

# Consumer Reports MoneyAdviser™

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Festive but frugal holiday entertaining See page 14

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ILLUSTRATION BY BOB ECKSTEIN

## Your rights as a consumer

The law is often on your side when you do battle with a retailer. Here's what you need to know to win the day.

**I**t's important to know your rights when you're trying to resolve a dispute with a retailer. But people often make the wrong assumptions about what the laws allow, or they rely on misinformation from friends, family, or merchants. Here are some common scenarios, the laws that apply, and advice on how to get satisfaction:

**In mid-November, you order an MP3 player online for your nephew's holiday gift. The merchant promises you'll have it on time, but the gift arrives two days after the family's holiday gathering.**

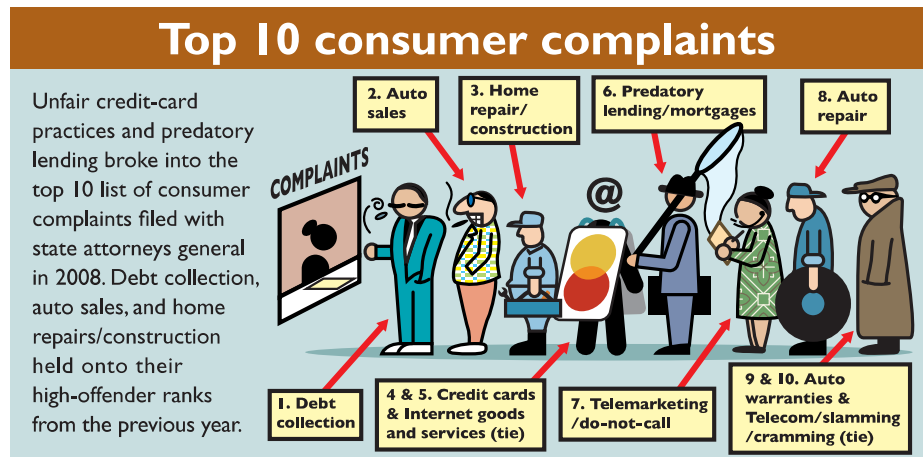
**The law.** The federal Mail or Telephone Order Merchandise Trade Regulation Rule requires stores to ship telephone, mail, fax, and Internet orders within 30 days. If the merchant promises an earlier shipment date,

it must meet that deadline. If the retailer has a reasonable basis for not getting your order out on time, it must obtain your consent to the delay. And if you don't respond or consent, the merchant must issue a refund. Merchants have more time—50 days instead of 30—to make the shipment if you're also applying for credit.

**You should know.** The clock begins running on shipping deadlines when the seller receives a properly completed order, including any advance payments. The merchant can't add any of the days it took for your check to clear or for its bank to credit its account with your payment. And it doesn't matter whether a fulfillment house or drop shipper the merchant used to handle orders caused the delay.

So if you're expecting a shipment and the retailer tries to contact you about a delay, be sure

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Source: National Association of Attorneys General, 2009.

## Know your rights

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to respond or your order will be cancelled, even if you still want it.

**Your supermarket advertises your favorite spaghetti sauce at half off. When you get there, the store tells you it ran out and you're out of luck.**

**The law.** The federal Retail Food Store Rule requires grocers to provide rain checks on advertised items or to substitute an equivalent product. But stores can get around that by demonstrating they ordered sufficient quantities to meet reasonably anticipated demand, or by including a statement in their advertising that quantities are limited or that the sale is available only in certain stores.

**You should know.** The federal law applies only to food stores, but states may have broader rules. For example, Connecticut's rain-check law applies to sellers of most products, with exceptions for seasonal items, products covered by store- or department-wide discounts, clearance items, and automobiles, among others. And many retailers have policies that exceed legal requirements.

**Those new earrings don't match your outfit after all. But the store says health rules prohibit such returns.**

**The law.** Despite what you may have heard, it's a myth that federal law prohibits the return of earrings, underwear, bathing suits, and similar items.

**You should know.** But merchants can—and often do—adopt their own policies against the return of such products. Absent that, your right to return such items falls under the store's general return policy or your state's refund law, if there is one. If a merchant tells you that a state or local health rule prohibits such returns, verify it with local consumer officials.

**The sign in the store says the computer printer is \$2.49, but it rang up at \$249. Saying it was an error, the store is refusing to honor the posted price.**

**The law.** It's generally a myth that retailers must honor a posted price if it's simply

a mistake, although some stores might do so as a matter of policy or on a case-by-case basis. The issue gets murky if the retailer begins processing the order, something that is more likely to happen online, says Jane Winn, a professor at the University of Washington Law School. But even then, she says, a merchant might be able to cancel the purchase if the price was so low that a buyer should have known it was mistake. An online retailer's fine print may relieve it of the duty to fulfill orders based on pricing errors.

**You should know.** Businesses that intentionally post false prices or that otherwise engage in bait-and-switch pricing can be liable under federal and state consumer-protection statutes.

**Your refrigerator dies three months after the manufacturer's warranty expires. The store and manufacturer say you have to pay to get it fixed.**

**The law.** The Uniform Commercial Code, fully adopted by most states, stipulates that most new consumer products come not only with an express warranty, but also with a so-called implied warranty of merchantability. That is an automatic, unwritten promise that your purchase will perform as commonly expected, including that it will last a reasonable amount of time given the nature of the item. In most states, implied warranties are in effect for four years, although that doesn't necessarily mean a product must last that long. Implied warranties apply to retailers and manufacturers and may be broader than an express warranty.

If you have a problem with a product that you think is the result of an inherent defect, let the manufacturer or retailer (preferably a supervisor) know that you'll take its failure to resolve your complaint as a breach of the implied warranty. If you don't get satisfaction, you may be able to assert your rights through a credit-card chargeback (see box on facing page). If that doesn't work, send a letter threatening legal action. You might need to file a small-claims-court action or consult a lawyer.

**You should know.** The fine print in most manufacturer warranties and online retailers' terms and conditions disclaim implied warranties. Although walk-in retailers



rarely disclaim them directly, they sometimes do so by marking sales "as is," "with all faults," or similar language. A handful of states prohibit such disclaimers, even for as-is sales. And the federal Magnuson-Moss Warranty Act prohibits companies from disclaiming implied warranties during the period in which any express warranty or service contract is in effect.

**After telling a salesperson that you needed a washing machine that can handle 15-pound loads, you bought the one he recommended, only to discover later that it can't. Now the store won't take it back.**

**The law.** By providing a machine that doesn't meet your stated needs, the merchant breached another implied warranty: that of fitness for a particular purpose. You have a right to cancel the sale. If the store won't honor your request to take the washer back, cancel the sale on your credit card, if possible. You may need to initiate (or at least threaten) legal action.

**You should know.** It can be difficult proving that you specified a certain requirement to the salesperson. So it's best to verify a product's capability or get the store's written assurance before you buy. Again, merchants in most states can disclaim the implied warranty of fitness for a particular purpose. Although rare among walk-in stores, the fine print for online merchants normally carries such disclaimers.

**You forgot to inform your wife that you're giving up golf and taking up the saxophone. Now the store won't take back the golf clubs she just bought you for your birthday.**

**The law.** Stores are generally allowed to adopt any return policy, though it should

be prominently posted at the point of sale. If there's no posted policy, some states impose one. For instance, beginning Dec. 1, New York will require retailers who don't have their own policy to give consumers 30 days to take something back, up from 20 days.

**You should know.** Returns generally require a receipt or other proof of purchase. Without one, you may be out of luck or have to settle for a store credit. Be sure to find out whether the store charges a restocking fee on returns. In some states, including California, Connecticut, and New York, retailers can't impose them unless they're disclosed in advance.

If an item you bought is broken or in any other way not what it's supposed to be, the store's return policy doesn't matter. So show the customer-service representative the item's defect and ask for your money back or a replacement. If he or she balks, ask to speak with a store manager. If necessary, threaten legal action or a chargeback (if you paid by credit card).

**Your new TV breaks down just weeks after you bought it. The company says it will fix it under the warranty, but you have to ship it back at your own cost.**

**The law.** Although the express warranty may require you to pay for shipping, you should expect to get what you paid for without paying additional costs. If neither the retailer nor manufacturer will make good, you might be able to cancel the sale under the implied warranty of merchantability. Again, this is where a chargeback or the threat of legal action might help.

**You should know.** If you have a full warranty instead of a limited one, you cannot be charged for shipping or reinstallation. And a full warranty cannot be limited to the first purchaser of the product.

**Thirty years ago, you bought a reclining chair with a lifetime warranty. You're still here, but the chair's lift mechanism has moved on to greener pastures. The manufacturer says the warranty is no longer in effect and parts are no longer available.**

**The law.** A "lifetime" warranty doesn't have any general legal definition, although some states may have their own rules. For a

muffler, for instance, lifetime might mean the life of the vehicle in which it's installed or as long as the original owner has the car. And lifetime warranties don't always include the entire item and the cost to replace it. For example, replacing that "lifetime" muffler may cost you a fortune for clamps and exhaust pipes. Some lifetime warranties specify time limits linked to the date a product is discontinued.

**You should know.** The fact that parts are no longer available for a product with a valid warranty does not relieve the company's responsibility to fulfill the terms, perhaps by repairing the existing part or by providing a replacement product.

**The vacuum manufacturer says your warranty is void because you used third-party bags instead of the company's more-expensive "genuine" ones.**

**The law.** Whether it's vacuum bags, printer cartridges, or parts or service for your car, federal law generally prevents you from being "tied in" to using any particular parts or services as a condition to maintaining your warranty coverage.

**You should know.** An exception is allowed if the company can show that its

product will not work properly without a specified item or service. The company does not need to cover third-party service or parts, or damages that result.

**You go to the bridal salon to pick up your wedding dress only to find that the store has disappeared, along with your deposit.**

**The law.** If you paid by credit card, you probably can contest the charges, says Henry Sommer, supervising attorney at the Consumer Bankruptcy Assistance Project in Philadelphia. If you used cash, check, or debit card and the store went bankrupt, you can make a claim with the bankruptcy court as an unsecured creditor. You'll probably be eligible for priority status for up to \$2,425 of the amount owed. But you may end up with pennies on the dollar after waiting months or years.

**You should know.** Check with your local or state consumer-affairs officials, who often intervene on consumers' behalf in such situations. Some states have guaranty funds for certain businesses or contractors that allow you to recover your money if the company disappears or otherwise fails to deliver or pay you what it owes. \$

## How credit-card chargebacks work

If you used a credit card for a purchase and have a problem with the retailer, you may be able to obtain a chargeback from the card issuer. Federal law grants this right under two scenarios:

► **Billing errors.** These apply to charges you didn't authorize; that are the wrong amount; for goods that were never delivered or delivered late; and for delivered items that were misrepresented or in the wrong quantity. To make a claim, write to your issuer within 60 days of the issuing date on the statement in which the charge first appeared. State the specific reasons you think there was an error on your bill. Some issuers extend this period, but don't count on it.

► **Claims and defenses.** You can request a chargeback under the claims and defenses provision for any legal reason you have to cancel a sale directly with the seller, including if

there's a problem with the quality of the merchandise. You have up to one year from the statement date to make a claim. You must meet four requirements: The disputed amount must be over \$50; you must be able to prove that you made a good-faith effort to obtain a refund or credit directly from the seller; you can dispute only up to the outstanding balance on your card (if your balance is zero, you can't use this provision); and the merchant must be within 100 miles of your home and in your home state.

While you're disputing charges, you can withhold payment for the amount at issue, but you must pay the undisputed portions of your credit-card bill to avoid late fees and finance charges. A successful chargeback won't prevent the merchant from pursuing you directly for payment, including in court, if it feels the chargeback was unwarranted.