



LEGAL BRIEF

CONSUMER PROTECTION

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I. Introduction

Creech Air Force Base Legal Assistance: As with other areas of the law, consumer protection legal assistance is available primarily in the form of advice and counseling. However, Air Force legal assistance attorneys cannot represent you in court or in an adversary proceeding against a consumer entity.

Bring Appropriate Documents: Please bring copies or originals of all documents related to the consumer concern you have. Also, please write out a timeline or summary of the circumstances surrounding your concern and bring it with you when you come for a consultation.

Try Writing a Letter: Our experience tells us that simple letters resolve many consumer disputes. A dissatisfied consumer who already tried unsuccessfully to resolve his/her complaint verbally is often amazed to find that a neatly written, politely worded letter sent by certified mail gets results. The relatively simple act of putting one's complaints into writing shows a merchant that you are willing to go to a little extra trouble to make things right. You may convince them to see things your way. Even if the letter does not resolve your problem, a copy of the letter will serve as evidence to a court that you tried to resolve your disagreement. You should keep an organized file with copies of all correspondence and other papers associated with your consumer problem in case you must take it to court or complain to a consumer agency (see our attorney referral and/or small claims court brochure for a listing of appropriate agencies).

Consumer Financial Protection Bureau: This agency aims to make consumer financial markets work for consumers, responsible providers, and the economy by protecting consumers from unfair, deceptive, or abusive practices and acting against companies that break the law. Upon submitting a complaint, they will forward the complaint to the company in question and then work to get a response. The company will have 15 days to respond to the consumer and the CFPB. Consumers can review the company's response and have 60 days to give feedback about the response. To file a complaint, visit:

<https://www.consumerfinance.gov/complaint/>

The following law summaries may assist you with problems we see frequently. Because they are very general, you should consult with an attorney if you have specific concerns. We have created a "Consumer Protection" list of important numbers to contact in Section VIII.

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II. Dealing with Creditors

Fair Debt Collection Practices Act: This federal statute protects consumers from harassment by debt collectors. It applies only to third party collection agencies, those hired by primary creditors to track down bad debts.

Under the act, a collection agency may not:

- Contact you at work if your employer prohibits such communications;
- Contact you if you are represented by an attorney;
- Contact you at any unusual place or time; engage in any harassing, oppressive or abusive conduct; use any false or misleading representations;
- Create any forms which lead the debtor to believe that someone other than the true creditor, such as a government entity, is asking for payment; or
- Make certain specific threats prohibited by law.

If the consumer notifies the debt collector *in writing* that he will not pay the bill or that he desires no more communications with the collector, the collector's contact with the consumer is severely restricted by law. Once notified in writing, the collector may only communicate with the consumer to notify him that the collector is pursuing other remedies, such as a lawsuit. The debtor's remedies for a collection agency's violation of this act may include actual damages, court costs, attorney fees, and punitive damages.

Get Your Free Annual Credit Report: Federal law entitles you to one free credit report every 12 months from each of the three major credit bureaus (Equifax, Experian, and TransUnion). To get your free reports, visit the official, government-authorized site: <https://www.annualcreditreport.com>.

Fair Credit Reporting Act: Fair Credit Reporting Act ensures the accuracy and privacy of your credit report. If you are denied credit, employment, or insurance, you must be informed of which credit bureau supplied the negative information. You then have 60 days to request a free copy of your report and dispute any inaccurate or obsolete items. Most negative information remains for 7 years; bankruptcies for up to 10 years. If the credit bureau verifies a disputed item, you can add a 100-word statement to your file explaining your side. For help, find a sample dispute letter on the FTC's website: <https://www.consumer.ftc.gov/articles/disputing-errors-credit-reports>.

Fair Credit Billing Act: Fair Credit Billing Act (FCBA) provides a means of resolving disputes that arise over errors on periodic statements received from creditors. It covers "open end" charge accounts such as credit cards and overdraft checking accounts. The act does not apply to loans for fixed amounts such as car payments.

Some of the situations where the Fair Credit Billing Act might apply include:

- Charges not made by you or anyone authorized on the account;
- Charges for the wrong amount;
- Overdue bills mailed to an old address when you provided 20 days-notice of your move;
- Charges for goods or services you returned or did not accept; and
- Charges for which you requested an explanation or written proof of purchase.

To be protected by the law, you must send a written error notice to the creditor within 60 days of your receipt of the billing error. Such notice must be separate from any payments and include your name,

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account numbers, the nature of the billing error, and a specific explanation as to how the bill is erroneous. The creditor must in turn acknowledge your challenge within 30 days. The creditor then has 90 days from receipt to investigate and either correct the error or provide to you an explanation of the charges.

While the dispute is being resolved, you must pay the portion of the bill not in controversy. The creditor may not take any legal or collection action against you or report your debt to a credit bureau once you have started the dispute procedure. Creditors also cannot close or restrict your account, although they are allowed to count the disputed amount toward your credit limit.

If the creditor responds properly but insists that the bill is correct, the creditor may then turn your case over to a collection agency. The collection service, however, must be informed that you disputed the bill. The same holds true if the creditor reports the unpaid bill to a credit bureau. You should also note that the Equal Credit Opportunity Act prevents creditors from discriminating against consumers who in good faith exercise their rights under the FCBA.

Any creditor who fails to follow the provisions of the Fair Credit Billing Act forfeits the right to collect the bill. This applies even if the bill was correct all along. The creditor also loses up to \$50.00 in finance charges owed on the disputed bill for not complying with the FCBA. If the FCBA cannot resolve your dispute, you may sue the creditor in court.

III. Warranties

Nevada law imposes warranties that protect the buyer in the event that the goods sold do not perform as expected. The Nevada Commercial Code defines and regulates warranties that accompany the sale of goods. See Nevada Revised Statute (NRS) 104.2312-2316.

Any promise or statement made by the seller that relates to the goods sold and makes up a basis of the bargain between buyer and seller can create an express warranty. A description of the goods may also create an express warranty. These warranties can exist even if the words “warranty or guarantee” are not used. For instance, if you buy a garage door opener because the box says that it is easy to install, the maker has made an express warranty that the product will, in fact, be easy to install.

The law also provides for implied warranties. Unless specifically excluded or modified by the seller, every product carries an implied warranty that it will be fit for its ordinary purpose. This is a warranty that guarantees that a toaster will toast, a computer will compute, and so on.

The assurance that a product will be fit for a special purpose is another type of implied warranty. This guarantee arises when the buyer relies upon the seller’s expertise to sell suitable goods. If you, the buyer, know little about widgets and ask the seller to provide the correct widget for your needs, this type of warranty protects you in the event that the product sold to you does not do the job.

The buyer should be aware of the fact that all of these warranties can be disclaimed or modified by the seller. See NRS 104.2316. All implied warranties can be excluded by expressions like “as is” or “with all faults.” When buying a product that disclaims a warranty in this way, beware of any oral assurances made by the salespersons about warranties. They are likely to be unenforceable if the seller clearly indicates that the product is sold “as is.”

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IV. Car Repairs

Car repair laws for Nevada come under NRS Chapter 487 and deceptive trade practices are covered under NRS Chapter 598. Chapter 487 requires garages that repair motor vehicles to register with the Department of Motor Vehicles.

Written Estimates: You can get a written estimate or statement from the mechanic that will give you an idea of the repair cost before the mechanic begins. This estimate should include labor, parts, accessories, and taxes. If the estimate is just for seeing what is wrong, the estimate must include the cost of the diagnosis, the cost of taking the car apart, and the cost of putting the car together again, if you do not authorize the mechanic to continue. Specifically ask for this written estimate or statement.

Mechanic's Liens: Be advised that, once the shop performs work for you, it has a mechanic's lien on your car because it has done something for you (repair, storage, etc.) and is entitled to be paid in return. With this lien, the garage has the right to keep and eventually sell your car if you do not pay. It can also charge storage fees in the meantime. This type of lien is covered by NRS Chapter 108, with specific applications in the other cited statutes.

V. Nevada's Lemon Laws

Nevada has lemon laws to protect buyers of new and used cars. See NRS Section 597.600 (new cars) and Section 482.36662 (used cars). The new car rules require the dealership to repair any factory defect or replace the vehicle with a similar, suitable model if the statute's conditions are met. The used car rules require used car dealers to disclose engine and drive train defects.

For your vehicle to be considered a "lemon" in Nevada, it must meet specific criteria:

- **Substantial Defect:** The vehicle must have a defect or condition that "substantially impairs the use and value" of the vehicle.

This means the problem is not a minor annoyance but a significant issue.

- **Reasonable Repair Attempts:** The manufacturer or its authorized dealer must have been given a "reasonable number of attempts" to fix the defect.

This is generally presumed if:

- The same issue has been subject to repair four or more times.
- The vehicle has been out of service for repairs for a cumulative total of 30 or more calendar days.
- **Reporting the Defect:** You must report the nonconformity in writing to the manufacturer. This must be done before the manufacturer's express warranty expires or within one year of the vehicle's delivery, whichever comes first.

Consumers with grievances under new or used vehicle lemon laws should attempt to resolve their difficulties with the dealer directly before taking formal legal or complaint action. Using certified mail frequently lets a dealer know the consumer is serious about his/her complaint and is a very effective way of creating a written record of attempts to resolve difficulties. If a consumer cannot resolve differences with a dealer directly, he or she should consider filing the complaint to the filing with the Nevada Consumer Affairs at https://consumeraffairs.nv.gov/About/File_a_complaint/

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VI. Three Day Contract Cancellation

Many people believe that they can cancel any sale within three days of signing a contract. This belief is usually not true. Federal and state three-day cancellation rules exist, but they do not apply in most circumstances.

For example, once you sign a contract to buy a car, you normally have no legal right to cancel the contract. If you want out of the contract, you have to hope that the dealer is feeling kind or that a condition of the contract, such as approval of financing, is not fulfilled by the dealer or lender. Many states do allow for a “cooling off” period for car sales, but beware, you do not have any automatic right to cancel an auto purchase contract in Nevada. Nevada rules for door-to-door sales or leases of consumer goods or services are outlined in NRS 598.140 through 598.280. This rule does not apply to anything bought at the seller’s place of business.

Some stores have liberal return policies. Those return policies are not required by law. Stores follow their return policies to encourage customers to buy. Likewise, there is no three-day law requiring an apartment complex or home seller to give back your deposit if you choose not to rent or buy from them after having signed a rental or purchase contract with them.

VII. Victim of a Bad Check

If you received a check from someone, and that check does not have sufficient funds, you have three choices. First, you may continue to work with that individual, in the hopes that they will secure the proper amount necessary for you. Second, you may file an action in Small Claims Court. Finally, you are entitled to contact a special unit within Clark County’s District Attorney’s Office: Bad Check Unit, 200 Lewis Avenue, Lower Level #00256, Las Vegas, NV 89101; Tel: (702) 671-4701; Fax: (702) 455-6410

VIII. Resources Available to Victims of Consumer Fraud in Southern Nevada

Government Agencies:

- Nevada’s State Attorney General’s Office – Bureau of Consumer Protection: 702-486-3132
- Clark County District Attorney’s Office: 702-671-2500
- Nevada’s State Attorney General’s Office: 702-486-3420
- Federal Trade Commission: 1-877-FTC-HELP

Private Companies/Organizations

- Better Business Bureau of Las Vegas: 702-320-4500
- KTNV News13: 702-368-2255
- KSNV-TV: 702-642-3333
- KLAS-TV8: 702-792-8888
- KVVU-TV FOX 5: 702-436-8256

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