

FRAUD IN ALABAMA

Alabama has long recognized a cause of action for fraud. Legal fraud in Alabama is described as misrepresentation of material fact made either willfully to deceive or recklessly without knowledge, and acted on by the other party, or made by mistake, and acted on by the other party; and as a suppression of a material fact which the party is under an obligation to communicate.

There are four elements of fraud through misrepresentation: (1) a false representation concerning an existing material fact; (2) representation which the defendant knew was false when made or was made recklessly and without regard to its truth or falsity; (3) reliance by the plaintiff on the representation and that he was deceived by it, reliance which was reasonable under the circumstances; (4) damage to the plaintiff proximately resulting from his reliance.

There are four elements of fraud through suppression of a material fact are: (1) a duty to disclose facts, such a duty may arise from the confidential relations of the parties or from the particular circumstances of the case; (2) concealment or non-disclosure of material facts by the defendants; (3) inducement of the plaintiff to act; (4) action by plaintiff to his injury.

One of the primary defenses used in this type of action is the statute of limitations. Statutes of limitations are statutes setting maximum time periods during which a certain action can be brought or rights enforced. After the time period set out in the applicable statute of limitations has run, no legal action can be brought.

The statutes impose a two year statute of limitation to fraud actions. However, there is a savings clause which provides that the claim must not be considered as having accrued until the discovery by the aggrieved party of the fact constituting the fraud, which he has two years within which to prosecute his action. The fraud is deemed to have been discovered for the purposes of the statute of limitations when the party actually discovers the fraud, or when the party has facts where

he might have actually discovered the fraud had he sought it from the sources of information which available to him.

CONSUMER FRAUD

A. Insurance Packing

There are various types of insurance that protect finance companies from loss: credit life, credit disability, and voluntary unemployment insurance, collateral protection insurance, non-filing insurance and force placed insurance. All of these insurance products provide major benefits to the finance company, but very little benefit to the consumer.

Credit life insurance is designed to pay off the loan balance in the event of the consumer's death. Credit life insurance is the most costly life insurance sold in Alabama. Many consumers are told by the finance companies that they are required to purchase credit life insurance in order to receive the loan. Of course, it is illegal to require credit life insurance as a condition to making the loan.

Another form of credit insurance, which has been required as a condition to making a loan, is credit disability or credit accident insurance. This insurance is designed to make the payments of the consumer, if he becomes disabled or is in an accident. Many consumers don't even know they have this insurance. Others have made claims on such insurance that have never been paid.

Another area of insurance packing in the consumer finance industry deals with collateral protection insurance. Many finance companies require that collateral protection insurance be sold through the finance company. It is perfectly permissible to require insurance on the collateral. It is illegal, however, to require the consumer to purchase collateral protection insurance through the finance company. Many consumers are told they must buy the collateral protection insurance through the finance company in order to obtain the loan.

Non-filing insurance is a type of insurance wherein the finance company charges a fee to the customer in lieu of filing a UCC financing statement. The finance company charges a premium and supposedly gives the premium to an insurance company to cover the finance company in case it attempts to repossess the collateral and is unable to do so, solely because it failed to perfect its security interest by filing a UCC financing statement.

The final type of collateral protection insurance is force-placed insurance. If the consumer does not keep the collateral protection insurance, the finance company has the right to purchase collateral protection insurance on the collateral. It is permissible for the finance company to buy insurance similar to the insurance that the consumer allowed to lapse. However, many finance companies have abused this privilege by purchasing insurance that gives them more protection than the consumer originally had with his own insurance.

B. Renewing Loans or Flipping

After a consumer makes several payments on a loan, the consumer typically receives a letter from the company that explains that they are entitled to additional money if they will come down and sign for it. Usually, this is a very small amount of money. In order to get the additional money, the previous loan is “renewed”, with all the accompanying fees and charges of a new loan. The operation of the Rule of 78’s in the early payment of interest and insurance charges results in a heavy penalty for those who refinance. Unfortunately, customers are not always made aware of the options available to them.

C. Dealer Arranged Loans

Many consumer financial transactions take place through dealers, i.e., sellers of goods such as cars, mobile homes, televisions, stereos, and washing machines. Since the finance company is

“purchasing the loan”, it can assert that it can purchase the loan for less than face value of the loan or at a discount. In reality, the finance company simply keeps a portion of the amount financed in each deal. The amount retained by the finance company never leaves the hands of the finance company, yet the consumer is obligated to pay it back and is charged interest on it.

Another form of dealer discount works as follows. The dealer will call the finance company and ask at what interest rate the finance company is willing to make a loan to a particular consumer. The finance company agrees to make the loan at 10%, for example. The dealer will then add 2% on top and make the loan at 12%. The dealer and finance company will split the 2%. The consumer is never told that the finance company was willing to loan the money at 10%.

D. Pawn Shops

Pawn shops and “pawn your title” businesses have become one of the most widely used forms of financing in this State. By statute, a pawn shop is allowed to charge up to 25% of the original transaction amount, **per month**. In fact, a pawn broker can charge an annual interest rate of up to 300% on one transaction.

E. Check Cashing Outlets

Typically, check cashing outlets charge a percentage of the check for their service of cashing the check. The percentage depends on the type of check. Only seven states limit fees charged by check-cashing stores, and even these regulations aren’t always honored. Many times the charges are as high as 10% of the value of the check.

F. Rent To Own Centers

Rent-to-own customers routinely pay much more for products than what they pay for the same item at most retailers. A typical effective annual interest rate for many of these transactions is 600 to 700%. As long as the consumer completely conforms to the rental agreement, he can keep the merchandise at the end of the agreement. However, if one payment is late or missed, the customer forfeits all of the previous rental payments and must begin the rental process over in order to keep the merchandise.

G. The Debit Insurance Industry

Debit insurance is distinguished from other types of insurance because of the agent's involvement and the smaller value of the policies. The debit agent goes to the policyholder's home once a month and collects a small amount of premium, usually in cash, for the policies. When the policyholder gives the agent money, the agent is trusted to take the money back to the company and credit it to the policyholder's account. On many occasions, these policyholders have their policies canceled and their cash value stolen by the agent, or the agent never credits their policy with the premium payment they made. Policyholders have loans taken out on their policy without their knowledge, and they are talked into canceling their old policies with cash value and taking out new policies.

As long as Alabama's Insurance Department is under-funded and understaffed, some debit insurance companies will be able to wreak havoc upon Alabama consumers.

CONCLUSION

In Alabama, one in six adults are functionally illiterate. One in every three adults do not have a high school education or G.E.D. certificate. Further, Alabama ranks 46th out of 50 states in

dollar spent per child on education. In addition to our high illiteracy rate, Alabama has some of the weakest consumer protection laws in the entire country.

Many Alabama residents are being injured by fraudulent consumer practices. As long as our population is uneducated and there is very little money appropriated to regulate these industries, these fraudulent consumer practices will continue. A more educated population, coupled with more regulation of these industries, should put us on the right track to stop fraudulent consumer practices.