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HOW TO ENFORCE YOUR CONSUMER RIGHTS

§ 1. 1. Introduction

This consumer rights chapter provides general information on how you can enforce your legal rights in the marketplace. It contains the following sections:

§ 1. 2. Complain And Correct

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§ 1. 2. Complain And Correct

The seller depends on the buyer for his living; the buyer depends on the seller for goods and services. Both benefit from high standards in the marketplace. As a buyer, you play an important role in upholding these standards. The seller, after all, is in the business of satisfying your demands.

Consumer studies reveal that only approximately ***one third*** of dissatisfied buyers complain. Many are unwilling to complain because they feel they will not be successful. They find that complaining is demeaning and frustrating. Often, they are embarrassed to admit that they have been duped.

The best buyer strategy, of course, is to shop very carefully. However, when you do end up with unsatisfactory products or services, you not only have a right, but also a responsibility to complain. Your responsibility is threefold:

A. To yourself — to get your money's worth,

B. To other buyers — to prevent repeated unfair sales tactics; and

C. To the seller — to hold the seller to fair standards.

When you settle for less than your money's worth, you do no one a favor. You merely make more room in the marketplace for poor products and shoddy service.

So, when you have a problem: ***complain***. But remember, there is a difference between effective complaining and simply bellyaching. The first is a serious attempt to correct a specific problem. The other is a vague and general expression of disgruntlement. Effective complaining gets results. Bellyaching does not.

To effectively complain you should:

A. Make sure you have a legitimate grievance and proof to support it — receipts, repair estimates, warranties, and other documents.

B. Complain promptly to someone with authority to correct the problem.

C. Explain exactly what is wrong and how you want it corrected.

D. State your case politely; remain calm and reasonable, yet be firm and persistent.

Your chances of resolving your problem increase when you take time to plan your complaint strategy. First decide whether to complain by letter, by phone, or in person. Minor problems may be disposed of quickly and easily by phone. Others may call for a face-to-face discussion and a follow-up letter. Some problems may be best handled by letter alone. Assess the situation and choose the most appropriate strategy.

§ 1. 3. Model Consumer Complaint Letter

Whether or not you choose to complain by letter, write a letter anyway. Outline the steps you plan to take to correct your problem. This exercise will clarify the problem and enable you to explain it to someone else in an orderly and reasonable manner. It may also help you vent steam and prevent you from blowing your top later. Here is an example of a properly constructed complaint letter:

Date

Seller's Name
Seller's Address
Dear (Seller):

I bought a (*brand name*) color television set, model #____, serial #____ from your Pleasant Avenue store on May 21, 2007.

Reception was poor from the start. On June 1, your repairer, (repairer's name) came to my home to try to adjust the set. While she improved focus and color slightly, the image remains blurry. I am left with an unclear picture and a $20 service charge.

Since my warranty clearly covers the cost of all parts and services for one year after purchase, the bill apparently was sent in error.

I ask for two things:

1) that you confirm in writing that I owe nothing for the June 1 house call.
2) that you either fix the set without charge or replace it with another TV of the same model.

I enclose copies of the sales receipts, warranty, and June 1 bill.

I hope you will give this matter your prompt attention. Please reply to my letter no later than _____. Thank you.

Sincerely,

Your name
Your address
Your telephone number

cc: Attorney General's Consumer Protection Division
Better Business Bureau
Chamber of Commerce
(other appropriate agency)

Describe the item or service you are complaining about completely and accurately

Be specific about the place and date of purchase.

State your complaint.

Ask for what you want.

Enclose COPIES (not originals) of pertinent documents.

Give deadlines for response: (e.g., 10 business days) or use the specific date by which you want a reply (e.g. "no later than August 5, 20__")

Note where you send copies of the letter.

§ 1. 4. Complain To The Source Of The Problem

Once you have figured how best to express your complaint and how you want it corrected, go directly to the source of the problem. Most likely, you will be able to resolve it right there. Begin by assuming you will. Never rant and rave. On the telephone, in a letter or face-to-face, be firm, but pleasant. Use this eight-point complaint system.

A. Identify yourself and explain your problem clearly and concisely. If you are complaining by letter, you will increase your chances of receiving prompt attention if you limit your letter to ***one or two*** typed or clearly written pages.

B. Have receipts and all pertinent documents available for review. If you are complaining by letter, enclose ***copies*** of these documents. Save the originals ***and keep a copy of the letter***.

C. Send your complaint letter by ***registered mail*** for proof that it was received. If you are mailing copies of the letter to consumer groups or government agencies, list their names at the letter's end, so the company will know that they have been contacted. These copies may be sent by regular mail.

D. Keep a record of the ***name and title*** of everyone you complain to and the date the conversation took place.

E. Give the person hearing your complaint a fair chance to respond. Listen attentively and ask for clarification of anything you don't understand. If you are complaining by mail, allow adequate time for response. Remember to put in the letter the ***actual date*** you want to hear from the company (*e.g.*, "Please respond no later than June 15, 2000"). This way you will know when the business is ignoring you. Ten days to two weeks is reasonable.

F. Stand firm. Do not accept a solution you feel is inadequate.

G. Promptly confirm any agreement by letter. Insist that all promises be put in writing.

H. If you think your legal rights have been violated (*e.g.*, you were sold a defective good), you might want to copy the relevant chapter from this Guide and send it to the business.

Often you will not have to take your problem further than the store you did business with. Most merchants rely on repeat business. They want to maintain a good reputation with their customers. When you complain about a product or service, they are likely to look on the complaint as an opportunity to leave you with a good impression.

There will be times, however, when you will have to climb up the next rung of the complaint ladder and talk with the manager or manufacturer. Most of the merchandise sold in Maine is manufactured outside the state. Also, many Maine firms are part of a large chain of stores with out-of-state headquarters. Often a complaint letter to the manufacturer of a product or to the regional or main office of a chain will get results when a complaint with a local store goes nowhere. If the local manager cannot or will not refer you to his central office, look it up in the ***Standard and Poor's Annual Directory of Corporations***. This directory is available at most libraries. If you still cannot find the proper office to contact, you can contact the state government agency which regulates corporations. In Maine all corporations are regulated by the Maine Secretary of State (207-626-8400) www.maine.gov/sos/cec/corp.This agency can tell you the name, address, principals and legal agent of

any Maine corporation. In addition, the Secretary of State may be able to supply the headquarters' address of an out-of-state corporation. Send your complaint to the person listed as the corporation's "legal agent." *See* Chapter 30, Consumer Assistance Resources, for a listing of consumer assistance agencies.

§ 1. 5. Using a Mediation Service

If complaining to top management proves unsuccessful, you may have to call a business, trade or professional association, consumer group or government agency for help. For example, you might want to ask the ***Attorney General's Consumer Mediation Service*** to assist you. We will contact the business concerning your complaint. If it is not quickly resolved we will then assign a mediator to work with you and the business in an attempt to resolve the dispute. This service is free. You can reach us by calling 207-626-8849, 800-436-2131, or by putting your complaint in writing and mailing it to:

Maine Attorney General
Consumer Protection Division
Consumer Information and Mediation Service
6 State House Station
Augusta, ME 04333-0006

See § 1.8 for a further description of our Mediation Service.

You may also want to contact your ***local Chamber of Commerce***, which will ask the business for its side of the story and then try to help you and the business find an acceptable solution. In addition, Maine has a branch of the ***Better Business Bureau***, which attempts to resolve consumer complaints and also offers arbitration of disputes. It can be contacted at:

Better Business Bureau
225 West Central St., Suite #1
Natick, MA 01760-3767
Phone: 800-4-BBB-811, info@boston.bbb.org
complaints@boston.bbb.org

The Maine Lemon Law also provides a free state arbitration hearing within 45 days of a properly completed application. *See* Chapter 7, The Maine Lemon Law and State Arbitration. Finally, many corporations (*e.g.*, car manufacturers) provide their own mediation services. Check your express warranty to see if mediation is offered.

§ 1. 6. Low Cost Legal Remedies

If your complaint or mediation efforts are not successful you may want to explore your legal options beyond these informal measures. Here are some options for you to consider:

A. Small Claims Court

Small Claims Court is a "people's court" where you don't need a lawyer. Costs are minimal and the procedures are simple and informal. *See* 14 M.R.S.A. §§ 7481-7486.

You can use Small Claims Court for two purposes: (1) to recover financial "damages" ***if you are not claiming more than $6,000***[1], exclusive of interest and costs, and (2) to obtain certain types of "equitable relief" — an order from the court to the defendant (the person you are suing) to "return, reform, refund, repair or rescind."[2] For example, the court might order the defendant to properly repair a TV set. Small Claims Court also provides a mediation service.

For more information about Small Claims Court, contact the clerk at your nearest District Court. The phone number of your District Court can be found by looking under, "Maine State of," in the white pages of your phone book. *See also* Chapter 27 in this Guide, A Consumer's Guide to Small Claims Court.

B. Private Legal Help

Sometimes the nature of your consumer problem will require hiring a lawyer. Finding a lawyer and paying for his or her services can be difficult. Here are some suggestions:

(1) *Ask Your Friends*

Ask your friends or someone you know and trust to provide you with the names of lawyers they have used and whom they know do good work. You should also check advertisements in newspapers and Yellow Pages.

(2) *Lawyer Referral Service*

The Maine Bar Association sponsors the Lawyer Referral and Information Service. This program provides you with an inexpensive initial meeting with a lawyer in your area to determine if you have a case worth pursuing. For a $20 fee, you receive a 30-minute discussion of your problem with a lawyer "experienced and/or competent" in that area. The Lawyer Referral Service can be contacted at 124 State Street, P.O. Box 788, Augusta, Maine 04332-0788 or by calling 207-622-1460 or 1-800-860-1460.

(3) *Pine Tree Legal Assistance*

Pine Tree Legal Assistance provides free legal service to low-income individuals in three subject areas: government benefits, landlord-tenant problems and certain types of consumer problems. Some of the six Pine Tree offices also handle a limited number of domestic relations cases such as divorces and child custody disputes.To determine if you are eligible for legal help from Pine Tree, and whether they handle your type of problem, contact your nearest Pine Tree office. The offices are located in: Augusta (207-622-4731); Bangor (207-942-8241); Machias (207-255-8656); Portland (207-774-8211); Presque Isle (207-764-4349); and Native American and Farmworker Units, Bangor (800-879-7463).

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[1] What if your total claim is for more than $6,000, can you still file your case in Small Claims Court? Yes. Let's imagine that you hired a contractor to build you a new home and you feel you are a victim of poor workmanship. You've determined your damages total $7,500 and are as follows: $4,000 to repair a roof that leaks, $2,000 for insulation the contractor failed to install, and $1,500 to repair the new driveway which has developed sinkholes. You can still go to Small Claims Court and seek damages of up to$6,000. If your lawsuit is successful you'd have enough to repair the roof and the installation but not the driveway. But can you sue the contractor later for the poorly constructed driveway? No. You only get one bite at the repair apple. *See* 14 M.R.S.A. §7485.

[2] 14 M.R.S.A. § 7481

(4) *Legal Services For the Elderly*

Legal Services For the Elderly handles miscellaneous cases at no charge for people over 60 years old. Its offices are located in the following Maine areas: Aroostook (1-800-439-1789); Eastern (1-800-432-7812); Southern (1-800-427-7411). The State-Wide Information Hotline is 1-800-750-5353 (207-623-1797 in the Augusta area).

(5) *Volunteer Lawyers Project*

All lawyers are under a general ethical obligation to provide a certain amount of free legal work to needy clients. The Volunteer Lawyers Project finds lawyers for low-income Maine citizens. It can be reached at 1-800-422-4293 or, in the Portland area, at 207-774-4348.

(6) *Cumberland Legal Aid Clinic*

The Cumberland Legal Aid Clinic is staffed by third-year law students under attorney/professor supervision. The clinic handles all civil and criminal matters (except minor traffic infractions) and a limited number of domestic relations cases in Portland area courts. The program runs year round. It is limited to low-income persons. The clinic is located at 59 Exeter Street, Portland, Maine 04102, adjacent to the University of Maine School of Law, and can be reached by calling 207-780-4370.

§ 1. 7. Looking Up The Law

There are three sources of law in Maine:

A. Statutory Law: The laws enacted by the Legislature and Congress;

B. Case Law: The law developed by the courts from statutes and the Constitution; and

C. Regulations: The rules developed by state and federal agencies pursuant to the laws enacted by the Legislature and Congress.

In some cases you may want to look up the specific law that applies to your question. To track down a Maine law or regulation that applies to your problem, contact the Maine Law and Legislative Reference Library (43 State House Station Augusta, Maine 04333-0043, 207-287-1600, www.state.me.us/legis/lawlib). The Librarians are very helpful and can answer your questions. You can also contact Garbrecht Law Library at the University of Maine Law School (207-780-4817), or any of the county libraries, which are located at each county's Superior Court. *See* § 31.8.

§ 1. 8. Attorney General's Consumer Information And Mediation Service

A. Who Can Use The Attorney General's Consumer Mediation Service?

The Attorney General's Consumer Mediation Service is a free service to Maine consumers who have a problem with a business. By offering this service, the Consumer Protection Division is able to monitor the types of problems consumers are having around the state. The Attorney General's Office is then in a better position to protect Maine consumers from unfair and deceptive business practices. Businesses can also apply for our help in resolving consumer disputes.

B. What Is Complaint Mediation?

Complaint mediation is a way to settle disputes in which the two parties to the dispute work through a third person to solve their problem. It is a simple and informal process. The third person, or "mediator," helps the disputing parties understand each other's position and to reach a mutually acceptable agreement. Mediation is a proven method of quickly settling problems.

C. How Does Our Consumer Mediation Service Work?

Your complaint is reviewed to determine if it can be mediated. If it appears that it can be, a copy of your written complaint is then forwarded to the business for its response. At the same time, we notify you by letter to let you know we have started the mediation process. One of our ***volunteer*** mediators (not a state employee) is then assigned to your case. We use additional letters or phone calls to determine the facts. Our mediator tries to bring you and the business closer to agreement. Of course, in order to reach a satisfactory settlement, we need the voluntary participation of the business.

D. How Do I Start The Mediation Process?

To start the mediation process, fill out a Consumer Complaint Petition, available from the Consumer Mediation Service (6 State House Station, Augusta, ME 04333-0006, 800-436-2131 or 207-626-8849. If you cannot get through on the phone (it's often busy!) write us a letter or email us at consumer.mediation@maine.gov. Oftentimes, problems are the result of simple mistakes or innocent misunderstandings. We urge you to first discuss your problem with the business yourself. If this attempt at resolution fails, then it's time to try mediation.

E. Health or Human Services Help

If you need help concerning your health and human services needs, call 211. Maine's 211 telephone service (similar to the 911 number) will connect you to a wide array of health and social services in your community. Maine's 211 service allows you to talk to a person trained to connect you with a wide array of health and social services in your community. Maine's 211 service includes a state-wide directory of over 5,000 resources, including state and local agencies and support groups. You can also search Maine's 211 web site at www.211@maine.org.

F. For More Information, Contact:

Maine Attorney General
Consumer Protection Division
Consumer Information and Mediation Service
6 State House Station
Augusta, Maine 04333-0006
Phone: 800-436-2131 or 207-626-8849
Fax: 207-626-8812
E-mail: consumer.mediation@maine.gov

If our phone is busy (we receive thousands of inquires each year), please **mail or e-mail** us your complaint or question. We will respond as soon as we receive your message.