

# APPLIANCES AND FURNITURE

## Introduction

*General Business Law §396-u*

Appliance and furniture deliveries are regulated by New York State law.<sup>1</sup> A furniture or major appliance dealer must disclose an estimated delivery date or range of dates conspicuously on the consumer's contract. Merchandise must be delivered by the latest date stated on the contract unless the consumer is notified of options including the right to cancel the contract, negotiate a new delivery date, or select a new item. This law does not apply to mail order goods.

## Defective Appliances at Purchase

If the consumer receives a defective appliance, the first step in resolving the complaint is to contact the store where he or she made the purchase. The consumer should start with the sales personnel who originally provided assistance. If this proves unsuccessful, the consumer should speak with the store manager or other employee having the authority to resolve the complaint.

If the initial telephone complaint call does not resolve the problem, send a registered letter or a certified letter (return receipt requested) to the store explaining the defect and the problem. Putting the complaint in writing is both a good strategy and provides certain legal protections to the consumer.

## Stopping Payment on a Purchase

If the consumer has paid for the merchandise by check, stopping payment presents the risk of stop payment charges. Also, the consumer might turn out to be mistaken about the type of defect present or about his or her legal right to return the goods, and might be sued for the amount due.

Under the federal Fair Credit Billing Act<sup>2</sup>, consumers paying by credit card may dispute the payment through their credit card company by sending a written notice to the creditor within **60 days** of the mailing of the first bill containing the disputed amount. The creditor may not attempt to collect any disputed amount while the matter is being resolved under the federal act. For more information on using the Fair Credit Billing Act, see the chapter in this manual entitled "Credit and Credit Reporting."

## Legal Remedies

If the consumer is unable to quickly and informally resolve his or her complaint with the retailer, several legal remedies are available. Since all legal remedies vary with the facts of the case, it is recommended that the consumer consult with a private attorney or a consumer protection advocate before utilizing them.

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<sup>1</sup> N.Y. Gen. Bus. Law § 396-u.

<sup>2</sup> 15 USC § 1666; see also 12 CFR § 226.13 (resolving billing errors).

First, check to determine whether the consumer may have been given a **written warranty** from the seller or manufacturer which gives the consumer specific binding legal rights to have the item replaced, repaired or money refunded. Second, New York law gives the consumer a statutory right to return the defective goods and receive his or her money back and sometimes money damages by the legal remedies known as rejection and revocation of acceptance:

**Rejection** requires that a consumer act within a “reasonable” time after delivery and that the seller be notified (preferably in writing). The seller usually has the right in this case to replace the item with one that is not damaged.

**Revocation** permits a remedy to the consumer where he or she reasonably believed that the defect would be remedied and it was not. For example, the revocation remedy might apply in situations where the store initially promised the consumer it would repair the item. Revocation may also apply in cases where the defect was of a type that is difficult to discover.

To use the revocation remedy, the consumer must notify the seller within a “reasonable” time after discovering the defect (or within the reasonable time in which the defect *should* have been discovered). Some courts require that the consumer give the seller the right to resolve the problem. For the revocation remedy, the defect must significantly lower the economic value of the product and the consumer must have kept the product at or near its original condition.

Since both revocation and rejection require that the consumer act within a “reasonable” time—a period not defined by the law—a consumer will need to act immediately upon discovering the defect.

## Used and Rebuilt Appliances

• *General Business Law § 395*

**Disclosure Requirement.** Any retailer who sells used, rebuilt, reconditioned or repossessed televisions, radios, phonographs or other major household appliances, must attach a tag or sticker to the merchandise containing this information. Labels, signs and advertising must also contain an appropriate description of the goods as used, rebuilt, reconditioned or repossessed. The State Attorney General may seek an injunction to halt violations of this law, and a violation of this law with intent to deceive customers is a misdemeanor.

## Receipts

Appliance repair shops, radio and television repair shops, laundromats, dry cleaners, and shoemakers, upon request by consumers, must give the consumer an itemized receipt for all items left in the shop.<sup>3</sup> The fine for a willful refusal to supply an itemized receipt is \$25.

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<sup>3</sup> N.Y. Gen. Bus. Law Art. 29-G (§§ 597 - 598).

## Maintenance Agreements

• *General Business Law § 395-a*

Any seller of retail products purchased for personal, family or household purposes which offers maintenance agreements must provide the buyer with an opportunity to review the agreement before it is purchased. Another copy of the agreement must be given to the buyer at the time of the purchase.

Maintenance agreements may not be terminated by the warrantor (the seller) unless prior to or upon delivery, the buyer is notified in writing that the agreement may be cancelled (1) for non-payment, (2) where use of the item is primarily for commercial purposes or (3) with a change in the buyer's residence beyond the disclosed service area, except where the buyer provides transportation or shipping to and from the service site. Upon cancellation for a change in the buyer's residence, the buyer shall receive a pro-rated refund. Mail order companies are exempted from this law. The statute does not address whether buyers moving out of the warrantor's service area may cancel the agreement.

The maintenance agreement law may be enforced by the State Attorney General, the corporation counsel for any city or by an attorney designated to do so by the local government involved. Fines of up to \$300 can be assessed against violators.

## Furniture and Major Appliance Deliveries

• *General Business Law § 396-u*

Furniture and major household appliance dealers must include a written estimated delivery date or range of delivery dates in the contract. The dealer must deliver the merchandise by the latest date stated for delivery, unless the consumer is notified of the delay and given a new anticipated delivery date or range of dates and afforded the right to select one of the following options:

- canceling the contract and receiving a full refund, which must be sent within two weeks of the consumer's request;
- canceling the contract and receiving a credit from the dealer of an amount equal to any deposit made by the consumer;
- negotiating a new delivery date; or
- modifying the contract by selecting new furniture or appliances.

The dealer must honor the consumer's choice.

Either consumers or the State Attorney General may sue to enforce this law. In actions brought by consumers, the court may award three times the actual damages or \$100, whichever is greater.

# Rules for New York City Residents

## Television, Radio and Audio Equipment Service Technicians

• *Rules for the City of New York, Chapter 2, Subchapter x, § 2-251*

All television, radio and audio equipment service technicians must be licensed by the New York City Department of Consumer Affairs. Service technicians must give consumers a detailed invoice describing the work performed, parts supplied, and charges made. The service technician must return all replaced parts to the customer except for warranty and exchange parts.

Licenses may be revoked or suspended if the service technician is guilty of fraud, deceptive advertising, misrepresentation, incompetency or untrustworthiness. The New York City Commissioner of Consumer Affairs can recommend to the service technician that, in lieu of revocation or suspension, restitution be paid to the consumer for any damages suffered. See this Manual's Appendix for the Commissioner's address and telephone number.

## All Other Appliance Service Technicians

• *Rules for the City of New York, Chapter 2, Subchapter x, § 2-255*

### Repairs Done Outside the House

Repair shops must give consumers a written estimate of the final bill upon taking possession of an item. The final bill may not exceed the estimate by more than **20%**.

Repair shops must post signs indicating the shops' liability for items not picked up after a certain amount of time.

If the repair shop cannot make an immediate estimate, the consumer must be told in writing the charge, if any, for giving the estimate, and what any pre-repair work will cost. The repair shop must notify the consumer, either by phone or in writing, of the estimated cost before the repair work is begun, and receive the consumer's authorization. The final bill may not exceed the estimate by more than **20%**.

After the work is completed, the service technician must return to the consumer every part replaced except for parts under warranty and parts which were visibly defective when the consumer first sought the repair.

### At-Home Repairs

The service technician must give the consumer an estimate in writing if the consumer requests one. This estimate must include a complete list of all the charges the consumer will have to pay. The service technician must also receive the consumer's permission before repairs are begun. The final bill may not exceed the estimate by more than **20%**. After work is completed, the service technician must return all replaced parts except for warranty parts.

Complaints should be referred to the New York City Department of Consumer Affairs.

## Appliance Standards

The U.S. Federal Trade Commission (FTC) has established testing, labeling and advertising requirements for **appliances** such as refrigerators, freezers, dishwashers, kitchen ranges and ovens, water heaters, air conditioners, clothes washers and dryers, furnaces and boilers. The FTC's **Appliance Labeling Rule**, in effect since 1980, is designed to help consumers comparison shop for energy-efficient appliances.<sup>4</sup>

Among other things, the Appliance Labeling Rule requires manufacturers to attach "Energy Guide" labels to most major home appliances. These "Energy Guide" labels provide an estimate of each product's annual energy consumption or energy efficiency. Information concerning energy consumption must be included with any printed material displayed or distributed where such products are sold, or in any catalogue from which the products may be purchased. For further details on appliance energy standards, contact the FTC.

The U.S. Food and Drug Administration (FDA) has established safety and emissions standards for **electronic products** such as microwave ovens, television sets and sun lamps.<sup>5</sup>

If an FDA-regulated product from the list above is found to be defective or not in compliance with the federal standards, the manufacturer must: (1) correct the product without charge and reimburse the consumer for any expenses incurred; (2) replace the product with a similar or equivalent substitute; or (3) refund the full cost of the product to the consumer. For further information, contact the FDA.

The U.S. Consumer Product Safety Commission (CPSC) has established safety standards for power lawn mowers<sup>6</sup> (those pushed by a person), refrigerators<sup>7</sup>, dryers, unvented gas fired space heaters and other appliances. The CPSC will intervene to protect consumers against the manufacture and sale of hazardous appliances. The CPSC can ban hazardous appliances and order a recall when an appliance is found to be dangerous to the public.

The CPSC has fact sheets and information brochures concerning safety tips on many consumer appliances. To obtain these fact sheets or other information on a specific consumer appliance, contact the CPSC.

## Disclosure of Information Concerning Household Furniture at the Time of Purchase

The FTC has established mandatory guidelines<sup>8</sup> for the household furniture industry to follow in disclosing material facts about the merchandise, which, if known, would influence a prospective buyer's decision to purchase.

For instance, the rule requires disclosure that certain materials were used in the construction of the furniture, and regulates the use of terms such as "floor sample."

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<sup>4</sup> 16 CFR Part 305.

<sup>5</sup> 21 CFR Parts 1004, 1020, 1030 and 1040.

<sup>6</sup> 16 CFR § 1205.

<sup>7</sup> 16 CFR § 1750.

<sup>8</sup> 16 CFR Part 250.

## **Service Contracts**

For information about service contracts and extended warranties, see this Manual's chapters entitled "Contracts" and "Warranties".