

8.0 CONSUMER PROTECTION ISSUES

8.1 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 volunteer attorneys provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems in Texas.

In most instances, the matters should be also referred to the Texas Attorney General at 1-800-621-0508 (consumer protection hotline) or 1-800-252-8011 (general hotline). The Texas Attorney General's and Federal Trade Commission's websites are excellent resources on consumer protection issues: <https://www.texasattorneygeneral.gov/cpd/consumer-protection> and <https://www.consumer.ftc.gov/>.

8.2 Most Common Issues

- Deceptive Trade Practices / Door-to-Door Sales
- Debt Collection / Credit Reporting
- Price Gouging
- Certain Commodities During a Disaster
- Home Equity Fraud
- Home Remodeling and/or Repair / Mold Remediation Fraud (see FAQs)

8.3 Summary of Relevant Laws

A. Texas Deceptive Trade Practices Act

The Texas Deceptive Trade Practices Act (DTPA), [Tex. Bus. & Com. Code § 17.41 et seq.](#), protects consumers against false, misleading, or deceptive trade practices, including unconscionability and breach of warranty. The DTPA provides that a consumer who is damaged by such unlawful practices has a private right of action and 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 the economic damages.

B. Laws on Home Solicitation Contracts and “Buyer’s Remorse”

Texas Door-to-Door Sales Law. It is important to know when a sale constitutes a home solicitation because special laws cover this kind of sale. In Texas, chapter 601 of the Texas Business & Commerce Code regulates the home solicitation industry and applies to certain consumer transactions in which (1) a merchant engages in a personal solicitation of a sale to a consumer at a place other than the merchant's place of business or (2) a consumer agrees or offers to make a purchase at a place other than the merchant's place of business. Texas law 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, the contract is void. The state door-to-door sales law does not apply to certain transactions, including:

- A purchase of goods or services less than \$25;
- A purchase of farm equipment;
- An insurance sale regulated by the Texas Department of Insurance;
- A sale of goods or services made (1) under a preexisting revolving charge account or retail charge agreement; or (2) after negotiations between the parties at a business establishment in a fixed location where goods or services are offered or exhibited for sale;
- A sale of real property if (1) the purchaser is represented by a licensed attorney; (2) the transaction is negotiated by a licensed real estate broker; or (3) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property.

For further information regarding door-to-door sales, please visit the Texas Attorney General's website on the topic at <https://www.texasattorneygeneral.gov/cpd/door-to-door-sales> and <https://www.texasattorneygeneral.gov/cpd/the-3-day-right-to-cancel-a-purchase>.

FTC Cooling-Off Rule. In addition to Texas state law, the Federal Trade Commission enforces federal requirements related to home solicitation sales pursuant to the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 C.F.R. pt. 429 (Cooling-Off Rule). The Cooling-Off Rule applies 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 Cooling-Off Rule applies even when a salesperson is invited to make a presentation in the home. Under the Cooling-Off Rule, the salesperson must tell the consumer about cancellation rights at the time of sale. The salesperson also must give the consumer two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain the right to cancel. The contract or receipt must be in the same language that's used in the sales presentation. The Cooling-Off Rule does not cover sales that are:

- Under \$25;

- For goods or services not primarily intended for personal, family, or household purposes (the rule applies to courses of instruction or training);
- Made entirely by mail or telephone;
- The result of prior negotiations at the seller's permanent business location where the goods are sold regularly;
- Needed to meet an emergency;
- Made as part of a request for the seller to do repairs or maintenance on personal property (purchases made beyond the maintenance or repair request are covered).

Also exempt from the Cooling-Off Rule are sales that involve:

- Real estate, insurance, or securities;
- Automobiles, vans, trucks, or other motor vehicles sold at temporary locations, provided the seller has at least one permanent place of business;
- Arts or crafts sold at fairs or locations such as shopping malls, civic centers, and schools.

For further information regarding the Cooling-Off Rule, please visit the FTC's website on the topic at <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>.

C. 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 their situations as soon as possible. Some creditors will agree to reduce, reschedule, or even postpone payments for certain periods of time.

Credit reporting is governed by the federal Fair Credit Reporting Act, [15 U.S.C. § 1681](#) *et seq.*, which requires that credit reporting agencies furnish a free copy of a consumer's credit report on request within thirty days after the consumer is notified of an adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers' claims. Texas law governing credit reporting is found at chapter 20 of the Texas Business & Commerce Code.

For further information regarding debt collection and credit repair, please visit the Texas attorney general's website on the topic at <https://www.texasattorneygeneral.gov/cpd/debt-collection> and <https://www.texasattorneygeneral.gov/cpd/credit-repair>.

D. Fair Credit Billing Act

Under the federal Fair Credit Billing Act (FCBA), [15 U.S.C. § 1666](#) *et seq.*, if a consumer paid for a purchase with a credit card and a billing dispute arises about the purchase (*e.g.*, the

merchandise shipped was not what was ordered), the consumer can notify the credit card company that he wants to dispute the purchase. A sample dispute letter can be found at the following link, under the section titled “Exercise Your Rights”:

<http://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>. The dispute letter must be addressed to the credit card company at the address provided for “billing inquiries,” which is typically specified on the billing statement. In addition, the letter must be received by the credit card company no later than sixty days after the first bill containing the disputed amount is mailed. The credit card company must acknowledge the dispute in writing within thirty days after receiving the dispute letter, unless the problem has been resolved. The credit card company must resolve the dispute within two billing cycles (but not more than ninety days) after receiving written notice from the consumer. The consumer may withhold payment of the amount in dispute until the dispute is resolved, but the consumer is still required to pay any part of the bill that is not in dispute.

Note: Disputes about the quality of goods and services are not “billing errors,” so the dispute procedure does not apply. However, if a consumer buys unsatisfactory goods or services with a credit card (or the sixty-day period for sending notice of a billing error has expired), a consumer may have other rights under the Act.

For further information about the FCBA, visit the FTC’s website on the topic at <https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>.

E. Price Gouging

Section 17.46(b)(27) of the Texas Business and Commerce Code makes it a deceptive trade practice 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 exorbitant or excessive prices for these items. This statute can be enforced privately, by the attorney general, or by district and county attorneys.

For further information about price gouging, please visit the Texas attorney general’s website at <https://www.texasattorneygeneral.gov/cpd/price-gouging>.

F. Home Equity Fraud

Home equity is the market value of a 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 seventy, minorities with limited English skills, or homeowners with fixed incomes below \$24,000.

There are numerous protections for consumers with home equity loans, most of which are in the Texas Constitution, Article 16 § 50(a), with important provisions at § 50(q).

8.4 Regulatory Agency Directives / Announcements

- Price gouging: <https://www.texasattorneygeneral.gov/cpd/price-gouging>
- Consumer protection – home solicitation:
<https://www.texasattorneygeneral.gov/cpd/door-to-door-sales>;
<https://www.texasattorneygeneral.gov/cpd/the-3-day-right-to-cancel-a-purchase>;
and <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>
- Fair credit billing: <https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>
- Disaster scams: <https://www.texasattorneygeneral.gov/cpd/disaster-scams>
- Mortgage foreclosure “rescue”:
<https://www.texasattorneygeneral.gov/cpd/mortgage-fraud>
- Debt collection: <https://www.texasattorneygeneral.gov/cpd/debt-collection>
- Key contacts:

To report a complaint about any of the topics listed above, consumers should contact the Texas Attorney General at 1-800-621-0508 (consumer protection hotline), 1-800-252-8011 (general hotline), or <https://www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint>.

Texas Attorney General: Consumer Division

Website: <https://www.texasattorneygeneral.gov/cpd/consumer-protection>
Consumer Protection Hotline: 1-800-621-0508
General Hotline: 1-800-252-8011

Houston Regional Office

Phone: (713) 223-5886

Fax: (713) 223-5821

808 Travis, Suite 1520

Houston, TX 77002-1702

Contact Information for Other Regional Offices:

https://www.texasattorneygeneral.gov/cpd/cpd_regionals

Better Business Bureau

BBB of Greater Houston and South Texas

Website: <https://www.bbb.org/houston>

E-mail: info@bbbhouston.org

Phone: (713) 868-9500

Fax: (713) 867-4947

1333 W. Loop South, Ste. 1200
Houston, TX 77027

BBB of Southeast Texas
Website: <https://www.bbb.org/southeast-texas>
E-mail: info@bbbsetexas.org
Phone: (409) 835-5348
Fax: (409) 838-6858
550 Fannin Street, Suite 100
Beaumont, TX 77701-2011

8.5 FAQs

Q. 8-1 What can I do to protect myself from unscrupulous contractors?

Before contracting for any services, the consumer should:

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

The telephone number for the Texas Office of the Attorney General's Consumer Protection Hotline is 1-800-621-0508 and general hotline is 1-800-252-8011. Urge consumers to contact the attorney general if someone calls with what the consumer feels is a scam; an early alert can prevent others from fraud. Urge them to contact consumer reporters of local media outlets to notify them of scams. The Houston Chronicle's newsroom contacts are available at <http://www.chron.com/about/newsroom/>. Local television affiliates' contact information is available at <http://abc13.com/contactus/> or <http://www.fox26houston.com/about-us/contact-us/7924407-story>.

[Tex. Bus. & Com. Code § 58.001](#) *et seq.*, regulates the actions of disaster remediation contractors who do not maintain offices within a county or adjacent county where a natural disaster occurred. Unless a disaster remediation contractor has an established office in the county or adjacent county where a property is located for at least one year prior to the contract, a disaster remediation contractor cannot require full or partial payment before beginning work and can only require partial payment reasonably proportionate to work performed.

For further information about home remodeling and selecting a contractor, please visit the Texas attorney general's website on the topic at <https://www.texasattorneygeneral.gov/cpd/home-remodeling-and-repair#besmart>.

Q. 8-2 Should I enter into a lien contract to pay for home repairs?

After a disaster, a homeowner frequently needs major repairs for serious damage. These repairs 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 via 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 consumer should be fully aware that the lien-contract 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 most common result is that the homeowner not only fails to have necessary repair work done, but also loses his or her home through foreclosure.

Q. 8-3 Should I consider refinancing my home to pay for home repairs or other expenses?

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. These companies then pressure the homeowner to sign multiple agreements without providing the homeowner 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.

Lower income and minority borrowers, as well as elderly homeowners, are often targeted by predatory lenders. They encourage borrowers to lie about their income in order to get a loan; knowingly lend the borrower more money than he or she can repay; charge unnecessary fees;

pressure borrowers into high-risk loans and use high pressure tactics to sell home improvements; and then finance them at higher interest rates. These predators pounce on desperate situations. A few tips for consumers include:

- Beware of lenders who claim that they are the only hope for a loan or ask borrowers to sign a contract/loan agreement with missing information.
- Beware when lenders say refinancing your home can solve credit or money problems.
- Always interview several contractors and lenders. Check with friends or family for recommendations.
- Research lenders, contractors, appraisers, etc. with the attorney general's office or the Better Business Bureau and review their complaint history.
- Never make false statements on a loan application. Any lender who allows this is fraudulent and possibly criminal.
- Do not let anyone convince you to borrow more money that you know you cannot afford.
- Attend homeownership education courses. They are available through the U.S. Department of Housing and Urban Development (HUD) or counseling agencies. You can find a list of HUD-approved housing counselors for Texas at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=TX>.

Q. 8-4 Can I trust my family member or close friend to help me with expenses?

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. Often, these persons use scare tactics to convince the elderly, disabled, or limited English or non-English speaking homeowner 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 himself or herself.

If a power of attorney is needed, consider a limited power of attorney, whereby the agent has no authority to make any contracts regarding the home.

Q. 8-5 What do I need to know about foreclosure consultants?

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. In

Texas, 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. Consumers should also be advised of the tips outlined above as ways to guard against fraudulent lenders.

HUD offers foreclosure counselors for free on their website via The Making Home Affordable Program (HAMP). All the information needed to begin the process is located on their website at <https://www.makinghomeaffordable.gov/pages/default.aspx>. To speak with a housing counselor now, call 888-995-HOPE (4673).

If anybody attempts to charge a consumer money for a modification, the odds are that the consumer is dealing with somebody who is trying to scam him or her.

Q. 8-6 How do I decide which bills to pay first?

Before deciding which bills to pay and which to ignore, consumers need to know the consequences. The types of debts listed below could have immediate, harmful consequences if unpaid:

- **Court-ordered payments**, such as alimony or child support, must be paid on time or jail time could be sought for contempt of court. If clients are unable to pay, do not simply ignore it. Ask the court to modify the payment order. A court will usually lower or eliminate your payments to meet your new financial condition. Additionally, if a client is on SSD, his or her children should be eligible for "dependents' benefits," which may cover the client's support obligations in their entirety. Check with the client's local Social Security office.
- **Ongoing services**, such as utilities, telephone service, or health insurance coverage, must be paid or consumers will lose future service or coverage.
- **Items purchased on credit or pledged as security on a loan** can usually be taken if payments cannot be made. However, a lender is unlikely to seek the return of any property unless a borrower misses several payments and is uncooperative. If the consumer needs extra time to make payments, he or she should contact the lender in advance.

Generally speaking, a consumer should pay his or her bills in the order of priority: home mortgage/rent, medical bills/food/utilities/court ordered payments, and then everything else. Your credit card bill is the last bill that you pay, and you only pay it if you have paid for your necessities in full.

But be aware: even after a creditor has taken one of the above steps, it may still have the right to recover money. For example, although a bank has repossessed a car, if its resale value is less than what is owed, there may be liability for the difference.

Q. 8-7 What should I do if I find myself unable to pay all of my bills?

If the debtor can afford to make small monthly payments, he or she 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 a 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.

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 he or she speaks with and date, time, and details about the conversations. If the debtor arranges a payment agreement, he or she 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 via certified mail. Consumer Credit Counseling Services may negotiate with collectors on behalf of debtors for little or no fee. To locate a credit counselor, visit <https://www.consumer.ftc.gov/articles/0153-choosing-credit-counselor>.

Be careful about signing renewal and/or refinancing agreements with creditors, as you may be waiving rights that you may have against the creditor. Also, generally speaking, if you sign an agreement with a creditor for payment, you will have re-started the statute of limitations with regard to that debt.

Q. 8-8 What do I do if I have no ability to pay my creditors?

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.

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 of Texas at 800-252-9690 or visit the State Bar's website at https://www.texasbar.com/AM/Template.cfm?Section=Lawyer_Referral_Service_LRIS.

Q. 8-9 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 nonexempt 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.

Under federal and state laws there are certain types of income and property are exempt from collection, regardless of how much is owed and regardless of whether or not there is a bankruptcy. The most important of these are:

- Social Security payments, annuity income (this should cover private disability insurance payments), pension income, worker's compensation and unemployment compensation (there are some exceptions for child support, alimony, and taxes);
- The proceeds and avails from a life insurance policy;
- Necessary household appliances and furnishings;
- Necessary personal items and clothing;
- Necessary medical equipment;
- If working, any tools needed for the job;
- A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;
- Farming or ranching vehicles and implements;
- Personal property for a family that has an aggregate fair market value of not more than \$100,000 exclusive of any liens, security interests, or other charges encumbering the property; or
- Personal property owned by a single adult and has an aggregate fair market value of not more than \$50,000, exclusive of any liens, security interests, or other charges encumbering the property.

If all property and income is exempt, then the debtor should notify creditors. Once creditors know there is nothing to take, they will usually write off the debt or at least stop collection activity.