

**Office of the  
Attorney General**

# **Idaho Consumer Protection Manual**



**LAWRENCE WASDEN**  
Attorney General of Idaho  
700 West Jefferson Street  
Boise, ID 83720-0010  
[www.ag.idaho.gov](http://www.ag.idaho.gov)



**State of Idaho  
Office of Attorney General  
Lawrence Wasden**

Dear Fellow Idahoan:

Consumer fraud is a serious problem in Idaho. Fortunately, it is often preventable. As your Attorney General, I am committed to working with you to prevent fraud. I will also vigorously enforce Idaho's consumer protection laws.

At no cost to the public, my office publishes the Idaho Consumer Protection Manual and other manuals to educate you about consumer protection issues and help you understand your rights if you become a victim of consumer fraud. If you are a victim of consumer fraud, you may file a complaint with my Consumer Protection Division.

An online complaint form is available on my website, [www.ag.idaho.gov](http://www.ag.idaho.gov). To request a complaint form from the office, call toll-free (in Idaho) (800) 432-3545. In the Boise area, call (208) 334-2424. TDD service for the hearing impaired is available. We also have Language Line translation services for Idahoans who do not speak English.

Informed consumers are Idaho's best defense against consumer fraud.

**LAWRENCE WASDEN**  
Attorney General

# Table of Contents

<b>THE CONSUMER PROTECTION DIVISION.....</b>	<b>1</b>
HOW TO CONTACT THE CONSUMER PROTECTION DIVISION .....	2
WHAT THE CONSUMER PROTECTION DIVISION DOES .....	3
<i>Consumer Education</i> .....	3
<i>Mediation of Complaints</i> .....	3
<i>Litigation</i> .....	4
WHAT THE CONSUMER PROTECTION DIVISION DOES NOT DO.....	5
<b>PROTECTING YOURSELF FROM CONSUMER FRAUD .....</b>	<b>5</b>
GENERAL RULES .....	5
ADDRESSING PROBLEMS .....	6
CONTACTING THE BUSINESS .....	6
<i>Calling or Visiting the Business</i> .....	6
<i>Writing a Letter to the Business</i> .....	7
FILING A COMPLAINT .....	7
PRIVATE CAUSE OF ACTION - SMALL CLAIMS COURT .....	8
<b>CONTRACTS.....</b>	<b>9</b>
BEFORE YOU SIGN A CONTRACT: .....	10
RESOLVING PROBLEMS WITH YOUR CONTRACT:.....	11
<b>MOTOR VEHICLES.....</b>	<b>11</b>
BUYING A NEW CAR.....	11
BUYING A USED CAR.....	12
IDAHO'S LEMON LAW.....	14
REPAIRING A CAR.....	16
<b>REPAIRING OR REMODELING YOUR HOME.....</b>	<b>17</b>
RESIDENTIAL CONSTRUCTION.....	17
CONTRACTOR REGISTRATION .....	17
NOTICES .....	18
HOW TO CHOOSE A CONTRACTOR.....	19
WHAT YOU SHOULD KNOW ABOUT THE GENERAL CONTRACTOR'S	
INSURANCE COVERAGE .....	21
RESIDENTIAL CONSTRUCTION/HOME IMPROVEMENT CONTRACT .....	21
<i>Tips To Consider Before Signing a Contract</i> .....	22
WHAT TO KEEP IN A JOB FILE .....	23
WHAT TO DO WHEN THE PROJECT IS FINISHED .....	23
WHAT TO DO IF YOU HAVE A COMPLAINT .....	24
<b>LIVING TRUSTS.....</b>	<b>24</b>

<b>LIVING WILLS.....</b>	<b>25</b>
<b>TELECOMMUNICATIONS .....</b>	<b>26</b>
THE NO CALL LAWS .....	26
<i>Registering for the No Call Laws</i> .....	26
<i>Filing a Complaint</i> .....	27
TELEPHONE SOLICITATION.....	27
<i>Consumer Rights</i> .....	28
<i>Notice of Cancellation</i> .....	28
<i>Telemarketer Responsibilities</i> .....	29
<i>Unlawful Acts</i> .....	29
CRAMMING .....	30
UNSOLICITED FAXES .....	31
900 PAY-PER-TELEPHONE CALL SERVICES.....	32
<b>COUNTERFEIT CHECKS.....</b>	<b>33</b>
RED FLAGS.....	34
IF YOU RECEIVE A SUSPICIOUS CHECK .....	34
<b>FREE PRIZES/MAIL SWEEPSTAKES .....</b>	<b>34</b>
FREE PRIZES .....	34
MAIL SWEEPSTAKES .....	35
<b>DOOR-TO-DOOR SALES.....</b>	<b>36</b>
<b>PYRAMID AND CHAIN DISTRIBUTION SCHEMES.....</b>	<b>37</b>
<b>SALES PRACTICES .....</b>	<b>38</b>
REFERRAL SALES .....	38
IMPLIED WARRANTIES .....	38
NEGATIVE OPTION .....	39
USED GOODS.....	40
RAIN CHECKS.....	40
LAY-AWAY .....	40
<b>CREDIT .....</b>	<b>41</b>
CREDIT PURCHASES .....	41
THE CREDIT REPORT PROTECTION ACT .....	42
FREE CREDIT REPORTS.....	43
CREDIT REPAIR .....	44
FAIR CREDIT BILLING .....	44
TRUTH IN LENDING .....	45
<b>TRUTH IN LEASING .....</b>	<b>46</b>
<b>THE CONSUMER FORECLOSURE PROTECTION ACT.....</b>	<b>47</b>

**RAFFLES, BINGO & PROMOTIONAL DRAWINGS.....47**  
**CHARITIES .....48**  
**INTERNET SAFETY .....49**  
    SHOPPING ONLINE.....50  
        *Use a secure browser* .....50  
        *Shop with companies you know.* .....50  
        *Keep a paper copy of your purchase* .....51  
        *Internet auction sites* .....51  
    E-MAIL .....52  
        *Advance Fee Scam*.....52  
        *“Phishing” or Verification Scam* .....52  
    SPAM.....53  
    CHILD SAFETY .....53

## **THE CONSUMER PROTECTION DIVISION**

The Consumer Protection Division is part of the Office of Attorney General. The Consumer Protection Division enforces the Idaho Consumer Protection Act, the Idaho Telephone Solicitation Act, the Idaho Pay-Per-Telephone Call Act, the Idaho Charitable Solicitation Act, the Idaho Competition Act and related rules on behalf of the State of Idaho.

The Consumer Protection Division also helps consumers and businesses resolve disputes.

In 1971, the Idaho Legislature passed the Consumer Protection Act to protect consumers and businesses against unfair methods of competition and unfair or deceptive business practices. The Office of Attorney General, as authorized by the legislature, has promulgated rules interpreting the Consumer Protection Act.

The Attorney General enforces the Consumer Protection Act on behalf of the State of Idaho. The Consumer Protection Division investigates complaints involving ongoing patterns of illegal activity in trade and commerce, with emphasis on the most serious cases involving widespread injury to Idaho consumers.

The Consumer Protection Act also allows consumers to seek legal remedies through private lawsuits.

The Consumer Protection Act encourages consumers who have been damaged by deceptive trade practices to seek redress. A court may award the consumer a minimum recovery of \$1,000, recovery of attorney fees and, at the judge's discretion, costs and punitive damages upon the showing of a violation of the Consumer Protection Act or the

Idaho Rules of Consumer Protection and a loss to the consumer.

Idaho law allows consumers who are at least 62 years old or who are disabled to recover additional damages from an individual who violates the Consumer Protection Act. Elderly and disabled consumers are entitled to receive the greater of \$15,000 or triple the amount of actual damages if the court finds: (1) the offender knew or should have known that the victim was elderly or disabled; and (2) the offender's conduct resulted in the loss or encumbrance of the elderly or disabled victim's home or the loss of more than 25% of the victim's income, money or retirement funds.

## **HOW TO CONTACT THE CONSUMER PROTECTION DIVISION**

You can call the Consumer Protection Division, toll-free, from any location in Idaho. In the Boise calling area, our number is (208) 334-2424. Outside the Boise area, call (800) 432-3545.

The Consumer Protection Division is located near the corner of 10th and Jefferson on the 2nd floor, 954 W. Jefferson, Boise. Our hours are 8 a.m. to 5 p.m. (Mountain Time), Monday through Friday.

Our mailing address is:

Office of the Attorney General  
Consumer Protection Division  
PO Box 83720  
Boise, ID 83720-0010

Consumers may file a complaint with the Consumer Protection Division by completing a complaint form on the Attorney General's website, [www.ag.idaho.gov](http://www.ag.idaho.gov). Consumers

also may call the Consumer Protection Division and request a complaint form be mailed to them.

## **WHAT THE CONSUMER PROTECTION DIVISION DOES**

The Consumer Protection Division helps protect individuals and businesses from deceptive practices by working in three major areas:

- Consumer education
- Complaint mediation
- Litigation

### **Consumer Education**

The Consumer Protection Division helps Idaho consumers help themselves. We focus our educational efforts on:

- Helping consumers learn to prevent a problem from occurring; and
- Helping consumers learn how to deal with a problem that has occurred.

To accomplish these goals, the Consumer Protection Division provides consumer information through the Attorney General's website, sponsors television and radio public service announcements, publishes pamphlets on consumer topics, informs the media about current scams and makes presentations to community groups. To schedule an educational presentation, call the Consumer Protection Division.

### **Mediation of Complaints**

Mediation relies on the voluntary cooperation of both sides of a complaint--usually a business and a consumer. Each of our



Consumer Specialists acts as a “go between” or buffer for the parties who may find it difficult to communicate with one another directly. Because of the large number of complaints we receive, almost all of the mediation is accomplished by correspondence. A Consumer Specialist forwards a consumer’s written complaint to the business, along with a letter requesting a response from the business. Mediation will often resolve the consumer’s complaints. When mediation is not successful, the complaining party may choose to consult with a private attorney and consider pursuing legal action privately.

## **Litigation**

The Consumer Protection Division files lawsuits on behalf of the State of Idaho as determined by the Attorney General on a case-by-case basis. Three statutory requirements must be met before the Attorney General can begin a consumer protection lawsuit:

- The Attorney General must have reason to believe that a person is using, has used or is about to use any method, act or practice in violation of the Act;
- Legal proceedings must be in the public interest;<sup>1</sup> and
- Except in limited circumstances, the Attorney General must have allowed the business or individual the opportunity of entering into an Assurance of Voluntary Compliance or Stipulation and Consent Judgment.

---

<sup>1</sup> Some of the factors the Attorney General considers in making this determination are: 1) potential numbers of victims (i.e., statewide or regional significance); 2) dollar amount involved; 3) the offensiveness or outrageousness of the acts and 4) likelihood of continued violations of the Act without state intervention.

Once the Attorney General determines that litigation is warranted, the methods used to stop the illegal act may vary. The Attorney General is authorized to seek injunctions, restitution, civil penalties and other remedies.

## **WHAT THE CONSUMER PROTECTION DIVISION DOES NOT DO**

The Attorney General's Office cannot provide legal advice or opinions to individuals or businesses. Tip sheets, brochures and news releases are available to the public, but our only client is the State of Idaho. The Consumer Protection Division may act only for the public interest. We cannot represent the interests of private individuals.

## **PROTECTING YOURSELF FROM CONSUMER FRAUD**

### **GENERAL RULES**

Before you make a major purchase, we recommend you read this manual and consider these ten tips for consumer survival:

1. If it seems too good to be true, it probably is.
2. Read. Ask questions. Comparison shop. Know the market.
3. Insist that all claims, promises and warranties be in writing.
4. Never sign anything you haven't read or don't understand.
5. Cool off for 24 hours before you buy. In most cases, you don't have the right to change your mind after you make a major purchase.
6. Never give your credit card or checking account number to a telephone or mail solicitor if you don't know and trust the company.

7. Obtain written estimates before you have any repairs made.
8. Know whom to call for help. Check with your local Better Business Bureau or the Attorney General's Consumer Protection Division.
9. Keep receipts, sales slips and warranties for as long as you own the product.
10. Remember, it is your money. Don't be intimidated. You can always take your business elsewhere.

## **ADDRESSING PROBLEMS**

If you are already involved in a transaction you believe violates the Consumer Protection Act, gather all the written information you have pertaining to the problem. This may include ads, brochures, contracts, letters, warranties and other documents. Write a short statement about what happened to you. Include the name of the company, how much money you paid, how much you owe, with whom you spoke, when the transaction took place, names of witnesses and other important information. This information will be important in contacting the business, as outlined below.

## **CONTACTING THE BUSINESS**

Many consumer problems can be quickly and satisfactorily resolved by contacting the business directly. These suggestions might make your contact with the business more efficient and productive:

### **Calling or Visiting the Business**

- Be prepared. Have ready all the information you will need to explain the problem.
- Speak to the person with the authority to grant the remedy you desire and make a note of his or her name.

- Be polite but firm.
- Concisely state the problem and the resolution you would like.
- Conclude the call with a restatement of what has been agreed.
- Make written notes about the call.
- Write a letter to confirm the conversation and the substance of any agreement.

### **Writing a Letter to the Business**

- Write a neat business letter, typed, if possible.
- Address it to the person with the authority to grant the remedy you desire.
- Supply the necessary facts, including identification of the goods, what happened, your previous attempts to get satisfaction, the remedy you desire and any serious consequences you have suffered because of the problem.
- Maintain a calm, rational tone.
- Request specific action by a specific date.
- Keep your letter short.
- Enclose copies (not originals) of receipts, contracts or other relevant information.
- Make a copy of your letter and save it.
- Send the letter certified mail, return receipt requested.

### **FILING A COMPLAINT**

If the business has engaged in false, misleading, deceptive or unconscionable acts or practices, the Consumer Protection Division may be able to help. You should contact the business directly and try to resolve your dispute before contacting the Consumer Protection Division.

If your contact with the business has been unsuccessful, you may file a complaint with the Consumer Protection Division. You can file a complaint on the Attorney General's website at [www.ag.idaho.gov](http://www.ag.idaho.gov) or call the Consumer Protection Division to request a complaint form. All complaints must be in writing. The Consumer Protection Division does not accept oral complaints.

In describing your complaint, be specific. Include the details about representations you believe are deceptive, misleading or false. State the kind of relief you are seeking from the business, such as an exchange, a repair or a refund. Attach copies of relevant papers, such as contracts, invoices, brochures and canceled checks. **Do not send any original documents.** Be sure to sign and date the complaint form before mailing it to the Consumer Protection Division.

The Consumer Protection Division cannot give you specific legal advice, and it cannot act as your private attorney. However, we will contact the business in writing and ask for a response to your complaint. This frequently takes several weeks and sometimes may take months.

**NOTE:** Unless you ask us not to contact the business, we will send your complaint to the business that is the subject of your complaint. Your complaint will also become part of the Consumer Protection Division's permanent records and will be available to the public under Idaho's Public Records Law.

## **PRIVATE CAUSE OF ACTION - SMALL CLAIMS COURT**

Every county in Idaho has a small claims court in which claims for up to \$5,000 may be brought against any Idaho resident. The lawsuit must be filed in the county where the

defendant resides or in the county where the dispute arose. While they are official court cases, small claims hearings are designed to be quick and somewhat informal - to provide parties with an inexpensive method of settling minor claims. Information on how to file a small claims suit is available at your local Court Assistance office or, online, at [www.courtselfhelp.idaho.gov](http://www.courtselfhelp.idaho.gov).

Attorneys may not represent clients in small claims court. However, before you decide to bring an action in small claims court, you may be wise to seek a private attorney's advice on how to proceed with a private cause of action under the Consumer Protection Act.

## CONTRACTS

Virtually all consumer purchases are made pursuant to a contract. Sometimes the contract is oral, sometimes it is in writing. Whether you are buying a car, getting cell phone or Internet service, or renting an apartment, it will be pursuant to a contract. As a result, it is imperative that you read and understand the contract before you complete the purchase. Keep the following points in mind when you are considering any purchase:

- There is no 3-day right to cancel in Idaho. Except for telemarketing and certain door to door sales, there is no 3-day cooling off period.
- If you sign a contract, it is binding. If you break the contract, you can be sued. Your signature on a contract indicates that you have read and understood the contract -- even if you haven't.
- Protect yourself by getting a written agreement. The terms agreed on must be in the contract. Oral contracts are legally binding but difficult to enforce. You can

still be legally responsible if you make an oral contract.

- The contract governs. In cases such as landlord/tenant leases, there are not many laws regulating specific details.
- Not all contracts have the word “Contract” typed across the top. Receipts, sales slips, tickets, guarantees --even parking valet stubs -- can all serve as contracts.

### **BEFORE YOU SIGN A CONTRACT:**

- When you're making a major purchase, insist on seeing the contract well in advance of signing it. Take a copy home overnight so you have plenty of time to read and understand it.
- Don't let the salesperson pressure you into signing.
- Don't rely on the salesperson's summary of what the contract means. Read the entire contract and make sure you understand it. If you have trouble with the language, get someone to help read it with you.
- Study the content to make sure the terms you and the seller agreed upon are included.
- Never sign a contract that contains blanks. Negotiate for terms that you are comfortable with.
- Be aware that some contracts eliminate the right to sue. Often, contracts require binding arbitration.
- If you want a clause added or deleted for your protection, write it in or ask for a manager. If the business refuses, consider taking your business elsewhere.
- Read credit applications before you sign. Don't sign if the information is not true.
- Make your signature big when you sign a contract. Sign your name large enough so that it overlaps the

lines above it, so it's hard for the company to cut and paste.

- Never leave the business without a signed copy of your contract in hand.

## **RESOLVING PROBLEMS WITH YOUR CONTRACT:**

- If you think you were misled or deceived, you can file a complaint with the Attorney General's Office. You can file a complaint with the Better Business Bureau at [www.bbb.org](http://www.bbb.org).
- If you need help finding a private attorney, contact the Idaho State Bar Lawyer Referral Service at (208) 334-4500 or visit the State Bar's website: [www.isb.idaho.gov](http://www.isb.idaho.gov).

## **MOTOR VEHICLES**

### **BUYING A NEW CAR**

Before you start shopping for a new car, determine what you can afford to pay. Then stick to your budget. Learn the true value of the vehicle you are considering before beginning to discuss trade-in values and credit terms. Negotiate the purchase price, trade-in and financing **separately**. These are really three separate transactions. Check with several financing sources before you purchase a vehicle on credit.

Be wary of automobile dealers who adjust the figures on your trade-in to "make the deal look better to the bank." This is an illegal activity intended to deceive the bank into believing it is adequately secured on the loan when it is not. If the dealer suggests this type of unlawful activity, walk away. If you enter into this type of illegal transaction you are most likely "getting in too deep." If you can't make your payments, your car may be repossessed, and you could be required to pay the remaining balance and other fees after the vehicle is resold.



Don't allow pressure, guilt or intimidation to influence your decision, and don't be pressured into buying something you don't want or need. It is always a good idea to comparison shop before making your decision to purchase. A great offer today will most likely still be available tomorrow or next week. Take your time. Wait a day or two before you make a final decision. You can avoid buyer's remorse after-the-fact by being a smart shopper before-the-fact.

Idaho does not have a "cooling off" period applicable to vehicle purchases. Do not be misled into thinking you can buy a car and then cancel the purchase contract within three (3) business days if you change your mind.

Read and understand the new car warranty before you buy. The Federal Trade Commission requires the dealer to make all warranties available prior to the sale. Inspect the vehicle before you take delivery. If you find any problems, refuse delivery until they are corrected. Do not accept oral promises such as, "We'll take care of those problems at the first service." Oral promises are difficult to prove and enforce. Insist that all promises and warranties be made in writing.

Some, but not all, Idaho automobile dealers charge a "dealer documentation fee" for completing sales paperwork. A "dealer documentation fee" is not a state imposed fee. It is unlawful for a dealer to charge such a fee if it has not been clearly and conspicuously disclosed in connection with the advertised price.

## **BUYING A USED CAR**

Federal law requires used car dealers to display a "Buyers Guide" sticker on each used car. The Buyers Guide gives you important information and suggestions to consider, including:

- whether the vehicle comes with a warranty and, if so,

- what specific protection the dealer will provide;
- whether the vehicle comes with no warranty (“as is”) or with implied warranties only;
- that you should ask to have the car inspected by an independent mechanic before you buy;
- that you should get all promises in writing and
- some of the major problems that may occur in any car.

Before you buy a used car, find out as much as you can about the car's history and maintenance record. Check a trusted database for information on the car's history, such as title, damage, and odometer data. Remember, there is no three-day “cooling off” period when purchasing a new or used car. If a used car is sold “as is,” there is no express or implied warranty. If the dealer makes oral promises, make sure the dealer writes those promises into the Buyers Guide before you sign it. Keep copies of all warranties. Without them, you may have no recourse against the seller if you have problems with the car.

The federal Anti-Tampering Odometer Law protects car buyers from the deceptive practice of concealing a car's true mileage by turning back or disconnecting the odometer. The Act also prohibits odometer fraud. Every seller of a motor vehicle must provide, at the time of sale, a written statement, which includes the following information:

- the odometer reading at the time of the transfer;
- the date of the transfer;
- the seller's name, address and signature;
- the make, body type, year, model and vehicle identification number;

- a statement certifying that the seller is complying with the Motor Vehicle Information and Cost Savings Act of 1972 and is aware of his civil liability under this provision and
- if the seller has reason to believe that the mileage reading on the odometer is incorrect, the disclosure statement must indicate that the actual mileage traveled is unknown. The term “seller” includes any person who transfers a motor vehicle, whether by purchase, gift or any other means.

## **IDAHO'S LEMON LAW**

Idaho’s Lemon Law governs motor vehicles that are subject to a manufacturer’s written warranty. If your motor vehicle is a “lemon,” the manufacturer is required to replace it with a comparable new vehicle or refund the purchase price, including the value of any trade-in, not to exceed one hundred five percent (105%) of the manufacturer’s suggested retail price of the motor vehicle. The manufacturer may deduct a reasonable charge for your use of the vehicle.

To be considered a “lemon,” the vehicle must have a defect that substantially impairs its use, value or safety, and the manufacturer, its agent or dealer must not have been able to correct the problem after a reasonable number of attempts. The vehicle is not considered a “lemon” if your abuse, neglect or unauthorized modifications or alterations of the vehicle caused the problem.

The law presumes the manufacturer had a reasonable number of attempts to repair the motor vehicle if, within two years of the date you took delivery or 24,000 miles (whichever comes first), the vehicle was in for repairs for the same problem at least four times, or it was out of service because of repairs for a total of 30 or more business days. You may still have a Lemon Law claim if repairs occur after 24,000 miles or two

years but before the manufacturer's warranty expires, provided that you first reported the problem to the manufacturer, its agent or authorized dealer during the term of the vehicle's applicable express warranty. However, this type of claim will be much harder to prove.

To qualify under Idaho's Lemon Law, your motor vehicle:

- must have been purchased or licensed in the state of Idaho;
- must be subject to the manufacturer's written warranty;
- must be a car, truck or van weighing 12,000 lbs. or less and
- must normally be used for personal, family or household purposes.

If you need to have your vehicle repaired during the warranty period, it is important to get repair orders for all warranty work performed. This will help you preserve your legal remedies under Idaho's Lemon Law. Ask for detailed repair orders. Keep them in a file. Be sure the repair orders indicate how many days the motor vehicle was in the shop and that the repair orders describe the problem(s) in detail. Make sure that the same description is used on the repair order each time the motor vehicle goes in for the same problem.

Idaho's Lemon Law provides a private cause of action. The Attorney General's Office does not represent consumers with Lemon Law claims. However, more information is available in a separate publication, *Idaho's Lemon Law*, available from the Consumer Protection Division and on the Attorney General's website.

## **REPAIRING A CAR**

When you leave your car with a mechanic for repairs, you should expressly limit the dollar amount you authorize for repairs, improvements or services. It is an unfair and deceptive practice for the provider of the repairs, improvements or service to exceed that limit without first obtaining your express oral or written consent.

Remember, however, that if you request an estimate for the cost of repair, it is just an approximation of the amount that may be involved in the repair work. When the work is actually done, the cost may be more or less than was estimated. If your car needs unforeseen repairs or improvements that would unreasonably or substantially increase the originally-estimated cost, the repair person must obtain your oral or written authorization before performing and charging you for the additional repairs. If the repairperson fails to obtain your authorization for the additional costs of repair, you are not legally obligated to pay those additional costs under the Consumer Protection Act and related rules.

You are entitled to get your old parts back if you so requested when new parts were installed, unless the replacement was made under a warranty or unless the price of the new parts was reduced in consideration for keeping the old parts.

You are entitled to an itemized billing or a copy of the work order if you ask for one, unless you agreed in a contract to be billed on a lump sum basis.

# **REPAIRING OR REMODELING YOUR HOME**

## **RESIDENTIAL CONSTRUCTION**

There are several things you should consider when selecting a general contractor for residential construction or home improvement.

## **CONTRACTOR REGISTRATION**

Idaho law requires contractors to register with the Idaho State Contractors Board. To verify that a contractor you are considering hiring is registered, call the Bureau of Occupational Licenses at (208) 334-3233 or contact the Board at:

Idaho Contractors Board  
Idaho Bureau of Occupational Licenses  
700 West State Street  
PO Box 83720  
Boise, ID 83720-0063

Although contractors must register, it is still your responsibility to do sufficient research before hiring a contractor. You must decide what work is to be done, what it will take to do the job, how much you are willing to spend and what type of professional you need.

You should also protect yourself from many of the common pitfalls of building or remodeling. The most frequent consumer complaints are about higher than expected cost, missed deadlines and poor workmanship. Sometimes these problems are not evident when the work is completed. Instead, they can surprise you months later.

To avoid costly mistakes and misunderstandings with a contractor, consider the following information.

## NOTICES

In Idaho, the general contractor must give the homeowner or residential real property purchaser a disclosure statement before entering into a contract with a homeowner or a residential real property purchaser, if the contract exceeds \$2,000. The disclosure statement must inform the homeowner or residential real property purchaser that the homeowner has the right to:

- require the general contractor to obtain lien waivers from any subcontractors working with the general contractor (at the reasonable expense of the homeowner);
- ask the general contractor for proof of general liability insurance and workers compensation insurance, as required by law;
- purchase an extended policy of title insurance covering liens and
- require a surety bond (at the expense of the homeowner) in an amount up to the value of the construction project.

By the end of the project, the general contractor must give the homeowner or residential real property purchaser a list of all subcontractors, material men and rental equipment providers directly hired or working for the contractor who have done work or supplied materials in excess of \$500. The list should include business names, addresses, and phone numbers. The list must be given to the homeowner before the closing of the sales agreement or before the homeowner provides final payment to the general contractor.

## HOW TO CHOOSE A CONTRACTOR

Select a general contractor with great care and consider the following:

- Ask friends and family members for recommendations.
- Ask the general contractor for the company's full business name, address and telephone number, and verify them. A post office box, with no street address, is not acceptable.
- Verify that the contractor is registered with the Idaho State Contractors Board. Inquire as to whether the contractor has been subject to disciplinary action by the Board.
- Call the Better Business Bureau (BBB) in the area where the contractor's business is located, or check on the web at [www.bbb.org](http://www.bbb.org), to see if any complaints have been filed against the company. Check to see if there are any unresolved cases and how long the contracting company has been in business under its current name. Some of the less reputable companies frequently change names in order to avoid being located.
- Check the records at the county magistrate court and district court to see if any claims have been filed against the contractor or company.
- Ask if the contractor is a member of a professional or trade association that has a code of ethics and a process to arbitrate disputes, such as the Idaho Building Contractors Association. You can write to the Idaho Building Contractors Association at 6206 N. Discovery Way, Suite A, Boise ID 83713, or call (208) 378-0101.



- Ask for a list of previous customers whom you can contact for references. Contact the references to find out if they are satisfied with the contractor, if there were problems and, if so, the nature of the problems and whether the problems were resolved to the customer's satisfaction.
- Compare construction costs by getting written itemized estimates or bids from several contractors. Each estimate should describe the same building specifications, materials and time frame for completion.
- Verify prices for building materials quoted in the estimate by contacting building supply companies. You may also ask the supply company about previous dealings with your prospective contractor.
- Avoid contractors who pressure you into quickly signing a contract.
- Do not automatically select the lowest bidder.
- Beware of:
  - Unknown or out-of-town businesses in unmarked trucks or vans.
  - Door-to-door salespeople and telephone solicitors promising quick jobs and bargain prices.
  - Organizations that offer a bargain rate because their "equipment is already in the neighborhood."
  - Businesses that advertise "special introductory offers."
  - Contractors who use high pressure, scare or threatening sales tactics.

## **WHAT YOU SHOULD KNOW ABOUT THE GENERAL CONTRACTOR'S INSURANCE COVERAGE**

Ask to see a copy of your general contractor's insurance certificate or the name of the insurance carrier and agency. Verify the coverage. General contractors should have property damage insurance to protect you from lawsuits if an accident happens on your property. A general liability policy in the sum of at least three hundred thousand dollars (\$300,000) is required to meet contractor registration requirements under Idaho law. Worker's compensation coverage should also be considered to cover potential worker injuries that may occur. Do not do business with any general contractor who does not have sufficient coverage.

## **RESIDENTIAL CONSTRUCTION/HOME IMPROVEMENT CONTRACT**

A residential construction or home improvement contract should be in writing and include:

- The date of the contract.
- The general contractor's full name, street address and telephone number.
- The names of any subcontractors.
- A complete description of all work to be done.
- The grade and quality of all materials to be used.
- An agreed upon starting and completion date.
- The cost of the total project.
- A payment schedule showing the amount and date of each payment.
- A copy of all warranties and guarantees.
- Documentation of any financing arrangements.

## **Tips To Consider Before Signing a Contract**

- Before signing any contract, you may want to consult a private attorney because, once signed, the contract will govern legal rights in your relationship with the contractor.
- Make sure that the contract contains all the terms of the agreement and that you have read and understand everything in the contract.
- Keep a signed, readable copy of the contract in a safe place.
- Make sure all verbal promises are included in the written contract. Be sure that the materials you select are what you want. Be sure the contract includes everything you feel is important to the job.
- Avoid costly overruns by making your construction decisions before construction has begun.
- If you need to borrow money to finance the construction work, add a clause to your contract stating that it is valid only if financing is obtained.
- Don't agree to a large down payment. Payments should be made upon the progress of the work. You should include a contract provision allowing you to withhold a certain sum, such as ten percent (10%), until the work is completed satisfactorily.
- Never sign a partially blank contract. Fill in or draw a line through any blank spaces.
- If you have any questions about the contract or do not understand any of its terms, ask for clarification before you sign it.
- If you sign a home improvement contract at home and it's for more than \$25, you have three days to cancel the contract, as outlined under the Door-to-Door Sales section of this manual.

## **WHAT TO KEEP IN A JOB FILE**

You should keep a file with all papers related to the residential construction or home improvement job, including:

- The contract and any change orders.
- Plans and specifications.
- Bills and invoices.
- Canceled checks.
- Letters, notes and correspondence with the general contractor.
- Lien releases from subcontractors and material suppliers.
- A record sheet on each subcontractor, listing the work performed and the length of time on the job.

## **WHAT TO DO WHEN THE PROJECT IS FINISHED**

- Thoroughly inspect all work before making final payment.
- Review the entire project with the general contractor.
- Immediately point out any defects, and be sure they are corrected.
- Require the general contractor to provide an affidavit of completion when the work is finished.
- Do not sign a completion certificate until the city/county building inspection department has certified that all work was performed in accordance with code standards, you have proof that all subcontractors have been paid in full and you are completely satisfied with the job.
- Withhold the percentage agreed upon in the contract until the job is completed, you are satisfied with the work that has been done and you have proof that all

subcontractors and employees have been paid.

## **WHAT TO DO IF YOU HAVE A COMPLAINT**

First, discuss the problem with the contractor. Speak to the manager or the owner about the problem, and follow up by sending a certified letter confirming all details of the conversation. Keep records of all conversations you have with the contractor and any letters you send to or receive from the contractor. If direct contact with the contractor does not solve the problem, file a complaint with the Bureau of Occupational Licenses at:

Idaho Bureau of Occupational Licenses  
700 West State Street  
PO Box 83720  
Boise, ID 83720-0063

You can also file a complaint online at [www.ibol.idaho.gov](http://www.ibol.idaho.gov) or call (208) 334-3233 for more information.

## **LIVING TRUSTS**

Living trusts are not for everyone. However, they can be a valuable estate planning tool if your estate justifies it. Living trusts are frequently marketed as a way to protect an estate from probate, but, for most people, probate is a relatively quick and inexpensive process.

The sale of living trusts is unregulated in Idaho, and many people selling living trusts are inadequately informed to advise you on the issues relating to living trusts and estate planning. Senior citizens are frequently targeted by people selling living trust packages.

Consumers who have purchased living trusts frequently complain that, after paying a substantial sum for the trust documents, they are left with inadequate direction or help in

funding the trust. Without proper funding, a trust is ineffective and, upon death, your estate would probably have to be probated. In that situation, heirs may experience frustration and increased expenses in trying to unravel your estate.

Other consumer complaints against marketers of living trusts include:

- exaggeration of the time, cost and complexity involved in probating a will;
- false assurances that assets in a living trust cannot be attached by creditors;
- false assurances that the income of living trusts in Idaho, drafted according to laws of other states, is exempt from Idaho income tax;
- the misleading use of estates of wealthy, famous people as examples to illustrate the benefits of living trusts when, in fact, the average consumer's estate cannot reasonably be compared to such examples; and
- misrepresentations regarding a consumer's ability to control assets placed in a living trust.

If you are concerned about estate planning issues, contact your lawyer, accountant or tax planner to discuss what estate planning tools will best serve your needs.

## **LIVING WILLS**

Living wills provide direction on how medical treatment should be provided or withheld if you become unable to communicate your wishes due to sickness or accident.

Forms for Living Wills with Durable Power of Attorney for Health Care are available from the Idaho Secretary of State's website at [sos.idaho.gov](http://sos.idaho.gov).

The State of Idaho maintains a health care directive registry in the Idaho Secretary of State's Office. Idaho residents may place their living wills and durable powers of attorney on the registry for a fee. In case of an emergency, you or your health care providers would be able to access your registered documents from different locations.

A living will is often sold as part of a living trust package. You should be suspicious of salespeople who point to living wills as a justification for high costs of a living trust package.

In order to determine which plan will best benefit you, the Attorney General strongly urges you to seek estate planning advice from professionals.

## **TELECOMMUNICATIONS**

### **THE NO CALL LAWS**

Idaho's No Call Law helps you reduce the number of unwanted phone solicitations you receive. Under Idaho law, it is illegal for telemarketers to call Idaho phone numbers registered on the National Do Not Call Registry.

The National Do Not Call Law operates similarly to Idaho's No Call Law. Telemarketers may not call registered telephone numbers. A telemarketer who does call a registered number can face court action and civil penalties under state and federal law.

### **Registering for the No Call Laws**

The Federal Trade Commission (FTC) administers the National Do Not Call Registry.

The Attorney General encourages Idahoans who do not want to receive telephone solicitations to register their residential and mobile phone numbers. Registration is free.

You can register your home and/or cellular phone number(s) on the National Do Not Call Registry by going to the FTC's online registry at [www.donotcall.gov](http://www.donotcall.gov) or by calling, toll-free, (888) 382-1222. When you register on the FTC's registry, your numbers are covered by both the state and federal No Call Laws. For convenience, there is a link to the FTC registration site on the Attorney General's website.

### **Filing a Complaint**

If you have been registered on the National Do Not Call Registry for at least three months and have received a telemarketing call, you may submit a telemarketer complaint to the Attorney General's Office as well as the FTC. Information on how to file an Idaho No Call Law complaint is available on the Attorney General's website. A telemarketing call is defined as an unsolicited phone call from someone with whom you do not have a business relationship (no transaction within 18 months and/or no inquiry regarding the caller's products or services within 3 months), and the ultimate purpose of the call is to sell products or services. Examples of unsolicited phone calls that are exempt from the No Call Laws include: requests for donations to charitable or political causes, requests for political support, surveys/polling/research and debt collection.

### **TELEPHONE SOLICITATION**

While many telemarketers are engaged in legitimate business, many people report deception by telemarketers. In response, the legislature enacted the Idaho Telephone Solicitation Act. This law grants consumers certain rights and places specific duties upon telephone solicitors. It is designed to safeguard the public against deception and financial hardship.



The best way to combat deceptive telemarketers is to be informed. Take time to research a business and to carefully consider a purchase before finalizing it.

## **Consumer Rights**

Under the Telephone Solicitation Act, you are entitled, in most situations, to:

- receive written confirmation regarding any purchase of goods or services made during the course of a telephone call,
- request and be provided with an itemized billing of goods or services purchased,
- cancel any purchase made over the phone, without obligation, up to three (3) business days after receiving written confirmation and
- pursue a private lawsuit against a telemarketer who has engaged in deceptive and/or misleading selling tactics during an unsolicited sales call.

## **Notice of Cancellation**

As noted, you may cancel a telephone sales transaction, without penalty or obligation, within three business days of the date you receive written confirmation of the purchase.

The business must return your payments within ten business days of receiving the cancellation notice.

When you cancel a transaction, you must return the goods to the business within 21 days of the date the refund is received.

To cancel the transaction, you must mail or deliver a written cancellation notice, signed and dated. This must be done no later than midnight of the third business day after receiving the written confirmation of the purchase.

Contact the business for its return mailing address if the business does not clearly provide a return mailing address.

### **Telemarketer Responsibilities**

- Telemarketers must clearly state that they are making a sales call.
- Telemarketers must clearly identify the company and the nature of the product or service being offered for sale.
- If the call is in regard to a prize promotion, the telemarketer must state, “No purchase or payment is necessary to win.” (This must be clearly explained to the consumer before or with the prize description.)
- Upon the request of a consumer, telemarketers must disclose their telemarketing registration number that has been assigned by the Idaho Attorney General’s Office. The registration number does not indicate that the Attorney General’s Office is endorsing the business; it is simply for reference and record keeping purposes.
- A telemarketer is restricted to making phone calls between the hours of 8 a.m. and 9 p.m. They may call seven days a week and on holidays.

### **Unlawful Acts**

It is unlawful for a telephone solicitor to:

- intimidate or torment any person in connection with a telephone solicitation,
- fail to hang up and free a consumer’s telephone line immediately upon request,
- misrepresent the price, quality or availability of goods or services being offered for purchase,

- use any device or method that may block the phone number or mislead the recipient as to the identity of the solicitor on a caller identification device (NOTE: Due to their location, some telephone numbers may display as “unavailable” or “out of area.”), and
- advertise, represent or imply that they have approval or endorsement of any government office or agency unless such is a fact. (It is a good idea for consumers to verify this with the government agency directly before making a purchase with the organization.)

**The Attorney General’s Office does not endorse businesses or solicitations.** If a telemarketer claims that the office has endorsed a telemarketer or his products, you should consider the claim false and report the false claim to the Attorney General.

## **CRAMMING**

Cramming is the term used to describe the addition of charges to your telephone bill for services you did not knowingly authorize. Unauthorized charges for voice mail service, 800 number service or calling cards are common forms of cramming.

Cramming is a violation of the Idaho Consumer Protection Act. It is also prohibited by Federal Communications Commission (FCC) rules.

To protect yourself from cramming, check every page of your phone bill each month to make sure you are not being charged for services you did not order.

If you discover unauthorized charges, here are some steps you can follow:

First, notify your local phone company that you are disputing the unauthorized charges.

Second, contact the company that placed the unauthorized charges on your account and request that your account be cleared of all charges. The name of each service provider and its toll-free number should be listed on your telephone bill.

Finally, you may file a complaint with the Consumer Protection Division against the company that added the charges to your account. You may also file a complaint with the FCC and the Idaho Public Utilities Commission.

## **UNSOLICITED FAXES**

**Unsolicited fax advertising is illegal in Idaho.** Businesses and residences receive unsolicited advertising over their fax machines every day. The ads are frequently “fax blasted” by third party marketing companies. To help you limit the number of junk faxes you receive, you may consider the following options:

If you receive faxes through your computer, you can install a fax-filtering program that will prevent junk faxes from reaching you.

Unplug your fax machine whenever you’re not using it. If you have different fax and phone numbers, you can disable your fax machine when you aren’t sending or expecting a fax.

You have a private right of action for a violation of the federal Telephone Consumer Protection Act, 47 USC 227. For additional information about filing a lawsuit against a faxer, contact a private attorney.

You may file a complaint with the Attorney General’s Consumer Protection Division or the FCC.

## **900 PAY-PER-TELEPHONE CALL SERVICES**

Most 900 telephone calls range from a few dollars per minute to \$50 or more per minute. Federal law requires advertisements to disclose the per-minute rate or flat fee. When a 900 number is dialed, there must be an introductory message describing the service and the cost of the call.

Always check your phone bill for 900 number charges. Each charge should include the date, time and, if billed on a per-minute rate, length of the call. There should also be a local or toll-free number to call about the pay-per-call charges.

If you find an error on your bill, follow the instructions on your statement. They will tell you who to call or write to dispute the charges. You must notify the company listed within 60 days from the date the first statement containing the error was sent.

Your telephone company cannot disconnect your phone for failure to pay these 900 number charges. For policy information related to long distance carriers, call the carrier or the Idaho Public Utilities Commission.

The Idaho Pay-Per-Telephone Call Act requires full disclosure of all the costs of every 900 call that will cost more than \$2.00.

Furthermore, the Act requires a “presubscription or comparable agreement” from the caller before charges for adult entertainment calls can be collected. A presubscription or comparable agreement is:

1. a written contractual agreement between an information provider and a legally competent person that is executed for the sole purpose of arranging purchase of pay-per-telephone call services; or

2. a disclosure of a pre-existing credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number.

You do not have to pay the bill if these requirements are violated. In addition, the violator is subject to civil penalties. The Idaho Pay-Per-Telephone Call Act also grants enforcement powers to the Attorney General.

## **COUNTERFEIT CHECKS**

In the last couple of years, the Attorney General's Office has noticed a significant increase in fraud involving counterfeit checks. Consumers have received counterfeit checks in connection with promotions and scams involving lotteries, prizes, tax refunds, government grants, and "mystery shopping" services.

We have also encountered instances in which a consumer received a counterfeit check as payment for an item sold through a classified ad or an Internet auction site. In this version of counterfeit check fraud, the payment is usually for an amount much larger than the agreed upon price. When the seller contacts the buyer about the overpayment, the buyer will typically say he made an error in the amount, indicate that he trusts the seller and encourage the seller to cash the check, keep the amount owed and send the buyer a personal check for the difference.

Fraudulent international lottery scams involving counterfeit checks are also common. In this scam, you will receive a letter notifying you that you have won a lottery in a foreign country, often Canada. The letter will include a check for a few thousand dollars and instructions that you should cash the check and send back another check for a lesser amount to cover taxes legal fees or other expenses. Once your check is

received, the letter promises, your full lottery winning will be sent to you.

In all of these variations, the check you received, no matter how realistic it looks, will turn out to be counterfeit. The fact that a bank cashes a check, or accepts it for deposit, does not mean the check is valid. It can often take several weeks for a security expert to determine a check is counterfeit.

Counterfeit checks are illegal. If you cash a check and it proves to be counterfeit, you will have to repay the money to the bank. If you send money to the scammer, it is almost certain that you will never get your money back.

## **RED FLAGS**

Be suspicious of checks you did not expect to receive or checks that are for amounts greater than you expected. No one sends you money out of the blue without expecting to make money in return. Be equally suspicious of unexpected money orders.

## **IF YOU RECEIVE A SUSPICIOUS CHECK**

If you receive a suspicious check, you should shred it. The Federal Deposit Insurance Corporation (FDIC) posts alerts when banks report receiving a counterfeit check. The web address is [www.fdic.gov](http://www.fdic.gov).

## **FREE PRIZES/MAIL SWEEPSTAKES**

### **FREE PRIZES**

“Prize” promotions are unlawful in Idaho if they require any kind of purchase or similar payment in order to participate. Even where no purchase or other payment is required, Idaho law provides that “prize” promotions or solicitations must not

be deceptive or misleading as to your chances of winning or as to the value of the prizes.

If you receive a “prize” promotion or sweepstakes offer that requires a credit card number or payment of a fee to receive a prize, the best course of action is simply to throw the solicitation away. If the offer comes over the telephone, just hang up.

## **MAIL SWEEPSTAKES**

You have probably received certificates in the mail congratulating you as a “guaranteed” grand prize winner in a promotional sweepstakes. However, the sweepstakes may only drag you along, mailing after mailing, trying to get you to purchase products or pay fees to claim your prize. Before you respond to a sweepstakes offer, here are some things to consider:

- Many of these promotions are fraudulent, and you will not receive the promised prizes of money or merchandise.
- The prizes (gems, watches, jewelry, etc.) may be worth much less than implied or stated in the sweepstakes.
- Never call a 900 number to claim a prize. You will be charged a very high fee for each minute of the phone call, and the promoters will keep you on the phone as long as possible!
- Never pay postage, processing fees or taxes to a sweepstakes. Whatever you pay will be more than the so-called free prize.
- Never give out your credit card number, social security number or your bank account number.
- A true prize requires nothing of you!



Very sensible people have lost thousands of dollars by simply believing that a huge sum of money would be mailed to them soon.

If you would like to reduce the mailings coming to your home, you can:

- Tear up and throw away questionable promotional sweepstakes mailings. When you participate in these sweepstakes, your address is sold to more mail solicitors.
- Write to:

Direct Marketing Association  
1615 L Street  
Washington, DC 20036

Ask them to remove your name and address from these lists. Be sure to enclose a check for \$1, payable to “Mail Preference Service”.

## **DOOR-TO-DOOR SALES**

Idaho Consumer Protection Rules protect you from high-pressure or deceptive door-to-door salespersons.

If you make a purchase of \$25 or more from a door-to-door salesperson for personal, family or household purposes, that salesperson is required to furnish you with written notification that you have a three-working-day grace period in which to cancel the purchase. The salesperson should give you a contract or receipt for your purchase and two copies of the Notice of Cancellation form. You may cancel your purchase by signing and dating one copy of the form and mailing or delivering it to the seller within the three-day period. Keep a copy for your records.

Within ten days of your cancellation, the seller must refund all your money, return any trade-in you may have given, cancel any contracts you have signed and let you know when or how the merchandise will be returned.

You have these rights even if the seller did not furnish you with the Notice of Cancellation forms. If you were not provided with the forms, you may cancel your purchase by writing a letter to the seller within three business days of the transaction, stating your desire to cancel. It is a good idea to send the letter certified mail, return receipt requested, and keep a copy for your records.

If you used credit to purchase goods or services from the door-to-door salesperson, the Idaho Credit Code allows you three business days to cancel the purchase, regardless of the price of the item. The three-day right to cancel does not apply if the sale is made entirely by mail, if you discussed or placed the order at the seller's place of business or if the sale is of real estate, insurance or securities.

## **PYRAMID AND CHAIN DISTRIBUTION SCHEMES**

Pyramid marketing is inherently fraudulent due to the mathematical impossibility for most people to achieve the promised income.

Pyramid schemes take many forms, from the simple chain letter asking you to send money to individuals named in the invitation letter, to more sophisticated chain distributions offering to pay you money to bring others into the scheme. Idaho law defines a pyramid promotional scheme as a plan or operation whereby you pay for the opportunity to receive compensation, derived primarily from the recruitment of other persons into participating in the plan or operation rather than from the sale of goods, services or other intangible property

by the person or other persons introduced into the plan or operation. A chain distribution scheme operates in a similar manner. Financial gain is made through the recruitment of other participants.

Pyramid promotional schemes violate the Consumer Protection Act and Idaho's criminal law. Participants in pyramid schemes may face felony criminal charges and monetary penalties. Chain distribution schemes violate the Consumer Protection Act.

## **SALES PRACTICES**

### **REFERRAL SALES**

If a merchant offers a reduction in price on a purchase in exchange for recruiting additional buyers, this is known as a referral sale. It is an unfair and deceptive act or practice for a seller to engage in any referral sale unless you are given the discount at the time names of potential purchasers are given. The discount cannot be based on the future purchase of goods or services to others.

If you are induced to enter into an agreement to purchase on credit because of a referral sales tactic, you may rescind the agreement or retain the goods and the benefit of any services performed, without any obligation to pay. This applies only to goods purchased for personal, family or household purposes.

### **IMPLIED WARRANTIES**

The Uniform Commercial Code (UCC), Title 28, Idaho Code, provides an implied warranty when goods are purchased from a merchant who deals in those goods. This means the goods automatically come with a guarantee that they are fit for the ordinary purpose for which they are used. In addition, if you

rely on the seller's skill or judgment in selecting goods for a particular purpose, the law also implies a warranty of fitness for that particular purpose.

The implied warranty protects you only from defects that substantially impair the product. It does not cover minor defects, such as scratches or problems that do not prevent the product from doing what it is supposed to do.

You may return the merchandise and request a refund only after the seller has had a reasonable opportunity to repair or replace it. What is reasonable will depend on the circumstances.

To get your money back or a replacement, you must revoke your acceptance of the product by offering to return it to the seller within a reasonable time after the defect is discovered. You should put your revocation to the seller in writing and keep a copy for your records.

Under the UCC, you have an obligation to take care of the product as long as it is in your possession. If it costs you money to take care of it, or if you suffer a loss because the item is defective, you may be able to recover your expenses. The implied warranty does not apply if you purchase a product marked “as is” by the seller. This means the seller does not make any promises about the condition or quality of the item. If something goes wrong, the seller is not obligated to repair or replace the item or to give you a refund.

## **NEGATIVE OPTION**

In a negative option promotion, a business offers something free for a period of time. After that, the business bills you for the goods or services unless you request that the service be discontinued. In Idaho, businesses are prohibited from using certain negative options. Businesses must obtain your written

consent before using negative option arrangements. Book and recording clubs may continue to use negative option mailings if the members have agreed up-front to that arrangement, and the transaction complies with existing federal law and Idaho's Unordered Goods and Services Rule.

## **USED GOODS**

It is an unfair and deceptive practice to represent, directly or indirectly, that goods are new or unused if the same is not true. Clear and conspicuous disclosure must be made if goods are used or if they contain used, rebuilt, re-manufactured or reconditioned parts.

## **RAIN CHECKS**

A store is required to have enough advertised items to meet the reasonably expected public demand for the goods, unless the advertisement states the quantity is limited. If, for some reason, the advertised item is not available, offering rain checks or substitute goods of the same or better quality is a mitigating measure under the Consumer Protection Act.

## **LAY-AWAY**

If you purchase something on lay-away, the seller must lay aside the actual goods you have chosen, or exact duplicates, unless you are given a clear and conspicuous disclosure that this will not be done. The seller may not increase the price of the goods laid away after the original agreement has been made. At the time of the purchase, the merchant should provide you with a written disclosure of the store's lay-away policy. The written disclosure must be on the initial lay-away receipt, on a separate sheet of paper or clearly and conspicuously posted at the store's lay-away desk.

# CREDIT

## CREDIT PURCHASES

Purchasers who use credit are protected under the federal Truth in Lending Act. This law applies if you use any type of credit card. It also applies when payment books or other similar devices are used.

Under the Truth in Lending Act and related regulations, if you use credit to buy a product that proves to be defective, you do not have to pay the credit bill, provided three conditions are met.

First, the cardholder must have made a good faith attempt to resolve the matter with the merchant.

Second, the amount of credit involved in the disputed transaction must be more than \$50.

Third, the transaction must have occurred in the same state as the cardholder's current address or within 100 miles from that address.

The question of where a transaction occurs (as in the case of mail or telephone orders, for example) is determined under state law.

Even if your transaction does not meet these three criteria, you should request a charge back (a credit to your account of the disputed amount) from the issuer of your credit card, because the issuer may have agreements with other businesses that give you additional rights.

You must, however, give the seller a reasonable opportunity to repair or replace the item just as you would if you had paid cash.

**Payment of a disputed balance waives the right to assert a claim or defense as to the credit card issuer.**

The credit card issuer cannot demand payment of your bill until your dispute with the seller is settled. If the credit card issuer demands payment in spite of your situation, you may sue and collect from \$100-\$1,000, depending upon the size of your purchase. Under the Federal Trade Commission's Holder in Due Course Rule and Idaho Consumer Protection Rules, you have the same right to refuse payment to the finance company as you have against the seller. This rule also protects you if the seller referred you to a particular finance company for credit. You must notify the finance company in writing that you are revoking your acceptance with the seller.

These rules do not apply in situations in which you arranged for your own loan without any help from the seller. If you borrowed money from a bank or other third party, and the loan was made directly to you without any help or recommendation from the seller, you are legally obligated to repay the loan in full.

If you lose your credit cards or suspect that someone has stolen them, immediately send the card issuer a letter (certified mail, return receipt requested) that includes your name, account number and the charges that you question, along with a concise explanation.

**THE CREDIT REPORT PROTECTION ACT**

The Credit Report Protection Act allows you to place a "security freeze" on your credit report and prohibits a person from intentionally releasing your Social Security number to the general public. A security freeze, often called a "credit freeze," generally prohibits a consumer reporting agency from giving your credit information to a third-party creditor. If you believe that your personal or financial information has been

disclosed without your permission, you should consider requesting a security freeze.

To obtain a security freeze, you must submit a request to each of the three major consumer reporting agencies asking them to place a freeze on your credit report. This can be accomplished by phone, mail, or online. Be prepared to provide your name, address, date of birth, Social Security number, and other personal information to properly place the credit freeze.

If a credit reporting agency violates the Credit Report Protection Act, and you are harmed by it, you should consult with a private attorney about your legal rights and options. You also can file a consumer complaint with the Attorney General's Office.

## **FREE CREDIT REPORTS**

Under federal law, you have a right to receive a free copy of your credit report once a year from each of the three national credit reporting agencies.

The annual free reports are available only through the centralized source set up by the three credit reporting agencies. If you contact the companies directly, you will be charged for your credit reports.

In order to obtain the credit reports, you will be asked for identifying information, including your Social Security number. Providing this information will ensure that credit reporting agencies send you your credit report.

To obtain your free credit reports:

- Call, toll-free, (877) 322-8228; or
- Order online at [www.annualcreditreport.com](http://www.annualcreditreport.com); or



- Complete the Annual Credit Report Request Form, available at [www.ftc.gov/credit](http://www.ftc.gov/credit), and mail it to:

Annual Credit Report Request Service  
PO Box 105281  
Atlanta, GA 30348-5281

When you apply for your free credit reports, the credit reporting agencies will likely attempt to sell you upgraded services. You are under no obligation to purchase any upgraded services. You may simply say no to these options and receive only your free report.

## **CREDIT REPAIR**

Beware of any business that promises to erase bad credit. Time and good credit practices are the only cures for a poor credit history. Any promises to the contrary are false and misleading. Idaho law requires all companies making credit repair claims to be licensed by the Idaho Department of Finance.

## **FAIR CREDIT BILLING**

Congress passed the federal Fair Credit Billing Act (FCBA) to protect and assist consumers seeking to resolve disputes with creditors. To protect your rights under the FCBA, you must send a written “billing error notice” to the creditor within 60 days after the first bill containing the error was mailed to you. The creditor must acknowledge your “notice” in writing within 30 days of receipt, unless the problem is resolved within that period. In addition, within two billing cycles or within 90 days, the creditor must conduct a reasonable investigation and either correct the mistake or provide an explanation as to why the bill is correct. During this dispute resolution, the creditor may not threaten damage to your credit rating or report you as delinquent to anyone.

## TRUTH IN LENDING

The federal Truth in Lending Act requires disclosure of the true costs of consumer credit so that you can make informed choices among credit sources. This allows you to shop for the best credit terms and to fully understand the credit agreement.

One important required disclosure is the finance charge, the amount it will cost to borrow or buy on credit. Another important disclosure is the annual percentage rate, also known as APR. The APR discloses the interest rate being charged. Other Truth in Lending disclosure requirements include:

- the identity of the creditor making the disclosure;
- the amount financed (the amount of credit provided);
- a breakdown of the amount financed (where the money goes);
- the number, amounts and timing of installment payments;
- the total amount of payments (the total amount of all scheduled payments);
- whether the obligation must be repaid on demand;
- the total sale price (the total price of the purchase on credit, including any down payment);
- if there will be a penalty or a partial refund of the finance charges if the debt is paid off early;
- any charges for late payments and
- the existence of a security interest in the purchased product.

Truth in Lending disclosures must normally be made at or before the time of the transaction. If they are not, and you are damaged by the failure to disclose, you may recover your

actual damages. You may also recover court costs and reasonable attorney fees.

## **TRUTH IN LEASING**

The federal Truth in Leasing Act regulates consumer leases because they represent an alternative to buying on credit. The Act requires disclosure of certain information to ensure you do not confuse leasing with purchasing on credit and to provide adequate information for you to make informed decisions.

If a lease advertisement contains any of the following two triggering terms, then specific disclosures must also be included in the advertisement. These triggering terms are: 1) a statement of the amount of any payment (for example, “Pay a mere \$140 per month”) or 2) a statement that any or no initial payment is required at the beginning of the lease (for example, “Zero Down,” “Low Down Payment,” or “Lease now and make no payments for three months”). If these triggering terms are used in a consumer lease advertisement, then the advertisement must clearly and conspicuously state, as applicable, the following five disclosures:

- that the transaction advertised is a lease;
- the total amount of any initial payments required on or before consummation of the lease or delivery of the vehicle, whichever is later;
- whether a security deposit is required;
- the number, amount and timing of scheduled payments and
- with respect to a lease in which your liability at the end of the lease term is based on the anticipated residual value of the vehicle (open-ended leases), that an extra charge may be imposed at the end of the lease term.

Truth in Leasing disclosures must normally be made at or before the time of the transaction. If you are damaged as a result of a failure to disclose, you may recover your actual damages, and you may also recover court costs and reasonable attorney fees.

## **THE CONSUMER FORECLOSURE PROTECTION ACT**

Due to an increase in mortgage foreclosures, the number of so-called “foreclosure rescue” companies has multiplied. These companies advertise that they can help financially distressed consumers save their homes from foreclosure, but, in fact, they often strip consumers of their equity and make them tenants in their own homes.

The Consumer Foreclosure Protection Act requires certain businesses to include written disclosures in any contract with a homeowner who is facing foreclosure. Contracts must include a notice informing the homeowner about the consequences of entering into a foreclosure rescue contract. The notice must provide information about resources the homeowner may consult. It also must include a five-day right to rescind the contract. Certain businesses, including licensed mortgage lenders and brokers, banks, and credit unions, are exempt from the Act’s disclosure requirements.

The U.S. Department of Housing and Urban Development provides information about foreclosure prevention on its website at [www.hud.gov](http://www.hud.gov). Consumers should consult with a private attorney before they sign any contract involving the ownership of their homes.

## **RAFFLES, BINGO & PROMOTIONAL DRAWINGS**

Idaho law authorizes bingo and raffle games only when

operated by qualified charitable organizations in the pursuit of charitable purposes. The charity may need to obtain a license from the Idaho Lottery Commission.

Under Idaho law, a game of chance in which you must pay money, make a purchase or give anything of monetary value in order to have a chance to win a prize is considered a lottery. It is unlawful in Idaho for anyone other than the Idaho Lottery, a charity licensed by the Idaho Lottery Commission or an Indian Tribe on its reservation to conduct lotteries, bingo games or raffles. Games of skill are not considered lotteries.

Merchant promotional contests and drawings conducted incidental to bona fide non-gaming business operations are allowed if participants do not have to pay money or other consideration in order to play.

## **CHARITIES**

The Charitable Solicitation Act prohibits unfair, false, misleading or deceptive conduct in the solicitation of funds for a charitable organization. The Attorney General enforces this law through the Consumer Protection Division.

Many charities use professional fundraisers to solicit donations by telephone. It is common for a charity to authorize professional fundraisers to use the charity's name. They will tell you the proceeds go to the charity. However, professional fundraisers often keep 85% or more of your contribution as their profit and to cover their operating costs. If you are not interested in the product or event, you will provide a greater benefit to the charity by sending a check directly to the charity and bypassing the fundraiser altogether.

You should carefully check out any organization that solicits you for a donation. For information about a particular national charity's activities, finances and fundraising practices, visit

the Council of Better Business Bureaus' Wise Giving Alliance at [www.give.org](http://www.give.org).

Before you agree to make a purchase or donation:

- Ask how your contribution will be used. Ask what percentage of your contribution will go to the charity itself. Ask if your contribution will be used locally or elsewhere. Get written information.
- Call the charity directly to verify whether the fundraiser is working on behalf of the organization. If you cannot verify the claim, report the solicitation to your local law enforcement officials and the Consumer Protection Division.
- Do not believe a fundraiser's suggestion that you'll receive special treatment for donating. No fundraiser can guarantee that you won't be stopped for speeding if you have a police organization's decal in your car window.
- Don't feel intimidated about declining to give. A caller who uses intimidation tactics or emotional pleas is likely to be a scam artist. Report the call to your local law enforcement officials and the Consumer Protection Division.

If you do give, be careful how you do it. Avoid cash gifts; cash can be lost or stolen. Never give your credit card number over the phone to someone who calls you. Write a check and make it out to the charity – not the solicitor.

## **INTERNET SAFETY**

One of the greatest risks of the Internet is that it is an anonymous place with no face-to-face contact. Thieves and predators take advantage of this anonymity and pretend to be someone other than whom they really are. For more detailed

information read the Attorney General's manual *Internet Safety*.

## **SHOPPING ONLINE**

### **Use a secure browser**

A browser is the software you use to explore the Internet. Your browser should comply with industry security standards. Most computers come with a secure browser already installed.

You can determine whether your browser is secure from your web browser window. Select the "HELP" menu option and then select "ABOUT." The information pop-up window will display the encryption level.

### **Shop with companies you know.**

Anyone can set up a business under almost any name on the Internet. If you are not familiar with a business, look for a physical address, a phone number and an e-mail address. Contact the business and ask for a brochure or catalog of merchandise and services. Request a copy of the business's refund and return policy. Contact the Better Business Bureau and the Consumer Protection Agency in the business's home state to find out what kind of track record the business has. Check with the Secretary of State to see if the business is registered. If you are purchasing an item from an Internet auction, check the seller's feedback rating.

Before you make a purchase, make sure that you know what you are paying for. Review the description, price information, and any limitations on purchases. (For example, goods may not be available for delivery outside of the country; there may be minimum quantities that must be ordered; etc.) If possible, compare the description to an actual physical model of the same item.

Review the fine print and look for words such as “refurbished,” “close-out,” “discontinued” or “off-brand.”

### **Keep a paper copy of your purchase**

When you order something over the Internet, keep a printed copy of your purchase order, receipt or confirmation number. A paper record will help resolve problems with your purchase.

If you are purchasing an item from an Internet auction, review the auction site’s recommended payment options. Decide whether you are willing to risk sending your money before you receive the product. Some Internet auction sites warn against paying by cash wire transfer, as this kind of payment is not traceable and usually impossible to recover in case of fraud.

The federal Mail or Telephone Order Merchandise Rule also covers purchases made over the Internet. Unless otherwise indicated, this rule requires that the merchandise must be delivered within 30 days. The company must notify you if the merchandise cannot be delivered within that time frame.

### **Internet auction sites**

Shopping on an auction site does not automatically protect you from fraud. In fact, some auction sites may be wholly fraudulent. Shop only on sites that you know or can verify are legitimate.

When shopping on an auction site, you should always understand and follow the site’s guidelines. Going outside the site to pay for a purchase puts you at greater risk of fraud and loss of money. Some sellers or buyers will offer to deal with you directly through your e-mail, for example claiming that your bid won a “second chance” offer. This is a tactic often



used by scammers as an attempt to lure you away from the site's protection guarantees.

Be especially cautious of buyers and sellers outside of the United States. Much of the fraud reported on these sites occurs with foreign transactions. If you lose money in an Internet scam, you will have practically no chance of getting it back, especially if the seller is in a different country.

If you have a dispute with an auction site purchase, contact the seller through the auction site's system. Don't communicate "off-site" or by direct e-mail. If you are not satisfied with the seller's response, use the auction site's dispute process. Be sure to act within the site's allowed timeframe. Don't let the seller delay until the dispute deadline has passed. If you pay with a credit card, you may also be able to dispute charges with your credit card company.

## **E-MAIL**

### **Advance Fee Scam**

Advance Fee Scams include requests for your personal bank account information or asking you to pay an advance fee for taxes, attorney fees and other transactional costs in order to receive a benefit or money.

### **"Phishing" or Verification Scam**

If you are a target of this scam, you will receive an e-mail or pop-up message that appears to be from a trusted company. The e-mail will indicate that the company needs to verify information for its records and will ask you to provide your credit card number, automatic teller PIN (personal identification number), Social Security number and/or other confidential information. This kind of e-mail is an attempt to

obtain information that can be used to steal your identity or your money.

The companies with whom you do business already have the information they need. Legitimate companies will not contact you by e-mail to verify information you have already provided.

If you receive an e-mail similar to these scams, do not respond. Forward it to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) and then delete the original e-mail from your computer.

## **SPAM**

Bulk electronic mail advertisements, or “spam,” are the e-mail version of junk mail: unwanted messages from people you do not know seeking to sell you a product or service.

The Federal “CAN-SPAM” Act of 2003 requires spammers to allow you to “opt out” from receiving future e-mails. Many people, however, report that they receive additional e-mails from other spammers after they ask to be removed from one spammer’s list. You can report spammers that do not honor your “opt out” request to the FTC.

A recipient of spam e-mail may also file a complaint with the Idaho Attorney General’s Consumer Protection Division.

## **CHILD SAFETY**

Here are some Internet safety tips for parents and kids:

- Communicate. Talk to your child about the potential hazards of the Internet.
- Keep the computer in a central room.
- Use parental controls and/or blocking software.

- Keep track of the websites viewed by your children.
- Maintain access to your child's account and randomly check e-mail.
- Teach your children not to give out any information about themselves.
- Do not allow your children to use chat rooms. Even seemingly safe "kids" chat rooms can be dangerous.

The National Center for Missing and Exploited Children has assembled a very useful, informative and fun Internet safety program for parents and kids. The program is available at [www.netsmartzkids.org](http://www.netsmartzkids.org).

Funds collected by the Attorney General's Consumer Protection Division as the result of enforcement actions paid for this pamphlet. No tax monies were used.

**LAWRENCE G. WARDEN**

Office of the Attorney General • State of Idaho  
Consumer Protection Division

P.O. Box 83720 • Boise, ID 83720-0010

954 W. Jefferson St., 2<sup>nd</sup> Fl. • Boise, ID 83702

(208) 334-2424 (local) • (800) 432-3545 (in Idaho)

[www.ag.idaho.gov](http://www.ag.idaho.gov)