

attorney represent you in Small Claims Court. Also, Small Claims Court decisions can be appealed to the Civil Court. Since you can get attorney's fees and costs in a UDAP suit, you should think about getting an attorney to sue for you in Civil Court. Always talk to an attorney first, because there may be other laws that the company is violating that could give you more remedies than the California UDAP law gives you. For instance, auto dealers and home improvement lenders are covered not only by California law, but also by federal laws that often provide for much larger damage awards.

How Much Time to Sue: Statute of Limitation

Most laws that allow you to sue someone civilly (as opposed to criminal prosecution) have a deadline beyond which you cannot sue the other party. This deadline is often called the statute of limitations. Under California's UDAP law the statute of limitations is three (3) years from the date of the commission of the fraudulent act or practice.

Steps to Take to Fight Fraud:

If you think a business has lied to you about a product or service do the following: Write a letter to the company saying what fraud you think they committed and that you want a refund. Send it certified mail. Complain to the Department of Corporations and the Better Business Bureau. See a consumer rights lawyer to see if you can sue. Remember, if you're a senior or disabled, you have special remedies if you're a fraud victim.

Seniors and the Disabled Get Special Remedy

If you are a senior or you are disabled, then the California UDAP law provides you with a special remedy of \$5000.00 in addition to any other damages that the court decides you are entitled to receive. You have to show that the business knew that you were a Senior or Disabled and that their unfair and deceptive act or practice caused you to suffer substantial physical, emotional, or eco-

nomic damage resulting from the defendant's conduct.

Resources

Legal Services Corporation (www.lsc.gov) Their mission is to promote equal access to justice in our nation and to provide high quality civil legal assistance to low-income persons. 3333 K Street, NW, 3rd Floor Washington, DC 20007-3522 (202) 295-1500

California Attorney General (www.ag.ca.gov) Assistance and guidance in filing consumer complaints. (800) 952-5225

California Department of Consumer Affairs (www.dca.ca.gov) The department takes consumer complaints. (800) 952-5210

California Department of Corporations (www.corp.ca.gov) This department is where you report Banks or retailers for violating the law. (866) 275-2677 or 866 ASK CORP

Inland Counties Legal Services:

Riverside Office: (951) 368-2555
Indio Office: (760) 342-1591
San Bernardino Office: (909) 884-8615
Rancho Cucamonga Office: (909) 980-0982
Victorville Office: (760) 241-7073

About This Publication

This publication was created by Inland Counties Legal Services (ICLS) Consumer Unit and made possible by a grant from the State Bar of California Equal Access Fund.

This Publication is NOT Legal Advice

This publication is a general overview of your rights and remedies dealing with Fraudulent Sales of Goods and Services. This is not legal advice. If you need specific legal advice you should consult an attorney. Changes in the law could effect the information in this guide.

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FRAUDULENT SALES OF GOODS AND SERVICES

IN CALIFORNIA

WHAT IS THE LAW?



AND WHAT ARE YOUR RIGHTS?

Inland Counties Legal Services
Consumer Unit
Serving Riverside and San Bernardino Counties

What Are Fraudulent Sales Acts & Practices?

Any fraudulent act or practice involving the sale of goods and services is illegal under California law. The law that deals with Unfair and Deceptive Acts and Practices (abbreviated, "UDAP") is called the *Consumers Legal Remedies Act*. It is found in the California Civil Code sections 1750 to 1784.

Examples

Although any fraudulent act is illegal in California, the California Civil Code spells out 23 specific acts that are clearly fraudulent by nature. Some examples of these include:

1. **Saying goods or services are someone else's.** For instance, claiming something is a certain brand when the store has actually switched brand labels.
2. **Lying about source, sponsorship, approval, or certification of good or services.** For instance a store might claim that a product is approved by a professional organization, or endorsed by a celebrity or some other respected organization, when it isn't.
3. **Saying that goods are new if they deteriorated unreasonably or are altered, used, or secondhand.** This is a common fraud in which used furniture or appliances are repackaged to appear new, but a close inspection reveals that they are used or secondhand.
4. **Slandering the goods or services, or business of another.** Claiming that a competitor's products aren't as good as the seller's is deceptive, because there is no good basis to make such a comparison.
5. **Advertising furniture without saying that it is unassembled if that is the case.** Furniture dealers must tell you if the furniture needs assembly. They must also tell you if they sell the same furniture assembled and the different price between the two.
6. **Lying about reasons, existence, or amounts of price reduction.** Often price reductions are said to be due to liquidation when really the goods are second hand or simply inferior and of below market value.

7. **Saying a part, replacement, or repair service is needed when it is not.** This is also a very common fraud, saying that a product can be upgraded for a small fee or that a service contract is needed to maintain the product when it's not.
8. **Putting an unconscionable term in the contract.** This can be any term that is grossly unfair to the consumer, such as exorbitant interest or fees for services that don't exist.
9. **Using prerecorded phone messages without a live person first telling the consumer; either the name of the caller, or organization, and either the address or phone number of the caller.** This practice is so common and so easy to get away with because a consumer would have to document who is calling and somehow get accurate contact information in order to pursue an action under the UDAP law.
10. **Home sales to a senior of home improvement loan secured by the home, where there's a pattern of fraud.** Any lien on your home can lead to foreclosure.

Remember, any fraudulent act counts as a violation. You are not limited to the list of violations in the Code.

Remedies if You are a Victim

The Consumers Legal Remedies Act gives consumers the right to sue for UDAP violations. But the law also demands that you take certain actions to try to remedy the situation before filing a lawsuit. If you are a Senior or Disabled, then you also have extra remedies that you can seek in California.

Step 1: Write a Letter to the Business

You cannot file a suit unless you have first notified the business that you believe that they have committed a UDAP violation. You have to give them at least 30 days notice before you can file suit against them. The notice must be a letter, sent by certified or registered mail, return receipt requested, to the place where the transaction occurred or to the person's principal place of business within California. You have to tell them what act or practice you think was fraudulent. If the business doesn't correct the problem within 30 days of your letter you can proceed to sue them.

Step 2: Report it to the Right Agency

You should always report possible UDAP violations to the proper government and consumer agencies. Many businesses and industries in California have specific legal and regulatory sanctions that can be imposed on them if they are found to have committed fraud. The first place to go to file a complaint should be the California Department of Corporations.

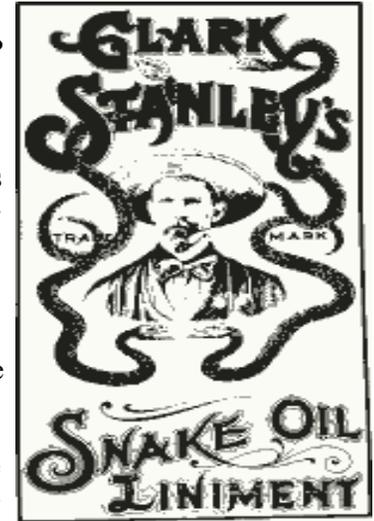
They can be reached at (866) ASK CORP or 866 275-2677 or on the web at www.corp.ca.gov. You should also complain to the Better Business Bureau (BBB). The BBB can often help get you a refund or otherwise help resolve a dispute with a company. Contact information for the BBB in the Inland Empire is included in this brochure.

Step 3: Talk to an attorney

You should always talk to an attorney if you think you are the victim of UDAP violations. An attorney can review your claim and tell you if it meets the definition of an unfair or deceptive act or practice. They can also tell you what your likelihood is of getting any resolution through legal action. In UDAP lawsuits, attorney's fees can be awarded to you if you win—so you shouldn't have to pay a lawyer up front to represent you.

Step 4: Sue in Small Claims or Civil Court

If you have taken the steps above and the business doesn't fix the situation, then you can sue. You have at least two choices for filing a lawsuit. You can sue in Small Claims Court or you can sue in Civil Court. Depending upon the type of business involved you may also have federal claims. Think first, before you file in Small Claims Court. Small Claims Court is limited to lawsuits up to \$7500 in damages and you cannot have an attorney represent you.



Classic Snake Oil Fraud:
Lots of Promises; No Results