

Consumer Legal Guide



**Your Guide
to Buying
on Time**



**ILLINOIS STATE
BAR ASSOCIATION**

ASK A LAWYER

BUYING ON TIME

Buying on credit has become so commonplace today that we often take it for granted without fully understanding the legal consequences. However, you should never accept the invitation to “buy now and pay later” without being fully informed of what is involved. For one thing, you will pay more money since interest and other costs are added to the cash price of the merchandise. Moreover, in most cases you will likely be asked to enter into a sales contract that contains a security agreement, which seeks to protect the seller by allowing the goods sold under the contract to serve as collateral for the extension of credit. Among other things, the security agreement within the contract will set forth when and how the seller or finance company can repossess the merchandise should you fail to make the required payments.

There are four simple steps you should follow to protect your interests before you buy on credit. First, shop and compare. The interest rates and terms of payment can vary depending on where you make your purchase. Second, always deal with an established and reputable company that will stand behind its merchandise. Third, read and understand all documents before you sign them. Fourth, if you have questions, call your family lawyer. In many cases, your questions can be answered without an office consultation.

CREDIT CARDS

The most common method for buying on credit is the credit card. Generally, when you use a credit card, you are taking advantage of an arrangement called “revolving credit,” in which the issuer of the credit card effectively loans you the money for the purchase and charges you a stated interest rate for doing so. The applicable interest rate and the usual service charges are regulated by law. These regulations will vary depending upon the type of credit arrangement that they address; for example, the regulatory provisions for a loan that is to be repaid in a

lump sum at the end of the billing period will be different from the regulatory provisions for an installment loan that is to be repaid in periodic installments over a specified amount of time.

In any case, the issuer of your credit card must inform you in writing of the various requirements of the credit arrangement. Clauses that permit the issuer to change the date on which payment is due without your consent or that require collateral for an amount due are unenforceable.

If a person possesses your credit card without your permission and intends to use it or sell it, he or she has committed a criminal offense and could be charged with a class 4 felony potentially punishable by one to three years in prison. Moreover, if you lose your credit card or it is stolen, you are not responsible for any unauthorized purchases that occur after you notify the issuer that your card has been lost or stolen. And even further, your responsibility for unauthorized purchases made before you are able to give notice to the issuer of the loss, theft, or unauthorized use of your card is limited to a specified applicable amount (e.g., \$25 for the unauthorized use of a card without a signature panel prior to notification).

If you receive a credit card that you have not requested, you are not liable for any purchases or amounts owed in connection with that credit card unless you have indicated your acceptance of the card by signing or using it or by permitting or authorizing another person to use it. The mere failure to destroy or return an unsolicited credit card is not an indication of the card's acceptance and thus you are not responsible for unauthorized purchases made with that card under these circumstances.

THE PROMISSORY NOTE AND SECURITY AGREEMENT

A security agreement in the context of a credit sale transaction occurs when the seller retains a security interest in some or all of the goods you have purchased in order to secure repayment for those goods should you fail to pay the amount required by the sales contract. In an ef-

fort to provide you with some protection when entering into a security agreement, Illinois law requires a seller's security interest to remain unenforceable against you unless three conditions are met: value has been given to the collateral, you have rights in the collateral (i.e. it is in your possession), and you have signed a security agreement that provides a description of the collateral.

The seller may wish to receive payment for the merchandise immediately rather than waiting for you to make the installment payments. To obtain payment immediately, the seller can sell the security agreement to a bank or finance company and receive immediate payment from them. In such a case, you will then be advised in writing to make your payments to that bank or finance company rather than to the seller.

A promissory note is attached to or made a part of the security agreement. You will be required to sign both documents. The promissory note is a statement whereby you promise to make the required payments to the holder of the note. You, as the buyer, are responsible to make the payments, and the seller of the merchandise may sell the promissory note or security agreement to another lender.

RIGHTS OF SELLER UPON DEFAULT

If you sign a security agreement and fail to make the payments as set forth in the sales contract, the seller may sue you to judicially enforce his or her security interest. A formal court proceeding is not the only way sellers can enforce their security interest; there are a variety of nonjudicial methods of enforcement that sellers may use to avoid litigation in court. In most cases, the seller will simply attempt to repossess the goods sold, which can be accomplished without the need for a court proceeding so long as the seller's repossession attempts do not breach the peace. A seller is not required by law to notify you of his or her intent to repossess your goods, although some may choose to do so. However, if the parties agree in the initial security agreement that the seller will pro-

vide notification of the intent to repossess before repossession occurs, the seller must notify you in order to comply with the terms of the agreement.

Once the goods are repossessed, the seller may sell, lease, license, or otherwise dispose of any or all of the goods and credit the money received from the disposition to the amount you owe on the contract and to the reasonable expenses incurred as a result of the repossession and disposition of the goods. However, before the seller can dispose of your repossessed goods by any method, he or she must send you a notification of disposition describing the goods being subjected to disposition, the method of disposition the seller intends to use, the time and place of disposition if it is public, and the best way for you to learn the exact amount that must be paid any time before the disposition in order to get your goods back. If you receive notice and are able to pay the amount you owe in full before the disposition of your goods, they will be returned to you. If the amount of the cash proceeds from the disposition of the goods exceeds the amount you still owe, the seller must give you the extra money back. However, if the disposition results in less than the balance you owe, you may have to pay the difference.

DEFECTIVE GOODS

Ordinarily, if you find that merchandise you have purchased is defective, you may require the seller to replace the item or fix the defect. If you have received defective goods, you may withhold payment for those goods, but you must also notify the holder of the note that the goods are defective. Defects in merchandise you have purchased do not in and of themselves release you from your promise to make payments under the sales contract, but do give you a defense if the seller or the person to whom the security agreement has been assigned or sold tries to sue you for non-payment. If the seller assigns or sells the security agreement to a new lender, the seller still remains responsible for the necessary repairs or the replacement of the defective item under the general sales contract. If you dis-

cover a defect in a purchased item, you should protect yourself by immediately notifying the seller and the new lender, if there is one. It is always best to give this kind of notice in writing and to keep a copy for your records.

In Illinois, the laws governing the purchase of automobiles differ somewhat from those governing the purchase of other merchandise. Automobile dealers are usually responsible for defects and repairs as are described in the automobile warranty issued when the automobile is sold new.

“AS IS” MERCHANDISE

A seller who wishes to avoid warranties that would obligate him or her to make repairs to the merchandise sold if necessary may offer goods for sale “AS IS.” Ordinarily, it is commonly understood that agreeing to accept an item “AS IS” implies that you are willing to assume the risk that you might receive defective merchandise and to forfeit any claim against the seller for such a defect. Thus, if the contract for the sale of any given good is stamped “AS IS” and you accept its terms, all warranties for the good are excluded from the purchase. However, you can refuse to buy any item that is designated “AS IS,” and in most cases you should choose to do so, especially when it comes to expensive or large purchases, in order to protect your legal rights as best you can.

LIMITS ON FINANCE CHARGES

There is a limit to the finance charges which a seller in Illinois may add to the price of goods purchased on the installment plan. Any charge in excess of the limit is illegal and is a basis for the cancellation of the contract if you desire to do so. The finance charge must be disclosed on the face of the contract. Do not sign any sales contract until you are certain that you can afford the finance charge and that the charge is in compliance with the law. If you have any doubts, do not sign the contract until you have consulted your lawyer. It is wise to treat a pur-

chase on credit with the same caution and care you would exercise in obtaining a loan from a bank or other financial institution. Your lawyer can provide the advice you may need to avoid entering an unfavorable contract. Remember, whenever you contemplate signing a binding contract, be sure you understand the terms of the agreement. An ounce of prevention is always worth a pound of cure.

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