

13

CONSUMER RIGHTS WHEN A SALESPERSON CONTACTS YOU AT HOME

§ 13. 1. Introduction

This consumer rights chapter provides information on your rights when confronted in your home by a telephone or door-to-door salesperson. It contains the following sections:

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§ 13. 2. Door To Door Sales

Purchasing goods or services from a door-to-door sales person (which can include sellers who *telephone* you at home), may be more convenient and may appear inexpensive, but there are also tremendous risks. When someone is selling you something in your own home they have you at a significant disadvantage. First, it is much harder to ask someone to leave your home (or even to say no to them), than it is for you to leave a store. Second, most door-to-door sales are conducted by

businesses that are not located in your general area, and in many cases not even in the state, so if you need to complain about the product or service, it is much more difficult and often impossible to receive satisfaction.

Because the door-to-door seller often has no permanent place of business and may even be from another state, there is a much greater risk of being cheated. Once you have parted with money, you may never receive the product at all, or the quality and quantity of the product may be less than you bargained for.

Maine law protects consumers from the unequal bargaining power of the salesperson who knocks on your door or calls you at home and the excessive risks associated with transient sellers. Following is a summary of your rights and responsibilities. If you do buy from your home, take full advantage of the law and use your common sense.

§ 13. 3. You Have A Right To A Written Contract

The Maine Consumer Solicitation Sales Act¹ states that if you are first approached by a salesperson *in your home*, or *by telephone*, or anywhere, except in the seller's store,² and the transaction is for \$25 or more, and you are not going to resell the purchased item, then in most cases,³ there must be a written contract.

In other words, in Maine if a telemarketer calls you at home and you agree to buy a good or service costing more than \$25, the telemarketer must send you a written contract which you must sign and return before the sale is final. The written contract must contain the signature of the consumer and seller, the date, the terms of the agreement and the name and permanent business address of the seller. The contract must also contain a statement which informs the consumer of the right to cancel within three business days (Monday through Saturday, unless it is a federal or state holiday). *See* Chapter 28 on How to Avoid Mail Order and Telemarketing Fraud. Violation of this law can be a Maine Unfair Trade Practice Violation⁴ and a Class E crime (or Class D crime, if the violation was intentional).⁵ The Maine Uniform Commercial Code (U.C.C.) sets forth contract law regulating the sale of goods by a merchant to consumers.⁶ The U.C.C. and other statutory provisions, principally the Statute of Frauds⁷ require certain contracts to be in writing before a court will enforce them (*e.g.*, contracts for goods costing \$500 or more).

¹ 32 M.R.S.A. §§ 4661-4670; similar requirements for home credit sales are found at 9-A M.R.S.A. § 3-501 - 3-507. These laws apply to sale contracts for \$25 or more.

² The Federal Trade Commission has adopted parallel protections in its "Cooling-off Rule," 16 C.F.R. Part 429; 60 Fed.Reg. 54180 (October 20, 1995). This Rule makes clear that the sale can take place in parking lots, hotels, convention centers, restaurants, and other places outside the seller's principal place of business. For example in a recent opinion by its legal staff, the F.T.C. found that this Rule applied to a consumer who purchased \$300 worth of photographs from a Florida company that was operating out of a North Carolina hotel room.

³ Sales that are exempted from this law include bond or stock sales, insurance sales, and sales by a "supervised lender." *See* 32 M.R.S.A. § 4668.

⁴ 5 M.R.S.A. § 207, *See* Chapter 3 in this Guide.

⁵ 32 M.R.S.A. § 4667.

⁶ *See generally* 11 M.R.S.A. §§ 2-101 to 2-725.

⁷ 33 M.R.S.A. §§ 51-53. The purpose of the Statute of Frauds is to "prevent perjury and fraud." However, a defendant in a contract enforcement action may waive the statute's protection, allow verbal evidence of the contract, and become bound by it. *Dehahn v. Innes*, 356 A.2d 711, 717-18 (Me. 1976).

§ 13. 4. You Have A Right To Cancel Any Contract Within Three Business Days

Even if you have signed a valid contract with the door-to-door seller or telemarketer, you have the right to cancel it within three business days (Monday through Saturday, unless it is a federal or state holiday) of the date of the contract.⁸ **Please note:** generally speaking door-to-door or telephone sales are the **only** consumer contracts for which a consumer has three days to cancel.

To cancel the contract, you must give written notice to the seller at the address stated in the contract. The notice can be in whatever form you choose so long as your intent to cancel is clear. If this notice is mailed, it is effective if deposited in a mailbox by midnight of the third business day (weekday) following the date on the contract.⁹

If the contract is for *permanent home improvements*, then the seller may not *even begin* work until the three-day time period has expired.¹⁰ If work has started or been completed, and you have properly canceled your contract, then you owe nothing to the seller.¹¹

§ 13. 5. Payment For Referred Customers

It is illegal for a door-to-door seller to offer to pay you a commission, rebate, or discount or refund to help the seller in any way to sell to another person, if this commission depends on the referral customer actually contracting to buy from the seller.¹² For example, if the seller promises to pay you money for the names of any neighbors who actually buy his product the seller has violated the law. It is *not* illegal for the seller to offer you money or a refund simply for the names of possible future customers.

§ 13. 6. You Have A Right To A Complete And Timely Refund Of Any Deposit Upon Proper Cancellation Of A Contract

A. Cash Sales

If the sale was for cash, and you have either returned the goods or made them available to the seller, then the seller must return your deposit within 15 days of the date you canceled.¹³ **NOTE:** You must make the goods available for the seller to retrieve for a 20 day period following the date you canceled the contract. If the seller doesn't pick up the goods within this time, you can keep them.¹⁴

⁸ 32 M.R.S.A. § 4663; 9-A M.R.S.A. § 3-502. See *Mountain Springs*, CV-95-419 (Me. Super. CE., Kenn. Cty., June 17, 1996); *Recovery Market Services, Inc.*, CV-94-83 (Me. Super. Ct., Kenn. Cty., June 28, 1996).

⁹ 32 M.R.S.A. § 4664; 9-A M.R.S.A. § 3-502.

¹⁰ 32 M.R.S.A. § 4664-A; 9-A M.R.S.A. § 3-502(5).

¹¹ See *Caulkins v. Petullo*, 513 A.2d 43 (Conn.1986) (a contractor cannot seek restitution for work done in violation of a Connecticut law that requires all home construction contracts to be in writing).

¹² 32 M.R.S.A. § 4669.

¹³ 32 M.R.S.A. §§ 4665-4666.

¹⁴ 32 M.R.S.A. § 4665.

B. Credit Sales

If the sale was on credit, the seller *must*, within 20 days of being notified of the cancellation, return any down payments or notes you have signed. You can keep the goods until you've received your refund. You have this right even if the contract states otherwise.¹⁵ **NOTE:** You must make the goods available to the seller to be retrieved for 40 days after the date of cancellation. If the seller doesn't retrieve them within this time, you can keep them.

§ 13. 7. All Door-To-Door Sellers Must Be Licensed Or Have A Permanent Place Of Business In Maine

The Transient Sellers Act¹⁶ states that if the seller does not have a permanent place of business in Maine where you can contact him (a home or building owned or held under a 12-month lease or rental agreement), then the seller must apply for a state license. The seller is *required to carry a copy of this license* with him during his door-to-door selling trips. Any advertisement of a transient seller in Maine must display the seller's license number. This law does not apply to sales worth less than \$25 or to sales of food or to sellers of such regulated products as goods, insurance, and bank services (e.g., credit cards).

While the Transient Seller's law **does** apply to telephone calls to the home or personal visits to the home, it usually does not apply to contact by mail. The one exception to this rule is when a transient seller contacts you by mail and offers you merchandise or money prizes free of charge but requires you to pay money to obtain the prize. This can be both an unfair trade practice and a Class E crime (or a Class D crime if the violation was intentional).¹⁷

In general, it is always wise to comparison-shop with local merchants before doing business with a transient seller. If the transient seller performs poorly, it is often very difficult to contact him in order to complain.

If you do decide to purchase merchandise from a transient seller, the seller must provide you with a written receipt, which displays his license number as follows: "**State Department of Professional and Financial Regulation Transient Seller's License Number.**" Out of state multi-level sales organizations which do not have a permanent place of business in the state must also be registered as transient sellers as well as their employees (including "independent contractors").¹⁸

Licensed sellers must post a substantial bond or security deposit with the Department of Business and Financial Regulation unless they qualify under the strict waiver requirements. This security deposit or bond is used to satisfy any judgments, including fines and penalties, arising against the transient seller in connection with his sales to consumers in the State. The security deposit or bond is not refunded until 12 months after the expiration of the seller's license. In order to find out if a salesman is a licensed transient seller, demand to see a copy of his license, or call the Department of Professional and Financial Regulation, Licensing and Enforcement Division at 207-624-8603.

¹⁵ 9-A M.R.S.A. §§ 3-504-505

¹⁶ 32 M.R.S.A. §§ 14701-14716.

¹⁷ 5 M.R.S.A. § 207; 32 M.R.S.A. § 14713.

¹⁸ 32 M.R.S.A. § 14703. *See State of Maine v. Club Atlanta Travel*, No.CV-97-101 (Me. Sup. Ct., Kenn.Cty., 1997) (Consent Decree in which court fined multi-level marketing organization \$5,000 and required it to be registered as a transient seller).

§ 13. 8. Home Repair Transient Sellers

All door-to-door sellers of home repairs (driveway paving, chimney repairs, siding, tree-trimming, etc.) must be registered with the State.¹⁹ The door-to-door seller *must* include his state registration number in the written contract the seller gives you. Failure to be registered or to reveal the registration number can be an unfair trade practice and a Class E crime (or Class D crime if the violation was intentional).²⁰ This new law is called the Door-To-Door Home Repair Transient Sellers Act and covers any home repair seller who does not have a permanent place of business in the municipality in which the solicitation is being made.

§ 13. 9. Frozen Food Sales

Door-to-door sellers of frozen food service plans in Maine must allow the first time buyer 10 days to cancel the contract. Further, the consumer can also cancel the contract the day the food is actually delivered.²¹

§ 13. 10. Remedies

If the seller has not followed the requirements of the Consumer Solicitation Sales Act (32 M.R.S.A. § 4661), the Home Solicitation Sales Act (9-A M.R.S.A. § 3-501), the Transient Sales Act (32 M.R.S.A. § 4681), or the Door-to-Door Home Repair Transient Sellers Act (32 M.R.S.A. §14512), as described in the preceding sections, then you have the following rights:

A. Cancel The Contract

Under the Unfair Trade Practices Act (5 M.R.S.A. §§ 207, 213) you can cancel the contract and receive a full refund of any deposit you may have made.

B. Sue Under The Maine Unfair Trade Practices

A violation of any of the above door-to-door or telephone sales laws is a violation of the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 207, 213). You can sue under this Act to recover damages or the return of your money plus attorney's fees and court costs: (1) in Small Claims Court, provided the amount of the contract is \$4,500 or less; (2) in District Court; or (3) in Superior Court. *See* Chapter 27 of this Guide for a guide to Small Claims Court.

C. Report Any Suspected Violations To Your Local Police

A violation of either the Consumer Solicitation Sales Law or the Transient Sales Act may subject the seller to criminal penalties. Violation of these laws can be a Class E crime (or a Class D crime, if the violation was intentional).²²

§ 13. 11. Credit Card Purchases

If you pay for your goods and services with your credit card and you then have a dispute with the merchant because you think the merchant has violated the contract (*e.g.*, did not deliver the goods you ordered, misled you as to what goods or services would actually be provided, etc.) then any claims or

¹⁹ 32 M.R.S.A. §§ 14501-14512.

²⁰ 32 M.R.S.A. § 14512.

²¹ 9-A M.R.S.A. § 3-502(1-A,6) (credit sales); 32 M.R.S.A. § 4664 (cash or credit sales).

²² *See State of Maine v. John Durfee*, 539 A.2d 629 (Me. 1988) (driveway paver who did not use required written contract and did not wait three days to commence paving convicted of a crime and sentenced to jail).

defenses (other than tort claims) you might have against the merchant can also be raised against the issuer of your credit card.²³ However, before you can refuse to pay the issuer of your credit card the following requirements must be met:

- A. You must have made a good faith effort to resolve your dispute with the merchant. This can be accomplished by writing a letter to the merchant and keeping a copy of your letter as proof that you attempted to resolve your dispute.
- B. The amount of initial transaction with the merchant must exceed \$50; and
- C. The place where the initial transaction occurred has to have been in Maine (or within 100 miles of your Maine address).

When a merchant (either in state or out of state) contacts a consumer in the home, either in person, by telephone or by mail, then that transaction is taking place in the state of Maine and therefore any claims or defenses the consumer might have against the merchant can also be raised against the credit card issuer. *See* §§ 12.9 and 28.6 in this Guide for further information concerning your rights when you purchase by credit card.

§ 13. 12. Fraudulent Telemarketers

Both Maine and Federal telemarketing laws protect consumers from unfair telemarketer sales pitches. Maine's Consumer Solicitation Sales Act is particularly important because it requires telemarketers who initiate the sale by phoning you at home to provide you with a written contract that gives you three days to back out of the sale. *See in general* Chapter 28 in this Guide, How to Avoid Mail Order And Telephone Fraud.

The Maine Attorney General has sued two telemarketing companies and was able to make significant recoveries for Maine consumers. The state sued Mountain Springs Water Treatment Co. for allegedly deceptive practices in selling water softeners.²⁴ When the company closed and left no assets the state went after the three companies that had financed the consumers' purchases. These companies agreed to provide \$507,771 in financial relief to 200 Maine consumers.

In a separate case, the State sued Research Marketing Systems, Inc. on charges of fraudulent telemarketing practices.²⁵ The company allegedly tricked consumers into paying \$99 to \$999 to recover money the consumer had already lost to fraudulent telemarketers. But the company's recovery services were little more than form letters under the consumer's signature. In a court approval settlement, RMS agreed to distribute \$136,465 to 2,000 customers nationwide.

Finally, be careful of "negative option" sale tricks. A "free trial" period may result in a year of unwanted credit card charges. See Chapter 12, § 15 in this Guide.

§ 13. 13. Selected Statutes

A. Consumer Solicitation Sales Act: 32 M.R.S.A. § 4681, Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

²³ 9-A M.R.S.A. § 8-303(6). These limitations do not apply if the merchant itself issued (or controls) the credit cards you used for the purchase.

²⁴ *State of Maine v. Mountain Springs Water Treatment Co.*, No.CV-95-419 (Me. Sup. Ct., Ken.Cty, 1996).

²⁵ *State of Maine v. Recovery Marketing Systems, Inc.*, No.CV-94-83 (Me. Sup. Ct., Ken.Cty, 1996).

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose, except resale in the ordinary course of trade or business.
2. Merchandise. "Merchandise" includes any objects, wares, goods, commodities, intangibles or services.
- 2-A. Permanent place of business. "Permanent place of business" means the building or other permanently affixed structure, including a home residence, which is used in whole or in part for the purpose of engaging in sales of consumer merchandise. "Dealer" means any person or legal entity which meets the Used Car Information Act definition of a "dealer" at 10 M.R.S.A. § 1471, sub-§ 2.
3. "Implied warranty" means any implied warranty arising under the Maine Uniform Commercial Code, 11 M.R.S.A. § 2-314 (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.
4. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit.

B. Consumer Solicitation Sales Act: 32 M.R.S.A. § 4662, Contents Of The "Door To Door" contract

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call upon the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact, the contract shall be in writing, bear the signature of the seller and the consumer, contain the date of the transaction, the terms of the sale or offer, the name and the mailing address of the seller's permanent place of business, a statement of the consumer's right to avoid as provided in this subchapter and a statement of the limitation contained in section 4664-A. A completely executed copy of the contract or agreement shall be furnished by the seller to the consumer immediately after the consumer signs the agreement or contract.

C. Transient Sellers Act: 32 M.R.S.A. § 14701, Definitions

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose except resale in the ordinary course of trade or business.
2. Employee. "Employee" means any independent contractor, agent or person working for a salary or commission.
3. Merchandise. "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical and vocational schools located outside of the State which are registered pursuant to Title 20, Section 2661.
4. Permanent place of business. "Permanent place of business" means any building or other permanently affixed structure, including a home residence, which is owned or held under a 12-month lease or rental agreement at the time business is commenced, and is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

5. Person. "Person" includes natural person, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.
6. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale, promise to sell, attempt to sell, or advertisement for sale, of any merchandise for cash or for credit.
7. Transient seller of consumer merchandise or transient seller. "Transient seller of consumer merchandise" or "transient seller" means any person who engages in the business of selling merchandise to consumers by means of personal contact or telephone contact, whether or not the seller is present in the State at the time of the contact or the time of sale, and who does not have, for the purposes of carrying on such business, any permanent place of business within this State. "Transient sellers of consumer merchandise" does not include persons who sell at public fairs, expositions or bazaars or members selling on behalf of public service organizations. "Transient sellers of consumer merchandise" does not include persons who sell exclusively by mail contact, except for persons who offer merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who require the recipient to pay something of value in order to participate in this offer, including, but not limited to, entrance fees, processing fees or handling charges. A "transient seller of consumer merchandise" does not include a supervised lender as defined in Title 9-A, section 1-301, subsection 39.

D. Door-To-Door Home Repair Sellers: 32 M.R.S.A. § 14501, Definitions

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of home repair services
2. Department. "Department" means the Department of Professional and Financial Regulation, Division of Licensing and Enforcement.
3. Door-to-door sales. "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.
4. Employee. "Employee" means any independent contractor, agent or person working for a salary or a commission who is affiliated with a home repair seller.
5. Home repair seller. "Home repair seller" means any person, partnership, corporation, business, trust or other legal entity that sells or provides home repair services.
6. Home repair services. "Home repair services" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. "Home repair services" includes, but is not limited to, the construction, installation, replacement, improvement or cleaning of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, plumbing fixtures, storm doors, storm windows, siding or awnings or other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

7. Permanent place of business. “Permanent place of business” means a building or other permanent structure, including a home residence, that is owned or held under a 12-month lease or rental agreement, from which business is commenced and that is used in whole or in part for the purpose of engaging in sales of home repair services.
8. Residence. “Residence” means a single-family or multifamily dwelling, including but not limited to a single-family home, apartment building, condominium, duplex or town house that is used or intended to be used by its occupants as a dwelling place.
9. Transient seller of home repair services. “Transient seller of home repair services,” “transient seller” or “seller” means a home repair seller who engages in the business of door-to-door solicitations or sales of home repair services who does not have, at the time of the solicitation or contract, a permanent place of business in the municipality in which the door-to-door solicitation or sale occurs.