there is evidence of obvious misdelivery or if it was offered in good faith as a substitute for the merchandise ordered.

If you receive anything you have not ordered, you should contact the sender and say that you do not want the merchandise. If you have ever done business with the

merchant, it is possible there has been a mistake. We recommend that you send a letter to the merchant by certified mail and keep a copy for yourself. You should document every effort to correct any mistake. However, if the situation does not appear to be a mistake, report the matter to Consumer Protection Division.

Unordered merchandise is anything delivered to you, without your prior express request or consent. This does not include any “negative option” agreements where you agree to accept merchandise each month, unless you take steps to stop delivery or reject the order. Some examples of “negative option” agreements include record, CD, tape or book clubs.

D O O R - T O - D O O R S A L E S

If you buy something at a store and later change your mind, you may not be able to return the merchandise. But if you buy an item in your home or at a location that is not the seller's permanent place of business, you may have the option to return it for a refund. While many door-to-door sales transactions are a legitimate and convenient way to shop, some companies use very high pressure sales tactics and oftentimes mislead or misrepresent what it is that you are purchasing. It is important that you know your rights and how to avoid becoming a victim.

Under South Dakota Law, the door-to-door sale takes place with the purchase of goods or services for more than \$25 payable in cash or installments, at a place other than the merchant's place of business. If you change your mind about an item or service that you have agreed to buy in a door-to-door sale, you have three business days of signing the contract to cancel without penalty. Also known as “The Cooling-Off Rule” door-to-door sales provisions apply to sales at the buyer's home, workplace or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants. The door-to-door sales law applies even when you invite the salesperson to make a presentation in your home or workplace.

Some types of sales cannot be canceled even if they do occur in locations normally covered by the Rule. The law does not cover sales that:

- are under \$25;
- are made entirely by mail or telephone;
- are the result of prior negotiations at the seller's permanent business location where the goods are sold regularly;
- are needed to meet an emergency; (example: insects suddenly appeared in your home, and you waive your right to cancel)
- are made as part of your request for the seller to do repairs on your personal property.

Also exempt from the law are sales that involve:

- sale or rental of real property, insurance, securities or commodities by a broker-dealer registered with the South Dakota Division of Securities; or
- sale lease or repair of motor vehicles, metal buildings, farm machinery or implements, or mobile homes, by a dealer having a fixed permanent location and place of business in South Dakota where such goods or services are offered on a continuing basis.

Whenever you make a purchase of goods or services in your home, or in any of the places mentioned previously, the salesperson is required to give you a copy of the receipt or contract containing the date of sale and the seller's name. Close to where you sign your name, the following should appear:

"You, the buyer may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The salesperson is also required to give you two copies of a "Notice of Cancellation" attached to the contract or receipt, and easily detachable. The notice contains a full explanation of your right to cancel and the procedure that you must follow. It must also include the date of your right to cancel. Until the seller complies with the law, you may cancel by notifying the seller in any manner.

To cancel, sign and date one copy of the cancellation form. Then mail it to the address given for cancellation any time before midnight of the third business day after the contract date. Saturdays count as business days, Sundays do not. Keep the other copy for your records. Proof of mailing date and proof of receipt are important, so, although it is not required, you should send a letter from your local post office by certified mail, with return receipt requested. You do not have to give a reason for canceling. It is your right under the law to change your mind.

If you cancel your purchase, the seller has 10 days to:

- Cancel and return any promissory note or other negotiable instrument you signed;
- Refund all your money and tell you whether any product you still have will be picked up; and
- Return any trade-in.

Within 20 days, the seller must either pick up the items left with you, or reimburse you for mailing expenses, if you agree to send back the items.

If you received any goods from the seller, you must make them available to the seller in as good condition as when you received them. If you do not make the items available to the seller - or if you agree to return the items but fail to - you remain obligated under the contract.

TELEMARKETING LAWS

The South Dakota telemarketing law aims to protect consumers from deceptive telephone sales tactics and telemarketing fraud. The law also prohibits fraudulent practices, by requiring solicitors to tell the truth and to give the consumer full terms and conditions of the deal.

Despite this telemarketing law, consumers should still be careful when dealing with telemarketers. This law does not eliminate the fraudulent tactics that the criminal callers use. Even the best effort of law enforcement cannot stop illegal telemarketing activities. It is up to you, the consumer, to be aware of your rights so that you are not victimized by those not adhering to the law.

TELEMARKETING SDCL 37-30A

Federal and/or state of South Dakota telemarketing statutes require the following:

- At the beginning of a call, the caller must tell you their true name, the name of the telemarketer by whom they are employed, the name and address of the business they represent and the purpose of the call.
- Within 30 seconds of the call, they must ask if you are interested in hearing the sales presentation, and hang up if you aren't.

- Immediately hang up the telephone any time during the solicitation that the consumer expresses a disinterest in the goods or services offered.
- Upon your request, a telemarketer must place you on their "do not call list" and not call you again once you have indicated such.
- If a prize is offered, you have to be told immediately if a purchase is necessary, the odds of winning, and any restrictions or conditions of receiving a prize.
- If you decide to make the purchase, the telemarketer must provide a written confirmation complete with the full terms of the deal. You must sign the written confirmation prior to the deal becoming valid.
- The only way to avoid a written confirmation is if the telemarketer provides a no questions asked, full refund policy. The refund policy must be disclosed at the time of the call and the telemarketer must provide a written version when the product is delivered.
- It is illegal for a telemarketer to withdraw money from your checking account without your express, verifiable authorization.
- You do not have to pay for credit repair or advance fee loan services until these services have been delivered.

A telemarketer may not:

- Place unsolicited consumer telephone calls to any residence which will be received before 9 a.m. or after

9 p.m. consumer's local time, or place any unsolicited consumer telephone calls on Sunday.

- Engage in unfair or deceptive solicitations.
- Engage in any conduct which harasses, intimidates, or torments any person in connection with a telephone call.

Tips to combat the criminal caller:

- Beware of anyone who asks you to send money or buy anything sight unseen, unless you are certain you are dealing with a reputable firm. Remember, you are not initiating this transaction and should be allowed the opportunity to check the company out.
- Resist high pressure sales tactics. The more a caller tries to hurry you into buying or sending money, the more likely he or she is a criminal.
- Take your time. You can ask for written information about the product, service, investment opportunity or charity that is the subject of the call so that you can take your time to study their offer. If the company won't willingly comply— BEWARE. Asking the caller to put the offer in writing does not necessarily protect you. It often leads to credible looking letters, which in the consumer's mind seem to legitimize what in fact is a bad deal. Even if they do send you something in writing,

check them out before responding.

- Keep information regarding your bank account or credit card information to yourself. Give this information only to those businesses whom you are familiar with, never to those who solicit you first.
- Don't pay for a FREE prize. If a caller tells you that there is a fee of any type, such as taxes, or shipping and handling costs, they are breaking the law.
- Never send cash, checks or money orders by courier, overnight delivery, or wire services to anyone who insists on immediate payment.
- Do not let appeals influence your decisions. Many telemarketers will request that you send money to charitable causes such as law enforcement or community causes which may not exist. They may use prizes to tempt victims to contribute, but all too often the prizes never arrive and the contributions are pocketed by the caller.

DO NOT CALL REGISTRATION

Consumers can also choose to have their names included in the Public Utilities Commission "do not call" registry.

You will be able to register at www.sddonotcall.com or by calling 1-888-382-1222 for this free service.

Once your number is on the “do not call” registry, telemarketers will be on notice that you do not want telemarketing calls. Your telephone number will stay on the registry for five years and after that time you will have to renew your registration.

Not all types of telemarketing calls are prohibited however. You may still receive calls regarding charitable solicitations, political activities, businesses that you have an established business relationship with, and the like. If you do not wish to receive these types of calls, simply say “put me on your do not call list.” All such callers are required to maintain an internal “do not call list.”

Complaints regarding calls that are exempt from the “do not call” list should be reported to the Consumer Protection Division at 1-800-300-1986.

S W E E P S T A K E S L A W S

Sweepstakes laws require solicitors to tell the truth and give the consumer the full terms and conditions of the deal before accepting any payment. The laws again aim to protect consumers from deceptive sweepstakes scams and to disclose the full terms and conditions of the offer.

S W E E P S T A K E S S D C L 37-32

Federal and/or state of South Dakota sweepstakes stat-

utes require that solicitors must provide a written prize notice which includes the following:

- The true name, address and telephone number of the solicitor and sponsor.
- The odds of winning, the true retail value of the prizes offered, and any restrictions or costs associated with receiving the prize.
- Telling the consumer if they must listen to or attend a sales presentation prior to obtaining a prize and describe the property or service that is the subject of the presentation.
- A statement disclosing the average length of a call, and any toll charges beyond normal long distance charges if the individual is invited or required to telephone the solicitor or sponsor to enter or claim a prize.

The law also prohibits a sweepstakes operator from:

- Providing a written notice that contains language, or is designed to lead a reasonable person to believe that it originates from a government entity, public entity, insurance company, consumer reporting agency, debt collector, or law firm unless they actually are.

- Placing on the envelope, which contains a written prize notice, any representation that the person to whom the envelope is addressed has won or will receive a prize.
- Representing directly or by implication that the number of individuals eligible for the prize is limited, or that an individual has won or will receive a particular prize unless it is true.

BE ALERT TO SWEEPSTAKES APPEALS

Legitimate sweepstakes mailings should clearly disclose that there is no purchase necessary to participate. To require a payment to enter would make the sweepstakes a lottery and it is illegal to operate a lottery through the mail. Always read sweepstakes promotions contents carefully. Your entry may be discarded if the rules are not followed to the letter. In addition make sure that you identify any eligibility requirements. For example, do you have to be a certain age to participate?

If the sweepstakes promotion states you are a “pre-selected winner,” you will usually receive a prize only if you respond to the sweepstakes. Although a sweepstakes may claim “you’re a winner,” you probably have not won the grand prize. In some instances, the majority of “pre-selected winners” receive only pennies per person. Re-

member to read all the contest rules to avoid being disappointed by the outcome.

Whether or not you are purchasing a product or service, sweepstakes participants must have an equal chance of winning. Remember that the probability of winning the big prize may be quite low and to check your odds of winning in the fine print.

Sometimes charitable organizations also use sweepstakes appeals to entice people to donate. In that situation, you do not have to give a donation in order to enter the sweepstakes. If you do donate to a charity through the sweepstakes campaign, check out the charity as you would any charitable donation. Again, you are not required to give to enter the sweepstakes. Do not give to the charity unless it clearly specifies the programs your gift would be supporting. Do not hesitate to seek out information about the charity’s finances and activities before donating.

Smart Shopping

ADVANCE FEE LOANS

Advertisements that guarantee loans are alluring, but they are most likely not legitimate. The “lender” usually promises to provide a loan, but requires the consumer to wire or transfer an up-front fee. The lender often refers to this as a “processing fee.” The consumer then waits for several weeks or even months only to find out the loan has been denied and the fee is non refundable, or the consumer never hears from the company again. Be leery of these loan offers if the lender is based in Canada, requests payment to be sent by wire transfer or if the lender “guarantees” the loan, even if you have credit problems.

BEAUTYPAGEANT OR MODELING SCAMS

Generally there is nothing more flattering than receiving an invitation for yourself or your child to enter a beauty or baby contest. Before getting involved in these types of contests, get some answers to questions like:

- Who is the promoter or sponsor of the contest?
- What individual is the main coordinator of the event?

- Do you need sponsors or will you have to sell advertising to participate?
- Who pays for cost of travel, lodging and meals?
- If you win and advance to another level, who pays?
- Is there an entry fee at every level of competition?
- Will specific clothes be required?
- Is there a refund policy?

A legitimate contest promoter will be able to respond to the questions with ease. Others may have difficulty in answering, or may vary their answers. The bottom line is that the costs of these contests are often passed on to the participant.

Model searches act much in the same way. Unscrupulous model and talent scouts begin by making you believe you are interviewing for a position when in fact the initial appointment turns into a high-pressure sales pitch.

Avoid the Model Rip-Off by:

- Asking yourself, “why me?” Don’t let your emotions or the company’s flattery take control. Think carefully and critically about how you were approached.

- Avoid high-pressure sales tactics. Never sign a document without reading and understanding it first.
- Check out client claims. If an agency says it has placed models and actors in specific jobs, contact the companies to verify that they've hired from the agency.
- Get everything in writing, including any promises that have been made orally.
- Keep copies of all important papers, such as your contract and company literature in a safe place.

B U S I N E S S F R A U D

The typical office scams involve goods or services that you routinely order: business supplies, maintenance contacts, classified advertising or internet web services. The caller is relying on an untrained employee who may not be aware of office practices.

Most of the scams involve the caller pretending to be a regular supplier hoping that the employee will authorize a purchase. The cost is usually three times what you might pay with your legitimate supplier. The best way to avoid these types of scams is to assign designated buyers and document your purchases. In addition check your documentation before paying bills. When merchandise arrives, make sure that all the details add up and if not refuse the merchandise. Lastly train all employees on how to re-

spond to telemarketers.

Other scams that businesses should be aware of are the promotions of advertising for online or nonexistent business directories. Though these directories appear to be legitimate publications, they are not distributed to the public, posted on the web, or promoted as advertised. The solicitation may come as direct mail invoice and it may even bear the "walking fingers" logo and the Yellow Pages name. Neither the name nor the logo is protected by federal copyright or trademark registration. Often times these invoices will appear to be the company that you are familiar with when in fact they are not associated at all.

C O N T R A C T S

A contract is an agreement between two or more people that creates obligations between the parties, such as purchasing a vehicle or hiring someone to repair your roof. Our office can not assist you with contractual disputes that do not involve consumer fraud. However, please be aware of the following when you are considering entering into a contractual agreement.

- Any contract may be reviewed by a private attorney or second party prior to entering into an agreement, so don't be pressured into a quick decision to sign any contract. Some contracts may be written to give the company an advantage in all legal questions. Contracts need to be reviewed carefully before signing.

- If both parties agree orally, it may or may not be an enforceable contract depending on the facts and type of sale. Be aware that unscrupulous salespeople may try to convince you a contract exists when it does not. Seek legal advice.
- Insist on a written agreement containing everything you were told verbally. The written work in a court of law may mean the difference between winning and losing
- Get the total cost of whatever you are buying in writing.
- Know how long you will have to make payments and be sure you can meet them.
- Insist that the salesperson give you a copy of the contract to review before you sign it.
- Never sign a contract with blank spaces to be filled in later by the salesperson.
- Thoroughly read and understand the contract and seek the advice of a trusted friend, relative or professional if you need another opinion. Only an attorney can give you a true legal opinion.

CREDIT REPAIR SCAMS

Newspapers, television ads and the internet are filled with

offers to help fix your credit problems. These companies are targeting consumers with poor credit histories with promises that they can clean up your credit report. After you pay them hundreds of dollars in up-front fees, these companies do nothing to improve your credit report but do get away with your money.

The fact is that no one can remove accurate and timely negative information from a credit report. So beware of those companies that give you claims like “We can erase your bad credit– 100% guaranteed” or “Credit problems? No problem!”

DEBT CONSOLIDATION

Advertisements promising savings on monthly bill payments and living debt free are abundant on television and the Internet. These promises sound great, but the credit counseling industry is filled with scam artists. Some consumers actually end up in worst financial shape after using the so called services.

If you are having trouble paying your bills talk with your creditors. They may be willing to work out a modified payment plan. Contact a legitimate credit counseling service. These organizations work with you and your creditors to develop debt repayment plans. Make sure the credit counselor is a local nonprofit organization that charges little or nothing for its services.

DISCOUNT HEALTH CARDS

Various companies now are offering “discount cards” that promise consumers a price cut on prescriptions and other health related purchases. It may sound good, but be careful. Some health cards are outright frauds.

The offers may come in the mail, or you may get a call, but all offers sound too good to pass up and they may urge you to make a quick decision.

Never sign up for a prescription or health care discount card without finding out for certain that your pharmacy or health care providers accept it. Also check with your health insurance company for their thoughts. Don’t rely on sales pitches that certain pharmacies or health providers accept the cards, this can be misleading. Compare prices to what you currently receive to those offered with the new card.

FARM PRODUCT SCAMS

Consumer Protection routinely receives complaints from farmers who have been contacted by out of state firms selling fuel additives, pesticides or tools. In many cases, after the consumer agrees to make a small purchase on a trial basis, they are sent larger quantities of unordered merchandise with large bills attached. Even though the consumer says he didn’t order the larger shipment, the company says they will turn it over to a collection agency if the bill is not paid. See Unordered Merchandise section

of this handbook for more information.

Telemarketers typically try to place their sales calls early in the morning and catch the farmer before he goes to the field or out to do chores. If you receive a call of this kind, take the time to make an informed decision by checking out the solicitor and by comparing prices with local businesses.

FOREIGN FRAUD

If someone writes or calls you indicating that they want you to participate in a foreign lottery, do not be fooled. Not only is it a scam, it is illegal for you to participate. Do not send money under any circumstances for a foreign lottery. US citizens cannot participate in foreign lotteries, and foreign lotteries cannot solicit in the United States. There are several different catches to this type of scam. First, they try to get you to send money to participate in a foreign lottery, and then they call you advising you that you’ve won, but you need to send additional money for taxes, currency exchanges, or to get the money through customs. If you become a victim of a foreign fraud scam contact the following agency:

U.S. Secret Service
Financial Crimes Division
950 H Street
Washington, DC 20001
Phone: 202-406-5572
Email: 419.fed@uss.s.treas.gov

HEALTH CLUBS

Keep in mind that joining a health club, tanning facility or health spa generally involves signing a membership contract or paying dues and fees. In some cases, the facility then goes out of business after collecting thousands of dollars in prepaid membership dues. When becoming a member, and before signing a contract, you should consider the following:

- Is everything that the salesperson promised written in the contract?
- Is there a “cooling-off” period?
- Upon illness or physical inability to use the facility, can the contract be cancelled or transferred to someone else? Knowing the spa's cancellation policies is especially important if you choose a long-term membership.
- Are the payments monthly or do you have to pay up front? Although monthly payments might be a little higher than yearly payments, you might save money in the long run if the facility goes out of business.
- Can you afford the payments? Consider the finance charges and annual percentage rates when you calculate the total cost of your membership.

HOME IMPROVEMENT

The secret to avoiding home improvement schemes is to get estimates, comparing both price and quality of work. Beware of transient roofers and people who offer to pave your driveway. They prey especially on the elderly, who are often too trusting and can ill-afford to pay too much for services and materials that are not always good quality.

If you truly need a new roof, get more than one estimate. Don't allow somebody you don't know to come in and re-roof, or claim to re-roof your house or barn, without asking for another estimate and comparing the price with local businesses.

It is also very important to fully understand any contract you sign. It should clearly state the type and extent of repairs/or improvements and the materials to be used. Do not accept any verbal agreements; get it in writing. A deposit should be sufficient to hire the contractor. **NEVER PAY IN FULL UNTIL THE WORK IS COMPLETED** and you have received signed lien releases from all subcontractors, (i.e. plumbers, electricians etc.), as well as from all material men (i.e. lumber yards, concrete suppliers, window suppliers etc.).

INTERNET SHOPPING

Shopping on the Internet may offer some bargains and conveniences, but there are also dangers. Many scams that con artists have promoted by newspaper, magazines, telephones and mail are now on the internet.

The most common signs of fraud are abundant promises of profits, guarantees of credit, incredibly low prices, or prizes that require upfront payments.

One of the main problems with internet purchases is that you are dealing with somebody at a distance. In some cases, it is virtually impossible to track the website to an actual person or address. Use the same common sense you would use when buying items off line. To protect yourself while shopping always use a secure browser and safeguard personal information. Before you order from a company ask for printed information such as a brochure or catalog. It is also important that you understand the company's refund and exchange policies. In addition, be sure to print a copy of your purchase order and confirmation number for your records.

If you do purchase items or services by the way of the internet, it might be wise to use a credit card. Your transaction will be protected by the Fair Credit Reporting Billing Act. Under this law, consumers have the right to dispute charges under certain circumstances and temporarily

withhold payment while the charge is being investigated. In the event of unauthorized use of your credit card, you are generally held liable only for the first \$50 in charges.

INTERNET AUCTIONS

Online auctions may be just the place to buy or sell your favorite collectibles, but they can also be risky business. The complaints generally deal with late shipments, no shipments, or shipments of products that aren't the same quality as advertised or even bogus online payment services. Whether you are the buyer or the seller, understanding how internet auctions work can help you avoid these problems.

Before bidding:

- Become familiar with the auction site. Never assume that the rules for one auction site apply to another.
- Find out what protections the auction site offers buyers.
- Know exactly what you are bidding on. Read the seller's description of the item or service and review any pictures closely. Look for words like "refurbished," "close out," or "off brand" to get a better idea of the actual condition.
- Find out every thing you can about the seller. Check feedback ratings.

- Check to see if there are any warranties.
- Read and understand the seller's return policy.

When bidding:

- Determine what your top price will be and do not go above that price.
- Retain all transaction information. Keep copies of all the seller's information, item description and the time, date and price of item that you had bid on. In addition, keep copies of any email correspondences that might have been exchanged during bidding process.

Before paying:

- Determine what form of payment you would like to use and whether or not the seller accepts.
- Never give out your social security number, credit card numbers or bank account information until you have adequately checked out the seller and the online payment service they are using.
- Before you decide to use any online payment service, know the terms and conditions of their agreement.
- Beware of sellers who contact you after an auction has closed; these sellers may try to lure you to pay by using a wire service, instead of a credit card or online payment service; in many cases, these offers are outright scams.

LIEN WAIVER

Consumer Protection investigators have seen an increase in calls from consumers who have found liens filed against their newly purchased or remodeled home. Here's how it can happen to you.

In most cases, consumers hire and pay one general contractor who then buys materials from local businesses and hires other subcontractors. Even if you have paid the general contractor's bill, he may not have paid the suppliers or subcontractors. You are then liable for the unpaid materials or work and the subcontractors or suppliers can file liens against your home for their bill. Any individual who furnishes skill, labor, services or materials for the improvement or development of property has the authority to file a lien on that property for the value of what was provided. In most cases, a consumer cannot legally transfer property until all liens have been paid.

You can avoid having a lien filed against your property by obtaining a lien waiver. When you hire someone to build a home, an addition or even a deck, don't pay the contractor or anyone else until you receive a waiver from all businesses that have sold your contractor materials in addition to each subcontractor that has provided a service in the completion of the project.

MAGAZINE SUBSCRIPTIONS

If you're offered a free magazine subscription for which you must pay only postage and handling, compute the total cost. The postage and handling may be very high when compared to usual rates.

Phone solicitors may try to convince you to buy a subscription for a small monthly payment. Because you pay only a little at a time, you may not realize that you have actually paid more than the regular subscription price.

MIRACLE HEALTH CLAIMS

Advertisements for miracle health claims are abundant in today's society. These types of promotions promise quick cures and easy remedies to those with health problems, weight concerns, skin conditions, and/or other ailments. Alternative cancer cures, arthritis treatments and "fountain of youth" drugs are other examples of what these offers target.

There are many unproven medications, healing devices and various types of therapies that can directly or indirectly be harmful, even deadly. The direct dangers are easy to see. Using drugs, chemicals, or even medical devices not tested and approved by the Food and Drug Administration (FDA) can result in any number of problems. Even some herbal remedies, which are marketed as "all natural" can produce severe allergic reactions or have

other adverse effects.

As for the indirect measures, money and time are lost when chasing unproven cures; time that may be critical to your health. Many people have experienced the frustration of ineffective conventional medical treatments for incurable or degenerative diseases. Unfortunately, by experimenting with unproven "miracle cures" a consumer's health often suffers because of abandoning regular medical treatment. Consult a physician before beginning any new treatment.

PAYDAY LOANS

A borrower writes a personal check payable to the lender for the amount he or she wishes to borrow plus a fee. The company gives the borrower the amount of the check minus the fee. Fees charged for payday loans are usually a percentage of the face value of the check or a fee charged per amount borrowed. And, if you extend or "roll-over" the loan—say for another two weeks—you will pay the fees for each extension.

Payday loans are intended to be paid back with your next paycheck. However, the interest rates are very high and you may end up paying a lot of money for the loan. Be sure to read the fine print and understand the terms of the loan.

PHISHING SCAMS

“Phising” is a scam that uses email to deceive consumers into disclosing their credit card numbers, social security numbers, passwords or other personal information. The unsolicited emails appear to originate from a company or governmental agency asking you for this information. But the bottom line is that the government does not send unsolicited emails. In addition, companies that you have a relationship with already have your personal information.

Avoid this scam by:

- Not responding to unsolicited emails
- Contact the company or agency cited in the email using a phone number you know to be legitimate or start a new internet search with a web address you know to be the companies own.
- Refusing to give out personal identifying information such as your social security number, credit card or bank account numbers.

NETWORK MARKETING: INVESTMENT OPPORTUNITES OR ILLEGAL PYRAMID SCHEMES

Multilevel marketing plans, also known as “network” or

“matrix” marketing, are a way of selling goods or services through distributors. These plans typically promise that if you sign up as a distributor, you will receive commissions for both your sales of the plan’s goods or services and those of other people you recruit to join the distributors. Multilevel marketing plans usually promise to pay commissions through two or more levels of recruits, known as the distributors “downline.” Legitimate network or multilevel marketing companies differ from pyramid schemes because they do not depend on re-circulating the money of new participants. Rather, they generate new wealth through the sales of goods and services to non-participants. While they use the same marketing structure as do pyramid schemes, network marking companies are designed to sell products, rather than participation.

PYRAMID SCHEMES

If the emphasis in a network marketing company is to build a sales force rather than to sell the company’s products to customers outside the company, watch out! It may be an illegal pyramid scheme which is an illegal money-making venture that simply circulates money among participants; it does not create new wealth. While a few people might get rich, many more will lose money when the pyramid scheme collapses. As the pyramid expands, it requires recruiting new members at a geometrically expanding rate. A pyramid’s success requires the participation of a rapidly expanding number of people.

As a result, pyramids are doomed to ultimate failure from the beginning. When a plan for new recruits breaks down or collapses within the pyramid, most people, except perhaps those at the very top of the pyramid, lose their money. The only question is, who will have lost money when the pyramid collapses? Don't gamble that you will make your money before the scheme fails.

THE DIFFERENCE BETWEEN PYRAMID SCHEMES AND NETWORK MARKETING

Because they know pyramid schemes are illegal, many pyramid promoters try to disguise their schemes as legitimate network or multilevel marketing companies by offering a line of products and claiming to be in the business of selling them. As a result, it can be difficult at times to distinguish between an illegal pyramid scheme and a legitimate network or multi-level marketing opportunity.

To tell the difference, it is often necessary to carefully analyze the way the company is marketed and the way it does business.

In some cases, the product may be worthless or overpriced. Sometimes the only reason a person purchases the product is to participate in the scheme. This price premium is actually a thinly disguised pyramid participation fee. In other cases, the product may have some value but the new participants are encouraged to buy larger

amounts than they can sell in order to meet high sales quotas. In still other cases, the participation fee may be disguised as expensive "training."

The key questions to ask are: Would I pay the price for the product or service offered without the potential for commission? Would other reasonable people pay this price for the product or service? If not, it is very likely a pyramid scheme.

PYRAMID REALITY

Pyramids are illegal. There is a real risk that a pyramid operation will be closed down by law enforcement authorities and the participants subject to penalties, fines and possible arrest. Pyramids are deceptive.

Participants in a pyramid, whether they mean it or not, are deceiving those they recruit. Few would pay to join if the odds stacked against them were fully explained. Pyramid-ing is based on simple mathematics: many losers pay a few winners.

Remember pyramid schemes deceive and cheat consumers and are illegal. But promoters continue to hype pyramid schemes and recruit new people. Con artists running the scams are looking for people who are vulnerable to get-rich-quick promises. Success comes only with hard work. There is no shortcut to wealth. For more information, contact the Division of Consumer Protection.

PROTECT YOURSELF

- Don't be rushed into any business deal. Show your attorney any contracts you receive from the company. A legitimate business opportunity won't disappear overnight.
- Ask questions about the competency and experience of the company and its officers, the products including the potential market in your area, start-up fees, buy-back provisions, and actual earnings of current distributors.
- Get written copies of all available company literature.
- Check with others who have experience with the company and its products. Find out if the products are actually being sold to consumers.
- Investigate and verify all information. Contact the Division of Consumer Protection if you suspect a company might be engaged in an illegal pyramid scheme.

If a pyramid promoter or recruiter tells you that the program has been examined and approved by the Division of Consumer Protection, know that the claim is not true. Our office does not approve any marketing programs. If such representations are made to you, please notify the Division of Consumer Protection at 1-800-300-1986.

RAIN CHECKS

Stores are required to offer rain checks, unless the advertisement clearly states that "quantities are limited," or unless the store can establish that advertised items were ordered in time for delivery and were in sufficient quantities to meet the public's reasonably anticipated demand. A rain check will allow you to purchase the desired item at a later time at the reduced price. Instead of a rain check, stores are permitted to offer a substitute item of comparable value to the sale item at the sale price. The store may also offer some form of compensation that is at least equal in value to the advertised item.

If you cannot find an advertised product on the merchant's shelf, ask for it. If the store has run out, you should ask for a rain check, a substitute or other equivalent compensation. In most cases, retailers will provide you with one of these options.

If you know that a particular store routinely runs out of advertised specials without stating that quantities are limited, and does not provide you with a rain check, a substitute item or some other equivalent compensation, write to the Correspondence Branch, Federal Trade Commission, Washington, DC 20580.

RENT-TO-OWN

A rent-to-own business offers personal property, such as TV's, stereos, furniture and appliances for rent with the option to buy. State law requires that rent-to-own businesses disclose the terms of the arrangement before you buy. The required disclosures include:

- the total number, amount, and timing of all payments necessary to own the property;
- a brief description of the property sufficient to identify it and any damages to the property at time of agreement;
- the initial payments required before delivery of the property;
- statements that the consumer will not own the property until all necessary payments have been made and that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged or destroyed;
- statements regarding late payments, default, pick-up and reinstatement fees;
- a statement summarizing the terms of the option to purchase including a statement that the consumer has the right to an early purchase option;
- a statement identifying the party responsible for

maintaining the property while it is leased and warranty coverage;

- a statement that the consumer may terminate the agreement without penalty by voluntarily surrendering the property in good repair, ordinary wear and tear excepted, upon termination of any rental agreement; plus a notice of the right to reinstate a rental agreement with the terms and conditions of reinstatement.

We suggest you shop around and compare the total cost of buying versus renting. You may find that although monthly rental payments are low, the total cost of rent-to-own may be higher than purchasing the item on credit.

RETURNING STORE ITEMS

Consumers have only limited rights if they are returning an item to a store. As in most states, no laws regulate store return policies in South Dakota.

Provided the goods weren't misrepresented, each store may set its own policy, which may include either a cash refund, an exchange, or no refund at all. Others may limit the amount of time in which a return may be made, such as 30 days from the date of purchase. Damaged merchandise may be handled on a case-by-case basis.

S H O P P I N G B Y M A I L

Shopping by mail can be a convenient way to save time, energy and money. It can also be difficult because of lost orders, computer mix-ups or long distance calls. Below are some precautions you can take to protect yourself when ordering by mail:

- Never send cash through the mail; only send a check or money order, or use your credit card.
- Carefully read the description of the product to make sure that the product offered is what you want.
- Note the stated delivery time and ask for an order or delivery number.
- Find out about the merchant's return policy. If it isn't stated, ask before you order.
- Keep a copy of your order form.
- Keep your cancelled checks and charge account records as they will be helpful if you have a problem.
- If merchandise is damaged, contact the mail order company immediately. If you are asked to return it, get a receipt from the shipper.

F E D E R A L M A I L O R D E R R U L E S

According to the rule adopted by the Federal Trade Commission in 1975:

- You must receive the merchandise when the seller says you will. If you are not promised delivery within a certain time period, the seller must ship your merchandise within 30 days upon receipt of your order.
- You have the right to cancel your order if the seller can't ship your order in the stated time or within 30 days. The seller must tell you if the promised delivery date cannot be met, and what the new shipping date will be. The seller must give you the option to either cancel the order for full refund or agree to the new shipping date. The seller also must provide a free way to reply, such as a stamped envelope or a postage-paid postcard.
- If you don't answer, it means you agree to the delay. If you do not agree to the delay, the seller must mail your refund to you within seven business days after your cancellation. If it's a credit sale, the seller has one billing cycle to adjust your account.
- These rules don't apply to C.O.D. orders or services associated with merchandise such as mail order photo finishing, magazine subscriptions, seeds and growing plants or book and record clubs where you agree to buy on a regular basis.

TELEPHONE NUMBER SCAMS

Consumers need to know the difference between 900 numbers and 800 numbers. Unlike 800 numbers which are free, you pay a fee when you call a 900 number. The company or organization you're calling sets the price and receives the money, not the telephone company. Charges can vary from less than a dollar to more than \$50 and usually are determined by a set rate per minute. Your phone company will provide a free service to block access to 900 number calls from your home phone.

Federal law requires that the cost of calling must be disclosed by flat rate, by the minute with any minimum or maximum charge that can be determined, or by range of the rates for calls with different options. All other fees charged for services and the cost of any other service to which a caller might be transferred must be disclosed. For example, if a 900 call is going to cost you \$4.00 per minute to call and there is a minimum billing of 6 minutes, you will automatically be charged a minimum \$24.00 on your telephone bill. Any minutes over that would be added on from there. In most cases, the charge of the 900 call is collected by the local telephone company on behalf of the business.

Any 900 calls offering sweepstakes, prizes or awards must disclose the odds of winning or the factors for determining the odds.

If you question 900 number charges which appear on your phone bill, you should follow the instructions on your phone bill immediately to dispute the charges. Pay the undisputed portion of your bill. Even if the telephone company removes the charges, the debt might be turned over to a collection agency by the company or service provider. In this case, send the collection agency a letter explaining why you dispute the debt and follow the procedures outlined in the Fair Debt Collection Practices Act. Your local and long distance telephone service cannot be disconnected for contesting pay-per-call charges.

TELEPHONE SHOPPING

Shopping by telephone is often a convenient alternative to shopping by mail. However, if you prefer the ease of ordering by phone, you may have trouble with merchandise that is delivered late or not at all. In making your decision to order by phone, consider your prior experience with the company or its general reputation.

When placing an order by phone, make sure you keep a record of:

- the company's name, address and telephone number;
- the price of the item or items ordered;
- descriptions and item numbers of products ordered;

- the method of payment and shipment used.

It is also very useful to keep a copy of the advertisement or catalog from which you ordered.

VACATION SCAMS

Typical vacation spots are Las Vegas, Reno, the Caribbean and Hawaii. If it sounds too good to be true it usually is. If you receive a phone call or postcard offering a free vacation, beware. No business is in the business of giving away free vacations to strangers.

In most cases, consumers are required to call for more details or to “claim” a free vacation. Consumers may be told they will be mailed a package detailing the vacation, but only after a credit card number has been given to cover a small service charge. Most often the credit card is billed for hundreds of dollars.

Another dream vacation offered at an incredibly low cost requires that a second vacation be purchased at “regular price,” which is much higher than those bought from a reputable travel agency. Sometimes “free” vacations do not include meals, taxes, deposits or surcharges.

In another scam, consumers must pay hundreds of dollars to join a travel club or time share to claim a “free” vacation. The problem usually arises when the consumer se-

lects a vacation date, it is typically overbooked or unavailable.

Tips to avoid travel scams:

- Be cautious of firms that ask you to pay before confirming reservations.
- Deal with an established firm. If the firm is unfamiliar, check with the Better Business Bureau or Consumer Protection Office in the state where it is located.
- Request written information for total costs and all items included.
- Ask about the right to cancel and if cancellation insurance is an option.
- Be cautious of vacation offers that are “good today only.”

WARRANTIES & GUARANTEES

Warranties and guarantees are a seller's or manufacturer's written promise to stand behind the merchandise and services. In evaluating warranties and guarantees, consumers need to know:

- what product, part of the product or performance is guaranteed;
- what length of time it is guaranteed;
- what will be done in case of failure;
- what the buyer must do to make the guarantee good;
- whether there is an "as is" clause in the contract which cancels any express or implied guarantees the dealer might have made orally.

Federal law requires most warranties (including those for cars and mobile homes) to be easy to understand. Warranties on products costing \$15 or more must be labeled "full" or "limited."

To have a full warranty, the product must meet minimum federal standards regarding repairs, refunds and replacements. Under this law, if you incur damages of \$25 or more, which are the result of deceptive warranties or vio-

lations of the law, you can sue the manufacturer for those damages.

A "lemon" clause is part of full warranties. If you cannot get a product or part repaired after a "reasonable" number of attempts, this provision requires the manufacturer to give you a refund, less depreciation, or to replace the product or part without charge.

WORK-AT-HOME SCAMS

Newspaper, magazine and internet ads praising employment opportunities like medical billing, stuffing envelopes, proofreading and assembly or craft work are becoming even greater in number. The amount of money consumers spend for further information varies from \$29.95 to \$500.00 or more. In most instances, there is no guarantee of job placement. You probably will never make any money or even regain the money sent for supplies or materials. Many times once you have sent the up front fee it is likely that you will never hear from the company again.

Charitable Solicitation

HOW TO GIVE WISELY

Consumers and businesses are frequently approached by individuals for donations to charitable organizations. Many times individuals have not heard of the charity and are concerned whether the organization is legitimate.

Currently, paid solicitors contracted by a charity to perform telephone solicitations are required to be registered with the Division of Consumer Protection. If you are contacted through a telephone call to donate money to a charitable organization that is unfamiliar to you, contact the Division of Consumer Protection to check their registration. If the company is not registered, they are soliciting illegally.

The best way to insure that your donation goes to a worthwhile cause is to only give to those charities with whom you are familiar. Below are some tips that can help you give wisely.

- Do not judge a charity solely on its name. Some solicitors deliberately use names similar to that of some better known organization. For example, there are many groups soliciting funds for law enforcement organizations and may not be affiliated with local or state officers. In fact some of these groups are “for profit” and are not actually charitable. If the name sounds unfamiliar, check into it more thoroughly.
- Evaluate the appeal for your donation. A good speaker’s dramatic urgency can be hard to resist. Pay close attention to the content of the appeal not how it is said. It is this content that should provide the basis for any decision to give.
- Many solicitors are volunteers or employees of the charity. Some charities hire a fundraising firm. Ask about the financial arrangements between them and the charity. In many cases, the charity receives only a small percentage of your contribution.
- Ask specific questions when you are asked to contribute money to an event. Who are the participating organizations and are they aware of this undertaking? Ask for a list of these organizations so you can call and check.
- Don’t be pressured and give in to a snap decision. If you are not immediately convinced to contribute, ask the solicitor to send written information.
- Always make your contribution by check or credit card. Cash donations are impossible to track and hard for the charity to protect.

New & Used Car Shopping

HOW TO GET THE BEST DEAL ON A CAR

Before you even set foot in a car dealership, make sure you know exactly what you want. Decide on the type and size of car or truck, or better yet, the model. You should also study the history of the car you are considering.

Does it have a good rating? Is it safe? Is it reliable? Is there a dealer nearby who can service your car if something goes wrong? Also decide the approximate price you want to pay. Check with your bank, savings and loan or credit union to ensure that you qualify for a loan.

A new car is one of the largest financial investments most people ever make. Take your time deciding and don't let a car salesperson sell you a vehicle you don't need. And, as always, deal through a reputable company. Ask several friends who are satisfied with their cars where they purchased them and from whom.

Below are tips to use when shopping for a car:

- Determine beforehand what you can afford and what type of vehicle will best suit your needs. Consider not only the initial cost, but insurance, maintenance and operating cost. Do not be afraid to shop around.
- Try to arrange for financing with a bank, the car dealership, credit union or savings and loan BEFORE you buy.
- Never go alone to buy a car. Always take somebody along for moral support, preferably somebody who is knowledgeable about cars and car maintenance.
- Never let a dealer talk you into borrowing extra money for a down payment. You're the one who is buying the car and know how much you can spend.
- Avoid buying anything unless you have road-tested it and are satisfied with it. If the dealer won't let you drive the car first, don't buy it.
- Avoid buying anything in a hurry. Think it over for a day or two and don't sign anything before you're sure of your obligations. You do not have a three day right to cancel. Once you sign, you have probably bought yourself a car.
- Have a mechanic check the car and make a list of the things which need to be repaired.
- Buy from a dealer with a good reputation. You will usually get better service and the dealer can't afford to alienate future buyers by not treating you right.
- Never sign a contract with blank spaces. Make sure that all spaces are filled with words, numbers or with a line through the space.

- If the salesperson says repairs have been made to the car for resale purposes, ask for proof or have the salesperson state the repairs in writing. If the dealer won't put them in writing, don't buy from them.
- Make sure that all promises the car dealer makes to you are in the contract in writing. If the dealer won't put them in writing, don't buy from them.
- Be sure you read and understand all parts of your contract. If you don't understand parts of the contract, have the dealer explain them to you. When reading the contract be sure to pay close attention to the section headed "disclaimer of warranty." Once signed, this essentially means that any repairs are your responsibility after you've bought the car.
- When buying a used car, ask for the title to reveal for damage disclosure information.
- Search VIN number.

USED CAR DEALER REQUIREMENTS

The dealer must list, in the contract, the price of the vehicle, all finance charges and any other charges you incur. All charges must be explained to you.

By federal law the dealer has to disclose the true mileage of the vehicle to you. If the true mileage is unknown, the dealer is required to tell you. An odometer statement should be given to you to comply with the law before any serious bargaining starts. If the seller refuses to let you have an odometer statement, notify the Division of Consumer Protection. If you have reason to suspect that your car's odometer has been tampered with, contact the Department of Revenue Dealer Licensing.

Within 30 days after the purchase, you should receive a title to the used vehicle. If you don't, contact the Office of Dealer Licensing.

South Dakota damage disclosure law requires car sellers to give you written notice if the car incurred damage of \$5000 or more while the seller owned the vehicle, and if the seller had knowledge the vehicle has ever been titled as salvage, flood or rebuilt. Read all disclosures and related paperwork carefully before you sign anything, and ask to see the most recent title and any previous "Damage Disclosure Statements."

USED CAR WARRANTIES

Almost all used cars sold by dealerships are sold “as is.” Most of the Division of Consumer Protection complaints about used automobiles are from consumers who do not understand the legal consequences of the “as is” designation. “As is” doesn’t mean that the car comes “as equipped,” it means that the dealer won’t make any repairs after the car leaves the lot.

The confusion is even greater when salespeople tell you that the car comes with warranty protection when the written contract contains the “as is” language. Consumers believe what the salesperson says. **What consumers don’t always know is that a court will look only at the contract.** Remember, if your contract says “as is,” your recollection of what the salesperson promised about a guarantee won’t help you at all in court.

Any guarantees or promises the dealer makes to you **must be given to you in writing** to make them binding legally on either of you. Always check to see whether the contract contains that **“as is”** clause which negates any oral guarantees or implied warranties the dealer makes to you. If the dealer made those guarantees on the warranty, ask him to strike the “as is” language and write in the warranties.

If the salesperson has made promises to you about warranties but your contract contains the “as is” statement,

you can ask the salesperson to put his initials by it, and give you a clear warranty statement. That way you will have a written warranty to show the judge if it turns out you got a defective vehicle.

LEMON LAW

The South Dakota motor vehicle lemon law enables consumers, under certain conditions, to obtain either a replacement or a refund for their new car, light pickup or motorcycle.

A condition that does not conform with the vehicle’s warranty and is identified by the consumer within the first year after delivery or the first 12,000 miles, whichever occurs first, is covered. If the condition has not been repaired after 4 or more attempts and significantly impairs the use, value or safety of the vehicle and arises out of normal and ordinary use, the consumer is probably entitled to a replacement or refund.

For a refund, there would be a reasonable allowance for the consumers use of the vehicle. This charge would be determined by the amount of time used and the total mileage on the vehicle at the time of the first report of the condition to the manufacturer or authorized dealer.

AUTOMOBILE REPAIR SHOPS

Always deal with a shop that has a good reputation. Explain as simply and fully as possible the problem and what condition you expect the vehicle to be in when it is returned to you.

Have a signed estimate of parts, labor and additional charges. You should also write across the estimate, with your signature and the mechanic's, that you will not pay for any costs above the estimate unless agreed to.

Always ask for the parts a mechanic has replaced. This will eliminate the danger of being charged for parts never installed.

VEHICLE RETAIL INSTALLMENT SALES

There are specific provisions under South Dakota law covering purchases of motor vehicles for any use from a seller where more than one payment is to be made. There must be a written contract where the consumer agrees to pay, over a period of time, the actual sales price of the vehicle, plus any insurance, official fees and finance charges. These motor vehicle retail installment contracts are also covered by the federal truth-in-lending regulations. Credit extended under these provisions may be

made only by lenders licensed and regulated by the State Division of Banking. These lenders can include bankers and even car manufacturers themselves.

The motor vehicle installment contract must include the following: the cash price of the vehicle; the amount of the buyer's down payment; the amount included for insurance and other benefits; official fees; the finance charge; the balance owed by the buyer; the number of installment payments; and the amount and date of each payment. The finance charge is computed and payable on the unpaid balances and may be set at any rate agreed to by both parties.

A buyer who pays or refinances the full amount of the installment contract is entitled to a refund of the unearned finance charge.

If provided in the contract, delinquency charges may be assessed by the creditor, but not in excess of \$5 or 5%, whichever is greater.

LANDLORD-TENANT ISSUES

Landlord-tenant disputes are a common occurrence in the renting process. The Attorney General's role in landlord-tenant disputes is limited. We are not authorized by law to provide legal advice or private legal services to individual citizens. We can, however, offer you general information to explain your rights regarding a landlord-tenant relationship that may help you.

The rights and duties of landlords and tenants in South Dakota are spelled out in federal law, state statutes, local ordinances, safety and housing codes, common law, contract law and a number of court decisions. These responsibilities can vary from place to place around the state.

Tenants in federal housing and other forms of subsidized housing may have additional rights under federal law not covered in this summary. Those tenants should check their leases for further information regarding federal statutes or mandates.

The local building inspector, or state or local health department, are the authorities to contact if your complaint relates to the health or safety of the tenant(s). The name, address, and telephone number of those organizations can be found in your local telephone book under city, county or state government.

If you feel your grievance merits legal action, we suggest that you consult with a private attorney regarding the merit of your case. You also have the option of using small

claims court. Additional information about this procedure is available from the Clerk of Courts office located at your county courthouse.

Many disputes could be avoided if landlords and tenants were aware of their rights and responsibilities to each other.

INSPECT THE UNIT

Prospective tenants should be allowed to see the rental unit before they put their money down. They should also be allowed to inspect the appliances, electrical system, plumbing, heating and lights as well as locks and windows. Prospective tenants may, if they choose, make a list of any problems they discover, and may request that the landlord sign the list before the potential tenants sign a lease. This will assist in determining contested damages by the tenant during moving out inspections.

Landlords can refuse to cooperate (these are not "rights" legally enforceable in court), but cooperation is advised. To have a list is in the best interest of both parties, since it protects all if there is a disagreement over who is responsible for the repairs.

RENTAL AGREEMENTS

A rental agreement is a legally binding contract between tenant and landlord of the rights and responsibilities of both parties. Renters are bound either by written leases or oral rental agreements **although it is best to have your agreement in writing.**

A written lease can be for any length of time. It can be for a week, month, or a year or longer. A lease will normally include the rental period, the amount of monthly payment, rent due date, fees for late payment, security deposit requirement and conditions for its return. It may also include duties to repair, responsibility for utilities, pet policies, yard care, snow removal and other conditions the landlord or tenant may wish to include.

When a lease is signed by both parties, it becomes a binding legal contract. If any party does not fulfill the terms of the lease, the person who defaults can be sued.

Before signing a lease consider the following suggestions:

- Read the entire contract and ask questions or obtain a legal opinion about unclear provisions.
- Do not move in or pay rent before lease is signed.
- Ask for changes. If tenants dislike certain provisions in

the lease, they have the right to ask the landlord to amend the lease with written changes. However, if a landlord refuses, which he has a right to do, a tenant must decide whether to sign the lease. If changes are made, both the tenant and landlord should initial the changes.

- Do not rely on verbal statements. All promises and agreements should be in writing for your protection.
- Make sure all the blanks are filled or drawn through if they do not apply and the date is correct before signing.
- It is possible to make changes in a lease if they are agreed upon by both the landlord and the tenant. Either delete the agreed upon change by drawing a line through it or add the desired clause to both the landlord and tenant copy and initial and date each change on both copies. If there is not enough room on the lease you will need to add another page entitled "Addendum to Lease." Write whatever additions to the lease that are agreed to and each party needs to sign and date the Addendum. Make sure both parties receive complete signed copies of any revised contract and Addendum.
- Remember, you need a **written** agreement to cancel your lease.

An oral rental agreement is the verbal relationship between a landlord and tenant(s). Just because the agreement is not down on paper, doesn't make the lease any less binding. However, oral agreements at times can be subject to misunderstandings resulting in the word of one against the other. The maximum length of time that an oral lease can be made is for one year.

If there is no lease, the rental period is determined by the time period for which the rent is paid. If rent is paid every month, the tenancy is on a month-to-month basis. The tenant or the landlord must then give the other party one month's notice before leaving or ending a rental agreement. While the landlord is allowed to raise the rent or change other conditions of the agreement upon thirty (30) days notice, the tenant may terminate the lease on the first day of the next month by giving notice to the landlord within fifteen (15) days of receipt of the landlord's notice of modification.

Whether there is a written agreement or not, the landlord and the tenant are subject to the laws of the State of South Dakota and cannot put something contrary to the laws into the lease or rental agreement.

There are a number of clauses which are very undesirable and often illegal, including:

- Clauses which say the landlord will never be liable for

damage or personal injury to you or your guests;

- Clauses in which a party admits responsibility, in advance, for any charge for damages;
- Clauses which allow the landlord to disregard responsibility for any repairs;
- Clauses which permit the landlord to enter the apartment at anytime and without notice;
- Clauses which give the landlord the right to evict you without proper notice;
- Clauses in which allow the landlord to take your possessions if you don't pay rent;
- Any clause which you agree to give up any rights you have under South Dakota or federal law.
- Clauses which differ from returning a security deposit or providing written statement showing specific reasons for not returning it within two weeks after termination by the tenant.

ADVANCE RENT REQUIREMENTS

A landlord has the discretion to collect various deposits as well as some rent in advance. These advance payments generally vary in amount. You should be careful about making any deposit unless a definite decision has been made to move into the unit. A tenant who puts down a deposit, but then decides not to occupy the unit, may not be entitled to a refund.

APPLICATION FEES

Some landlords require prospective tenants to pay an application fee. If required, the fee is used to cover the cost of checking the tenant's references. Prospective tenants should ask if an application fee is required and, if so, the amount of the fee. This should be considered when deciding where to rent. Tenants should also ask if application fees are refundable and request a receipt for payment.

SECURITY DEPOSITS

A security or damage deposit is the most common requirement of landlords. Many landlords require a security or damage deposit from the tenant at the start of the rental period. This is money paid by the tenant and held by the landlord to pay for any damage beyond ordinary wear and tear the tenant or his guests might do to the rental unit, any unpaid rent, or any money the tenant owed to the landlord under some agreement.

Before giving a security deposit, the tenant should inspect the premises and prepare a statement as to its condition during a pre-rental walk through with the landlord. A statement should be made and signed by both landlord and tenant of such things as damaged areas or items, worn rugs, stains in the carpeting, broken fixtures, holes in the walls, screens, etc. The term "ordinary wear and tear"

is vague and this will help protect both parties from misunderstandings later about what damage the tenant caused.

A landlord may not require a security deposit in excess of one month's rent unless "special conditions" exist which "pose danger to maintenance of the premises." One example would be having an additional deposit for a pet.

When a tenant moves out, the landlord is required either to return the deposit or to provide a written statement showing the specific reason for his failure to return it. This statement must be furnished within two weeks after the termination of the tenancy and the landlord's receipt of the tenant's mailing address or delivery instruction.

The landlord may withhold from the deposit only such amounts as are necessary either to remedy defaults in the payment of rent or to restore the premises to its condition at the beginning of the tenancy (ordinary "wear and tear" excepted). If the landlord withholds the deposit, the tenant may also demand an itemized account of the deposit withheld. This must be provided within forty-five (45) days of the termination of the tenancy.

If the landlord does not follow these rules for returning the deposit he or she forfeits all rights to the deposit. Any bad faith or malicious retention of a deposit by landlord of residential premises could also subject the landlord to punitive damages not to exceed two hundred dollars.

TENANT RIGHTS & RESPONSIBILITIES

If you rent or lease a house, apartment, mobile home or storage space, you are a tenant. A tenant must pay their rent on time. Late payment or nonpayment of rent is the most common reason for eviction. A tenant must repair all damage to the premises caused by his or her ordinary negligence or that of their family, guests or pets (excludes ordinary wear and tear). Tenants must use ordinary care to preserve the premises in a good and safe condition and are responsible for the actions of their family, guests and pets within the premises or grounds.

QUIET ENJOYMENT

A tenant has the right to possession and “quiet enjoyment” of the property he or she is renting - that is, to be free from unreasonable interference by the landlord or other persons. The landlord has the right to make a reasonable inspection, but only with prior notice to the tenant and at a reasonable time. Only in the event of an emergency may a landlord lawfully enter your apartment without notice to you.

If it is impossible for you and your landlord to arrange a time he can come over then you may need to leave your key with a friend or relative or let the landlord make re-

pairs when you are gone. If your time schedule forces your landlord to pay more for repairs (such as having to pay weekend rates to a plumber who could have come over during working hours) that cost could be passed on to you. Also, if your landlord is selling your rental unit, real estate agents are subject to the same rules about entering your property as your landlord.

If a tenant continues to refuse reasonable entry to a landlord, the landlord can get a court order allowing entry or evicting the tenant and recovering actual money losses.

HABITABILITY/RIGHT TO REPAIR

A landlord is required to keep rental premises in reasonable repair and fit for human habitation (except for damage caused by the tenant). This includes maintaining all electrical, plumbing and heating systems in a good and safe working order. This warranty of habitability cannot be waived or modified by the parties to the rental agreement. The parties, however, can agree to hold the tenant responsible for certain repairs instead of rent.

When the landlord fails to repair the tenant's dwelling, the tenant may pursue either of two remedies. The first is to vacate the premises, in which case the tenant will be discharged from all further obligations under the lease. The second is to have the tenant make the repairs on his or her own, in which case the tenant may deduct the expense of the repairs from the rent. These measures must

be strictly followed. A tenant may wish to speak with a private attorney or legal aid office for advice before proceeding.

Before the tenant can take either of these measures, he or she must give the landlord notice of the repairs that are needed, wait a reasonable length of time and act only when the landlord neglects to do so. This notice to the landlord should always be in writing, should state the repairs that are needed, and should give a specific reasonable deadline for making the repairs. You may need proof that you requested repairs if there is a dispute. Make sure you are specific about what needs repair and refer to the lease or rules if possible and it is best to send the notice to the landlord by registered/certified mail. You should also keep a copy of such correspondence.

If the costs of the necessary repairs exceed one months rent, the tenant may withhold his rent and deposit it in a separate bank account maintained for the purposes of making the repairs. If the rent is going to be deposited in an separate bank account the tenant must **FIRST** give written notice to the landlord stating the specific reason for withholding the rent and then provide the landlord written evidence of the deposit. The account is be maintained until either the landlord makes the repairs or enough money accumulates to pay for the repairs. These repairs must be necessary to maintain the habitability of the premises such as plumbing, heating, security, electricity, etc.

Another option that might be available to a tenant is

checking with their local housing inspector in the city that they live, or with health, energy or fire inspectors to see if there are possible code violations. If code violations are detected generally the inspector will give the landlord a specific amount of time to fix them. A landlord cannot retaliate (strike back) by filing an eviction notice, or by increasing rent, or decreasing services, because a tenant contacts a governmental agency charged with the responsibility of enforcing a building and housing code.

LANDLORD RIGHTS & RESPONSIBILITIES

The responsibilities of the landlord are to keep the premises in habitable condition, and leave the tenant to the quiet enjoyment of the property. The landlord has the right to the rent money (provided premises have been kept in good condition) and also the right to the premises, in good condition, after the rental period has ended. The landlord may also have other rights, as provided by a written rental agreement. A landlord has certain rights under certain circumstances, including the right to require a security deposit and the right to evict a tenant.

A landlord may neither lock out a tenant nor interrupt the services, such as electric, gas, water or other essential services. Doing so could subject the landlord to damages of two months free rent and return of any advance rent and deposit paid to the landlord.

T E R M I N A T I N G T H E T E N A N C Y

Notice to Landlord:

Leases can vary as to the time required to terminate the lease agreement. Most leases that specify a definite term of tenancy (such as a 6 month or 1 year lease) state the amount of time required for notice to terminate or renew the lease or they expire upon the termination of the expired time. If you have a lease read it carefully for notice requirements.

If a written lease does not give a specific time period for renewal or expiration of the lease, then advance notice must be given at least one full rental period before the tenancy's last day.

The same holds true in month-to-month tenancies. Notice should also be given to terminate the lease at least one full rental period before the last day of your tenancy. If you rent is due on the first of the month, the notice must be given one full rental period before the end of paid lease term. This means the day before the last rent payment is due.

For example, if a tenant who pays rent on the first day of the each month wishes to leave at the end of June, the tenant must inform the landlord of the fact on or before May 31. No matter when during June the tenant actually leaves, the tenant is responsible for the entire month of

June's rent. If the tenant misses the proper notice deadline – even by a day – the tenant is liable for an extra month's rent (July in this case).

Notice from the Landlord:

Unless a tenant is being evicted the landlord must give the same notice requirements as the tenant is required to give.

E V I C T I O N

The only lawful way to evict a tenant is for the landlord to obtain a court order signed by the circuit court or magistrate judge. This is obtained in a lawsuit called a “forcible entry and detainer” action. After giving a three-day notice, a landlord can secure a court order to have a tenant evicted if:

- The person by force, intimidation, or fraud, goes onto the property of someone else that has rightful possession and takes over the possession. Or if they entered the property peacefully but by force, menace, or threat of violence, keeps possession of the property.
- The tenant is in unlawful possession of the landlord's property (by remaining on the property after the expiration of a rental agreement or failing to pay rent for more than three days after it is due);

- The tenant substantially damages the premises; or
- The tenant does or fails to do something which, under the terms of the lease, is identical to cancellation.

A tenant must be given three (3) days notice to vacate before a forcible entry or detainer action can be commenced by a landlord. If the tenant refuses to move after three days, the landlord can then file a lawsuit (Forcible Entry and Detainer) for eviction. The lawsuit begins by serving the tenant with a Summons and Complaint which gives the tenant four days to file and serve a written answer. A telephone call does not constitute an answer nor does a letter written to the landlord. We recommend that you contact an attorney immediately upon receipt of a Summons and Complaint. If you fail to file and serve proper answer, a court order will be issued requiring the tenant to move. If an Answer is properly filed and served, the matter is brought on for hearing before the court.

A landlord cannot just lock a tenant out, take their property, shut off the electricity, gas, water or other essential services. If a landlord resorts to such measures, the tenant may recover possession or end the rental agreement. The tenant may also be entitled to damages for loss of use of the premises or property and for any out-of-pocket expenses caused by the landlord's illegal conduct.

ABANDONMENT OF PERSONAL PROPERTY

If a tenant is evicted or leaves personal property in a rental unit after moving out, the tenant's personal property may be treated as abandoned property. The landlord's obligation regarding property left behind by the renter depends upon the value of the property. Property with a value of less than \$100 is presumed to have been abandoned after ten (10) days and the landlord may dispose of it. Property with a value exceeding \$100 must be stored by the landlord for thirty (30) days and then may be treated as abandoned and disposed of by the landlord. If the property is claimed by the tenant during this time the landlord is entitled to handling and storage costs.

If you are being evicted by law enforcement pursuant to a court order, make sure you make immediate arrangements with the landlord to get your property as soon as possible.

A landlord cannot hold a tenant's property for payment of back rent or damages to the rental property. He must sue the tenant in Small Claims or Circuit Court and obtain a judgment before an attempt is made to collect for anything not covered by a security deposit.

RE TALIATORY EVICTIONS PROHIBITED

It is unlawful for a landlord to force a tenant into moving by raising the rent, decreasing services, or starting an eviction because of any of the following:

- Complaints to the landlord because needed repairs are not being made.
- Complaining to a governmental agency who can make inspections or force the landlord to make repairs.
- Becoming active in a tenant organization.

If the landlord should start a retaliatory action within 180 days of an event specified above the landlord can be sued for retaliation and recover up to two months rent, return of any security deposit and up to \$500 in attorney fees.

This is a summary of some of the various federal and state laws pertaining to landlord-tenant issues. It is considered educational material only. If you have questions regarding landlord-tenant issues contact the Division of Consumer Protection at 1-800-300-1986. But if you need legal advice we suggest that you contact a private attorney.

Credit Cards

Credit cards and revolving charge accounts are regulated by law. The credit cards regulated by law are the typical charge cards issued by major retail stores, banks, financial institutions and oil companies. These credit cards are used to purchase goods and services on revolving charge accounts. The major difference between an open account and a revolving charge account is the degree of formality and credit use.

USING YOUR CARDS

Your credit card can be dangerous in the wrong hands. So, always remember to keep your credit card, cash card or telephone card information in a safe place. There are some helpful tips for the use of your cards:

- Sign cards as soon as they arrive.
- Save receipts to compare with billing statements.
- Whenever you give your credit card numbers to anyone you have authorized that person/company to charge your account. **A written authorization by you is NOT required to charge your account.**
- If you disagree with a charge on your account, contact your credit card company immediately. They can tell you how to formally dispute a charge.
- Many credit card companies use some code for identi-

fication, like your mother's maiden name or a Personal Identification Number (PIN). Someone can charge on your card with just your code and the expiration date. Never give this information over the phone.

- Your liability for fraudulent use from loss/theft is limited if you notify the issuer.
- Notify card companies in advance of a change in address.

CREDIT CARD RATES & TERMS

The interest rate allowed on a credit card account is technically called a credit service charge. Like interest rates, there is no maximum credit service charge rate under South Dakota law. Any credit service charge rate that both parties agree on can be set, subject to the federal Truth-in-Lending Act and other provisions. South Dakota provides that these credit service charges may be compounded and that a minimum charge on each monthly bill may be assessed.

A credit card issuer may change the terms of any credit card arrangement. Changes must be made in writing and the customer must be given notice prior to the change.

Changes may include the credit card service charge, fees and other costs that can be applied to existing balances as long as the card holder does not, within 25 days of the effective date, furnish written notice to the issuer that he does not agree to abide by such changes. If the notice is given by the customer, the customer must quit using the card.

Here are some questions to ask when you consider getting a credit card:

- What are the interest rates? Very low advertised rates usually are only “teaser” rates, and a much higher regular rate kicks in after a few months.
- Are there steep “penalty” rates? One late payment may trigger penalty rates that are much higher.
- Are there other hidden fees? Most cards have cash advance fees, late payment fees or over-the-limit fees and often times annual fees.

When using your credit card it is also important to avoid the revolving debt trap. Don't think that you can avoid trouble just by making the minimum payment each month. For example: Say that you make only minimum payments and you run up a \$1000 balance on a card on a card with a 13% annual percentage rate. Even if you never use the card again, if you continue to make only the minimum payments you will still owe over \$500 three and one-half years later. Paying off the debt will take over six years.

C R E D I T C A R D P R O T E C T I O N

Telemarketing calls or mail solicitations trying to sell you a “credit card protection” plan can be misleading. They promise to “insure” you against unauthorized charges and to notify your credit issuers if your credit cards are lost or stolen. At first these offers may seem sensible, but there are several problems with these types of offers.

First, the solicitations or phone calls may lead you to believe that they are contacting you on behalf of your credit card company even if they are not. Second, most of these outfits try to sell you expensive protection you may not need at all.

The bottom line is that federal law provides that, if you report a lost card before it is used, you are not liable for any amount charged by others, and your maximum liability is only \$50, even if unauthorized charges are not discovered until your statement arrives. Credit protection plans will rarely tell you that fact.

Federal Credit Laws

Equal Credit Opportunity Act

This act requires that credit grantors extend credit fairly and without considering race, color, age, sex, or marital status.

Fair Credit Billing Act

This act says that if you receive a billing that you feel is incorrect and you notify the creditor in writing within 60 days, the creditor must either correct the bill or send you an explanation within 90 days.

Truth in Lending Act

This act requires credit grantors to tell you what using credit really costs (like interest rates, minimum monthly payment, finance charge, etc.)

Fair Credit Reporting Act

This act guarantees your rights regarding your credit file. If you are turned down for credit due to a credit report, you can get a copy of it from the credit reporting agency (CRA) at no cost. Otherwise, a copy of your file from a credit bureau involves a fee. You do have the right to dispute incorrect information in a report.

Summary of Your Rights Under the Fair Credit Reporting Act:

- You must be told if information in your credit bureau file has been used against you and be given the address of the credit bureau that prepared the report used to deny you credit, insurance or employment.
- You can find out what is in your file. At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently.
- You can dispute inaccurate information with the CRA.
- Inaccurate information must be corrected or deleted. A CRA must remove or correct inaccurate information, usually within 30 days after you dispute it.
- You can dispute inaccurate items with the source of the information.
- Outdated information may not be reported. In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.
- Access to your file is limited. A CRA may provide information about you only to people with a need recognized by the Fair Credit Reporting Act such as an application with a creditor, insurer, employer or landlord.

- Your consent is required for reports that are provided to employers, or reports that contain medical information.
- You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.
- If you are a victim or suspect that you may be a victim, the Fair Credit Reporting Act allows the consumer to file an alert with the CRA.
- You may request that your social security number be shortened on your credit report

The three major national credit bureaus are:

Equifax
800-685-1111
www.equifax.com

Experian
888-397-3742
www.experian.com

TransUnion
800-916-8800
www.transunion.com

Collection Practices & Identity Theft

FAIR DEBT COLLECTION PRACTICES ACT

Questions and Answers Concerning Debt Collectors

What debts are covered?

Personal, family, and household debts are covered under the Act.

Who is a debt collector?

A debt collector is any person who regularly collects debts owed to others. This includes attorneys who collect debts on a regular basis.

How may a debt collector contact you?

A collector may contact you in person, by mail, telephone, telegram, or fax. However, the debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector may not contact you at work if the collector knows that your employer disapproves of such contacts.

Can you stop a debt collector from calling you?

Yes, you may stop a debt collector from calling you by saying so in writing. Once you tell the collector not to call

you, the debt collector can no longer do so **except** to tell you that there will be no further contact or to notify you that the collector or the creditor intends to take some specific action. Please note that by sending such letter does not make the debt go away if you actually owe it.

May a debt collector contact anyone else about your debt?

If you have an attorney, the debt collector must contact the attorney, rather than you. If you do not have an attorney, a collector may contact other people, but only to find out where you live, what your phone number is, and where you work. Collectors usually are prohibited from contacting such third parties more than once and in most cases, the collector may not tell anyone other than you and your attorney that you owe money.

What must the debt collector tell you about the debt?

Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money that you owe; the name of the creditor to whom you own money; and what action to take if you believe you do not owe the money.

What types of debt collection practices are prohibited?

Debt collectors may not harass, oppress, or abuse you or

any third parties they contact. For example, debt collectors may not use threat of violence or harm, use profane language, repeatedly use the telephone to annoy someone, or publish a list of consumers who refuse to pay their debts (except to a credit bureau).

A debt collector must not be unfair in attempting to collect any debt. For example, a debt collector cannot:

- Collect any amount greater than the amount of your debt; unless allowed by law;
- Deposit a post-dated check prematurely;
- Contact you by postcard;
- Make you accept collect calls or pay for telegrams;
- Take or threaten to take your property unless this can be done legally.

What Can You Do If The Debt Collector Breaks The Law?

You have the right to sue a debt collector in a state or federal court within one year from the date the law was violated. If you win, you may recover money for the damage you suffered plus an additional amount up to \$1,000.

IDENTITY THEFT

Identity theft has materialized into one of the fastest growing crimes, with the distinction as the most difficult to resolve. One of the main reasons for the increase of identity theft is our information age that requires us to share personal information. Since this personal information is so readily used it is much more accessible to crooks.

Ways to minimize your risk of being a victim of identity theft:

- Before giving any personally identifying information, find out how it will be used and if it will be shared with others.
- Pay attention to billing cycles and contact creditors if bills do not arrive in a timely manner.
- Use passwords and avoid using information like mother's maiden name, your date of birth, the last four digits of your social security number, your phone number, or a series of consecutive numbers.
- Do not give out personal information unless you have initiated the contact or know who you are dealing with.
- Be careful about how you discard personal information. Shred credit card receipts, bank statements,

insurance forms and other information.

- Order a copy of your credit report each year. Make sure it is accurate and includes only those transactions that you have authorized.

WHAT CAN VICTIMS DO

What do you do if you are a victim?

- Contact the fraud department of all three national credit reporting agencies. Request a “fraud alert” be placed on your file and that no new credit be granted without your approval.
- Contact the security department of creditors and financial institutions where accounts have been fraudulently opened. Remember to check all areas of your credit such as: credit cards, banks, mortgage companies and even utility companies.
- File a report with local police where the identity theft occurred and get a copy of that report if proof is needed later.
- Contact the Social Security Hotline at 800-269-0271 to have an alert put on your social security number.

- Contact the Federal Trade Commission. Although the FTC does not have authority to take legal action, it is a federal clearinghouse for complaints by victims of identity theft.

The FTC provides information to help victims resolve problems caused by the theft:

FTC’s Identity Theft Hotline
1-877-438-4338
TDD: 202-326-2502
www.consumer.gov/idtheft

Monitoring your credit card statements and your credit report is the most important step you can take to safeguard your credit identity. A credit bureau is required to provide one free credit report during any 12 month period if you believe the report contains inaccurate information due to fraud, or if you are unemployed but plan to look for a job within 60 days, or if you are on welfare.

Where to report fraud or obtain a copy of your credit report:

<u>BUREAU</u>	<u>REPORT FRAUD</u>	<u>TO GET CREDIT REPORT</u>
Experian	888-397-3742	888-397-3742
Trans Union	800-680-7289	800-916-8800
Equifax	800-525-6285	800-685-1111

References

Reference Guide

Office of Attorney General Larry Long.....	(605)773-3215
500 East Capitol Avenue	
Pierre, SD 57501-5070	
www.state.sd.us/atg	
Division of Consumer Protection.....	in state only 1-800-300-1986
500 East Capitol Avenue	(605)773-4400
Pierre, SD 57501-5070	
www.state.sd.us/atg	
Public Utilities Commission.....	1-800-332-1782
500 East Capitol Avenue	(605)773-3201
Pierre, SD 575001-5070	
www.state.sd.us/puc	
Division of Insurance.....	(605)773-3563
Department of Revenue and Regulation	
445 East Capitol Avenue	
Pierre, SD 57501	
www.state.sd.us/drr2/revenue.html	
Division of Banking.....	(605)773-3421
Department of Revenue and Regulation	
217 1/2 West Missouri Avenue	
Pierre, SD 57501	
www.state.sd.us/drr2/revenue.html	

Office of Dealer Licensing.....(605)773-3541
 Department of Revenue and Regulation
 445 East Capitol Avenue
 Pierre, SD 57501

Department of Labor.....(605)773-3101
 700 Governors Drive
 Pierre, SD 57501
www.state.sd.us/dol

State Bar of South Dakota.....in-state 1-800-952-2333
 222 East Capitol (605)224-7554
 Pierre, SD 57501
www.sdbar.org

Consumer Product Safety Commission.....1-800-638-2772
 Product Safety Hotline
 Washington, DC 20207-0001

Federal Trade Commission.....1-877-382-4357
 600 Pennsylvania Avenue, N.W.
 Washington, DC 20580
www.ftc.gov

Social Security Administration.....1-800-772-1213
 Windsor Park Building
 6401 Security Blvd.
 Baltimore, MD 21235

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Carmel, NY 10512

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