

## CHAPTER THIRTEEN

### The Consumer Minefield

#### *Contracts in Context*

A book addressing all the ways bad people are scheming to take your money away without delivering what you think you're getting would be considerably heftier than this one. But there are some fairly common situations to which you can apply the principles discussed elsewhere in the book.

#### ADVERTISEMENTS THAT HIT HOME

Chapter Five discussed advertising in the sense most of us think of - stores or businesses taking out ads on the radio, TV or Internet to lure you to what they have to offer. There are other kinds of advertisements besides store advertisements, however. Classified ads, mail and telephone solicitations, "spam" e-mail and Internet banner ads are subject to the same rules as store advertisements. But in these contexts, the rules are somewhat harder to enforce. *Your* rule is this: Any contest or get-rich-quick scheme that requires you to part with money probably is a losing proposition. If it were so easy and quick, the pitchman wouldn't have to advertise it. Ask yourself if you've ever met anyone who achieved wealth by answering a classified ad for a product or service (as opposed to placing one!).

#### Pyramid Schemes

It is worth familiarizing yourself with the concept of pyramid schemes. Ads for them may be found in the

back of magazines, in classified ads, at a website referenced in an Internet bulletin board or chat room, or on the “community bulletin board” at your supermarket or pizza restaurant. Or someone -- maybe someone you know casually, or even well -- may contact you by mail or over the phone or by e-mail, promising you some huge return on your money and telling you of real people who made a bundle in the scheme.

That part is true, actually. Some did get a lot of money. But they did it illegally -- by inducing people like you to pony up. The only way you could do the same is to con a large number of people to make the same mistake you did. The classic example is the ad that says, “Make money at home -- send \$5.00 and a self-addressed stamped envelope to learn the secret of wealth!” The envelope really does come back. The secret: Take out an ad offering to sell the secret of wealth for \$5.00.

The courts have held many of these scams -- and any promotion that promises an unrealistic return -- to be false advertising; if they involve mail, they are postal violations, and if they involve the Internet they may be wire fraud. Some cases might involve violations of securities laws. Some of these scams are called “Ponzi schemes” (see sidebar) when the only returns are the funds of people newly recruited into the “system.” (By the way, "multi-level distribution" schemes, in which the consumer is paid for selling products and recruiting other distributors, pose similar risks as true Ponzi schemes.)

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Sidebar

## PHARAOH OF FINANCE

Charles Ponzi offered jazz-age Bostonians a deal they couldn't resist: A 50 percent return in 45 days, and 100 percent in 90 days. In 1920 the 38-year-old Ponzi claimed that he had a supply of 14 Spanish postal reply coupons that U.S. post offices were obliged to accept in return for 64 stamps. He generously offered investors the opportunity to participate in this windfall, in return for a commission as well as consideration for his efforts (and those of a supposed team of agents) in procuring the stamps.

Ponzi raked in over \$15 million in less than a year. His story was convincing because of the generous "returns" paid to his earliest investors -- which were merely the receipts from the latest victims. As long as people down the line kept believing, he was able to deliver. Eventually, however, Ponzi's shady past and phony present became clear. Less than half of the money Ponzi collected was ever recovered, and his "enterprise" resulted in the failure of six banks. Ponzi gave his name to the Ponzi scheme, a classic mass con game, or "confidence game" -- a fraudulent scheme based on initially gaining the confidence and trust of the victim. Ponzi spent three and a half years in jail, but avoided further imprisonment by characteristically jumping bail.

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Sidebar

Speculation

Speculation is not, by itself, fraudulent. Many fine fortunes have been made, and lost, by speculation, without anyone having a (legitimate) complaint. Speculation is, however, a game to be played only by

someone who can afford to lose it. It's little more predictable than casino gambling or playing the horses. The best place for speculation is as part of a diversified investment portfolio. But there's no place for phony speculation schemes. One dependable red flag is that no legitimate speculative investment will ever promise or even strongly suggest a specific return to you.

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If you are contacted by mail regarding what seems like a fraudulent scheme, contact your local postmaster or the office of the U.S. Postal Service Inspector General. Otherwise, report such a pitch to your state or city's consumer protection office or state attorney general. Virtually all states now provide a way for shutting down these scams and recovering victims' money. The process may be long, however, and the longer it is, the less the chance that you'll see much, or any, of your money back.

## DOOR-TO-DOOR SALES

Most people feel secure in their homes. Ironically, that feeling makes them especially vulnerable to door-to-door salespeople. That's particularly true of homebound people such as some elderly or persons with disabilities. You have few facts by which to judge a door-to-door salesperson. There is no manager, no showroom, and no immediate way to assess the company that the salesperson represents (if there is one). Even if you have been contacted in advance by phone and offered the "opportunity" for a "free in-home estimate" or "examination" or whatever, all you know is that the salesperson has a

phone and, perhaps, a confederate. But once that sample case is sitting on your coffee table, who wants to be a rude host?

Unfortunately, some door-to-door salespeople take advantage of this vulnerability. Thus over the years the federal government, and many states, have passed laws regulating door-to-door sales.

If you do go through with a purchase, federal and state laws usually require such salespeople to provide you with the following details on your receipt:

- the seller's name and place of business;
- a description of the goods and services sold;
- the amount of money you paid or the value of any goods delivered to you;
- your cooling-off period rights (see below).

Also, if the salesperson makes the sale in Spanish or another language, you may have the right to all the above details in that language.

### The Cooling-Off Period

What if your friendly visitor succeeded in "closing" the sale, but as soon as he or she turned out the door you got a sinking feeling -- or perhaps a certain look from your spouse -- that suggests maybe you don't need new drapes, vinyl windows, flower seeds or encyclopedias just now after all? Federal law now requires a three-day "cooling-off period" for door-to-door sales. During that time, you can cancel purchases you make from someone who both solicits and closes the sale at your home, or even elsewhere -- such as a hotel -- that is not an established place of business.

You don't have to give any reason for changing your mind during the cooling-off period, and the three days don't start until you receive formal notice of your right to cancel. You can cancel almost any sale not made at a fixed place of business, including someone else's home. Federal law extends this cooling-off period to both credit and noncredit sales above a minimal amount. It also forbids the company to charge you any cancellation fee. The federal law will apply to most such cases, and many states have similar laws that fill in the gaps.

If you decide to cancel during the cooling-off period, state law usually will require the salesperson to refund your money, return any trade-in you made, and cancel and return the contract. The salesperson has ten business days to do this under federal law. You must make the goods available to be picked up during that period. Under federal law, if the salesperson waits longer than twenty calendar days, you may be allowed to keep the goods free.

#### Door-to-Door Home Repair Sales

This one is simple: If workers show up on your doorstep with "leftover" asphalt, shingles, or other material from a nearby job, and offer you a sweet deal to fix your driveway, roof, or whatever, tell them to go somewhere else.

Make your home repairs when you're ready, and only with contractors you know or who are recommended by an experienced friend. (See the section on home improvements below.) In any event, the last place on earth to make an important decision about home repair work is your front step, looking at four guys with shovels whom you've never seen before.

## TIMESHARES

Timeshares are a period of time, maybe a week or so per year, that you can buy for a specific property (usually a residence at a resort), during which the right to use the property belongs to you. The idea is that you benefit by "prepaying" for a vacation place rather than renting it, as you otherwise might do.

The profit that would have gone to the owner supposedly stays in your pocket.

One problem with timeshares is that the savings are often offset by expenses. If, like most people, you finance your timeshare purchase over time, the interest costs alone may eat away that supposed profit. Even if you pay cash, you lose the interest you could otherwise have earned on that money.

And unlike renters, who have the option of coming or not from season to season as a resort becomes more or less desirable, timeshare owners are generally locked in. In some cases they may be able to exchange their property, but that involves a formal exchange program and costs money. They usually cannot sell the property except at a substantial loss.

Furthermore, your timeshare contract will make you responsible to pay any increases in taxes, maintenance or repairs. If you think any of these amounts are going to decrease, you're in for a big surprise.

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Timeshare sellers will often point out that, notwithstanding these problems, once you pay off the

timeshare you will have "free" vacationing, so at some point you will break even with the cost of renting and eventually be in the black. But that break-even point, which takes in account all of your costs, including interest, may not come for ten to twenty years. Ask yourself whether you are prepared to vacation in the same place at the same time every year for the next decade so you can eventually save on your vacation expenses.

If you don't like the timeshare deal, you can always sell it. Well, maybe not "always." Maybe not ever. Practically speaking, many people who bought timeshares in the 1980s -- when any investment involving real estate looked like a winner -- have found themselves with white elephants on their hands. You may have to unload the timeshare for much less than you paid, if you can find a buyer at all. You may be stuck agreeing with the sponsors that they will take back the timeshare during the payment period and you will be off the hook for the rest of the term. You would get nothing back for what you've already paid in (which might be several times what you would have paid in rent) but you would have no further obligations.

## PETS

Before you buy a pet, you have a right to know about the pet's health, family history or pedigree, training, and medical care, both normal and unusual. Many states even have specific "right to know" laws for pet purchasers. If your state doesn't, then general warranty laws apply.

If you buy a pet, and it turns out that it's sick or injured, your recourse may depend on whether you bought the pet from a pet shop or a private owner. It also may depend on whether you had a

written contract, and what express and implied warranties exist under your state's laws. It also matters whether you bought this pet for a specific purpose, such as breeding it for competition. In general, it's best for you and the seller to sign a written agreement about your pet that will clarify most of a new owner's questions.

One way of avoiding problems is to ask the seller for the name of the pet's veterinarian. Ask the vet for an opinion on the pet's health, which may alert you to potential problems before you complete the purchase.

If you have a problem with a pet purchase, many of the old standbys apply: Immediately notify the seller in writing, keeping a copy for yourself. Keep all contracts, papers, and even the original advertisement, if there was one. If you have not received a replacement or refund within thirty days, consider filing a small-claims lawsuit. Don't worry about becoming an expert on pet law. The judge will probably base a decision on the fairness of the case, not on technicalities.

## HOME REPAIRS AND IMPROVEMENTS

There are a number of special legal protections for consumers who contract for home repairs or improvements. The Federal Trade Commission and federal truth-in-lending laws police this area. To a certain extent, the states regulate home repairs, too. Generally, as in any other contract, home-repair contractors may not mislead you in any way to get the job. Be aware of these techniques:

- promising a lower price for allowing your home to be used as a model or to advertise their work;
- promising better quality materials than they will use (beware of "bait and switch" here as well);

- providing "free gifts" -- find out when you will receive them, or try to get a price reduction instead;
- not including delivery and installation costs in the price;
- starting work before you sign a contract, to intimidate you;
- claiming that your house is dangerous and needs repair;
- claiming that the contractor works for a government agency;
- offering you a rebate or referral fee if any of your friends agree to use the same contractor.

Protect yourself by getting several written estimates. Check into a contractor's track record with other customers before you sign a contract. That doesn't mean a friend with a cousin who does carpentry, by the way. All the good will in the world won't make that door close flush if it's not done right. Rather, your recommendations must come from people who have had work done in their own homes by the contractor. And don't let a book of photos sway you about the quality of a home contractor's work, since you're only going to see the contractor's "greatest hits."

Don't pay the full price in advance, and certainly not in cash. Don't sign a completion certificate or receipt until the contractor finishes the work to your satisfaction -- including cleanup. Hold back a portion of the price to cover the cost of a "punch list" of incomplete items.

Be sure the contract has all the details in writing. Too often a contract of this type will read "work as per agreement." Instead it should specify who will do the work, and include a *detailed* description of the work, the materials to be used, and the dates of starting and completion. It also should contain all charges, including any finance charges if you are paying over a period of time. In

addition, the contract should include the hourly rate on which the total cost is to be based. Be sure any "guarantee" is in writing (and that the company is well established and most likely will be in business long enough to honor the guarantee).

Be especially wary of any mortgage or security interest the contractor takes in your home, which means that you may lose your home if you don't meet the payments for the work. If the contractor takes a mortgage or security interest, federal law gives you three days to change your mind and cancel.

You should be aware that the contractor may be able to file a lien on your home even if the contract is silent on the point. That's because filing a lien is permitted under state law in the event of a dispute over payment. A construction lien or mechanic's lien is a claim, filed with a court or county clerk, on (or "against") property for the satisfaction of a debt. It's subordinate to a mortgage, so is not as serious a threat to your property, but it is a cloud on the title that might make it hard for you to sell the property. You can ask the contractor to waive the right to place a lien in the contract (the contractor might not agree) or withhold final payment until the contractor gives you a release- of-lien form that covers the work of subcontractors as well.

Consider having a lawyer look at the contract, especially if there's a security agreement. If problems do arise that threaten your rights to own your home, see a lawyer immediately. (For more on this topic, see the chapter on home ownership.)

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Sidebar: The Top 10 Consumer Problems

The State of New Jersey's Office of Consumer Protection has published a list of the 10 most troublesome consumer problems in that state. These, unfortunately, exist in every state. The New Jersey list also includes basic advice for handling each problem.

- Fly-by-night home repair contractors (as discussed previously in this chapter).
- Telephone solicitations. Always ask the caller to send written information. Also, determine your total obligation before agreeing to anything. Don't give credit-card information to strangers over the telephone.
- Furniture delivery delays. Do not take "ASAP" (as soon as possible) as a delivery date in a sales contract. Get an exact date. If the merchandise doesn't show up by that date, you would then have the right to cancel.
- Free vacation offers. An example is the postcard telling you about a "free vacation" you have won: Just call a toll-free number and "confirm" your credit card number. Later the vacation is not as free as you thought. Play it safe -- book your travel arrangements through a reliable agent or directly with travel carriers.
- "Bait and switch" tactics (see the section above on advertising).
- Mail-order rip-offs. When shopping by mail, you're always taking a risk. When the offer sounds too good to be true, it probably is.
- Work-at-home schemes. Usually aimed at young mothers and the disabled, these schemes promise to help you "earn money in your spare time." They'll ask you for twenty dollars in "startup" costs.

What you'll get is information about how to rip someone else off the way they just cheated you.

- Detours around contract cooling-off periods (see the section above on door-to-door sales). Federal law only protects you if you sign the contract in your home or somewhere other than the normal place of business. Even at home, don't depend on a cooling-off period -- think before you sign.
- Health spa memberships. Most complaints center on high-pressure sales tactics. A year's membership can cost quite a bundle -- make sure that you'll use it, and that all "understandings" and assurances are in writing.
- Timeshare lures. People often buy timesharing vacations on impulse. Be sure you're ready to go to the same place during the same period of time for years to come. If the timesharing resort (or condominium or whatever) is not fully built, make sure all occupancy dates are in the contract and review these contracts with a lawyer. (High-pressure timeshare sales pitches have led to a federal law giving consumers some protections. If the property is located in another state, the federal Interstate Land Sales Full Disclosure Act gives you the right, in some circumstances, to get out of a timeshare contract.)

A listing of the "top scams" compiled by the Better Business Bureau of Mainland British Columbia (Canada) adds the following:

- phony invoices that look authentic but are really solicitations;
- advertisements offering "big money" overseas jobs that are really selling nearly worthless listings;
- look-alike postal notices asking for payment to release unsolicited merchandise held at a warehouse in the recipient's name;

- offshore lotteries implying that you've won even before you buy your tickets;
  - loan brokers who charge hefty up-front fees but seldom deliver;
  - solicitations for "charities" that are really businesses;
  - solicitations for investments in Third World countries.
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### APPLIANCE REPAIRS

Much of what the "Automobiles" chapter discusses about car repairs applies to home appliance repairs.

You can best protect your rights by getting a written estimate before work begins. At least make sure you get an oral estimate telling how the repair shop will figure the total charge, including parts and labor. Also, tell the repair shop to get your approval before beginning work. It will then be able to give you a better idea of how much the repair will cost.

When deciding whether to repair or replace, consider these points:

- the appliance's age and likely life span after this repair, compared with that of a new appliance;
- how the repaired appliance will compare with a new appliance in operating costs and efficiency;
- the length of the warranty on the repair, compared with the warranty on a new appliance;
- the price of a new appliance compared with the cost of the repairs.

### BUYING CLUBS

There are several different types of buying clubs. One of the more popular kinds is a compact disc (CD) or music club. It offers five or ten CDs or tapes to you for an initial nominal price. You might pay only a nickel or a dollar, plus postage and handling. In return, you agree to buy a certain number of CDs or tapes at the "regular club price" over a period of time. The "regular club price" is much higher than the initial price, and is often higher than normal retail store prices, especially with postage and handling. In fact, though, the average price including the introductory deal usually works out to your benefit. (Remember that there are costs involved in getting to a store downtown or at the mall, too.)

The potential problem with these clubs is that they automatically send you a CD or tape every month or so. Before shipping the item, the club sends you a notice of the upcoming shipment. The only way to prevent the automatic shipment is to return the notice before the date it specifies. Book clubs operate on a similar basis. Other clubs, such as those that sell children's books or science books, don't send you any notice -- they assume you want the whole "library."

These clubs are not necessarily a bad deal. You may want to meet your additional obligation quickly and then resign your membership. Also, the clubs do offer many incentives to try to keep you as a member, which may be worthwhile to you. But if you forget to return the monthly notice, you will receive unwanted CDs or tapes, and you will be obligated to pay for them or to return them, sometimes at your own expense. Most reputable organizations, however, such as the Book-of-the-Month Club, will send you a postage-paid mailing label to return unwanted materials easily and at no cost..

## Merchandise Clubs

The idea behind merchandise clubs is that you pay a fee in order to qualify for discounts. The club presumably obtains these discounts because of its volume buying power. Before joining one of these, take a good look at what it promises. Will it limit you to certain manufacturers? Are catalogs easily accessible? Shady clubs often appear on lists put out by the offices of state attorneys general and consumer protection agencies. Check with them first.

The better-known “warehouse clubs” can offer substantial savings even over a “superstore” discounter. Most accept only cash or a limited number of credit cards. It’s strictly no-frills -- most don’t even bag your purchase. That’s one way the discount is financed. But you have to know *exactly* what you want, and hope the warehouse store has it. These stores will not special-order merchandise and may only have a few models of an appliance. You will get no sales help besides someone to take your money. If you’re a novice purchaser for a complicated product such as a computer, it may be worth the few extra dollars when buying something so sophisticated, and with so many optional features, to shop at a place where you can get some questions answered.

## FUNERAL HOMES

No one wants to be a consumer of funeral-home services, but unfortunately most of us do end up with this responsibility at some point. The Federal Trade Commission has established something called the Funeral Practices Rule, which has the effect of federal law, to ensure that consumers are not taken advantage of at this time. The Funeral Practices Rule requires mortuaries or funeral homes to give you prices and other information you request over the telephone. The intention is to prevent corrupt funeral

home operators from requiring you to come to their showrooms, where they can prey on your weak emotional state.

Under the Funeral Practices Rule, when you visit a funeral home, it must give you a written list with all the prices and services offered -- including the least expensive. You can keep this list. You have the right to choose any service offered, as long as it does not violate state law. The funeral home must give you a copy of that state law. The funeral home must reveal any fees charged for outside items, such as flowers, and may not charge a handling fee for purchases of caskets from third parties. The home may not falsely state that embalming is required by state law and must give general information about embalming options. The Funeral Practices Rule also entitles you to an itemized list of all charges you incur. The general idea of the Funeral Practices Rule is that the funeral home must inform you of your options every step of the way.

You should also be aware that some funeral homes offer "free" estate planning or "trusts." It should be obvious that estate planning that's worth anything can't be free, and that a funeral home is just about the last place you'd turn for a good plan in any event. These are often imperfect or limited trusts that can complicate rather than simplify an estate and are usually just an attempt to sell pre-need burial contracts that are often overpriced. In some states, such promotions may constitute unauthorized practice of law.

## TRAVEL

## Overbooking

Overbooking by hotels is a violation of your contract to rent a room -- *if* you have paid in advance. Otherwise, the reservation is just a "courtesy." Therefore, it's often worth it to pay for a hotel reservation by credit card when you make it. If you cancel within a couple of days before the reservation date, you probably will get a complete credit, depending on the credit card company's arrangement with the hotel. Also, many premium credit card companies guarantee their cardholders' hotel rooms through the evening if the rooms are reserved with the card. (Contact the credit card company if the hotel doesn't honor your reservation.)

If your room is unavailable even after you speak to the manager, you could have a contract claim. But it probably won't be worthwhile to pursue it legally because of the cost. Perhaps the best advice is to request firmly that the hotel arrange suitable alternate accommodations for you.

Airline overbooking is a little more complicated. Generally, even if you have paid in advance, you do not have a contract to go at a certain time. You only have a contract for a ticket for transport (or carriage) to a certain city. You do, however, have certain rights if you check in on time and have a confirmed ticket. Federal regulations require that if you get bumped against your wishes, the airline must give you a written statement, describing your rights and explaining how the airline decides who gets on an oversold flight and who does not.

Travelers who don't get on the flight where they have a confirmed reservation are often entitled to an on-the-spot payment as compensation. The amount depends on the price of their ticket and the length of the delay. There's no compensation if the airline can arrange to get you on another flight that is

scheduled to arrive at your destination within one hour of your originally scheduled arrival time. If, however, the substitute transportation is scheduled to arrive more than one hour but less than two hours after your original time of arrival, the airline must pay you an amount equal to the one-way fare to your final destination, up to \$200. You're entitled to up to \$400 if your substitute transportation will not arrive within two hours (four hours for international flights).

These rules have exceptions and conditions. "Fly-Rights" is a pamphlet published by the U.S. Department of Transportation. It contains a full discussion of this and other areas of airline law, and is available from the Superintendent of Documents, Order Department, U.S. Government Printing Office, Washington, D.C. 20402, telephone 202-783-3238. The order number is 050-000-00513-5. Or click <http://www.dot.gov/airconsumer/flyrights.htm>. You can also click on <http://www.dot.gov/airconsumer/customerservice.htm> to see the policies of specific major airlines.

If you're just delayed, not bumped, ask the airline staff what services it will provide. Ask about meals, telephone calls, and overnight accommodations. You can complain to the U.S. Department of Transportation if you think an airline has abused you. The Department provides information regarding this process at <http://www.dot.gov/airconsumer/problems.htm> But write to the airline first. In these competitive times for the travel industry, airlines often are responsive to consumer complaints.

## Charter Tours

When you sign up for a charter tour, your money often takes a twisting route to the tour operator. This leaves you vulnerable to many different stops that exist in between. The best approach is to pay by

credit card. If you pay by check, the tour operator's brochure usually will specify the name of an escrow bank account where all payments eventually go. Make out your check to that account. Also, if possible, put the destination, dates, and other details on the face of the check, which should guarantee that the payment goes where it should go. That may help you get your money back if the tour is canceled or if the tour operator or travel agent goes out of business. Remember: *Your* contract is with the tour operator.

U.S. Department of Transportation regulations require that you be shown and sign an operator/participant contract, which describes your rights, before your payment is accepted. Demand it if it isn't offered to you.

Some operators carry bonds to reassure their customers, rather than using escrow accounts. If an operator doesn't have an escrow account, ask whether it is bonded and how you would be reimbursed in case of a default.

Often, the travel agent will insist that the check be made out to the travel agency, because it is the policy of some agents to write a single check to the tour operator themselves. That's fine, but insist on a written guarantee from the tour operator and the agency, and make sure that the agency's check is made payable to the tour operator's escrow account. Reputable agents and operators should be willing to stand behind the tour.

You also can protect yourself by getting trip insurance. This guards you if you have to cancel the trip because of your illness or an illness in the immediate family. Various types of trip insurance, as well as message relaying and referrals to overseas legal and medical help, are also provided free by many

premium credit cards.

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