

CONSUMER LAW PRACTICE IN OKLAHOMA



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Introduction

Consumer protection laws are designed to protect consumers from unfair and deceptive trade practices by sellers of goods and services. Consumer laws exist at the federal and state level and are enforced by government agencies, offices of attorneys general, and through individual and class action lawsuits filed by victims. There are numerous federal laws such as the Federal Food, Drug, and Cosmetic Act, Fair Debt Collection Practices Act, the Fair Credit Reporting Act, Truth in Lending Act, Fair Credit Billing Act, and the Gramm–Leach–Bliley Act, etc. There are also numerous Oklahoma state laws such as the Oklahoma Consumer Protection Act, Home Repair Fraud Act, Telemarketing Restriction Act, Gift Certificate and Gift Card Disclosure Act, Manufacturer Warranties and the list goes on.

This continuing legal education paper is not going to focus on each of the various federal and state laws, but rather, it will explain some ways a solo or small firm lawyer may use to help a client with common issues that happen every day.

Automobile Purchases

Besides buying a house, the average consumer's largest financial purchase will be an automobile. When buying a new or used vehicle there is one rule that consumers need to understand. There is NO COOLING OFF PERIOD or 3-day right to cancel the

contract. For some reason, many consumers are under the impression that they have this option. It may be due to the Federal Trade Commission's Rule that gives a person a 3-day right to cancel a sale made at someone's home or workplace, or at a seller's temporary location.¹ Oklahoma has a similar state law.² So, unless the car salesperson shows up at a homeowner's door and solicits the sale, there is no right to rescind the contract. Once the contract is signed and the consumer has driven off the lot, there are very few options for canceling the contract and returning the vehicle.

Consumers buying new vehicles are probably less likely to show up at the door of a lawyer's office with a problem. In some cases, the consumer may have buyer's remorse and complain that they were pressured into the sale or that the advertising was deceptive. These types of cases are difficult to litigate, and a solo or small firm lawyer may not want to put resources into it. However, a lawyer can help the consumer by referring them to the Oklahoma Motor Vehicle Commission ("OMVC"). The OMVC's purpose is "licensing and regulating the new motor vehicle industry to benefit the people of Oklahoma."³ The OMVC has [complaint forms](#) available online at:

In rare cases, there may be mechanical issues with a new car that would fall under Oklahoma's "Lemon Law."⁴ The statute has some very strict guidelines that the consumer must follow to recover under that act. For example:

For the purposes of this act, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity, directly in writing, to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.⁵

This is just one of the provisions, and therefore, if a lawyer is interested in taking one of these cases, they should thoroughly advise the client on the procedures under the Act.

Lawyers are more likely to hear from disgruntled consumers regarding used car purchases. Many times, consumers will not quite believe the big 72 pt. font in the middle of the used car contract that states: **SOLD AS IS!** Lawyers need to evaluate whether there is an avenue to proceed with legal action. What is in the four corners of the contract; was there an intentional failure to disclose a known defect with the car; was there a warranty; or is there evidence fraud, such as rolling back the odometer? If there

¹ <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>

² Oklahoma Home Solicitation Sales Act, 14A O.S. § 2.502.

³ <https://www.ok.gov/omvc/>

⁴ Manufacturers' Warranties, 15 O.S. § 901.

⁵ 15 O.S. § 901.B

is any evidence of potential wrongdoing, a lawyer could write a demand letter to the car dealer for the client on a limited scope basis requesting the dealer take back the car with a refund for the client or loan forgiveness. Some of the smaller dealers carry their own notes and so this may be an easy fix. A lawyer may consider filing a lawsuit if the actions of the dealer were really egregious or this type a case may be one in which a lawyer helps the client file a small claims suit on a limited scope basis using District Court Rule 33.

As with new cars, consumers can be directed to the regulatory authority. The Oklahoma Used Motor Vehicle and Parts Commission has an [online complaint form](#) available and they offer a mediation service between the consumer and the dealer.

Home Repair Fraud

A home is the most valuable asset a consumer will purchase in their lifetime. Oklahoma does not require general contractors to be licensed and therefore, it can be tricky finding a competent contractor that has adequate insurance and assets to perform the work.

Roofers, home inspectors, electrical and plumbing companies must be licensed and bonded through the Construction Industries Board (“CIB”). A consumer can check their status on the [CIB’s website](#).

While evaluating whether to take a case on behalf of a homeowner against a contractor, a lawyer should consider the following factors.

1. Did the homeowner pay the contractor for work that was never done? If so, this may be a criminal case of embezzlement and the lawyer should consider referring the consumer to their local law enforcement agency or filing a complaint with the [Attorney General’s Consumer Protection Unit](#) (“CPU”).
2. Did the contractor do some of the work but did not finished the job? A solo practitioner may not want to invest in expensive litigation and therefore, it may be in the best interest of the consumer to file a consumer complaint with the Attorney General’s CPU. Their mediation services through the complaint process can often resolve these matters without further action.
3. Did the contractor do inferior or shoddy work? These are the most difficult contractor cases. As a criminal matter, many prosecutors will decline to invest the time and expense investigating these types of cases. It still may be in the best interest of the homeowner to file a complaint with CPU but it also may require litigation depending on the amount of money involved.

Filing Actions Under the Oklahoma Home Repair Act and the Oklahoma Consumer Protection Act

The Oklahoma Home Repair Act (“OHRA”) is restricted to contractor fraud and does not apply to other types of cases such as carpet installation or new home construction.⁶ The OHRA has some specific provisions that are useful for contractor cases. There are instances where an unscrupulous contractor will take advantage of a senior citizen and charge them far too much for the service. Under the OHRA, a contractor is liable for fraud if a court finds that they required “payment for the home repair at a price which unreasonably exceeds the value of the services and materials needed for the home repair.”⁷ A violation of the OHRA is subject to the provisions of the Oklahoma Consumer Protection Act.⁸

The Oklahoma Consumer Protection Act (“OCPA”) allows consumers to file private actions against sellers of goods and services⁹.

The OCPA lists 32 unlawful practices including various other statutes that violate the act, but the broadest provision is number 20 of Section 753. It is a violation of the act when a seller “commits an unfair or deceptive trade practice as defined in Section 752 of this title.¹⁰” Section 752 defines an unfair trade practice as:

“any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers”

Who is a Consumer under the OCPA?

The Oklahoma Supreme Court defined who qualifies as a consumer in a couple of cases in 2011 and 2012. Without a statutory definition the Court ruled that the plain and ordinary meanings of the term would prevail, particularly the Court found that a consumer is someone who purchases a good or service for their own use and consumption.

“the Consumer Protection Act extended to buyers only when they were also “consumers.” Because the term “consumer” was not legislatively defined, we turned to plain and ordinary meanings of the term focusing on definitions related to the use of purchased goods.¹¹”

“A person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.”¹²

Consumer Transactions under the OCPA.

⁶ 15 O.S. § 765.2 (B)

⁷ 15 O.S. § 765.3 (c)

⁸ 15 O.S. § 765.1

⁹Consumer Protection Act, 15 O.S. § 751 et. seq.

¹⁰ 15 O.S. § 753 (20)

¹¹ *James v. Tyson Food, Inc.*, 2012 OK 21 (citing *Lumber 2, Inc. v. Illinois Tool Works, Inc.* 2011 OK 74)

¹² Black’s Law Dictionary, Ninth Edition (2009). *Lumber 2, Inc. v. Illinois Tool Works, Inc.*, 2011 OK 74

The OCPA defines a consumer transaction as “the advertising, offering for sale or purchase, sale, purchase, or distribution of any services or any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value wherever located, for purposes that are personal, household, or business oriented.”¹³

The OCPA Exemption.

The OCPA exempts “actions or transactions regulated under laws administered by the Corporation Commission or any other regulatory body or officer acting under statutory authority of this state or the United States.”¹⁴ The Oklahoma Supreme Court confirmed these exemptions in the *Estate of Hicks v. Urban East, Inc.*, ruling that the “action or transaction” in the case at bar involves the services and level of care alleged to have been wrongfully represented to plaintiff’s decedent. As such, the action or transaction is regulated under laws administered by the Oklahoma Department of Health, as mandated by the Nursing Home Care Act. This places the action or transaction squarely within the exemption to the Oklahoma Consumer Protection Act found at § 754(2).¹⁵

Although an entity may be regulated by another regulatory body, it may not be exempt from the OCPA if the “action or transaction” does not fall under their regulations.

Identity Theft

A [report](#) by the U.S. Department of Justice estimated that 26 million persons or about 10% of all U.S. residents over the age 16 were victims of Identity Theft for the year 2016. This is up from 17.6 million in 2014. 85% of the incidents involved the misuse or attempted misuse of credit or banking information. The good news from this report is that over half of these victims were able to resolve the problem within a day or less and only 12% lost more than one dollar. Even though a person may not lose money after an incident, it is a stressful situation and a lawyer should be able to counsel their clients on these matters.

A good source of information on Identity Theft is the Federal Trade Commission’s (“FTC”) [webpage for Identity Theft](#). The FTC encourages lawyers to use these resources to help their clients. “The FTC’s IdentityTheft.gov can assist attorneys who counsel identity theft victims. The site provides victims with a personal recovery plan, walking through each step to take. It also provides pre-filed letters and forms to send to credit bureaus, businesses, and debt collectors.”¹⁶

The steps taken after an incident depends on the circumstances. Many times, a credit card company or bank will alert a consumer to a possible fraudulent transaction. In

¹³ 15 O.S. § 752(2).

¹⁴ 15 O.S. § 754.

¹⁵ *Estate of Hicks v. Urban East, Inc.* 2004 OK 36.

¹⁶ <https://www.consumer.ftc.gov/features/feature-0014-identity-theft>

these types of cases, a new card or account number is issued to the consumer and the case is closed.

Steps to Mitigate Damage by Data Breaches and/or Stolen and Lost Information.

If a consumer loses a credit card or it is stolen, or the consumer's personal information is compromised by a data breach against a company holding their information there are actions that can mitigate the damage.

1. The consumer should alert any creditors or banks that may have been compromised.
2. They should check their credit reports with the 3 major bureaus. Federal law allows consumers to download one free credit report from each of the bureaus every 12 months. They can go to <https://www.annualcreditreport.com/index.action> to do this.
3. They should consider putting a fraud alert or security freeze on their credit reports. A fraud alert lasts 90 days and requires a creditor to take certain steps to verify an individual's identity while applying for credit. A security freeze restricts access to a consumer's credit report and lasts forever unless the consumer releases it.¹⁷
4. They should monitor their accounts regularly.
5. File a police report with their local law enforcement agency. In 2007, the Oklahoma state legislature passed a law that required law enforcement agencies to allow a victim to file a report within their domicile regardless of jurisdiction.¹⁸

Senior Citizens and Consumer Law

Senior citizens are particularly vulnerable to unfair and deceptive trade practices. According to a bipartisan report by the United States Senate Special Committee on Aging, senior citizens lose over \$2.9 billion a year to financial scams.¹⁹ As the baby boomer population grows, these scams will continue to increase and cause pain and suffering to the elderly and their families. Most of these losses are caused by scammers rather than legitimate businesses.

The reasons that senior citizens are more vulnerable than younger adults are that they most likely have a "nest egg," which makes them a target, they tend to be more trusting of people, they are more unlikely to report fraud and they make poor witnesses.²⁰

¹⁷ <https://www.consumer.ftc.gov/articles/0497-credit-freeze-faqs>

¹⁸ 21 O.S. § 1533.3.

¹⁹ <https://www.aging.senate.gov/fraudbook/index.html>

²⁰ <https://www.fbi.gov/scams-and-safety/common-fraud-schemes/seniors>

Lawyers have limited options when dealing with elderly scam issues. For instance, telemarketing scams often involve criminals outside of the United States that use high pressure techniques to trick victims into sending money or providing financial information. Door to door home repair salespersons use fear tactics to scare the victim into signing a contract and then do shoddy work and disappear out of the state before law enforcement can be notified.

Here is a list of possible remedies to these situations.

1. The 3-day right to cancel a contract can apply to contractors who go door to door seeking a contract for home repairs.²¹
2. File a complaint with law enforcement.
3. Educate the family members to help guide the senior citizen to better decisions.
4. Set up a living trust and designate someone else to handle the financial affairs.
5. A Power of Attorney could be set up with a trusted relation or friend.
6. A financial Guardianship.
7. Contact Oklahoma Adult Protective Services in the Department of Human Services.

The list above may be helpful but one of the main reasons that senior citizens are victims in these cases is isolation. Many times, they live alone and do not have a lot social interaction. Fixing this part of the equation may be the key to stopping exploitation.

Conclusion

There are many types of consumer issues that a solo and small firm lawyer will encounter in their practice and this paper covered only a few of them. With today's rapid technological changes and a consumer driven economy, lawyers need to be prepared to offer a wider variety of legal services, including consumer laws.

²¹ Manufacturers' Warranties, 15 O.S. § 901

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Julie A. Bays graduated with a Bachelor of Arts degree, *summa cum laude*, from the University of Oklahoma in 1995 and was inducted into Phi Beta Kappa in April 1995. She graduated from the University of Oklahoma College of Law in 1998.

Ms. Bays joined the Oklahoma Attorney General's Office in April of 2002 where was responsible for prosecuting antitrust and consumer protection cases. Ms. Bays served on various task forces and committees including the Oklahoma Bar Association Unauthorized Practice of Law Committee, the Federal Trade Commission Southwest Netforce, and the National Attorneys General Association Antitrust Policy Task Force. She taught various Continuing Legal Education classes for the State of Oklahoma including Electronic Discovery and Ethics, The Zen of E-Discovery, and The Risks of Identity Theft and Consumer Fraud. Ms. Bays also traveled the state educating consumers regarding identity theft and other types of consumer and internet fraud. In January 2013, she was appointed Chief, Assistant Attorney General of the Consumer Protection Unit.

In November of 2018, Ms. Bays joined the Oklahoma Bar Association as their Practice Management Advisor. She works with the OBA Management Assistance Program to provide assistance to attorneys in using technology and other tools to efficiently manage their offices. Bays is also involved with the Access to Justice initiatives of the OBA such as Oklahoma Free Legal Answers.