

CONSUMER ISSUES

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CONSUMER ISSUES

OVERVIEW

Disasters are breeding grounds for unscrupulous consumer practices. Disaster victims, particularly senior citizens, the disabled and limited English or non-English speaking persons are vulnerable to scams. Even financially sound families may fall behind on credit payments resulting in collection actions. Consumer information is essential to help prevent victimization.

IMPORTANT NOTE: The information contained in this section is designed to help a volunteer attorney provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems. Because of the complicated nature of such cases, disaster victims should be advised to seek the advice of an attorney.

I. MAJOR CONSUMER ISSUES AFTER A DISASTER

A. Caveat Emptor -- Let the Buyer Beware

After any disaster, three factors impact consumers: 1) A desperation to repair any damage and to heal family shock over losses; 2) Excessive demand on firms which provide repair services; and 3) Limitations on the supply of available services because of damage to service providers. In any situation, excess demand and limited supply causes prices for goods and services to increase. A major disaster exacerbates this factor. Consumers should take time to prioritize their needs and develop alternative plans to solve their problems.

Before contracting for any services, the consumer should:

1. **Verify licensing**, if applicable, with appropriate regulatory agencies;
2. **Verify company legitimacy** with local Better Business Bureaus;
3. **Obtain comparison bids** with lists of services provided and material costs;
4. Obtain all **estimates in writing**;
5. Speak with other customers to **verify satisfaction**;
6. **Read all contracts** or service agreements **before signing**; and
7. File complaints with appropriate regulatory agencies if confronted with potential fraud or abuse.

The telephone number for the Texas Office of the Attorney General Consumer Division is 1-800-337-3928. Urge consumers to contact their county District Attorney's Consumer Fraud Division if someone calls with what the consumer feels is a scam. An early alert can prevent others from fraud. Urge them to contact the local newspaper's consumer desk to notify them of scams.

B. Price Gouging

Section 17.46(b)(25), Texas Business and Commerce Code, makes it a deceptive trade practice in Texas to take advantage of a disaster by selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price, or even demanding an exorbitant or excessive prices for these items.

This statute can be enforced privately, by the Attorney General, or by local District Attorneys.

C. Home Equity Fraud

Home equity is the market value of the home minus the mortgage and other liens on the home. For example, if a home's market value is \$100,000 and the mortgage and all liens are \$80,000, the equity is \$20,000 ($\$100,000 - \$80,000 = \$20,000$).

Home equity fraud is the taking of a homeowner's equity by fraudulent means. Victims of home equity fraud are most often elderly persons, particularly widows over age 70, minorities with limited English skills or homeowners with fixed incomes below \$24,000.

1. Home Repair/Lien Contract Scams

After a disaster, a homeowner frequently needs major repairs for serious damage. This may include roofing and siding, plumbing, electrical wiring, heating and cooling, replacement of damaged structures, interior living quarters, etc. The cost of these repairs is most likely greater than the insurance coverage and the ability of the homeowner to cover the cost. Frequently, a low-income homeowner has deferred maintenance which may make the damage ineligible for FEMA funding.

The homeowner may feel trapped between the high cost of the repairs and the limited funding for repairs. Unscrupulous contractors or salespeople will take advantage of the fears of the homeowner and agree to make the repairs at unrealistic prices or financing schemes.

The salesperson or contractor then induces the homeowner to sign a lien-contract secured by the home. The loan repayment amounts are higher than what the consumer can afford to pay on a fixed income. Alternatively, the contractor provides inadequate repairs or services and the consumer refuses to pay the note to the finance company. The lien-contract, however, functions like a promissory note. If the homeowner misses only one payment the creditor may foreclose and sell the home without ever going to court. The common result is that the homeowner not only fails to have necessary repair work done, but loses his/her home through foreclosure.

2. Refinancing Schemes

Because of the increased costs of confronting an emergency, consumers frequently fall behind in their credit payments or overextend themselves to the point that they must choose whether to pay creditors or obtain basic necessities such as food. Such consumers are often approached by finance companies promising to consolidate the homeowner's debt for existing mortgage, credit card debt, car loans and repair loans. They then pressure the homeowner to sign multiple agreements without sufficient time to review them or consult with anyone.

The negative outcomes of such refinancing schemes include high processing fees, payments to bogus/phantom creditors and default on the loan. The homeowner often cannot pay both the refinancing costs and basic living expenses, resulting in a situation far worse than before the refinancing.

3. Foreclosure Consultants/Equity Purchasers

Some financial predators prey on persons during the foreclosure process. They claim to be foreclosure experts who offer to assist homeowners after they receive a notice of default. Once the finance company files a formal lien with the County Clerk, the homeowner is deluged by these foreclosure consultants. These financial thieves further encumber the property with liens for fees and extravagant charges. They try to obtain title through a power of attorney or by direct transfer. They take advantage of the homeowner's distress and offer to purchase the home for below market value through misrepresentations on the value of the home and on encumbrances. They represent to the homeowners that they may stay in the property for the rest of their lives. In fact, after they obtain the property, they sell it and the new owner serves the tenants with eviction papers. Clients should be warned of such scams.

4. Caretaker/Befriender/Relative Scams

Isolated homeowners who need assistance to maintain their homes frequently are victimized by friends, relatives or caretakers. They assist the homeowner with household chores, including shopping or taking them on medical visits. Children of elderly parents sometimes seek control of their parents' property for their own uses. All of these persons use scare tactics to convince the elderly, disabled or limited English or non-English speaking person to transfer title of the property to them. Sometimes they obtain a power of attorney when a person is very sick. Unbeknownst to the homeowner, the power of attorney holder may convey or encumber the property and keep the proceeds for him/herself.

D. Debtor/Creditor

Often disasters can trigger financial crises as victims fall behind in their bills. Missed payments or collection actions can damage their credit ratings. Victims should notify creditors of the situation as soon as possible. Some creditors will agree to postpone payments for a period of time.

1. Debt Collection

a. Communicating and Negotiating with Creditors

If the debtor can afford to make small monthly payments, s/he should contact the collector to ask if the payments are acceptable and reach an agreement on all of the following:

- 1) Total amount owed on the bill, including the interest to be added each year;
- 2) Amount of monthly payments;
- 3) Due dates that payments must reach the collector;
- 4) Address where payments must be mailed; and
- 5) Whether the collector will remove negative information about the bill from the debtor's credit report.

b. Documenting Communication between Debtor and Creditors

It is important for debtors to keep a record of phone calls from the collector regarding the past due bill, including the full names of the individuals s/he speaks with and date, time and details about the conversations. If the debtor arranges a payment agreement, s/he should send a brief letter confirming the terms of the payment plan. The debtor should always keep copies of any letters and payments sent to the collector. Letters to the collector should be sent certified mail. Consumer Credit Counseling Services may negotiate with collectors on behalf of debtors for little or no fee. See the business listings of the White Pages of the phone book.

c. Notifying the Collector of Debtor's Inability to Pay

Some debtors who have no employment income or prospects for such income might be considered "judgment proof." Such people own no real estate, no personal property of significant value, no more than one car, and would probably not have bank accounts or other investments. Such debtors who are unable to arrange a workable payment plan should consider sending the collector a letter informing them of the inability to pay and requesting that the collector stop contacting the debtor about the debt. The debtor should

include in the letter any special circumstances which help explain the inability to pay.

Sending such a letter limits the collector's right to contact the debtor.

d. Filing Bankruptcy

Bankruptcy may become a last resort option for disaster victims who cannot satisfy their creditors. Filing bankruptcy will not necessarily cancel all debts.

It is recommended that individuals wishing to pursue bankruptcy proceedings be referred to a State Bar-certified lawyer referral service where an experienced bankruptcy attorney can be identified. For information about lawyer referral call the State Bar at 1-800-252-9690.

e. What Happens when Debtors Fail To Pay

Debtors are not criminally liable for owing debts; however, a collector may file a civil lawsuit against them to collect the debt, and a court judgment will give the collector the right to collect any non-exempt assets. Also, the collector has the right to report the unpaid debt to a credit reporting agency. Auto loan contracts usually permit the collector to repossess a car without advance notice after a borrower's failure to make payments. The debtor will have to pay the full balance of the loan plus all costs of repossession in order to regain possession. If the debtor cannot pay, the collector may sell the car and sue the debtor for the amount the debtor owes over the sale price.

If a past due bill is for services a debtor continues to receive (e.g., utilities), the collector may discontinue service or withhold reconnection, even if the debtor moves to another residence. The collector may also sue to try to collect the unpaid balance.

2. Credit Reporting

Legal Authority

This area is governed by the Federal Fair Credit Reporting Act, 15 U.S.C.A. § 1681, which requires that credit reporting agencies furnish a free copy of a consumer's credit report upon request within 30 days after the consumer is notified of an adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers' claims. Texas law is found at Section 20.01, Texas Business & Commerce Code.

II.

REMEDIES

A. Texas Consumer Protection Laws

1. Texas Deceptive Trade Practices Act--Section 17.41, et seq., Texas Business and Commerce Code.

This law protects consumers against false, misleading, or deceptive trade practices, including unconscionability and breach of warranty. It prohibits, among other practices:

- a. Misrepresenting or causing confusion or misunderstanding as to source, sponsorship, approval, or certification of goods or services or affiliation, connection, or association with another;
- b. Misrepresenting agreements to confer or involve rights, remedies, or obligations, which they do not have or involve, or which are prohibited by law;
- c. Mislabeling goods or services;
- d. Knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- e. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- f. Taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by selling or leasing at an exorbitant or excessive price, or demanding an exorbitant or excessive price in connection with the sale or lease of, fuel, food, medicine, or another necessity.

For a complete listing of specific instances that constitute false, misleading or deceptive acts or practices, see Section 17.46(b)(1) -- (25). In addition, see Section 17.50(a).

The Act provides that a consumer who is damaged by such unlawful practices may recover economic damages, injunctive relief, other equitable orders, and attorney fees. If the illegal acts are committed knowingly or intentionally, the aggrieved consumer may obtain mental anguish and additional damages not to exceed three times economic and mental anguish damages. See, Section 17.50.

2. Home Solicitation Contracts -- § 39.001, Texas Business & Commerce Code

This Act regulates the home solicitation industry. It requires specific language to be included in contracts and notices of cancellation. A buyer has the right to cancel a home solicitation contract until midnight of the **third business day** after the day on which the buyer signs the agreement. If a seller fails to give a buyer notice of the right to cancel the contract, until the seller has complied, the buyer may cancel.

3. Rescission

A contract may be rescinded if all parties consent. In addition, the following are other possible bases for rescission:

- a. Mistake;
- b. Duress;
- c. Fraud;
- d. Undue influence;
- e. The consideration for the obligation fails; and
- f. The consideration is void.

Rescission is also allowed if the contract is unlawful or if the public interest will be prejudiced by permitting the contract to stand. See, Section 2.209, Texas Business & Commerce Code.

B. Texas Insurance Code

Many flood insurance claims are governed by federal law. However, the conduct of insurers and adjusters may still be subject to prohibitions under state law. A consumer with insurance questions should contact an attorney who specializes in insurance claims.

Under state law, a consumer may have protections against unfair settlement practices, misrepresentations, delays in claims handling, and denial of claims. A consumer may be able to recover policy benefits, other actual damages, interest, penalties, and attorney's fees. If the insurer or adjuster knowingly or intentionally engaged in unfair insurance practices, the consumer may potentially recover mental anguish damages and additional damages.

C. Federal Remedies

Truth in Lending Act -- 15 U.S.C. §§ 1601-1641 Regulation Z -- 12 CFR § 226.1 et seq.

This federal act requires loan and credit providers of transactions involving four or more installment payments, to provide specific loan disclosure statements to the borrower. It provides for a three-day rescission period and damages for violations of this Act. In addition,

violations of the disclosure requirement may extend the rescission period up to three years from the time of consummation of the loan.

D. Common Law Remedies

Other remedies include the traditional common law remedies of **fraud in fact** and **fraud in the inducement**. The first involves contracts, which are signed because of misrepresentation of the contents. A deed transferred because of fraud is void and the title remains in the grantor. The second involves a document whose contents the signer knows, however, s/he is forced to sign it without proper consent. This type of contract is voidable. **Forgery** is where a person falsely signs a document or tricks someone into signing a document. Such documents are void.

III. MISCELLANEOUS CONSUMER ISSUES

A. Home Repair Problems

Abandonment and shoddy work problems with home repair contractors are frequent during a disaster. At a minimum, homeowners should check license status, the local Better Business Bureau, and references prior to signing a contract. Homeowners may also contact the Texas Office of the Attorney General, Consumer Division, at 1-800-337-3928, to determine whether there are any complaints on file in the State of Texas.

Homeowners with complaints about a contractor's performance should file a complaint with the Texas Office of the Attorney General, Consumer Division, with the local Better Business Bureau and with the contractor's bonding company. In addition, homeowners should consult an attorney for advice regarding the advisability of filing a civil damages action.

B. Mechanics' Liens

If a homeowner fails to pay for repair work which the contractor claims to have satisfactorily completed, the contractor may file a mechanics' lien by the 15th day of the third calendar month after the debt accrues. See, Section 53.001, Texas Property Code.

C. Storage Companies

Storage companies must be bonded and a consumer should confirm bond information with the bond company before choosing a storage company. See, Section 59.001, Texas Property Code.

D. Insurance Problems

After a hurricane or flood, consumers may have claims for damage to their homes, cars, or other personal property.

The Federal Emergency Management Administration provides these tips for consumers after a flood:

AFTER

Flood dangers do not end when the water begins to recede. Listen to a radio or television and don't return home until authorities indicate it is safe to do so.

Remember to help your neighbors who may require special assistance -- infants, elderly people, and people with disabilities.

Inspect foundations for cracks or other damage.

Stay out of buildings if flood waters remain around the building.

When entering buildings, use extreme caution.

- Wear sturdy shoes and use battery-powered lanterns or flashlights when examining buildings.
- Examine walls, floors, doors, and windows to make sure that the building is not in danger of collapsing.
- Watch out for animals, especially poisonous snakes, that may have come into your home with the flood waters. Use a stick to poke through debris.
- Watch for loose plaster and ceilings that could fall.
- Take pictures of the damage--both to the house and its contents for insurance claims.

Look for fire hazards.

- Broken or leaking gas lines
- Flooded electrical circuits
- Submerged furnaces or electrical appliances
- Flammable or explosive materials coming from upstream

Throw away food -- including canned goods -- that has come in contact with flood waters.

Pump out flooded basements gradually (*about one-third of the water per day*) to avoid structural damage.

Service damaged septic tanks, cesspools, pits, and leaching systems as soon as possible. Damaged sewage systems are health hazards.

INSPECTING UTILITIES IN A DAMAGED HOME

Check for gas leaks--If you smell gas or hear blowing or hissing noise, open a window and quickly leave the building. Turn off the gas at the outside main valve if you can and call the gas company from a neighbor's home. If you turn off the gas for any reason, it must be turned back on by a professional.

Look for electrical system damage--If you see sparks or broken or frayed wires, or if you smell hot insulation, turn off the electricity at the main fuse box or circuit breaker. If you have to step in water to get to the fuse box or circuit breaker, call an electrician for advice.

Check for sewage and water lines damage--If you suspect sewage lines are damaged avoid using the toilets and call a plumber. If water pipes are damaged, contact the water company and avoid the water from the tap. You can obtain safe water by melting ice cubes.

<http://www.fema.gov/library/floodf.htm>.

Here are some additional tips from FEMA:



STABILIZE THE BUILDING AND ENVIRONMENT

- Some building contents may be contaminated. Do not enter without current tetanus shots, protective gloves/clothing, hard hat and NIOSH-approved respiratory mask.
- Identify and repair structural hazards. Brace shelves. Remove debris from floor.
- Reduce temperature and relative humidity at once to prevent mold outbreak. Ideal targets are less than 70° F/45% RH.
- If warm outside, use coldest air conditioning setting; cover broken windows with plastic.
- In cool, low-humidity weather open windows, use circulating fans. If mold is already present, do not circulate air.
- Do not turn on heat unless required for human comfort.
- Remove standing water and empty items containing water; remove wet carpets and furnishings.
- If everything is soaked, use commercial dehumidification except in historic buildings.
- Purchase needed supplies.



DOCUMENTATION

- Once it is safe to enter the building, make a preliminary tour of all affected areas. Wear protective clothing.
- Do not move objects or collections without documenting their condition.
- Use a Polaroid-type camera or video camera to record conditions of collections and structure. Make sure images clearly record damage. Supplement with better quality photos when necessary.
- Make notes and voice recordings to accompany photographs.
- Assign staff to keep written records of contacts with insurance agents and other investigators, and staff decisions on retrieval and salvage.
- Make visual, written and voice records for each step of salvage procedures.



RETRIEVAL AND PROTECTION

- Leave undamaged items in place if the environment is stable and area secure. If not, move them to a secure, environmentally controlled area.
- If no part of the building is dry, protect all objects with loose plastic sheeting.
- When moving collections, give priority to undamaged items and those on-loan. Separate undamaged from damaged items.
- Until salvage begins, maintain each group in the same condition you found it; i.e., keep wet items wet, dry items dry, and damp items damp.
- Retrieve all pieces of broken objects and label them.
- Check items daily for mold. If mold is found, handle objects with extreme care and isolate them.



DAMAGE ASSESSMENT

- Notify insurance representative or risk manager. You may need an on-site evaluation before taking action.
- Make a rough estimate of the type of materials affected and the extent and nature of damage. A detailed evaluation can slow recovery now.
- Look for threats to worker safety or collections. Determine status of security systems.
- Look for evidence of mold. Note how long the materials have been wet and the current inside temperature and relative humidity.
- SEE DOCUMENTATION SECTION. Documenting the damage is essential for insurance and will help you with recovery.

(<http://www.fema.gov/r-n-r/response.htm>).

Texas standard homeowners policies exclude coverage for damage caused by hurricanes and flooding.

Consumers should determine whether they have flood insurance through a separate policy under the federal National Flood Insurance Program. Flood policies are commonly required in flood-prone areas. These policies may be issued directly by the federal government, by the

same insurer that issued the homeowners policy, or by another insurer. Consumers may want to call their insurance agents to determine whether they have flood coverage.

A consumer who has flood insurance may be contacted by an adjuster who works for and is paid by the flood insurer. The consumer may also be contacted by a “public adjuster” who will help the consumer prepare a claim. Public adjusters typically charge the consumer a fee based on the amount of the consumer’s claim.

A good public adjuster can help a homeowner determine the amount of the loss and obtain the maximum the homeowner is entitled to under the policy. Unscrupulous adjusters improperly recommend contractors to make repairs. Homeowners should always hire contractors independently of the adjuster. Contracts must include a 72-hour right to cancel. With either type of adjuster, the consumer should get everything in writing. With a public adjuster, the consumer should check with the Better Business Bureau before hiring the adjuster.

If the homeowner’s loss is covered by the National Flood Insurance Program, there is a strict deadline that requires that a proof of loss form be filed within 60 days of the flood. The insurer and adjuster cannot extend this deadline. Failure to meet this deadline may bar the consumer’s claim.

Consumers may have coverage for automobile damage under their auto policies. The insurer has certain contractual and statutory deadlines to acknowledge, investigate, accept or reject, and pay the claim. These deadlines are stated in the policy and in article 21.55 of the Texas Insurance Code. These deadlines are extended in the event of a weather-related catastrophe or major natural disaster.

The Texas Department of Insurance is available to provide help. TDI describes its role this way:

TDI's Role in a Major Natural Disaster

The Texas Department of Insurance's role in a disaster is to do everything possible, within the scope of its authority, to assure that policyholders receive prompt, fair and responsive service from their insurance companies. This includes assisting storm victims in locating their companies and offering consumer counseling to those who need help in filing claims and in understanding their rights and insurance coverages.

For information and to file complaints, call the Texas Department of Insurance at 1-800-252-3439.

In addition, if problems arise that cannot be resolved directly with the adjuster, the insurer, or

through TDI, the consumer should contact an attorney who is an insurance specialist immediately.

E. Phoney Charities

Door-to-door and telephone solicitations from charities without identification are frequent after a disaster. Avoid “(900)” phone number donations and contact the Texas Office of the Attorney General, Charitable Trusts Division, to check if a charity is registered and legitimate. The local District Attorney's Office may be aware of fraudulent schemes as well.

F. Attorney Solicitations

The State Bar of Texas strictly prohibits attorneys from soliciting clients in person or by phone. Complaints against attorneys may be filed by calling the State Bar Barratry Hotline at 1-800-633-6630. Before hiring an attorney, individuals can call the State Bar Membership Records Department at 1-800-204-2222, extension 1383, to obtain public information about the attorney, including any discipline history. The State Bar can also provide phone numbers of current State Bar-certified lawyer referral services; call 1-800-252-9690.

G. Powers of Attorney

Consumers should avoid individuals who promise to obtain disaster relief if they sign a Power of Attorney form. In past disasters, these persons typically obtained benefits and then kept all or a large portion for themselves. FEMA does not authorize or license persons as intermediaries.

H. Identity Theft

Identity theft is a growing problem that may be exacerbated by a disaster. The following are steps that may be taken by consumers to help resolve issues raised by identity theft:

- (1) File a report with the local police or police where the identity theft occurred. Obtain the police report number or a copy of the police report for your files (some companies may require it to process your notice of identity theft). Effective September 1, 2005, Texas law requires peace officers to prepare a written report whenever a consumer alleges he or she is a victim of identity theft, and to provide you with a copy of that report if you request it.
- (2) Obtain and complete a copy of the Federal Trade Commission Identity Theft Affidavit. The Affidavit is accepted by: the three major credit bureaus, participating credit issuers, and most major financial institutions. It is available online at www.consumer.gov/idtheft/affidavit.pdf.

(3) Contact the fraud departments of any one of the three major credit bureaus, and ask them to place a fraud alert on your account. The fraud alert asks creditors to contact you before they open any new accounts or make any changes to your current accounts.

Equifax
P.O. Box 740241
Atlanta GA 30374-0241
(800) 525-6285
www.equifax.com

Experian
P.O. Box 2104
Allen TX 75013
(888) 397-3742
www.experian.com

TransUnion
Fraud Victim Assistance Division
P.O. Box 6790
Fullerton CA 92634
(800) 680-7289
www.tuc.com

As soon as the credit bureau confirms your fraud alert, the other two credit bureaus will be automatically notified to place fraud alerts. You may then request a free copy of your credit report from all three. You may also request that a Texas Security Freeze be placed on your credit account. If a freeze is placed on your file, the credit bureau may not release your file without your express consent (there are a few exceptions to this prohibition). Note: To obtain a Texas Security Freeze, you must make your request by Certified Mail, include a copy of the police report, and provide proper identification.

(4) If another person is arrested and falsely uses your name or personal information, have your information expunged from the arrest record by contacting the Texas Department of Public Safety (512-424-5258).

(5) For any accounts that have been fraudulently accessed or opened:

Contact the security department of the appropriate creditor or institution;

Close the account (and perhaps all accounts);

If necessary, open new accounts;

Use passwords to access those accounts (not a maiden name or SSN).

Where appropriate, request that they cease reporting the information.

(6) File a complaint with the Federal Trade Commission, which maintains a database of identity theft cases used by law enforcement agencies.

Federal Trade Commission

Identity Theft Clearinghouse

Federal Trade Division
600 Pennsylvania Avenue NW
Washington DC 20580
www.consumergov.idtheft
(877) 438-4338