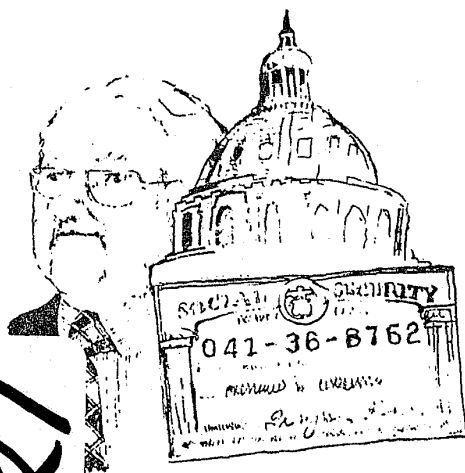


# Senior Citizens & The Law



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PART VI: CONSUMER PROTECTION

As a consumer, the older adult often faces the same problems as the younger adult does. But there are a number of factors which make the case of the older consumer special. The following discussion attempts to give a general picture of the special problems older consumers face and of some of the remedies available to combat these problems. In doing so, it attempts to cover a topic which is both broad and complex. Consumerism is an area which is fairly new; much of the relevant law has yet to be interpreted by administrative agencies and the courts. Thus, what you read here depends on a number of generalizations involving subtle legal distinctions. It is not intended to cover the entire area or give complete information on what it covers. Rather, it will try to give a clear enough picture of the legal problems and remedies in the contractual aspects of consumer protection (civil rights and remedies, legality of financing arrangements, etc.) to be useful to you. The related subject of fraud is discussed in the criminal section of this booklet.

The General Problem

Consumer problems for the elderly are aggravated by several characteristics of the elderly as a group. First, retirement generally brings with it a lowered income which illness and other special expenses may lower even further, forcing the older consumer to rely more heavily on credit. This lowered income also may force him or her to deal with less

reputable companies offering lower prices. For the first time the older consumer may be unable to keep up with his or her time payments.

Second, the elderly as a class of persons face discrimination. When they reach retirement age, their credit status may often be reduced automatically. This may be due in part to the generally lower income of the elderly and to the fact that their income is usually not subject to garnishment. "Ungarnisheeable" means that, especially in the case of federal benefits, the creditor cannot go to court and get an order requiring the debtor's employer to pay the creditor some of the debtor's salary to satisfy the debt. This situation means that any older citizen may not be as good a credit risk as a younger one because the creditor has no security to enforce a debt by garnisheeing an older person's income.

Third, many elderly persons choose to make cash purchases. This practice may cause the older person difficulties when he or she attempts to establish credit in our modern credit-card society.

Finally, even where the older person has been able to establish a good credit rating and a good work record, he or she may be unable to maintain that record due to retirement and illness. The resulting erosion of the record can damage the person's pride and cause him or her to fear losing everything in the face of a consumer problem.

### What to Remember in Dealing with Consumer Problems

If you are faced with a consumer problem, there are several things you should remember:

1. The very worst that can possibly happen is that you may lose a lawsuit regarding the problem--you cannot be put in jail for being unable to pay the amount you owe a creditor.
2. It is very unlikely that you will lose your home or personal possessions. The process of foreclosing against a home to pay off a debt is long and expensive. Besides, most creditors' judgments will be quite small, making it unworthwhile for them to attempt foreclosure. Creditors also risk generating adverse publicity toward themselves by trying to foreclose on you.
3. Your Social Security benefits cannot be garnisheed.
4. While your credit record might be affected, there is a good chance that the credit bureau will not hear of it. If it does, you will find that it is not hard to live with some marks against your credit record. Such marks will not likely affect your credit record any more than will retirement itself.

In any case, it is needless to panic. See a lawyer if necessary. Your problems are probably only half as bad as you believe them to be.

Signing a Contract--What to Look For

Signing a contract, whether to purchase a washer, a car or a television set or simply to take out a loan, is a very serious undertaking. Before you enter any contractual agreement, you should:

1. Take the contract home and read it before signing.
2. If the contract uses terms such as "with all faults" or "as is," these terms generally will mean that the salesperson or merchant is refusing to guarantee the quality of the product. Even where he or she has promised you that he or she will fix anything that goes wrong, he or she does not have to keep the promise if it is not in writing.
3. Check the interest rate you are being charged on a time payment contract or loan. Wisconsin limits the amount of interest you may be charged to 18 percent annually if the amount of the purchase is less than \$500 and to 12 percent annually if it is over \$500.
4. Check with your bank to see whether you can get a better interest rate. Bank loans to regular customers are often cheaper than financial charges.
5. If a seller is unwilling to put any of his or her promises in writing, he or she probably does not intend to keep them.
6. If you have doubts about a company, check with the Better Business Bureau before you purchase anything from the company.

It is important to remember when you enter a contract to buy a product or a service that the contract will be binding upon you, and that the seller can enforce it in court. While there are exceptions to this general rule, it is wise to keep it in mind when you sign any agreement. Even where exceptions do apply, it is difficult to get out of a contract and the effort may entail your hiring an attorney and going to court.

A second rule is that you know what you are signing. You may not realize it, but the innocent-looking piece of paper you have just signed may be a contract. Granted, it may not look like a contract and it may not be titled with the word CONTRACT, but it may be a legally binding agreement nonetheless. Ask the person you are dealing with to explain an agreement, especially those parts unclear to you. Remember what he or she tells you--later it may be your grounds for showing a misrepresentation or an omission. If he or she is evasive about answering your questions, you should think twice before signing.

### Three-Day Cancellation Period

One exception allowing you to end a contract is generally known as the three-day cancellation or "cooling off" period. This exception principally applies to door-to-door sales contracts. You are legally able to cancel a contract to buy products or services, if:

1. the sale is made in a face-to-face meeting, as in the case of door-to-door sales, away from the seller's regular place of business, or if the salesman

solicited your business by phone or mail and you signed the agreement to buy away from the seller's regular place of business (for instance, in your home); and

2. if the transaction involves the extension of credit to you or if you pay in excess of \$25 cash for an item.

What this means is that in the case of a high-pressure door-to-door sale or a sale by mail or telephone where you sign the agreement to buy at your home, you can cancel the agreement within three days after making it. In order to cancel, you must notify the seller or the company in writing -- a letter will do provided that you mail it no later than midnight on the third business day after you sign the agreement. The seller is then required to return to you within 10 days any downpayments you have made. You are not liable for any finance, interest or other charge for cancelling the agreement.

#### After I Have Signed--What Are My Rights and Remedies?

Once you have signed either a purchase or a loan agreement it is important that you know your rights and responsibilities as a party to the agreement. This knowledge will not only enable you to protect your interest, but may also give you some peace of mind in dealing with the merchant or bank.

#### The Wisconsin Consumer Act

One of the most important sources of consumer protection in Wisconsin is the Wisconsin Consumer Act (WCA), which went into effect March 1, 1973. The WCA covers most consumer credit transactions entered into after that date. Basically, it

limits many of the remedies creditors used to have and creates new remedies for consumers.

#### Rates

The WCA limits the amount of interest rates or finance charges on loans and sales agreements to 18 percent annually on the first \$500 of loan or purchase money and to 12 percent on any amounts greater than \$500. For example, if you purchase a television set for \$600, you could be charged up to 18 percent per year on \$500 of the price and up to 12 percent per year on \$100. The same limitations apply also to loans from banks and to most credit card arrangements.

The WCA also allows merchants to levy a minimum finance charge of \$5 where the amount financed is less than \$75 and of \$7.50 where the amount financed is more than \$75. If you were to buy a new winter coat for \$85 on time, you would likely be charged at least \$7.50 in interest--even if you paid all the installments before they were due.

However, you may prepay any installment agreement without being forced to pay a penalty. For example, if you are to pay the cost of a new washer over 12 months, you can pay it off in 6 months and receive a rebate for any amount of interest you have overpaid.

#### Disclosures to Customers

Every agreement you sign to buy an item on credit in Wisconsin must contain a "Notice to Customer." The purpose of



this notice is to inform you of certain rights you have and of certain things you should be aware of. This notice must state the following four items:

1. Do not sign this [agreement] before you read the writing on the reverse side, even if you are otherwise advised.
2. Do not sign this [agreement] if it contains any blank spaces.
3. You are entitled to an exact copy of any agreement you sign.
4. You have the right at any time to pay in advance the unpaid balance due under this agreement and you may be entitled to a partial refund of the finance charge.

If these conditions are not on the agreement you may want to think twice before you sign it.

#### What If I Miss a Payment?

In Wisconsin a merchant may not bring any legal action against a customer for failure to make payments unless the customer is in "default." To be in default, a customer must have missed two payments or missed the first or the last payment on an installment contract.

Nevertheless, a Wisconsin merchant may use informal means to get payment even where you have missed only one payment. Before a creditor will sue you for the amount you owe him or her, he or she will use a number of informal collection methods. However, these methods are limited by law. The following are some of the methods a creditor may not use to get payment:

1. threats of physical force or criminal prosecution;
2. threats of telling or actually telling your neighbors, friends, or employer of the situation so as to embarrass you;
3. use of obscene or threatening language;
4. threats of enforcing a right against a customer which the merchant knows he or she does not have; and
5. harrassment with late night or odd-hour phone calls.

These practices are prohibited whether the party trying to collect the payment is a merchant or a debt collection agency.

Despite these legal restrictions, debt collectors may still try to force you to pay them by using harsh methods to generate fear in one form or another. Threats of repossession, a ruined credit record or jail are not unheard of.

There are a number of things you can do to counter such "scare" tactics.

1. Explain your predicament to the debt collector only once and inform him or her that you will not discuss the matter further. Hang up if he or she calls you again.
2. You might attempt to have the collection agency's phones removed by calling it back right after it calls you.  
(This action will create a record which the phone company can check to verify that the calls came from the agency.)  
Then call the phone company and inform them that you have been receiving harrassing phone calls from the agency.

Since the agency requires its phones to stay in business, the threat of losing them may be enough to stop their calls.

3. If the creditor is a doctor, a dentist, etc., he or she may be receptive to a telephone call from you informing him or her of the methods that the collection agency is using. In many cases creditors are unaware of these methods and are willing to arrange a different payment schedule.
4. Though businesses may be less receptive to such a call, it is worth an effort to contact them.

#### What About Repossession?

One of the more effective collection devices is repossession of the goods which were sold. A seller can repossess or take back goods which he or she has sold you when you fail to make payments. He or she may then resell the goods and hold you liable for the difference between the resale price of the goods and what you owed on them at the time of repossession, plus the cost of repossession.

The only time the seller can repossess the goods without your permission is when it will not cause a breach of the peace. Otherwise, the seller cannot come into your home or garage to repossess items without your permission. However, where a car is the item in question, the seller may hire a towing company to take it away if it is on the street.

In any case, it makes a difference whether you surrender

the goods to a creditor voluntarily or only after he or she has requested or demanded that you give them back. In Wisconsin, a seller may inform you that you are in default and that you have the right voluntarily to surrender the items sold. If you voluntarily return them to the seller, you will be liable for any deficiencies upon resale of the items. However, if you refuse to return them, the seller will be required to get a court order telling you to give them up. In that case, the repossession of the goods is an involuntary surrender and you will not have to make up any deficiencies in the seller's recovery on their resale. But you may be required to pay the court costs and attorneys fees which the seller had to pay in order to recover the goods. In cases where the item sold is fairly expensive, involuntary surrender of it may be the wiser course. Before taking back any items, you have the right to a court hearing.

#### What If I Am Sued?

If you are in default (i.e., have missed two or more payments) a creditor may want to start legal action against you. If the items have been returned to the creditor, he or she must notify you that you can "cure" the default within 15 days by paying all past due installments plus any delinquency charges. If you fail to pay all of these charges up to date, the creditor can sue you for the amount owing on the agreement or for any deficiency if the item is resold.

### The Special Problem of Fraud

Studies have shown that in addition to being especially vulnerable to crimes against property, such as burglaries and theft, older citizens as a group are more apt than members of other age groups to be victimized by con games or fraud schemes. To combat this problem you should know how to recognize fraud and what to do about it.

It would be impossible and not very useful to list all of the fraud schemes that con artists have tried. However, many fraud schemes have a number of characteristics in common that you can use to spot them before they defraud you.

First, many of these schemes appeal to a person's curiosity or vanity. Thus, in the same way that advertisers will tell you that product X will make you look and feel younger, the con man will offer you such products as "miracle" drugs and fabulous beauty potions to improve your appearance and health.

Second, many fraud schemes rely to a large degree on your lack of familiarity with the price of certain items. For instance, a so-called "rare" item may in fact be available to you at a local store or by mail for half or less than half of the cost a door-to-door salesman will charge for it.

A third ploy con artists often use is to pressure you to act immediately. Approaching you with a telephone call or a door-to-door visit, they claim that unless you act at once

(for instance, "while supplies last"), you will be passing up a "once-in-a-lifetime" opportunity. Their intent is to confuse you by pressuring you to buy without thinking.

A fourth common ploy is to misrepresent a product. For instance, a door-to-door solicitor may tell you that the glasses he or she is pushing are made of unbreakable miracle space-age plastic. Then, after you have bought a pair you discover that they break the first time you drop them.

A fifth characteristic common to many frauds is the "name brand identification" pitch. For instance, a solicitor may tell you say that a product is composed of parts manufactured by a name-brand manufacturer. Later, then, you discover that only one small part of the product is actually a brand-name part--the rest is made of scraps.

A sixth unscrupulous sales method, often used with older adults, especially those with family, is to shame them into buying certain products. The heavy-handed salesman may say something like, "You don't want your family to be ashamed of you for using those old, cracked dishes, do you? Don't you owe it to them to own fine dishes and silverware such as these?"

The tactic of telling the consumer "You have been specially selected by a computer" to be the first one to enjoy a certain product is also a common one. What it fails to tell you is that the computer belongs to the publisher of a magazine or newspaper to which you subscribe, and that the publisher

sold your name and the names of other subscribers to the company now trying to do business with you.

Though not exhaustive, this list of tactics includes some of the ones that con artists most commonly use. In addition to these practices there are a number of others that the law expressly prohibits.

#### Unfair and Deceptive Trade Practices

Wisconsin law prohibits unfair and deceptive trade practices. This law is enforced by the Bureau of Consumer Protection of the Wisconsin Department of Agriculture and the Office of Consumer Protection of the Department of Justice. Several rules have been developed to govern specific activities, including auto repair, home improvements and door-to-door sales. You should contact either agency for information if you believe you have been victimized by an unfair or deceptive practice.

Fraud, or violation of a state rule, may give you a right to a private lawsuit. You should remember that fraud normally requires you to prove an intent to deceive. For example, the fact that someone charges more than you would pay elsewhere is not fraud in itself unless the person lies about prevailing prices. Similarly, failure to carry out a promise will usually be treated as a breach of contract (See pp. 110 ) rather than as fraud.