

## Chapter Six



# CONSUMER PROTECTION

## SALES TACTICS

While the majority of sales persons and businesses you encounter possess integrity and are concerned that its customers are well satisfied, there are exceptions of which you should be aware. Unfortunately, many unscrupulous businesses target the elderly as an easily exploited group. Fortunately, there are many state and federal laws which are designed to protect consumers. Many of these laws have enhanced civil and/or criminal penalties if the individual or company responsible for the fraudulent conduct “knew or should have know that the person aged sixty or older is substantially more vulnerable than other members of the public.” As such, in any consumer situation, it is **CRITICAL** that you keep all the paperwork you signed and received from the salesperson or business.

You should also know that many consumer protection laws provide for the payment of your attorney’s fees if you win a lawsuit involving a consumer problem. The reason is that, by bringing a particular problem to the attention of law enforcement or the public, you and your attorney are

performing a service, and the offending party should pay for the legal work that was required.

The following schemes are frequently used to take advantage of the person who is unaware of his or her rights.

### **BAIT AND SWITCH**

The Federal Trade Commission defines bait advertising as “an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell.” “It’s purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser.”

### **PIGEON DROP**

This con scheme is designed to trick you into withdrawing your savings and giving it to a defrauder. Often this person will first befriend you and, sometime later, will inform you that a large sum of money has been found and that you may have a share of it. First, though, the “nice” person will ask you to put up some “good faith” money to prove your interest. Most likely, the “nice” person will ask you for cash. *Never* take money from your savings and give it to someone such as this, no matter how nice the individual seems or how long you have known the person. The whole reason this scam works is that unsuspecting victims trust a nice, friendly face. Report anyone who offers you such a deal to the police. Such a person comes across as your best friend and the stories sound convincing. Don’t be taken in.

## **ORAL ESTIMATES AND GUARANTEES**

Always get an estimate, guarantee, or warranty in writing. The writing proves what the business promised you and is legally binding. For the same reason, never sign a blank check or a contract which has blank spaces left on it. The sales person may tell you that signing is only a formality, but if the blanks are filled in after you've signed the document contrary to the oral agreement, you may be unable to prove your case once the company has your signature. Always request a copy of the signed document for your records at the time you sign it.

### **“HAVE I GOT A SPECIAL DEAL FOR YOU”**

Beware of mailings or phone calls which tell you that you have been specially selected to receive an item at a reduced price. Generally, a good many other people have been told the same thing. This tactic is designed to flatter you into buying the product. A similar tactic often used to sell real estate offers a “free vacation” to a resort area. The “free vacation” may not cover all your costs, and your time will often be monopolized by agents and sales people hoping to sell you a sizeable purchase. Be very careful of any offer of “free” trips or “free” merchandise. If the merchandise you purchase has been marked up in price, you may actually be losing money. Likewise, the seller will often times increase the price and then reduce it before they put it on sale. Mail orders, especially for health, or Medicare Supplemental insurance, or life insurance require careful checking. (See Chapter 9 on Medigap insurance).

Take your time when you make a purchase. Watch out for high pressure sales people who tell you they “have” to make one more sale. Be cautious of “one day only” or “once in a lifetime opportunities.” It may be the con artist’s once in a lifetime opportunity to take your money.

## DOOR-TO-DOOR SALES



If you are an older person with transportation difficulties, you may find door-to-door sales convenient. Unfortunately, you may also find that the sales person cannot be located should something go wrong with the purchased product, or that the product you paid for is never delivered. Moreover, it is illegal to sell some items door-to-door. For example, Kentucky law prohibits the sale of hearing aids door-to-door. If you think you need a hearing aid, see your physician for a hearing test and ask him or her to recommend a reliable company.

The safest course for the consumer is never to do business with door-to-door sales people. As an alternative to purchasing items from a door-to-door salesperson, local businesses will sometimes deliver merchandise to your home if you are unable to travel and you make this known to the merchant. Nevertheless, if you must shop this way, there are a few rules to remember. Do not sign a contract until you have examined the product and have been able to check out the company with the Better Business Bureau. To locate the Better Business Bureau in your area refer to the white pages of your phone book. Be sure to get a copy of the contract. Pay with a check. Make the check out to the company and not the salesperson. You should also review the warranty.

If you purchase an item from a salesperson at your home that costs more than \$125, Kentucky law gives you three days to cancel that purchase. Moreover, the contract must contain, in bold print, your right to cancel the purchase or agreement by mailing a written notice to the seller. If the salesperson fails to comply with this law, you have a continuing right to cancel the contract. However, this law does not apply to insurance, real estate, securities, or emergency home repairs you requested.

## **HOME IMPROVEMENT AND LOAN CONSOLIDATION SCAMS**

You should be very skeptical of door-to-door sales persons who offer to make repairs on your home. Seniors are often the targets of home improvement con-artists because so many seniors own their homes “free and clear” but are not able to do difficult home maintenance work. Many times these home improvement swindlers peddle their scams door to door promising the improvement will be completed in a professional manner and with quality workmanship. In reality, these swindlers simply take the money and run. Although these scams vary, the deceptive business practices and consequences are the same: the job is never completed; the work is so poorly done that the job has to be redone; defective work isn’t remedied; payment is demanded for unauthorized work; warranties are not honored; refunds are not given; or, the project is never even started. More troubling is that many seniors finance their home improvements through a home-equity loan, a new mortgage or an installment contract which often has an unaffordable or hidden interest rate and payment. Such financing arrangements sometimes create financial difficulties for seniors who end up losing their homes.

The Kentucky Home Solicitation Sales Act and certain federal laws provide some protection against abusive home-equity lenders and home improvement con-artists. Someone who has taken out a home-equity loan, such as a re-financing to consolidate debts or to finance home improvements has the right to cancel the transaction within three days of signing the final papers. In some cases, the right to cancel may even last as long as three years. At the loan closing the borrower is given two copies of a cancellation form, one of which can be mailed or faxed back to the lender stating, “I am canceling

the transaction.” To cancel the loan within the applicable time period, the borrower must send to the lender’s place of business a written notice canceling the loan. However, if the lender did not provide the borrower with the necessary forms, the loan may be canceled “in any manner, by any means.”

In general, it is a bad idea to re-finance your home in order to “consolidate” credit card and other unsecured debt. If your home is paid for and you are struggling to meet living expenses, a better choice of financing might be a reverse mortgage (See Chapter 7).

Nevertheless, a few common sense safeguards can help prevent an individual from becoming a home improvement/loan consolidation scam victim. They are:

- Get at least three estimates;

- Ask the contractor for the names and phone numbers of other customers and call them;

- Call the Better Business Bureau to check the contractor’s reputation;

- Do not rely on any verbal promises, so get everything in writing, including start and completion dates; and,

- Don’t pay the entire fee up front; rather make your payments contingent upon completion of work phases.

For any home-equity loan, follow these guidelines:

- Insist on your right to see the loan papers three days in advance of the closing; and be sure the closing papers contain the same figures as the preliminary papers;

- Shop around for favorable interest rates, and take note of how much the mortgage broker is charging for their services (if you can’t tell from the papers, ask);

Don't sign anything until you have a family member, trusted friend, or attorney read it;

Don't ever sign a document with blank lines or boxes;

Be on the lookout for home appraisers that are "in the pocket" of the lender (it is important that the appraised value of your home is accurate);

Be realistic about whether you can make the proposed monthly payments;

Avoid loans with large "balloon payments" at the end of the loan period; and,

Do not purchase unnecessary insurance from the lender.

For more information, contact the Consumer Protection Division of the Attorney General's Office at 1024 Capital Center Drive, Frankfort, Kentucky 40601. The consumer hotline number is 1-888-432-9257.

### **THE TELEPHONE: TELEMARKETERS AND SWEEPSTAKES OFFERS**



The phone rings. A voice you do not know (or a computer voice) wants to sell you something--a home improvement, stocks or bonds, or insurance. The important thing to remember is that the main purpose of the call is for the caller to make a profit. However, wisely placed orders by telephone may sometimes save time and money.

The phone rings again. This time the nameless person says you've won a prize or wants you to enter a contest. With such "offers," you need to be extremely careful, never pay any money up front and ask for a copy of the contest rules before you go any further.

Deceptive and fraudulent peddling is so widespread that the Federal Trade Commission and states' Attorney Generals, including Kentucky's, have given top priority to enforcing telemarketing consumer fraud laws. Indeed, Kentucky law imposes strict requirements on telemarketers. First, many telemarketers must register with the Attorney General's Office. Second, phone solicitations can occur only between the hours of 10:00 a.m. and 9:00 p.m. The solicitor must identify himself or herself and ask the consumer if he or she is interested in hearing a sales pitch. If the consumer says "no," the call must be discontinued. Likewise, telemarketers may not require or permit employees to use a fictitious name; solicit anyone under 18; cause the phone to ring more than 18 seconds; or, call an individual who has previously stated they aren't interested in the solicitation. Finally, if you orally agree to purchase goods or services over the phone, you have 14 days after receipt of the goods to cancel the purchase.

Consumers can also be placed on a "no call" telephone solicitation list by registering their name with the Attorney General's Office. To register, call 1-888-432-9257. Unfortunately, the Attorney General's Office estimates that 95% of the entities that solicit by phone are not required to honor the no-call list. To further reduce the number of phone solicitations you receive, you can write the Direct Marketing Association and request that your name be placed on their Telephone Preference Service. This Association also maintains a "junk mail" service for individuals who wish to reduce the amount of junk mail they receive. The address is: Direct Marketing Association, P.O. Box 9014, Farmingdale, NY 11735-9014.

Kentucky law also requires "professional solicitors" who seek donations for charities to register with the Attorney

General's Office and submit to a criminal history background check. Such a solicitor must tell you he or she is being paid to solicit funds for a particular charity. A majority of the funds you donate may be kept by the "professional solicitor." It is quite common for these solicitors to keep 75% of your donated funds, and on occasion they will keep 90% of the donation. As such, Kentucky law requires that if you ask the solicitor, he or she must tell you what percentage of your donation is actually going to charity.

There is also a Kentucky statute that regulates the use of automatic dialing equipment. The call must be terminated within ten seconds after the person called fails to consent to hear the message or hangs up.

Due to increased competition in the phone industry, two new schemes called "telephone slamming" and "telephone cramming" are on the rise. Slamming occurs when a customer's long distance service is switched without authorization. Consumers learn they have been "slammed" after they notice their phone bill is higher or they lose certain benefits. Cramming occurs when phone customers are billed for phone services that were not authorized or used. These added charges are often overlooked because of their location on the phone bill. You can be crammed simply by accepting a collect call. To avoid being slammed or crammed, it is critical that you review your phone bill every month to ensure that the long distance carrier shown is the one you have selected and that you understand all phone charges. Likewise, be alert for any other unauthorized services on your phone bill such as charges for 800 numbers. Notify your phone company if you do not recognize a charge. If you think you've been slammed or crammed, contact the Public Service Commission, Director of Consumer Services at (502) 564-3940.

For violations of consumer laws and regulations there are remedies. The Kentucky Attorney General's Consumer Protection hotline is 1-888-432-9257. The office also maintains two excellent web sites which are: [www.law.state.ky.us/cp](http://www.law.state.ky.us/cp) or [www.law.state.ky.us/senior](http://www.law.state.ky.us/senior). The home page for the Attorney General's Office is: [www.law.state.ky.us](http://www.law.state.ky.us). In addition, the home page for the Federal Trade Commission is: [www.ftc.gov](http://www.ftc.gov). You may also write or call:

Office of the Attorney General  
Consumer Protection Division  
1024 Capital Center Drive  
Frankfort, KY 40601  
Ph. (502) 696-5389

Federal Trade Commission  
Telemarketing Fraud, Room 200  
6th and Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
Ph. (202) 326-3134.

### **STOLEN IDENTITY AND CREDIT CARD FRAUD ALERT**

It is not difficult for someone to steal your identity. It is easy for someone to acquire your name, address, phone number, and even your social security number. With this information, it is possible to apply for a credit card or make charges against your personal credit. You may not know that someone has stolen your identity until the credit card bill arrives in the mail. If you find that someone has used your credit card without your authority, the credit card company cannot make



you pay for the unauthorized charges beyond \$50. Nevertheless, to help avoid this type of theft, follow these rules:

1. Do not give your credit card number to someone who calls YOU. If someone calls you and asks for your credit card number, a red flag should go up. Some bogus companies will attempt to “sell” you something over the phone in an attempt to get your credit card number. Other thefts occur after a caller requests your credit card number for “verification” or so that you can receive a “prize.” Be wary and do not divulge any personal information during these conversations and DO NOT give them your credit card number.

2. Think twice before purchasing something over the telephone or the Internet with your credit card. While many people assert that doing business over the Internet is safe as long as you are using an encrypted program that scrambles your card number before sending it through the Internet, it is hard to tell which Internet sites are safe and which are scams. Be sure that you are fully informed about the company and its encryption methods before you make an Internet purchase.

3. To protect yourself from someone applying for a NEW credit card in your name, you must have a FRAUD PREVENTION ALERT placed on your credit history. There are three major credit bureaus in the United States and you must ask each company to place the fraud prevention alert on your file. When you place an alert on your file, it means that the credit card companies must personally call you each time a new card is applied for. If you applied for the card yourself, you simply verify that, yes, you want the new card. However, if someone else has applied for the card, you can prevent it

from being issued when the credit card company calls you. The numbers for the three major credit bureaus are:

Experian: 1-800-301-7195;  
TransUnion: 1-800-525-6285; and,  
Equifax: 1-800-525-6285 (national) and  
1-800-272-9281 (Kentucky).

Having a fraud prevention alert placed on your credit history will help to prevent identity theft. It is a free service, so you will not be charged by the credit bureau. You must renew your fraud prevention alert every seven years.

#### **“EARN MONEY AT HOME” PROMISES**

Be skeptical of any advertisement that offers you a good income while working at home. These schemes generally require that you pay an initial fee. Seldom do you actually recoup even your initial outlay of money. Other “promises” of regular income may involve nothing more than the sending money and, in return, receiving a book or pamphlet of ideas for working at home. There is rarely any actual employment given for the fee you pay. In some cases, companies will have you perform some task (such as stuffing envelopes) but will refuse to pay you, claiming that your work was not done correctly. If the initial investment is over \$500, Kentucky law requires the business to register with the Attorney General’s Office.

#### **CHECK CASHING COMPANIES AND CAR TITLE LOAN COMPANIES**

There are over 300 licensed check cashing companies in Kentucky. Check cashing companies take post dated personal checks from customers in exchange for holding the checks a period of time which is usually two weeks. The companies are actually making short-term loans

at extremely high rates of interest because they initially pay customers quite a bit less than the full amount on the check. Indeed, the difference between the amount the check casher gives the customer and the amount the company gets from the bank (or from the customer who redeems a check before it is cashed) is interest on the loan. These companies also charge hefty fees for “rolling over” the customer’s check (i.e., allowing the customer to wait another two weeks before the check is cashed or picked up by the customer.) The annualized interest rate on these transactions can exceed 300%. Because of exorbitant interest rates and consumer outrage, Kentucky passed a law in 1998 regulating these companies by allowing fees no higher than \$15 per \$100 two-week loan. The legislation also prohibits them from allowing more than one “rollover” of a check loan. This is still an interest rate of 390%. Moreover, the Kentucky Supreme Court has recently ruled that state usury laws should have applied to check cashing companies since their inception. This means consumers who were subject to exorbitant interest rates and fees before 1998 may have a legal remedy.

Car title loan companies advance loans to customers in exchange for the title to the customer’s vehicle and a monthly payment with interest. While paying on the loan, the customer gets to drive the vehicle. The danger of borrowing money against one’s car title in this way is that the company may try to “repossess” the car if payment of the loan is not made or is late. These companies were not regulated until 1998. Kentucky law now limits the interest rate on title loans to 36%. Before the legislation, these companies regularly charged an interest rate of 264%.

## PRE-PAID FUNERALS



While most of us would prefer not to think about our own funerals, pre-planning a funeral can be a very good idea. The advantages are that the cost of most funeral items is locked-in as of the date of payment, and that you and your family can plan without the grief and the rush to make a quick and expensive decision. You may pay for a pre-arranged funeral on a monthly installment basis. Moreover, pre-planning your funeral allows you to comparison shop and relieves the family of trying to do the right thing when decision-making is difficult.

Do not hesitate to discuss cost as you compare funeral homes. Ask if lower priced caskets are available if you do not see what you want at a price you want to pay. Decide what you want, not what the funeral director wants for you.

After you have made a decision, read the preneed burial contract very carefully. Do not sign a contract for a pre-arranged funeral unless you are sure you understand all of it. These contracts are subject to Kentucky law which requires the money you pay to the funeral home to be kept in trust for you at a financial institution until needed. The law also allows the Attorney General to license sellers of these contracts and audit the funds received on the contract to make sure the funds are placed in trust in a financial institution. Preneed burial contracts must also be registered with the Attorney General's Office in your name. A copy of the contract should be left with the funeral home. Take another copy with you and make sure your family or friends know how and where to find it. A bank safety box is *not* a good idea in which to safekeep the contract because the box is not likely to be opened until after the funeral.

You may cancel your agreement with the funeral home by giving written notice. You are entitled to a return of the entire sum paid, plus all earned interest within ten days.

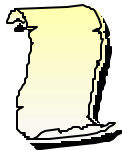
### **DEBT COLLECTION**

Sometimes because of an unexpected expense such as a medical emergency or unforeseen circumstances, people find themselves unable to pay their bills. Should this happen to you the best move is to contact the company immediately and attempt to work out a compromise payment plan. If you take the initiative to work out a solution, your creditors may agree to reduced payments. If they do, be sure to get their agreement in writing or write them a note to confirm your understanding of the agreement. It is important that you approach your creditors before you actually skip a payment. This may keep your delinquent account from being reported to a credit collection agency or from being the basis for a lawsuit against you. You should respond to any correspondence sent to you by your creditors. If you dispute the amount that a creditor says you owe, most creditors are legally required to respond within 30 days to your **written** letter questioning the debt. You may also wish to see a counselor who specializes in credit counseling. In some communities an agency exists which offers debtor counseling at little or no cost. The creditor or collection agency may not harass you with phone calls, call you between the hours of 9:00 p.m. and 8:00 a.m., call you at work, jeopardize your job, or threaten you with jail or violence. If this happens you should consult an attorney.

Creditors often include a provision in contracts or credit card applications which permits them to legally repossess the property if you "default" or miss a payment. The company will then attempt to re-sell the property, often for

a low price, and collect from you the difference between what you owed and what the item sold for. This leaves you without the property but still owing money for it. To avoid this situation and to protect your credit rating, you should attempt to make all payments on time. If you must miss a payment, contact the company before the payment is due and try to arrange a solution. If the matter is not resolved you should consult an attorney immediately to prevent your property from being repossessed. However, you do not have to allow repossession (except for most electronics) before a court has ordered it.

## **INSURANCE**



The Kentucky Department of Insurance publishes a Consumer Guide comparing prices and values offered by companies which write automobile and homeowner insurance. It is published periodically in many newspapers throughout the state. You may obtain information on all types of insurance, and submit complaints relating to insurance practices, by contacting the Kentucky Department of Insurance, P. O. Box 517, Frankfort, KY 40602. You may also call the Department's Consumer Protection Division at 1-800-595-6053. The Department of Insurance also maintains a web site whose address is: [www.doi.state.ky.us/index.stm](http://www.doi.state.ky.us/index.stm).

### **Credit Insurance:**

Often if you make a major purchase on credit, the dealer will offer to sell you life or disability insurance to cover the payments in case you cannot. You do not have to buy such insurance, or buy it from the dealer in question. If you do agree to purchase credit life insurance, you have a right to

get a copy of the policy, and to cancel it at any time and obtain a rebate of the unearned premiums.

The Chapter on Health Care discusses the sources of help in the selection of your health insurance plans, Health Maintenance Organizations, physicians and hospitals. It may be important to review with your lawyer the contents of your insurance policies, such as the coverage provided by health, life, automobile, home or renters', and industrial insurance policies.

### **PREVENTIVE SELF-HELP**



There are several steps you may take to protect yourself before any problems arise. The best self-help available is forethought. Before making a purchase ask yourself whether the item is something you need. If it isn't, then it is really no bargain. Remember you can check the reputation of the company through the Better Business Bureau and you can also ask other customers. Refuse to be rushed into a purchase. Check out all the facts.

#### **Always:**

1. Save all receipts, documents, product information, instruction booklets, contracts, guarantees, canceled checks, and company addresses;
2. Read all contracts carefully and get any additional promises in writing. If you do not understand a portion of the contract, do not sign it. Ask the sales person to explain the contract to you. If you still do not understand,

ask to take the contract with you and have a trusted friend or lawyer review it;

3. Ask for the name and business card of sales persons with whom you deal;
4. Research the company or business. Check with the Better Business Bureau and the Attorney General's Office to see if any complaints have been filed against the business. Ask for references and contact them before making a purchase or signing a contract;
5. Know your rights. If you have questions, call the Consumer Hotline at 1-888-432-9257.

**Never:**

1. Give your credit card number, bank account number, or social security number to unsolicited callers or someone you don't know;
2. Be pressured into making a quick or hasty decision. Don't give in to such high pressure sales tactics. It's part of the scam;
3. Purchase anything to receive a free prize.

**WHEN A COMPLAINT DEVELOPS**



1. Talk to the sales person who sold you the item. If the problem cannot be remedied, ask to speak with the manager or company service representative. If the problem is still unresolved get the name and address of the appropriate person to call or write.

2. Write a letter to the proper individual. Be sure to include your name, address, and phone number. Explain the problem and what you want, and include any model numbers, brand names, size, and color specifications as well as where, when, and why you bought the product. Be as specific as possible. Also include a copy of the sales receipt, contract, and guarantee. Keep the original receipt for yourself. Specify a date by which you would like a reply from the company.
3. You may file a complaint with the Office of the Attorney General or Better Business Bureau. Again, be as specific as possible as to the business, the problem, and the remedy you are seeking. Remember, that the Attorney General's Office can only file suit to "protect the public interest." The office cannot act as your private attorney. Nevertheless, the Attorney General's Office and the Better Business Bureau offer mediation services.
4. If the dollar amount in dispute is for \$1,500 or less, you may take the company or individual to small claims court. You do not need a lawyer for this court. You may argue your claim yourself. To learn more about filing a small claim, go to the office of the district court in the county where you live or the county where the sales person or company does business. You may also wish to write for a pamphlet explaining the process of going through small claims court by addressing a letter of request to the Consumer Protection Division of the Attorney General's Office. The Attorney General's Office website also contains this information. The Administrative Office of the Courts will also provide informational pamphlets on

small claims court and their address is 100 Mill Creek Park, Frankfort, KY 40601, (502) 573-2350). Ask for the brochures on

post-judgment collection and general information about small claims court. Finally, the Office of Senior Protection in the Kentucky Attorney General's Office, can help you with questions and information about consumer issues. The office may be reached at (502) 696-5610 or by writing to Office of Senior Protection, Attorney General's Office, Capitol Building, Frankfort, KY 40601.

5. Another alternative to a consumer violation is found in Kentucky's Consumer Protection Act. One section of the Act declares as illegal any "unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." The Act allows the Attorney General's Office to bring a lawsuit if the suit would be in the public's interest. However, the Act also allows a lawsuit to be filed in circuit court by a private individual whenever the Consumer Protection Act is violated. The consumer is entitled to recover a broader award of damages from the private suit rather than just out-of-pocket losses from an Attorney General's action. Finally, attorney's fees may be awarded to the consumer if he or she wins the lawsuit.

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Consumer rights encompass many varied problems. The Kentucky Attorney General's Office publishes many pamphlets and leaflets on consumer matters, including a pamphlet on "Funeral/Cemetery Laws: Prepaying a Funeral." There are leaflets dealing with Home Repairs, Buying Clubs, and Home Solicitation Sales. Detailed statutes govern loan brokers, new car sales, sales of real estate for recreation or retirement, prepaid funerals, and solicitation for charity. Some of these issues are complex. If you have a consumer

problem you should seek help from the Kentucky Attorney General's Office, your own attorney, the Better Business Bureau, small claims court, T.V. and radio consumer reporters, trade associations, or the Federal Trade Commission.