

# CONSUMER UNIVERSITY



Your Guide to Protecting your Money  
in Today's Consumer Marketplace

Finances • Charitable Donations • Shopping Rights  
Automobile Lemon Law • Credit Cards • Fraud • Safety  
at Home and Away • Protecting Your Health • Debt  
Management • Refunds • Scams • Personal Data Security

Created by the Massachusetts Office  
of Consumer Affairs  
and Business Regulation

Barbara Anthony  
Undersecretary

# CONSUMER UNIVERSITY

## Table of Contents

	Page #
<b>PROTECTING YOUR MONEY</b>	05
<b>Consumer Rights and Responsibilities</b>	06
<b>Finances – Savings and Checking Accounts</b>	06
18/65 law	06
Low Cost Banking	06
Reverse Mortgages	07
New Consumer Protections in Debt Collection	13
<b>Spending Your Money Wisely</b>	16
Charitable Donations	16
<b>Shopping Rights</b>	18
Sales	18
Item Pricing	19
Mismarked Merchandise	19
Bait and Switch	19
Rain Checks	19
Layaway Plans	20
Restocking Fees	21
Warranties	22
Refund, Return and Cancellation Rights	22
Telemarketing Sales	23
Mail Order	24
Door-to-Door Sales	26
FTC’s Cooling Off Rule	27
Billing Errors	27
Unsolicited Merchandise	28
Reducing Unsolicited Offers	29
<b>Contracting for Goods or Services</b>	30
Three-Day Cancellation Rights	30
Service Calls	30
Auto Repairs	31
<b>New and Leased Car Lemon Law</b>	32
<b>Used Vehicle Warranty Law</b>	37
<b>Lemon Aid Law</b>	44
<b>Shopping for Auto Insurance Step by Step</b>	47

<b>Home Improvement Contracting</b>	49
The Written Contract	51
<b>Additional Considerations When Paying for Goods &amp; Services</b>	54
<b>PROTECTING YOURSELF FROM IDENTITY THEFT</b>	57
Tips to Protect Your Credit Cards	58
Pre-paid Value Cards/Gift Cards	60
<b>Sample 30-Day Demand Letter</b>	64
<b>Fraud</b>	66
Three Elements of a Fraud Promotion	67
<b>Person-to-Person Schemes</b>	72
<b>Mail Fraud</b>	74
<b>Timeshare Re-sales</b>	78
<b>Internet Fraud</b>	79
Foreclosure Rescue Scams	81
<b>Attitudes and Actions to Help Protect Yourself from Fraud</b>	82
<b>SAFETY AT HOME AND AWAY</b>	85
<b>Protecting Yourself Against Crime</b>	86
<b>Crime Prevention at Home</b>	87
<b>Home Safety Tips – Your Physical Safety</b>	91
<b>Crime Prevention When You Go Out</b>	92
<b>Protecting Yourself While in the Car</b>	94
<b>Crime Prevention When You Travel</b>	96
<b>PROTECTING YOUR HEALTH</b>	99
<b>Health Care</b>	100
Massachusetts Health Insurance Requirements	100
Questions to Ask When Choosing a Health Plan	100
<b>Medicare-Medigap</b>	102
<b>End of Life Planning and Advance Directives</b>	104
Power of Attorney	104
<b>Health Care Proxy</b>	106
<b>Guardianship/Conservatorship</b>	107
<b>Elder Abuse and Neglect</b>	110
Locate a Counselor	115
<b>Massachusetts Family Caregiver Program</b>	118
<b>Prescription Advantage</b>	120

# INTRODUCTION

Seniors are a large and growing demographic group in the United States. An estimated 39 million Americans are 65 years old or older—that's almost one in ten Americans. Seniors are also living longer—an estimated 5 million Americans are 85 years or older, and they are the fastest growing segment of the senior population. Expanding the numbers of seniors even further, in 2011 the baby boom generation will begin to turn 65, and by 2030, it is estimated that there will be 72 million seniors in the US—almost one in five Americans.

A lot of wealth is concentrated in the senior population—many own homes and other assets, including investment accounts and a working-life's worth of savings. With age come concerns about whether these assets will last a lifetime, whether good health will be maintained, and whether mental agility will last. Sometimes seniors feel cut off and a bit vulnerable, fearing eventual decline in cognitive and physical functions. Over time it is not always easy to keep up with innovations in communication and other media, and when friends and family move away, it is not necessarily a simple matter to find a new community of support. Sometimes, unscrupulous people try to take advantage of those feelings of vulnerability, and even worse, try to take advantage of a senior's declining physical or mental health.

Our ongoing mission is to educate Massachusetts consumers about their rights, and about ways to protect their financial interests. With this guide, we want to provide information to help you make informed decisions, and offer you some suggestions and tips to help you avoid deception and fraud. We also direct you to where you can find additional resources and assistance, and offer some common sense ideas about how you can protect yourself from crime. Our experience in responding to calls from consumers on health insurance, banking, licensed professionals, home repairs, new and used car sales, retail, and consumer fraud gives us some insight into the problems you might have faced in navigating this brave new world. We'd like to share what we've learned with you.

Please note that we repeat some information in different sections of this manual, both to emphasize the importance of the information, and to allow you to turn to separate sections for guidance as topics arise. Please feel free to share this information with friends, neighbors and family members—many people can benefit from being aware of risks, to avoid being taken advantage of—no one expects anyone to have all of the answers in advance, but education is a valuable tool to keep you alert to dangers.



# PROTECTING YOUR MONEY

# Consumer Rights and Responsibilities

## Finances - Savings and Checking Accounts

### “18/65” Law

Massachusetts state-chartered banks are required by law to offer free personal checking and savings accounts to seniors age 65 or older, with no minimum balance. These accounts are called 18/65 accounts because the law also applies to accounts for children under 19. You must show proof of your age to qualify.

The law prohibits the bank from charging you monthly service fees for 18/65 accounts. In addition, the bank must give you basic printed checks for free, and allow you to write checks, and make deposits and withdrawals at the bank at no charge. If you bounce a check, the bank cannot charge you more than \$5 per bounced check.

The bank can still charge you for other banking services, such as stop payments or money orders, according to their schedule of fees. You will usually pay extra for travelers' checks, or for custom printed checks.

### Low Cost Banking

*Basic Banking for Massachusetts* was launched in 1994 to expand access to bank products and services and to encourage people with modest incomes to establish banking relationships. Banks participating in *Basic Banking for Massachusetts* voluntarily provide low-cost checking and savings accounts that meet the guidelines outlined below.

### Basic Checking Account

- No more than \$25.00 to open the account
- Monthly fee of no more than \$3.00
- Provides at least 15 free withdrawals, including at least eight (8) checks, per month
- No more than \$1.00 for each withdrawal over the allowable number of free withdrawals

## Basic Savings Account

- No more than \$10.00 to open the account
- No monthly fee on account balances of \$10.00 or more
- Monthly fee of no more than \$1.00
- Interest paid on all account balances of \$10.00 or more

**Basic Banking** accounts cannot be conditional, for example, limited to those who open both a checking and savings account or to those with Direct Deposit.

# Reverse Mortgages

## What is a Reverse Mortgage Loan?

A reverse mortgage loan is a special type of mortgage loan that enables seniors (generally age 62 and older) to borrow against the equity in their home. The loan does not have to be repaid unless the borrower sells the home, permanently moves away from the home, dies, or if the borrower defaults on an obligation under the loan such as failing to pay real estate taxes, homeowner's insurance payments or lets the property fall into unreasonable disrepair.

## What you Need to Know about Reverse Mortgages

- Reverse mortgages are NOT one size fits all.
- Counseling by an approved agency is mandatory for all borrowers prior to obtaining a reverse mortgage.
- Reverse mortgages must be made with a lender approved by the Division of Banks. Call the Division at (617) 956-1500 to find out which lenders are approved, or go to [www.mass.gov/dob](http://www.mass.gov/dob).
- The lender must provide you with a disclosure and acknowledgement of contingencies which could force sale of the property securing the loan.
- Generally, no repayment is required unless the borrower(s) sells the home, permanently moves away from the home, dies, or if the borrower defaults on an obligation under the loan such as failing to pay real estate taxes, homeowner's insurance payments or lets the property fall into unreasonable disrepair.
- State law requires that the specific mortgage terms are in plain language.
- A reverse mortgage loan has estate and tax planning consequences and may impact eligibility for Medicaid and Supplemental Security income.
- Homeowner must still pay property taxes and insurance, and keep the home maintained.
- Amount of funds you are eligible to receive depends on your age, the value of the home, your built up equity, interest rates, and upfront costs.

- There is a 7 day “cooling off” period following your acceptance of a commitment from the lender, during which time you cannot be required to close or proceed with the loan transaction.
- Federal and state laws grant the right to rescind or cancel the transaction within 3 business days from the date of closing if it is a refinance transaction.

## **Common Types of Reverse Mortgages**

In Massachusetts the Term Reverse Mortgage is available through banks and credit unions across the state. Term reverse mortgages are available for borrowers who are 60 years and older. Additional information on Term Reverse Mortgages may be found at [www.elderhomeowners.org](http://www.elderhomeowners.org).

The most common type of reverse mortgages were introduced in 1989 with the US Department of Housing and Urban Development (“HUD”) sponsored, FHA-insured, Home Equity Conversion Mortgage (“HECM”). HECM is the most common reverse mortgage product.

To be eligible for a HECM, the borrower must be 62 years of age or older and own the outright or have a low mortgage balance that can be paid off at closing with proceeds from the reverse mortgage. Homeowners can only have one HECM at any one time and the home must be their principal residence.

HECM products available as of 4/6/2011:

- HECM Standard which includes the HECM adjustable rate mortgage as well as the HECM Fixed rate mortgage.
- HECM Saver
- HECM for Purchase, which was introduced by HUD on 10/20/08, allows borrowers to purchase a primary residence if they are able to use cash on hand to pay the difference between the HECM proceeds and the sales price plus closing costs. Borrowers can opt for the HECM Standard or HECM Saver when taking out a HECM for purchase.

## **Interest Rate and Insurance Premium**

### ***Interest Rates***

- It is important to remember that the interest paid on a HECM loan is calculated as compound interest, unlike the interest on a conventional loan which is calculated as simple interest.
- HECM borrowers choose adjustable interest or fixed rates. With adjustable rates the interest rate may adjust monthly or annually.
- Lenders may not adjust annually adjusted HECMs by more than 2% points per year and not by more than 5 total % points over the life of the loan.

- The monthly adjusting HECM does not have an interest rate cap; *however*, secondary market investors in the past generally only purchased these loans if the rate was capped at 10% over the initial rate charged on the loan. This may be subject to change if more investors begin purchasing HECM loans.

### **Mortgage Insurance Premium**

The HECM insurance guarantees that you will receive expected loan advances. The insurance also guarantees that, if you or your heirs sell your home to repay the loan, your total debt can never be greater than the value of your home. Borrowers have to pay a mortgage insurance premium fee at settlement and annually.

### **Characteristics of a HECM**

- Non-recourse loan
- Mortgage Amount Based On:
  - Age of the youngest borrower
  - Current interest rate
  - **Lesser** of appraised value or HUD HECM Lending Limit

### **Financial Requirements**

- No income or credit qualifications are required.
- No repayment as long as the property is primary residence.
- Closing costs may be financed in the mortgage.
- Lender must be in first lien position.

<b>Payment Option</b>	<b>Pros</b>	<b>Cons</b>
<b>Lump Sum Payment</b>	All funds received at once.	Funds can be exhausted.
<b>Line of Credit:</b> Access funds at your discretion.	Flexibility—Access funds as needed.	Funds can be exhausted. May be able to refinance reverse mortgage (at extra costs) to gain access to additional funds only if there is any equity remaining in the home. To access funds, submit a written request to the loan servicer.
<b>Term:</b> Receives fixed monthly payments for a set period of time.	Funds can be automatically deposited into your bank account.	Amount of funds received each month is fixed. If you need additional funds, you must request a payment plan change.

<b>Tenure:</b> Receive fixed monthly payments for as long as you live in the home.	Monthly advances continue for as long as you live in the home, even if the total amount you receive exceeds the value of the home.	Amount of funds received monthly is fixed. If additional funds are needed you must request a payment plan change.
<b>Modified Term:</b> Fixed monthly payments for a set period of time, plus access to line of credit.	Provides two sources of available funds. Combines Term and Line of Credit.	Receive smaller monthly payments because a portion of equity has been set aside in the line of credit.
<b>Modified Tenure:</b> Fixed monthly payments for as long as you live in the home, plus access to line of credit.	Provides two sources of available funds. Combines Tenure and Line of Credit.	Receive smaller monthly payments because a portion of equity has been set aside in the line of credit.

## Fees

Reverse mortgages have up-front fees and costs that may amount to thousands of dollars, increasing the amount owed. Understand the total costs associated with the loan by asking questions and insisting on answers.

### Typical fees Include:

- Origination fees: 2% of the first \$200,000 borrowed and 1% thereafter. Fee may not exceed \$6,000.
- Mortgage Insurance Premium Fees:
  - **HECM Standard:** Equal to 2% of the lesser of the appraised value of your home, the HECM mortgage limit for your area, or the sales price plus an annual premium equal to 1.25% of the mortgage balance.
- **HECM Saver:** Equal to .001% of the lesser of the appraised value or your home, the HECM mortgage limit for your area, or the sales price plus an annual premium equal to 1.25% of the mortgage balance.
- Service Fees: amount of money deducted from available loan proceeds at closing to cover the projected costs of servicing the account. Typical monthly fee ranges between \$30-\$35.
- Closing Costs: includes, but not limited to, appraisal fee, credit report fee, recording fee, document preparation fee, title insurance, land survey, etc.

### New Massachusetts Law—Effective November 1, 2010

1. Borrowers must affirmatively agree in writing to this type of loan and certify that they have completed the required third-party counseling with a counselor

approved by the Executive Office of Elder Affairs. This new requirement becomes effective on November 1, 2010. Beginning on August 1, 2012, third-party counseling will be required to be conducted in person.

2. **Effective August 1, 2012:** Borrower must receive in-person reverse mortgage counseling from a counselor approved by the Executive Office of Elder Affairs, and must receive a certificate of such counseling.—.
3. **Effective August 1, 2012:** Failure to abide by #2 render the terms of the loan unenforceable.
4. The Commissioner of Banks shall write regulations for these provisions.

### **Key Decisions about Reverse Mortgages**

- Have you discussed this with friends and family?
- Will a reverse mortgage give you the amount of money you need to get from it?
- Understand the legal consequences of title transfers, especially if you have been advised to transfer title out of your or your spouse's name to qualify for the loan.
- Consider your options and timing—is this the best time to take out a reverse mortgage?
- Compare fees and interest rates.
- Pick your lender, but remember they must be on the approved list.

### **Abuses and Pitfalls of Sales and Marketing Tactics**

As reverse mortgages become popular, abuse grows. Look for these signs:

1. The lender is not licensed or approved by the Division of Banks.
2. You have been advised to have loan proceeds payable to a third party and not you as the borrower.
3. You are discouraged from talking with family, friends, or a professional about the loan.
4. You are pressured to use equity in your home to buy something with the proceeds or use them for home repairs.
5. Be cautious of anyone who seems eager for you to get a reverse mortgage.
6. You're asked for a large deposit upon applying and told it will speed up the process.
7. You're pressured to make a quick decision, or offered a discount to sign by a certain date.
8. Insurance premiums and other costs are not explained clearly.
9. Your children, relatives or others are pressuring you to get a loan so they can use the money. Even if they promise to pay you back, the loan puts your future security at risk.

## **Reverse Mortgage Counseling**

- All borrowers must be counseled prior to obtaining a reverse mortgage. Counselors must be approved by Elder Affairs.
- Participate in an “in person” counseling session, if possible.
- Take family members with you to the counseling session.
- Ask the counselor about alternative loan products.
- Ask the counselor how to interpret the loan documents.
- Make sure you and any co-borrower receive certificates verifying attendance at a counseling session.

## **Using Reverse Mortgage Proceeds for Investment Purposes**

Be *extremely* cautious of using the money you receive from a reverse mortgage as an investment vehicle, particularly if you take out a lump sum payment. If you are encouraged to purchase an insurance product or other financial product such as an annuity with the proceeds of your reverse mortgage, ensure that you understand both the terms of the reverse mortgage loan *and* the terms of the investment product. Be sure to consider what will happen if the returns turn out less than promised, or if you lose the principal.

Remember! A reverse mortgage is a complex financial transaction, and you should seek the advice of your own estate planner, financial advisor, and attorney to discuss the appropriateness of a reverse mortgage.

# New Consumer Protections in Debt Collection

On April 7, 2011 expanded consumer protections go into effect which significantly increase the money and personal property which is out of the reach of a creditor seeking to satisfy a court judgment. In addition, the revised law puts other protections into place for consumers who are over sixty years of age or consumers who are handicapped. These protections ensure that financially distressed Massachusetts residents are able to maintain the basic necessities of life.

## Examples of personal items exempted

- An automobile up to \$7,500 of wholesale resale value, this exemption rises to \$15,000 for a handicapped person or a person age 60+
- Cash, savings or other deposits in a bank account of up to \$2,500
- Household furniture up to \$15,000 in value
- Wages equal to 85% of the debtor's gross wages or 50 times the hourly minimum wage per week, whichever is greater
- One computer and one television

## Protect Yourself

- Attend any scheduled court proceeding including Small Claims Court so you do not lose by default.
- Assert your rights in court to ensure that the Court does not order you to make payment from exempt assets.

The Supreme Judicial Court approved amendments to the Trial Court's Uniform Rules on Small Claims which went into effect on October 1, 2009. These rules were amended to address various issues affecting consumers in debt collection cases initiated in Small Claims Court. Key provisions include:

- Requiring that creditors verify a debtor's current address prior to filing a claim to ensure that debtors are properly notified of the pending case.
- Requiring creditors to set forth details of the amounts owed, including last four digits of account number, amount and date of last payment, if any, and the name of the original creditor, if different.
- Requiring that creditors notify the Court in writing when a small claims judgment has been paid in full.

These amendments were put in place to prevent default judgments from being entered against consumers who were not properly notified of the court proceedings. Prior to these amendments many consumers had default judgments entered against them as the address used by the creditor for notification purposes was out of date or incorrect. Consumers only became aware of the court proceedings when the Constable's Office

came to their residence to execute the judgment by seizing their property which most often included their vehicles. If you believe that your property was seized due to a default judgment against you due to insufficient notification you should contact the Court Clerk's Office in which the judgment was issued for guidance.

### **Know your rights**

If you are being contacted by an individual or company who is attempting to collect a debt first verify if they are the creditor or a debt collector. Creditors are persons or entities attempting to collect a debt owed to them. The collection practices of such creditors are regulated by the Office of the Attorney General. A debt collector is a third party which attempts to collect a debt owed or due to another. Please note, debt collectors who are operating in the Commonwealth are required to be licensed by the Division of Banks (Division). In addition to debt collectors, the Division also has oversight regarding disputes involving state-chartered banks, credit unions, mortgage lenders, and other licensed entities. However, attorneys acting on behalf of a client are not required to be licensed as a debt collector by the Division if they are licensed in the Commonwealth to practice law.

### **You Should**

- Request verification of a disputed debt in writing.
- Create a paper trail by keeping a record of the date, time and name of the individual contacting you and putting all of your requests and responses in writing. Plan to repay any undisputed obligation and determine a payment plan you can maintain and provide that to the creditor or debt collector in writing.
- Check the licensing status or Bar status of a debt collector/attorney who contacts you.

### **A Creditor or Debt Collector Must**

- Tell you the amount of the debt and the name of the creditor to whom it is owed at the initial communication or within five days of the contact.
- Disclose in the initial communication that they are attempting to collect a debt and that any information obtained will be used for that purpose.
- Disclose the name of the creditor or debt collection company and the name of the individual collector making the contact.
- Inform you of the name and address of the original creditor if you request that information in writing within thirty days of the initial contact.
- Communicate directly with your attorney if you provide such information to the creditor or debt collector.
- Notify you in writing within thirty days of the initial contact of your right to not have collection telephone calls made to your place of work.

### **Creditors or Debt Collectors Can**

- Assume a debt is valid if it is not disputed within thirty days of contacting the consumer.
- Contact any person, including family and friends, for the sole purpose or acquiring information on where you live or how to contact you.
- Call you at home and come to your residence during normal working hours which are from 8:00 am to 9:00 pm, but only twice in any seven day period.
- Collect expenses in excess of the amount owed, such as fees or interest, if such charges are expressly authorized by the agreement or permitted by law.

### **Creditors or Debt Collectors Can Not**

- Discuss your debt with third parties, such as friends or neighbors without your direct prior consent or judicial authority.
- Represent or imply they are affiliated with the federal government or any state or distribute any document which simulates or falsely represents that it is authorized by any court or government agency.
- Use or threat to use violence or criminal means to cause physical harm, or harm to your reputation or property.

### **Additional Resources**

- For a complete list of amendments, including a list of exempt property, please refer to Chapter 431 of the Acts of 2010.
- For questions or assistance with a debt collector, bank, credit union, mortgage lender, or other licensed entities please visit the Division of Bank's website at [www.mass.gov/dob](http://www.mass.gov/dob). You may also contact the Division's Consumer Assistance Unit at (617) 956-1501 Monday-Friday 8:45am to 5:00pm.
- For questions or assistance with a creditor collecting its own debt please visit the Attorney General's website at [www.mass.gov/ago](http://www.mass.gov/ago). You may also contact the Attorney General's Office at (617) 727-8400.
- For questions or assistance regarding attorney conduct please contact the Board of Bar Overseers at (617) 728-8700.
- For additional information regarding debt collection you may visit the Federal Trade Commission's website, [www.ftc.gov](http://www.ftc.gov). You may also contact the FTC at (877) 382-4357

# Spending Your Money Wisely

## Charitable Donations

Most charities are worthy of your financial support. Charitable fundraising is a big business these days, however, and just like any big business, it has its share of questionable operators. With today's economy, it's more important than ever to make your donations carefully. Follow the tips outlined below before making a donation.

### Know Your Charity

Never give to a charity you know nothing about. Ask for printed materials which clearly and specifically state:

- The name, address and telephone number of the charity;
- A specific description of how the charitable funds will be used;
- Whether your donation is tax deductible as a charitable contribution; and
- Whether the charity uses a professional fundraiser.

### Find Out Where Your Money Goes

- Beware of statements such as "all proceeds go to charity;" the proceeds may not be very much after expenses are deducted.
- Ask for financial statements which tell you how much of your charity dollar goes to fundraising or administrative expenses, and how much is left for the program you want to support.

### Verify the Information Given

- Call the Attorney General's Non-Profit Organizations/Public Charities Division, or go online to <http://www.charities.ago.state.ma.us/> to find out if the charity and its fundraiser are registered in the Commonwealth. The Attorney General does not endorse specific charities but does collect financial information which is accessible through the web site. You may also e-mail a request to [charities@state.ma.us](mailto:charities@state.ma.us), or call 617-727-2200 X2101.
- Call your local police department. Some require organizations to register before soliciting. They may be able to tell you if they have received complaints about the solicitations.
- You can also check with the BBB charities list, at (703) 276-1000 or <http://www.bbb.org/charity-reviews/national/>.

- Call the beneficiaries of the charitable funds – local schools, shelters, workshops, etc. Find out whether they are aware of the solicitation and have authorized the use of their names.

**Keep Records**—especially receipts and cancelled checks, in case you have a complaint later. They also come in handy when you file your income tax returns.

**Don't be fooled by a name**—some phony charities have sympathetic sounding names, or names that closely resemble those of respected, legitimate charities.

**Don't fall for a “sob story”**—the hard luck tale is a favorite ploy of the phony operator. A legitimate charity will tell you how it's using your money to make a difference for the better.

**Don't succumb to pressure**—take time to decide. The need is always there; make sure the organization will be there, too. This is especially important at times of disaster relief efforts. Be sure you are dealing with a recognized organization, not someone who calls or e-mails out of the blue, suggesting you can give money to an unfamiliar organization to “help the victims of hurricane Katrina,” or “help the victims of the earthquake in Haiti.”

**Don't pay by cash**—Pay by check, and make it out to the charity, never the fundraiser. Use the charity's full name; don't use initials. Never give your credit or debit card number, or checking account number to a fundraiser over the telephone. If the fundraiser comes to your door, always ask to see identification. Better yet, mail your check directly to the charity.

**Don't be lured by “goodies”**—household products and tickets to shows can be legitimate fundraising tools, but they do add extra costs. If you receive unordered items in the mail, don't feel obligated to make a donation. It's against the law to demand payment for unordered merchandise. Watch out for sweepstakes as well; you may end up “winning” very little or something you don't want.

# Shopping Rights

## Sales

A sales or retail transaction can include the purchase of any item, from a \$2.00 light bulb to a \$30,000 car. The major complaints by consumers in any of these transactions generally involve the same issues: deceptive advertising; overpricing; poor quality goods; and return and refund policies.

This guide covers the most frequently asked questions we receive at the Office of Consumer Affairs and Business Regulation. Unfortunately, too many of these questions are only asked after the fact, instead of before purchases are made. Although there are many consumer protection laws on the books, it is still a *caveat emptor*, buyer-beware marketplace, and the best protection against bad bargains, or outright scams, is to be an alert, informed shopper who knows his or her rights and is not shy about asserting them.

This section reviews some of your basic consumer rights under federal and state law, and offers general guidelines to help you observe the **3 R's** of smart shopping:

- **Knowing your Rights**
- **Reading** advertisements, contracts, warranties carefully before you buy or sign anything
- **Researching** for the best buys and for reliable dealers and merchants.

## Pricing

All consumers, particularly those living on fixed incomes, are looking for the best buys that will provide the most value for their money. There are laws to protect consumers against unfair or deceptive pricing and advertising, but self help and smart shopping – knowing your rights; reading the labels, price tags and advertisements carefully, and good comparison shopping – are still your best safeguards against overpricing and overcharging.

Sellers are required to disclose the actual selling price of merchandise and services prior to the sale or agreement. Merchants cannot make claims about the cost of merchandise or about the value, savings, or usual price of products by advertising that certain items are “on sale,” “reduced,” or available for a “limited time only,” when these claims are false, misleading, or deceptive.

## **Item Pricing**

In Massachusetts, there are currently two separate sets of laws applicable to prices on items. For the most part, items in a grocery store, or food department of a non-grocery store, must be individually marked with a price. There are exceptions, such as end-aisle displays, baby food, milk and eggs, and a few other items, but the price must still be marked on the shelf or display even there. For non-food stores, stores that have scanners throughout the store for customers to use need only price on the shelf or display, not on individual items—the scanner is a back-up tool which reads the bar code on the item if you cannot find the display price. If the store does not have scanners in the store for customers to check prices, the store must generally price items offered for sale, with exceptions similar to those provided for grocery stores.

## **Mis-Marked Merchandise**

If the store has the wrong price tag on an item for sale, the customer is entitled to buy the product for the lowest price represented, unless the price is obviously a gross error, where there is a huge discrepancy between the marked price and the value of the item. If, for instance, a six pack of soda is mismarked \$.27 instead of \$2.70, the mistake is obvious, and the merchant would not have to sell the item for the clearly erroneous price. This rule applies to all retail stores, not just grocery stores or food departments.

## **Bait and Switch**

“Bait” advertising is the illegal practice of advertising products for sale at low prices in order to lure buyers into the store and then “switching” them to another, more expensive item the merchant had intended to sell all along. Bait and switch tactics vary, and include instances where a seller:

- Refuses to show, demonstrate, or sell the advertised merchandise according to the terms of the offer;
- Disparages the product – its quality, guarantee, or the terms of the sale – in order to encourage consumers to buy a more expensive item;
- Demonstrates a defective product, unusable for the purpose represented or implied in the advertisement.

## **Rainchecks**

When a store advertises that certain merchandise is available “on sale,” it is required to have an adequate supply of the advertised product in stock to meet reasonably anticipated demands.

Unless the advertisement discloses clearly and adequately that the supply of sale merchandise is limited or unavailable in certain areas, consumers may be entitled to “rainchecks,” allowing them to buy the item for the advertised price when it is back in stock. Stores may also have a policy of “no rainchecks,” but should disclose this fact,

along with the information about limited quantities. If the seller offers rainchecks for items that run out, the seller must inform prospective buyers when it reasonably expects to honor those rainchecks, and generally must honor the raincheck within 60 days of the original offer. Sellers can also honor the advertised sale price by offering a comparable product at comparable savings.

If when shoppers come in for a sale item, the store tries instead to switch buyers to a higher priced item, it may be involved in “bait and switch” tactics, which are prohibited under regulations of the Attorney General.

### **Layaway Plans**

Notices to “Ask About Our Convenient Layaway Plans” were familiar signs in stores at a time when consumer credit was not so readily available to most shoppers. With the current difficult economic times, “layaway” has returned in a number of retail stores. Though the terms may vary from store to store, certain state requirements apply to all stores in Massachusetts.

Before making a deposit on layaway merchandise, you can protect yourself by making sure that you know the business you are dealing with and its layaway policies, as well as your legal rights, in advance of signing an agreement or making any installment payments.

Be very careful that you use only well-known and established companies for layaway plans. Remember, you are giving the store money until you get your goods. Generally, if a business shuts down or files for bankruptcy, there is little, if any, recourse for the layaway customer.

### **Your Rights**

- Before the store accepts your first payment, it must fully and truthfully disclose in writing its layaway policies, including cancellation rights and refunds of installment payments made prior to cancellation.
- The goods that are put aside for you should be described in detail, including the brand names and model numbers.
- The price of the merchandise should be fixed in writing. A merchant cannot raise the price of the layaway merchandise, either by increasing the payments or by substituting lower quality goods.
- A merchant cannot tell you that specific items, or exact duplicates, are set aside for you unless this is true.
- You must be notified if the merchandise will be held for only a limited period of time.

- You must be given a dated receipt for each payment and, upon request, the total balance of payments up to that date.
- After you have made all required payments on your installment plan, you must be given the identical goods you ordered, or an exact duplicate, unless you have agreed in writing to substitute merchandise.

### **Restocking Fees**

While there are no laws related to restocking fees, check to see if a retailer charges a fee if you want to bring something back. While stores cannot charge for return of defective goods, and you are entitled to your choice of refund, return or repair on defective items, they can set whatever return, refund or cancellation policy they want with respect to non-defective goods, but they must clearly and conspicuously disclose it. This is often done by means of a sign at the customer service counter. Restocking fees of as much as 15-20% of an item's purchase price are sometimes charged, particularly on open boxes of electronic goods, computers, and recorded music or video games.

### **Warranties**

A warranty is an enforceable pledge to consumers that products sold to them conform to the quality and quantity promised, and if they don't, an agreement that consumers can return the merchandise for their choice of a refund, repair, or replacement.

**Express Warranties** may be written warranties provided by a manufacturer with their products, or warranties created when a seller makes a promise, shows a sample or model, or describes goods to the buyer.

Any statement of fact, or promise, made by a seller relating to goods sold to you creates an Express Warranty, or guarantee, that the goods are as stated or promised. If a salesperson tells you that a watch is "waterproof," or displays a picture of the watch working underwater, an express warranty is created that the watch is waterproof, and if this is untrue, you are entitled to return the watch for a refund.

**Implied Warranties** are important protections for buyers that are imposed by law at the time of sale, rather than expressly stated by the seller.

1. **Implied Warranty of Merchantability:** When you buy merchandise from sellers in Massachusetts, the product automatically comes with a warranty that it is in "merchantable" condition and will function properly with reasonable safety, ease, and efficiency for a reasonable period of time – a toaster should toast, a refrigerator should cool – or you are entitled to your choice of a refund, repair, or replacement.
2. **Implied Warranty of Fitness for a Particular Purpose:** This warranty arises when, at the time of sale, the seller has reason to know your purpose for buying a product, and knows that you are relying on his or her expertise to recommend

suitable merchandise for that purpose. If you tell the salesperson that you need something that will cut tall grass, and you are sold a special lawnmower “to do the job,” the seller implicitly warrants that the lawnmower is fit to cut tall grass, or you can return it for your money back.

***Private parties are not bound by the Implied Warranty of Merchantability or Fitness for a Particular Purpose—they arise under the “Uniform Commercial Code” and apply to merchants only.***

***In Massachusetts, merchants cannot disclaim or limit implied warranties; goods cannot be sold by merchants “as is,” or “with all faults.” Because of this, even if a store has a “No Returns” policy, this policy does not apply to defective products.***

### **Refund, Return and Cancellation Rights**

Contrary to widely held belief, there is no automatic right to cancel all consumer transactions within a three-day “cooling off” period.

Unless your contract has a cancellation provision, or other exceptions apply, consumers have very limited cancellation rights. Generally, sellers can establish any return, refund, or cancellation policies they choose, so long as they tell consumers about it, tell the truth about it, and live up to their policies.

The refund, return or cancellation policies must be *disclosed to customers clearly and conspicuously before the sales transaction is completed. Printing the store’s return policy only on a sales slip or receipt is not notice before the sale is completed, since a customer receives a sales slip or receipt only after the transaction is over.*

“Clearly and conspicuously” means that signs should be clear, large enough to see, and posted in visible places where they are likely to be noticed. Such as:

- “Returns within 7 days,”
- “Merchandise credit only,” or
- “No cash refunds,”

***If the store fails to disclose its return policy before the sale, customers have the right to return goods within a reasonable period of time. The store cannot misrepresent or fail to honor its refund, return, or cancellation policies.***

**Defective products** – Remember, Implied Warranty laws allow consumers to return defective products, regardless of the store’s return policy. If the item does not work properly, buyers are entitled to return the merchandise for their choice of a refund, repair, or replacement.

## Telemarketing Sales

The Federal Trade Commission's Telemarketing Sales Rule applies to most goods a customer orders from the seller by mail, telephone, fax or on the Internet. The Rule requires that when a seller advertises merchandise, it must have a reasonable basis for saying or implying it can ship within a certain time. If there is no statement made as to shipping time, the reasonable period is within 30 days. If the seller cannot ship within 30 days, it must contact the consumer and seek consent to ship later, and if the consumer does not consent, the seller must cancel the order and promptly issue a refund. The order must have been "properly completed" to fit this 30 day shipment requirement—correct payment and all information to complete the order must have been received by the seller.

Sellers are permitted to send you a "delay" notice with revised shipping date—this notice may have you accept by silence—that is, the notice may ask you to contact the company if you do **not** agree to the delay. If you receive a subsequent delay notice, the seller cannot provide for acceptance by silence—you must notify the company if you still want the goods. The company must provide a free means to contact it about the order—either by toll free number or pre-paid card. If the company at this point provides an indefinite shipping time, you may contact them at any time to cancel. The company also has the option to cancel the order itself and send you a full refund within 7 working days if you paid by cash, money order or check, or within one billing cycle if you paid by credit card.

Exempt from this rule: magazine subscriptions; seeds or growing plants; C.O.D. orders, "club" membership products, such as book or recording clubs; services—such as mail-order photo finishing.

If you have simply placed an order but not yet paid--there is no rule that states that a seller cannot charge you for until the goods are shipped, so check with the seller as to how and when a charge will be placed on your account.

## Mail Orders

Millions of people enjoy the convenience of mail order shopping, and many reliable and reputable companies offer a wide selection of specialized or discounted products that are not always available in local stores. But before ordering anything from a catalogue, print advertisement, telephone or tv solicitation, or by fax solicitation or computer, be sure you know the business you are dealing with, the product you are ordering, and the terms of the transaction.

### Before Ordering

1. If you are not familiar with the company, check to see how long it has been in business and what kind of track record it has with consumers. For information about possible consumer dissatisfaction, you can check with the Attorney General or BBB office in the state in which the business is located, as well as checking with the Massachusetts AG at 617-727-8400, or the BBB at 508-652-4800.
2. Read catalogues, order forms, and web site information carefully, so that you fully understand the company's products and prices, as well as its delivery and return policies.
3. Be sure you know the answers to the following questions before placing your order:
  - a. What is the company's "substitution policy," if the item or size you order is not in stock? If you do not want a substitute or "comparable" item, look for a "no substitution" check-off box on the order form, or call or e-mail the company to ensure that unless you get the specific item you have requested, you will not be sent an alternate product.
  - b. What guarantees are offered by the company? Does the company advertise "satisfaction guaranteed," or "money back guarantee?" If so, you should be able to return the merchandise for any reason and receive a full refund.
  - c. Are there special restrictions or time limits on the guarantees? Any limitations on warranties or guarantees should be disclosed to you prior to your order.
  - d. Are there additional fees for your order? Check for postage, handling and shipping charges, small order or minimum purchase fees, taxes or other costs before you authorize a purchase with your credit card. If ordering over the phone, confirm the total price with the person taking your order. If ordering on-line, review the transaction details before hitting the "submit order" link—you may want to print out a copy of that page before submitting the order, too, to be sure it matches the confirmation you are subsequently sent.
  - e. What are the company's return and refund policies? Return policies vary and may depend on the reasons for the return—wrong size, wrong

shipment, damaged goods, for example. Be sure you know about any hidden or extra nonrefundable charges for returned items. Who pays for the handling and postage of returned items? Are there “restocking” fees? Can you cancel your order if you change your mind before the items are shipped? What, if any, charges are imposed for cancellations?

- f. Has the company promised a specific delivery date? Federal law requires that mail order merchandise be delivered within 30 days from the time the company receives the completed order, or within the time period indicated by the seller. If the company is unable to ship within the promised time, it must give you an “option notice.” This notice gives you the choice of agreeing to the delay or canceling your order and receiving a prompt refund.

## **When Ordering**

1. Fill out the order form carefully and completely (online, you often cannot go to the next screen unless all required information is filled in). The delivery time promised or the 30 day period does not begin until the company receives the completed order information.
2. If you do not want substituted products for those you have ordered, clearly state “no substitution” on a written order form. If you are placing your order over the phone, inform the person taking the order that you do not want substitutions. If you are ordering online, confirm before sending the order that a “no substitution” policy is in place—if it is not, consider another way to order the product, possibly by contacting the company by phone.
3. Total any additional fees and charges attached to your order and confirm the amount with the company’s representative on the phone. Do not authorize open ended charges to your credit card.
4. Confirm the 30 day delivery period or date promised by the company. Online, you can often track the progress of your order as the order is filled and shipped.
5. Charging your purchase to your credit card can protect you if the company fails to deliver your order or delivers defective merchandise. Under the law, you do not have to pay a charge made on your credit card if you have a legitimate dispute with the merchant. You can dispute a charge if you feel you have been cheated, requesting a “charge back.” You must do within 60 days of receiving the erroneous credit card statement, and the credit card company must then investigate. It is not quite as simple to challenge a debit card or check transaction; the money is taken immediately from your account when you place your order.

When placing your order, be sure to keep complete and accurate records, regardless of the medium you use to order. If by phone, write down the name and title of the person taking your order as well as all pertinent information about the order, including:

- Company name, address, phone number; or web site address and contact information;
- Date of the order and confirmation number;
- Shipping, handling or other charges and fees;
- Keep copies of: catalogue or advertisement; order form or order confirmation page; copies of all communications/correspondence with the company.
- Keep copies of credit card slips/bills, canceled checks or money orders.

## Door-to-Door Sales

State and federal laws provide for a 3-day right to cancel or a “cooling off” period for door-to-door purchases over \$25.00 and for other sales made away from the merchant’s regular place of business. Such sellers must include a **Notice of Cancellation Rights** in your receipt or contract at the time of sale, along with **cancellation forms** to be returned to the seller with your notice of cancellation by midnight of the 3<sup>rd</sup> business day after signing the agreement. This cancellation form must include the date by which you have to cancel your order.

***If your contract or receipt does not include this cancellation notice, your 3-day right to cancel is extended until such notice is given to you by the seller.***

**Exceptions** - this federal 3-day cancellation or cooling off period does not apply to real estate, insurance or securities sales, or to emergency home repairs.

Other, Massachusetts-specific laws provide for 3-day cancellation rights for sales of:

- Health club memberships
- Timeshare purchases
- Mortgage refinancing
- Home Improvement contracts

*The 3-day cancellation right does not extend to sales agreements made pursuant to a telemarketing solicitation. In Massachusetts, there are very limited “3-day” rights to cancel, created by federal or state law: the “door-to-door” sales exception noted above; health club contracts; timeshare purchases; home improvement contracts; and non-purchase-money mortgages (second mortgages, re-financing, home equity loans).*

## Federal Trade Commission's Cooling Off Rule

The "FTC Cooling Off Rule" establishes specific obligations and procedures for sellers and buyers.

Sellers	Buyers
<p>At the time of sale, sellers must provide buyers with certain documents:</p> <ul style="list-style-type: none"> <li>• Written notice of 3 day cancellation rights;</li> <li>• Two copies of the cancellation form;</li> <li>• A copy of the signed contract and receipt.</li> </ul>	<p>In order to cancel the sale, the buyer must:</p> <ol style="list-style-type: none"> <li>1) Send written notification of cancellation to the seller at the address given in the contract;</li> <li>2) Send cancellation notice by the 3<sup>rd</sup> business day after signing the agreement.</li> </ol> <p><i>It is always best to send the cancellation notification by Certified Mail, "Return Receipt Requested," so that you have a record confirming your cancellation notice within the 3-day period.</i></p>
<p>The contract or receipt must be in writing and must include:</p> <ul style="list-style-type: none"> <li>• The seller's name and address;</li> <li>• The date of sale;</li> <li>• A clear explanation of the buyer's right to cancel the transaction.</li> </ul>	<p>Consumers must allow sellers to pick up the merchandise at their home. If both seller and buyer agree, consumers can ship goods to the seller's address, at the seller's expense and risk.</p>
<p>Once sellers receive the buyer's cancellation notice, they must return the consumer's payment within 10 business days.</p>	<p><b>It is very important that you follow the correct procedures to exercise your 3-day rescission rights.</b></p>

## Billing Errors

You're protected by the Fair Credit Billing Act when you use your credit card to pay for purchases. If you find an error on your credit card or charge statement, you may dispute the charge and withhold payment on the disputed amount while the amount is in dispute. The error might be a charge for the wrong amount, for something you did not accept, or for an item that was not delivered as agreed. Of course, you must still pay for any part of the bill that is not in dispute, including finance charges on the undisputed amount. If you decide to dispute a charge, write to the address indicated on your monthly statement for "billing inquiries." Include your name, address, credit card number, and a

description of the billing error. Send your letter within *60 days* of receiving your billing statement. The creditor must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has already been resolved. The creditor must resolve the dispute within two billing cycles—but not more than 90 days—of receiving your letter. “Resolving” does not mean that the creditor must rule in your favor, however, after its investigation.

### **Unsatisfactory Goods or Services**

While the process for dispute of unsatisfactory goods and services is similar to the billing dispute process, certain additional limitations apply. You must have made the purchase in your home state, or within 100 miles of your current billing address. The charge must be for more than \$50, and you must make a good faith effort to resolve the dispute with the seller before disputing with your credit card company. No specific process is required for the effort to resolve the dispute with the seller.

### **Paying by Debit Card, Cash or Check**

You do not have the same protections when you pay with a debit card, cash or check that you do with a credit card. If you pay by cash, there is generally no right to “dispute” the charge. You need to negotiate with the business, or consider if you wish to proceed to court. For checks, you can issue a “stop payment” before the check is cashed, but the bank will impose a fee for this service, and if the check has been processed, your remedy is to negotiate with the business or consider if you wish to proceed to court. You can dispute unauthorized debit card charges for *error or theft* by notifying the bank within 60 days of receiving your statement, but claims for defective goods or other matters are not susceptible to this dispute process. You can cancel recurring transactions on a debit card (health club memberships, for example) only before the fact—generally at least 30 days in advance of the next scheduled withdrawal, and only if you have grounds to cancel, and you must contact the company with which you have contracted as well as the bank.

### **Unsolicited Merchandise**

If a company sends you merchandise that you did not order or did not request on a trial basis, either over the phone or in writing, the package is yours to keep as a gift. You need not pay for something that you did not order, and you are not obliged to return the item to the sender. To avoid any billing problems, send the company a certified letter, “return receipt requested,” notifying the seller that you did not order the merchandise and that you have a legal right to keep unsolicited merchandise sent to you. The company may arrange to pick up the unsolicited goods.

## Reducing Unsolicited Offers

### Mail

Mail Preference Service

Direct Marketing Association (“DMA”)

P.O. Box 9008

Farmingdale, NY 11735-9008

[www.dmachoice.org](http://www.dmachoice.org)

You can also opt out of unsolicited commercial e-mail from DMA members at this site.

### Stop “pre-screened” credit card offers

Call 1-888-5OPT-OUT (567-8688) or go to [www.optoutprescreen.com](http://www.optoutprescreen.com). You will be asked for personal information, including your name, address and Social Security number, but this information will only be used to prevent you from receiving further unsolicited credit card offers.

### Limit unsolicited telephone sales calls

Register at [www.donotcall.gov](http://www.donotcall.gov), or call 1--888-382-1222 from the phone number you wish to register for the federal Do Not Call list, and for the Massachusetts state Do Not Call list go to [www.Mass.gov/donotcall](http://www.Mass.gov/donotcall), or call 866) 231-CALL (2255)

# Contracting for Goods and Services

## Three Day Cancellation Rights

There is ***no*** general three day right to cancel a sales transaction. Once you have agreed to purchase an item or contract for a service, you have created a contract, and cancelling it leaves you in breach. A breach of contract means that the other party is generally entitled to full payment regardless of whether or not you take the item or go through with the transaction. Contracts are enforceable by their terms in a court of law, though it is unusual for a court to order something other than money damages. A court can order “specific performance,” but only in very limited situations.

This all means that you need to be very sure before you sign your name on the dotted line that you really want to follow through with your agreement, because you cannot rely on the other party to allow you to cancel with no penalty.

As noted in the section on cancellations, you do have 3 days to cancel a door to door sale for an item over \$25; a home improvement contract; a health club contract; a timeshare contract; and a second mortgage or refinancing.

## Service Calls

You want someone to come check on your appliances, check out your furnace or water heater, or come to give you an estimate for home repairs. While each of these seems on the surface to be very similar, the rules applicable to each are a little different. In general, it is a very good practice to ask in advance what a service call will cost, whether it will be credited to your bill, and whether you will be charged for travel or simply for the time the repairperson is in your home.

Attorney General regulations require that where you initially contact the repairperson for an in-home service call, the company must disclose if it imposes a service charge even if no repairs are made, before the repairperson comes to your home.

It is also unfair or deceptive to fail to provide you in advance *upon your request* a written estimate of the cost of the anticipated repairs, or the basis on which the charge will be made and an estimate of the reasonably anticipated time to accomplish the repairs, including any charge for reassembly of any parts disassembled for inspection or any service charge.

Once the repair is made, you are entitled to an itemized list of repairs performed along with the reason for the repairs, including a list of parts and a statement of whether they are new, used or rebuilt, and their cost to you, as well as the number of hours of labor charged—provided, however, that you can be charged “flat rate” labor if the repairs are customarily done and billed on a flat rate basis.

## Auto Repairs

When you take your car in for repairs, what does the dealer have to tell you? Does your car have to be fixed that day? Before commencing repairs, the repair shop is required to write down: your name and address, and a telephone number where you can be reached; the date and approximate time the vehicle was delivered to the repair shop; the year, make and registration number of your vehicle; the odometer reading; the specific repairs you requested, or, if you have not requested specific repairs, a brief description of the problem.

It is a violation of the law to charge you for any repairs unless either the repair shop has received written authorization signed by you that lists the specific repairs to be performed and the total price to be paid, including parts and labor; *or* your signed written authorization for specific repairs and the charges for such repairs, including parts and labor, are posted in the shop; *or* if the repair shop cannot get written authorization from you (usually because it needs to diagnose the problem first), the repair shop notifies you before commencing repairs and you agree, *or* the shop has a signed waiver from you with a limit to the price beyond which it must contact you. The repair shop must also note how it got oral permission to proceed. If there is no authorization to proceed, the repair shop is not permitted to charge more than \$10 beyond the authorized price if it goes forward with the repair.

Repairs must be performed on the day the vehicle is brought in, unless the parties agree otherwise, or if parts need to be ordered, or if the delay was caused by circumstances beyond the shop's control, and which it could not have anticipated.

**Storage fees:** The repair shop is required by law to tell you the conditions under which it may impose storage charges, and the hourly or daily rate it charges.

**Parts:** You are entitled to inspect or have returned to you any parts the shop replaces. Because the dealer may sell such parts or return them to the manufacturer, check before the work starts as to what will happen with them if this is of concern to you.

**Diagnosis:** The shop must tell you in advance of any charge for an estimate or diagnosis.

**Mechanics lien:** Be aware that a "mechanic's lien" arises for the value of repairs made, and that it is "perfected" by means of retaining the vehicle until it is paid for. Some unscrupulous repair shops have performed work in excess of what has been agreed to and then will not release the vehicle unless it is paid for the work. While this is in violation of the law, it is not always easy to get the car out without paying for it. You then may need to pursue the business in court for the overcharges.

# New and Leased Lemon Law

The Massachusetts Lemon Law protects consumers who have serious defects in their new cars. The law defines a lemon as a new or leased motor vehicle that has a defect which substantially impairs the use, market value, or safety of the vehicle and which has not been repaired after a reasonable number of attempts. M.G.L. c. 90, §7N1/2.

If a consumer's new or leased vehicle has a substantial defect that still exists or recurs after a reasonable number of repair attempts, then the consumer may have the right to a refund or replacement vehicle. Not all car problems are serious enough to qualify under the Lemon Law.

## Vehicles Covered By the Lemon Law

Any new car, motorcycle, van or truck bought in Massachusetts from a new-car dealer for personal or family purposes is covered by the Lemon Law for the "term of protection" of one year or 15,000 miles of use from the date of original delivery, whichever comes first. The law also covers vehicles that are resold during the one year or 15,000-mile term-of-protection, and new vehicles leased after July 1, 1997.

## Vehicles Not Covered By the Lemon Law

- auto-homes;
- vehicles built primarily for off-road use;
- vehicles used primarily for business purposes;
- vehicles with defects caused by owner negligence, accidents, vandalism, or unauthorized repair of the vehicle by a person other than the manufacturer or authorized agent; or
- vehicles leased before July 1, 1997.

## Term of Protection

The term of protection is one year or 15,000 miles of use from the date of original delivery, whichever comes first. This means that the defects the consumer has complained about and the required repair attempts must occur during this period. However, the manufacturer's final repair attempt can take place after the term of protection.

## Substantial Impairment

The Lemon Law only covers serious defects- those which substantially impair the use, market-value or safety of the vehicle. The law does not list the defects which are considered substantial. The consumer must be able to demonstrate specifically how the use, safety or market value of the vehicle is substantially impaired by the defect. For example, to prove market value impairment, the consumer must show that the vehicle is

worth at least 10 percent less than it would be without the defect. Although a defect may be annoying, it is not necessarily substantial.

## **Repair Attempts**

### ***Reasonable Number of Repair Attempts:***

The Lemon Law gives the manufacturer, its agent or authorized dealer a "reasonable number of attempts" to repair the substantial defect. This standard is met if, within the term of protection (1 year or 15,000 miles):

- a repair is attempted 3 or more times for the same substantial defect, and the problem continues or recurs within the term of protection;
- or
- repair attempts for any substantial defect or combination of defects total 15 or more business days, not necessarily all at one time.

***Note: A business day is any day that the service department of an authorized dealer is open for business.***

Consumers have a right to a dated, itemized bill for any repair work, including warranty repair work, under the Attorney General's Motor Vehicle Regulations (940 CMR 5.00).

## **Final Repair Attempt**

If the substantial defect continues or recurs after the manufacturer or authorized dealer has made a reasonable number of repair attempts to repair the defect, the consumer must give the manufacturer (not the dealer) one final repair opportunity, not to exceed seven business days, to fix the defect. This seven-day period begins when the manufacturer knows or should know that 3 repair attempts or 15 business days out of service limits have been met or exceeded. This is usually the date the manufacturer receives a final repair opportunity letter from you. The consumer may notify the manufacturer of the final opportunity even after the one year or 15,000-mile term of protection ends.

At the end of the 7 business days, the consumer may pick up the vehicle. The manufacturer may choose not to use this final opportunity to attempt repair. If after the seven business days, the substantial defect has not been repaired, or has been repaired and recurs, the consumer has the right to a refund or replacement under the Lemon Law. If the manufacturer does not comply voluntarily, the consumer may request an arbitration hearing through the Office of Consumer Affairs and Business Regulation. Sample notices of the final opportunity to repair, and applications for arbitration are available at the Consumer Affairs web site, at [www.mass.gov/consumer](http://www.mass.gov/consumer).

## **Replacement**

If the vehicle qualifies as a lemon and the manufacturer offers a replacement vehicle, it must be one that is acceptable to the consumer. The consumer is free to reject a replacement vehicle and demand a refund. However, the consumer cannot reject a refund and demand a replacement. If the consumer is given a replacement vehicle under the Lemon Law, a new one year or 15,000 mile term of protection starts from the date of delivery of that replacement vehicle.

If the manufacturer issues a replacement vehicle, it must reimburse the consumer for the following costs:

- transfer of registration fees;
- sales tax resulting from the replacement; and
- unreimbursed towing or rental charges resulting from the defect.

## **Refund**

### **New Vehicles (purchased)**

If the consumer chooses a refund, the consumer must receive the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, but a reasonable allowance for use will be deducted.

If the manufacturer issues a refund, it must reimburse the consumer the following costs:

- sales tax;
- registration fees;
- finance charges;
- dealer-added options;
- unreimbursed towing or rental charges resulting from the defect;
- unreimbursed, unused portion of an extended warranty;
- unreimbursed, unused portion of credit insurance;
- defect-related incidental costs.

The consumer is entitled to a pro-rated excise tax refund from the consumer's city or town. Under the Lemon Law, consumers will not be reimbursed for attorney's fees, lost wages, or other consequential damages.

### **Leased New Vehicles**

If the consumer chooses a refund, the consumer must receive the total lease payments made under the agreement. A reasonable allowance for use will be deducted based on the following formula:  $\text{total payments made} / 100,000 \times \text{mileage}$  (total payments made divided by 100,000 multiplied by mileage).

## **Asserting Consumer Rights**

If the manufacturer will not refund the consumer's money or replace the vehicle,

consumers have several options. They may seek mediation, arbitration, or may choose to file suit in court.

### **Mediation**

This allows both parties to reach a mutually agreeable resolution with the help of a facilitator. Mediation is voluntary, requiring both parties' consent. The Attorney General offers free mediation services through Face-to-Face and Local Consumer Group mediation programs. Additional information about these programs is available by calling (617) 727-8400, or by reviewing the Attorney General's web site at [www.mass.gov/ago](http://www.mass.gov/ago)

### **Arbitration**

In arbitration, the consumer and the manufacturer present evidence about the condition of the vehicle to an impartial person or persons. There are two types of arbitration: state-run and manufacturer-sponsored.

***State-run Arbitration:*** The state-run Lemon Law Arbitration Program hears only Lemon Law cases. To qualify for state-certified arbitration, the vehicle must meet the criteria outlined above. The purpose of the arbitration hearing is to determine whether or not the vehicle qualifies for refund or replacement under the Lemon Law. State-run arbitration is "all or nothing." If the arbitrator determines that the vehicle meets the Lemon Law standards, the consumer will be awarded a full refund (less the use allowance and the amount of any previous settlement from the manufacturer) or replacement. If the arbitrator decides that the vehicle is not a "lemon," there will be no award, although the consumer may have rights to different remedies under other laws. The arbitrator cannot order the manufacturer to make a partial refund, attempt additional repairs, or extend the terms of the express warranty.

Consumer Affairs must receive the consumer's request for arbitration within 18 months of the date the vehicle was delivered to the consumer in order to require the manufacturer's participation. The request must be made on an official application. The consumer can request state-certified arbitration even if the consumer has already used the manufacturer's own arbitration program.

A neutral arbitrator will hear both sides of the case and will generally issue a formal decision within 45 days of acceptance of a request for arbitration. Within 21 days of the decision, manufacturers must either issue the award or file an appeal. Late payment of awards or frivolous appeals can result in a judge awarding double damages to the consumer.

***Manufacturer-sponsored Arbitration:*** The consumer may request manufacturer-sponsored arbitration for Lemon Law defects, as well as other less serious problems. A manufacturer cannot require a consumer to use its arbitration program, but if the consumer does choose to use it, the arbitrator or panel does not have to apply the Lemon

Law standards. The arbitrator can order partial refunds as well as full ones. Most manufacturers are bound by the decisions of their arbitration programs. For specific information on your manufacturer's arbitration program, contact its zone or regional office.

## **Court**

Consumers also have the right to proceed to court if they have met the Lemon Law's requirements and the manufacturer refuses to refund money or replace the vehicle with one that is acceptable to the consumer, or if the consumer is not satisfied with the arbitration decision.

Failure to comply with the Lemon Law is an unfair and deceptive act under the Massachusetts Consumer Protection Act, c. 93A, which may entitle the consumer to double or treble damages, plus court costs and reasonable attorney's fees.

## **Sources of Additional Information**

*For information on consumer rights under the Lemon Law, to obtain an arbitration application, or case hearing information:*

[Office of Consumer Affairs and Business Regulation](#)

(617) 617-973-8787 or Toll Free: (888) 283-3757

Our website has on-line copies of the Consumer Arbitration Manual and Arbitration Applications for new cars and leased cars.

**To file a formal complaint (NOT for arbitration) against a dealer or manufacturer**

[The Office of the Attorney General](#)

(617) 727-8400

**To check a manufacturer's complaint history**

Office of Consumer Affairs and Business Regulation (arbitration history only)

(617) 973-8787 or Toll Free: (888) 283-3757

The Office of the Attorney General

(617) 727-8400

[Better Business Bureau](#)

(617) 426-9000

(508) 755-2548

(413) 734-3114

**For information on auto safety problems and recalls**

[National Highway Traffic Safety Administration](#)

(800) 424-9393

## Used Vehicle Warranty Law

The Used Vehicle Warranty Law protects consumers who buy used vehicles from a dealer or private party in Massachusetts. (M.G.L. c. 90 §7N 1/4) The law requires dealers to provide consumers with a written warranty against defects that impair the vehicle's use or safety, and requires private parties to disclose any known use or safety defects.

The Used Vehicle Warranty Law provides protections and remedies, including mandatory repairs, refunds, or repurchases. It does not cover all vehicles or all defects, and not all problems will qualify a vehicle for repurchase.

### Vehicles Covered

The law applies to used cars, vans, trucks and demonstration vehicles not covered by the New Car Lemon Law, and which:

- are sold by a Massachusetts dealer or private party,
- cost at least \$700 (dealer sales only),
- have fewer than 125,000 miles on the odometer when sold (dealer sales only).

Demonstration or executive vehicles are covered under the law under certain circumstances.

### Vehicles Not Covered

The following are not covered under the Used Vehicle Warranty Law:

- motorcycles, mopeds, dirtbikes;
- leased vehicles;
- auto homes, and vehicles built primarily for off-road use;
- any vehicle used primarily for business purposes, or purchased by, owned by or registered to a business

### Private Party Sales

The Used Vehicle Warranty Law applies differently to a vehicle purchased from a private party than it does if purchased from a dealer. Under the law, a dealer is anyone who sells four or more vehicles in a 12 month period.

The Used Vehicle Warranty Law requires private party sellers to inform buyers about any and all known defects which impair the safety or substantially impair the use of the vehicle. The law applies to all private party sales regardless of sales price or mileage. If a consumer discovers a defect that impairs the vehicle's safety or substantially impairs the use, and can prove that the seller knew about the defect but failed to disclose it, the

consumer may cancel the sale within thirty days of purchase. The seller must refund the amount paid for the vehicle, less 15 cents per mile of use.

## Dealer Sales

**Only defects that impair the vehicle's use or safety are covered. Defects are not covered if they**

- affect appearance only;
- are covered by the manufacturer's express warranty and the dealer assures that the repairs were made;
- are caused by negligence, abuse, vandalism, or accidents unrelated to the defect;
- are caused by repair attempts made by someone other than the dealer, its agent, or the manufacturer; or
- are caused by substantial change made by the consumer to the vehicle (such as installing a sunroof that was not part of the vehicle when the consumer bought it).

## Dealer Warranty

Anyone who sells four or more vehicles in a one-year period is a dealer under the Used Vehicle Warranty Law. Dealer warranties cannot be waived under any circumstances. The dealer must give the consumer a signed, dated, correct copy of the limited used vehicle warranty at the time the vehicle is purchased. The warranty requires the dealer to repair any defect that impairs the vehicle's use or safety.

## Warranty Length

The coverage depends on the mileage of the vehicle at the time of purchase as outlined below:

Mileage	Warranty Period
Less than 40,000 miles	90 days or 3,750 miles, whichever comes first
40,000 to 79,999 miles	60 days or 2,500 miles, whichever comes first
80,000 to 124,999 miles	30 days or 1,250 miles, whichever comes first
125,000 miles or over	No express warranty

If the true mileage of the vehicle is unknown at the time of the sale, the warranty period is calculated according to the age of the vehicle as outlined below:

Age of Vehicle	Warranty Period
3 years old or less	90 days or 3,750 miles, whichever comes first
More than 3 and less than 6 years old	60 days or 2,500 miles, whichever comes first
More than 6 years old	30 days or 1,250 miles, whichever comes first

## **Warranty Extension**

The warranty is extended by one day for each day the vehicle is out of service for repairs, and by one mile for each mile it is driven while repairs are being made. In addition, any repair performed on a covered defect during the warranty period carries its own 30-day warranty. This warranty begins the day the repair is completed and can continue after the original warranty on the car as a whole expires.

## **Dealer Fails to Provide Correct Warranty**

If the dealer does not give the consumer a warranty or gives one that is incomplete or inaccurate, the consumer is still entitled to warranty repairs. The warranty, however, will not begin to expire until the dealer gives the consumer a complete and accurate copy of the warranty.

## **Warranty Repairs**

The defects must arise during the warranty period. The consumer must return the vehicle to the dealer for repair no more than five business days after the expiration date of the warranty period. The dealer may charge a one-time \$100 deductible, but only if this amount is written on the consumer's copy of the warranty.

## **Dealer Refunds**

The limited used vehicle warranty provided by the dealer gives the consumer the right to a refund if the vehicle was either:

- repaired 3 times for the same use or safety defect that continued to exist or recurred during the warranty period,

OR

- out of service by reason of repair or invalid refusal to repair for at least 11 business days during the warranty period, not necessarily all at one time.

***NOTE: Business day is defined as Monday through Friday, except for state or federal holidays. When counting the number of business days your car has been out of service, any part of a business day counts as a whole day.***

## **Waiting for Parts**

If the dealer needs to order parts during a repair attempt, the days out of service while waiting for parts do not count toward the 11 business day requirement of the law. However, the warranty will extend by one day for each day waiting for the parts. A maximum of 21 calendar days during the warranty period will not be counted toward the 11 business day limit if parts are ordered. All business days after the 21st day will count.

## **Dealer Refuses Repairs**

The dealer may only refuse repairs if the consumer has refused a dealer's offer to buy back the car for the full purchase price. If the dealer has not offered to repurchase the vehicle, then the dealer must repair all use or safety defects. If the dealer refuses to accept the vehicle

for repairs when you present it in person, then the vehicle will be considered "out of service" beginning that day. This and any following business days waiting for the vehicle to be repaired will count toward the 11 business days out of service requirement for a refund. The same rule applies if the dealer fails to take the vehicle within 3 business days of a telephone or written request for a repair.

### **Dealer Repurchase**

The dealer has the right to offer to buy the car back for the full repurchase price instead of making repairs. The consumer is responsible for helping to determine the refund amount by giving the dealer copies of receipts and other documents for each cost to be reimbursed. The dealer must make the repurchase offer in writing. Under the law, the consumer has at least five business days from when receipt of the dealer's offer to decide whether to accept the offer.

***WARNING: If the dealer offers a full refund under the law, and the consumer refuses to accept it, THE CONSUMER WILL NOT BE ENTITLED TO FURTHER WARRANTY REPAIRS UNDER THE WRITTEN WARRANTY PROVIDED BY THE DEALER.***

### **Returning the vehicle**

If the dealer is going to buy back vehicle, the consumer will need to work together to meet and exchange the vehicle and its title for a refund. The consumer must transfer the title back to the dealer.

If the vehicle title is at the Registry of Motor Vehicles, contact the Title Division at (617) 351-9550. The consumer should indicate the planned return of the vehicle under the Used Vehicle Warranty Law, and request that a certificate of title be issued to the consumer as soon as possible. If the vehicle is financed, the consumer will need to get a lien release from the finance company. The lien release will enable the Registry to issue a title in the consumer's name so that the consumer can sign over title to the dealer. Also, the consumer will need to work with the dealer and the finance company to arrange for the dealer to pay the finance company the portion of the loan that is still owed.

### **Refund Calculations**

If the consumer has met the requirements for a refund, the consumer should ask the dealer to repurchase the vehicle. To calculate the amount the consumer is entitled to receive under the law:

#### **ADD**

- the purchase price including the amount for the trade-in given, if any;
- finance charges;
- registration fees;
- the pro-rata cost of payments toward motor vehicle damage, collision and comprehensive insurance;
- the non-refundable portion of payments made for credit life, and credit accident insurance on your vehicle loan;

- the non-refundable portion of payments made for any extended warranties and service contracts;
- unreimbursed costs of towing up to 30 miles;
- up to \$15 a day for alternate forms of transportation, starting on the third day the car has been out of service for repair;
- payments made toward the \$100 repair deductible; and
- any other costs directly related to the defect.

#### SUBTRACT:

a use allowance of 15 cents per mile for every mile driven from the time of delivery to the date the refund is given; and

- the amount of any overallowance on a trade-in vehicle.

An "overallowance" or "discount" is the difference between the trade-in amount and the actual cash value of the trade-in vehicle. For example, the dealer may list the trade-in amount as \$2,000 for your trade-in but the trade-in is only worth \$1,500. In this case, \$500 of the trade-in amount is an overallowance. The overallowance will be deducted from the consumer's refund only if the amount of the overallowance is clearly and separately listed on the consumer's copy of the motor vehicle purchase contract, bill of sale, or other documents given to the consumer at the time of the sale.

If the dealer still has the trade-in vehicle, s/he has the option of returning it to the consumer rather than refunding the trade-in amount. If the dealer has the trade-in and wants to keep it, s/he may keep it and refund you the amount of the trade-in.

The use allowance on the consumer's vehicle may be large if the car has been driven many miles since your purchase. Keep in mind that the use allowance will be based on the miles driven through the time the vehicle is actually returned and the vehicle's title has been signed over to the dealer.

The consumer's refund will not include lawyers' fees, lost wages, excise tax, sales tax, or other costs that are not directly related to the defect. The consumer can apply at your city or town hall for an abatement of excise tax. Contact the Department of Revenue to request information regarding an abatement for the sales tax at (617) 351-9550. If the dealer deducts from the purchase price for mileage, the consumer may not be able to get your the tax back. Sales tax is only returned by the state when the full payment is refunded. Since the Used Vehicle Warranty Law does not require the dealer to refund the sales tax, the consumer may not be able to recover this cost.

#### **Asserting Consumer Rights**

If the dealer will not refund the consumer's money, the consumer should consider seeking mediation, arbitration, or filing suit in court.

#### **Mediation**

This allows both parties to reach a mutually acceptable solution with the help of a facilitator.

Mediation is voluntary, requiring both parties' consent. The Attorney General's Office offers both informal mediation through its Local Consumer Programs, and a more formal mediation process through its Face to Face Mediation Programs. More information is available from the Attorney General's Office's Hotline at (617) 727-8400, or on its web site at: [www.mass.gov/ago](http://www.mass.gov/ago).

### **Arbitration**

Arbitration is an informal and inexpensive way to resolve a consumer's complaint. In arbitration, the consumer and the dealer present evidence about the condition of the vehicle to an impartial person. The purpose of the arbitration hearing is to determine whether or not the vehicle qualifies for a refund under the Used Vehicle Warranty Law. This arbitration is "all or nothing." If the arbitrator determines that the vehicle meets the standards of the law, the consumer will be awarded a full refund. If the arbitrator decides that the vehicle is not a "lemon," there will be no award, although the consumer may have rights to different remedies under other laws.

Consumer Affairs must receive your request for arbitration within 6 months of the date your vehicle was delivered to you. The request must be made on an official application provided by Consumer Affairs and available on our web site at [www.mass.gov/consumer](http://www.mass.gov/consumer).

### **Court**

You have the right to proceed to court if you have met the Used Vehicle Warranty Law's requirements and the dealer refuses to refund your money, or if you are not satisfied with your arbitration decision.

Failure to comply with the Used Vehicle Warranty Law is an unfair and deceptive act or practice under the Massachusetts Consumer Protection Act, c. 93A, which may entitle the consumer to double or triple damages, plus court costs and reasonable attorney's fees.

Consumers considering court action should consult an attorney if the vehicle was purchased for more than \$2000. In order to invoke the protections of the Consumer Protection Act, the consumer or his or her attorney must begin by sending the dealer a 30-Day Demand Letter.

### **Implied Warranty Law:**

The implied warranty of merchantability is a guarantee provided by law in the sale of all consumer products, including automobiles, even if they cost less than \$700 or have been driven 125,000 miles or more before sale. The implied warranty is in addition to any express, written warranty. Under the implied warranty, a product must do what it was designed to do with "reasonable" safety, efficiency and ease for a "reasonable" period of time. If it does not run properly, the seller is responsible for repair, replacement or a refund. The law does not define the word "reasonable." This will depend in part upon the condition, age, and sale price of the vehicle.

***NOTE: The implied warranty of merchantability does not apply to private party sales, only to those made by a "merchant".***

A dealer cannot deny coverage under this warranty. Under the implied warranty of merchantability, merchants cannot sell products to consumers "AS IS," "WITH ALL

FAULTS," or with a "50/50 WARRANTY" which requires the consumer to split the cost of any repairs with the seller.

### **Odometer Law**

This law prohibits both dealers and private party sellers from turning back or readjusting the odometer or mileage indicated on any automobile offered for sale. If a consumer can prove that the seller reset the odometer, the consumer can sue for \$1500 or three times the amount of damages, whichever is greater, along with court costs and attorney fees. Odometer tampering is also a criminal offense.

### **Title Requirements**

All vehicles must have a certificate of title issued by the Registry of Motor Vehicles and must be properly endorsed at the time of sale. Dealers must inform a consumer, on request, of the name and address of the prior owner of a vehicle, under the Attorney General's regulations.

### **Sources of Help**

#### **For information on your rights under the Lemon Law, or case hearing information:**

Office of Consumer Affairs and Business Regulation  
(617) 973-8787 or Toll Free: (888) 283-3757

A copy of the Warranty Extension Reference Chart, Consumer Arbitration Manual and the Arbitration Application are available on-line at the OCABR web site.

#### **To file a formal complaint** (not for arbitration) against a dealer:

The Office of the Attorney General  
(617) 727-8400

#### **To check a dealer's complaint history:**

Consumer Affairs (arbitration history only)  
(617) 973-8787 or Toll Free (888) 283-3757

Attorney General's Office  
(617) 727-8400

Better Business Bureau  
(617) 426-9000  
(508) 755-2548  
(413) 734-3114

#### **For information on auto safety problems and recalls:**

National Highway Traffic Safety Administration  
(800) 424-9393

# Lemon Aid Law

The Massachusetts Lemon Aid Law allows a consumer to void or cancel a motor vehicle contract or sale if the vehicle fails to pass inspection within seven days from the date of sale AND if the estimated costs of repairs of emissions or safety related defects exceed 10% of the purchase price. (M.G.L. c. 90 §7N) This law applies to both dealer and private party sales of cars and motorcycles purchased for personal or family use. Dealers must display Lemon Aid rights by putting a sticker on the left front window of each used car at the time of delivery.

## Vehicle Inspection and Registration Requirements

By law, sellers of used vehicles must remove inspection stickers prior to transferring the vehicle to the new owner. Motor vehicle inspection stickers are not transferable to a new owner. A newly purchased used car, must be inspected at a licensed Massachusetts Inspection Station within seven days of registering it. In order to be protected by the Lemon Aid Law, however, the vehicle must be inspected within seven days of purchase. It is wisest not to have the dealer from whom the vehicle is purchased do the inspection.

## If The Car Will Not Run

Cars that do not run automatically fail inspection. To be eligible for a refund under the Lemon Aid Law, the purchaser must demonstrate that the estimated cost of repairs for safety or emissions related defects (and not the problem that is keeping the car from being inspected) is more than 10% of purchase price. Proving this may be difficult because it requires that a mechanic locate the problems and estimate the cost of repairs for these defects.

## How To Receive a Refund

In order to obtain a refund, the vehicle must be inspected and rejected by a licensed Massachusetts Inspection Station within 7 days of purchasing it. The rejection cannot be caused by the consumer's negligence, abuse or an accident occurring after the date of sale. In addition, the following steps must be completed within 14 days from the date of sale:

1. Obtain a written statement, signed by an authorized agent of the inspection station, stating the reasons why the vehicle failed to pass the safety or combined safety and emissions inspection test.
2. Obtain a written estimate of the costs of the necessary emissions or safety repairs showing that those costs exceed 10% of the purchase price.
3. Notify the seller of the intent to void the contract under this statute (M.G.L. c. 90, §7N). It is best to do this by certified mail, return receipt requested, and by regular mail. Enclose a copy of the documents listed in Steps 1 and 2, and keep copies.
4. Deliver the car to the seller, even if delivery requires towing services. It is advisable to take a witness and copies of the documents listed in Steps 1, 2, and 3. If the seller refuses to accept the car, the consumer should prepare a statement indicating that the consumer and a witness delivered the car to the seller on that date, but that the seller

refused to accept the car. The consumer should be sure the statement is signed by both the consumer and the witness in the presence of a notary public.

If these provisions are complied with, the consumer is entitled to a full refund of the purchase price. The consumer and the seller may agree in writing to have the seller do the necessary emissions or safety-related repairs at the seller's expense. The consumer may, however, refuse the seller's offer and accept a full refund.

### **If the Consumer Has Paid For a Title**

The consumer should contact the Registry of Motor Vehicles Title Division at (617) 351-9550, and explain the planned return of the vehicle to the seller under the Lemon Aid Law, and request that a certificate of title be issued as soon as possible. When the consumer receives the title, the consumer should assign and transfer it back to the seller. If the seller refuses to accept the title, then the consumer should send it by certified mail and retain a copy for his or her records.

### **If Sales Tax and Registration Fees Were Paid**

#### **To ensure you receive a rebate**

**Sales Tax:** Fill out an abatement form available from the Massachusetts Department of Revenue Taxpayer Service Division, P.O. Box 7010, Boston, MA 02204 (617) 887-6367.

**Registration Fee:** If the license plates are returned within 10 days from the date the vehicle was registered, the refund will subtract a charge of \$5. If the plates are returned after this 10-day period, but within a "reasonable time," the consumer will receive a partial rebate.

### **Asserting Your Rights**

If these options do not produce the desired results, here are additional options:

#### **Mediation**

Mediation is an inexpensive and informal way to resolve a dispute without hiring an attorney and going to court. Contact the Attorney General's Office as noted above for mediation services.

#### **Court Action**

The consumer may also consider pursuing a claim through the court system. For claims under \$7,000, small claims court may be the least costly alternative. Consumer Affairs publishes a Consumer's Guide to Small Claims Court available upon request and on our web site. Larger claims may be more suitable to District or Superior Court. Consider seeking legal advice for any claims.

### **Other Rights and Remedies**

If the consumer does not qualify for a refund under the Lemon Aid Law, other laws and regulations may assist. Unless otherwise noted, these laws do not apply to private party sales.

### **Implied Warranty of Merchantability**

In addition to any express written warranties given by the dealer, consumers are also

protected by an Implied Warranty of Merchantability. This implied warranty is automatic with every car sold by a dealer. The dealer warrants that the car is safe and in running condition for at least a reasonable period of time. Consider such factors as the price paid, the car's age, make, model and mileage to help determine what problems the dealer should be required to fix.

A consumer cannot waive the implied warranty of merchantability. This means that a dealer cannot sell cars "as is," "with all faults," or with a "50/50" warranty.

### **Odometer Law**

The law prohibits both dealers and private party sellers from turning back or readjusting the odometer or mileage indicator on any automobile offered for sale.

### **Title Requirements**

All vehicles must have a certificate of title issued by the Registry of Motor Vehicles and it must be properly endorsed at the time of sale. Under the Attorney General's Motor Vehicle sales regulations, the dealer must inform the buyer, on request, of the name and address of the prior owner of a car.

### **Private Party Sales**

In addition to the Lemon Aid Law requirements, a private party who sells a consumer a used vehicle must tell the buyer about any known use or safety defects. If the buyer discovers a defect which impairs the safety or substantially impairs the use of the vehicle, and can prove the seller knew about it, then the buyer can return the vehicle within 30 days of purchase. Private parties are bound by this law, regardless of the age or selling price of the vehicle.

### **For General Information**

Office of Consumer Affairs and Business Regulation  
(617) 973-8787 or Toll Free: (888) 283-3757

### **Title Information**

Registry of Motor Vehicles: Title Division  
(617) 351-9550

### **To file a complaint against a dealer:**

The Office of the Attorney General  
(617) 727-8400

# Shopping for Auto Insurance Step by Step

In April, 2008, Massachusetts automobile insurance changed from its previous rate-setting system to “managed competition.” Under this new system, insurers are able to provide varying pricing for their car insurance coverage, so it can pay to shop around. The Division of Insurance has created its “step by step” guide to shopping for car insurance.

## **First, Decide How Much Insurance You Need**

For most drivers, the minimum levels of insurance will not provide enough protection. Many people choose to purchase higher limits of property damage and bodily injury coverage. Owners of newer vehicles often purchase collision and comprehensive coverage. You can learn more about the different coverages available by going to [www.insuremass.doi.state.ma.us](http://www.insuremass.doi.state.ma.us). Decide how much coverage you need before you begin to shop.

## **Decide How You Are Going to Shop**

Auto insurance companies sell policies through local agents and directly through websites or 1-800 phone numbers. As you decide which method meets your needs, you should consider shopping both ways in order to obtain a full range of premium quotes.

### **Get Multiple Quotes**

There is no substitute for getting multiple quotes for your automobile insurance. The only way you can be confident that you are not overpaying for the coverage and service that you want is to obtain a price quote from a significant number of insurers. Many agents only represent one or two insurers. As you choose agencies for premium quotes, be sure to ask each agent which companies they represent so that you can get quotes from a large number of insurers through a small number of agencies.

## **Be Prepared With Your Shopping Checklist**

Before making your first phone call or visiting your first insurer website for a quote, take a moment to pull together all of the key information you will need to obtain an accurate quote

- ✓ The year, make and model of each vehicle you want insured. For the most accurate quote, use each vehicle’s VIN number.
- ✓ Tell the agent how much insurance you want. Always ask for the same coverage levels for each quote so you can make an apples-to-apples comparison.
- ✓ The name, license number and date first licensed of each licensed driver in your household.
- ✓ List any special after-market equipment that has been installed in your car.

- ✓ Be ready to answer questions about your vehicle usage such as the number of miles you drive each year.
- ✓ If you are changing insurers, you will be asked about any gaps in coverage.
- ✓ Think about other insurance you might want to bundle with your auto insurance.

Many companies offer significant discounts to customers who also purchase a home or renter's insurance policy.

### **Things to Remember**

Remember to ask for all of the discounts that might be available to you. Each insurer offers many different discounts including common ones such as low annual mileage, anti-theft devices, multi-car policies, and good student.

Double-check each quote to make sure that the information is accurate and that the coverage levels are the same. Also be sure to check the policy's term length – if one quote is only half as much as all the others, it might be based on a 6-month policy.

#### **Compare and Save**

Once you have a suitable collection of quotes, you can compare prices as well as other important factors such as product features, claims handling reputation, location of the agent or direct writer or the financial health of the company. It might take a few hours to assemble a significant number of quotes, but a small investment of time could save you many dollars in the long run.

# Home Improvement Contracting

In 1992, the Massachusetts Residential Contracting law, also known more commonly as the Home Improvement Contractor Law (M.G.L. c. 142A) went into effect, enacted in order to protect consumers and regulate the practices of home improvement contractors. The law establishes a contractor registration requirement, an arbitration program for resolving disputes between homeowners and registered contractors, and creates a Guaranty Fund to compensate consumers up to \$10,000 for unpaid judgments against home improvement contractors.

“Residential Contracting” is defined by the law as “the reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, or demolition, or the construction of an addition to any pre-existing owner occupied building containing at least one but not more than four dwelling units, which building or portion thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building.” A “contractor” is defined as “any person who owns or operates a contracting business who, through himself or others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for, residential contracting work.”

Under the law, “No contractor or subcontractor shall undertake, offer to undertake, or agree to perform residential contracting services unless registered therefor.” There are certain limited exemptions from registration spelled out in the statute, such as those who engage solely in landscaping or interior painting. The list of exempted categories is in section 14 of the law, reproduced below.

The Office of Consumer Affairs and Business Regulation (OCABR) has overseen the arbitration program and Guaranty Fund program since the law went into effect in 1992. In July, 2009, OCABR was also transferred the authority to register contractors, a process previously handled by the Board of Building Regulations and Standards. Along with that authority, OCABR undertook the related process of accepting consumer complaints to review and evaluate for possible disciplinary action against contractors for violations of the law. A contractor against whom a complaint has been filed may be required to appear for a hearing before an OCABR hearing officer. The complaining consumer serves as a witness for the Commonwealth for the hearing. Contractors found in violation of the Home Improvement Contractor Law may be assessed a fine, and/or have their registration suspended or revoked. Unregistered contractors who should have been registered at the time of the contract at issue in the consumer’s complaint may also be assessed a fine.

## Information About Contractor Registration

The Home Improvement Contractor Registration Program is authorized by Massachusetts General Law Chapter 142A. The law sets out the parameters for registration and empowers the Office of Consumer Affairs and Business Regulation to administer the program. The law is codified as a Code of Massachusetts regulation (CMR).

### Who must register?

All persons, individuals, proprietorships, partnerships, corporations who solicit, bid on, or perform residential contracting as a contractor or subcontractor on an ***EXISTING ONE TO FOUR UNIT OWNER-OCCUPIED RESIDENTIAL BUILDING***.

### Who is exempt from registration?

- Workers who work for a contractor or subcontractor for a wage
- All licensed professionals or tradesmen who take an exam as a condition of their licensure when they are working within the scope of their license, such as architects, electricians, plumbers but NOT Construction supervisors licensed by the BBRS.
- the Commonwealth or its subdivisions
- Schools offering vocational education courses or training in home construction or improvement.
- Owners doing their own renovations
- Persons who perform any bona-fide single job costing \$1,000.00 (one thousand dollars) or under.
- Part time contractors or subcontractors whose gross revenue in the previous 12 months was less than \$5,000
- Persons enrolled as full time students for last and next academic term and 2/3 of whose employees are so enrolled and whose gross revenue is anticipated to be or has been under \$5,000.
- Persons who install central heating, A/C systems, energy conservation devices, provide conservation services on behalf of a public utility, landscaping, interior painting, paper hanging, finished floor covering, tile, fencing, free standing masonry walls, above-ground swimming pools, shutters, awnings, patios, driveways.

## What work is covered?

Residential contracting is defined as;

*“The reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition or construction of an addition to any pre-existing building containing at least one but not more than four dwelling units, which building thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building.”*

## Do I need a written contract?

All agreements with owners for work exceeding \$1000 (one thousand dollars) MUST have a written contract. The Contract MUST contain certain provisions detailed in the law. There is a sample contract on the OCABR web site.

## The contract must include, at a minimum:

1. The complete agreement between you and the owner and a clear description of any other documents that form a part of the agreement;
2. The full names, social security numbers, addresses, (NOT a post office box), and registration number of the contractor (the contractor is the company or individual or proprietorship or partnership who is agreeing to the work, not necessarily an individual's name), and the names of the salesperson, if there was one, who solicited or negotiated the contract and the date when the contract was signed by the parties;
3. The date on which the work under the contract is scheduled to begin, and the date on which the work is scheduled to be substantially completed;
4. A detailed description of the work to be done, and the materials to be used, in the performance of the contract;
5. The total amount agreed to be paid for the work to be performed under the contract;
6. A time schedule of payments to be made under the contract, stated in dollars, including all finance charges, if any. If you require advance deposits, they must be listed in the contract, and may not exceed either 1/3 of the total contract price, OR the actual cost of any special order or custom made materials or equipment which must be ordered in advance of the beginning of work in order to ensure that the project will proceed on schedule. **Be aware: it is unlawful to demand final payment until the contract is completed to the satisfaction of the parties to the contract.**
7. All the parties to the contract must sign the contract. The contract must also be dated. It is also a good idea to date the signatures.

8. **There must be a clear and conspicuous notice on the contract: that all contractors and subcontractors must be registered by the Office of Consumer Affairs and Business Regulation (“OCABR”), and that any inquiries about a contractor or subcontractor relating to a registration should be directed to OCABR;**
9. **The registration number of the contractor or subcontractor;**
10. **The owner’s three-day cancellation rights under Massachusetts law;**
11. **All warranties and of the owner’s rights under G.L. c. 142A;**
12. **Any lien on or security interest on the residence as a consequence of the contract; and**
13. **In ten point bold type or larger, directly above the space provided for signature, the words “Do not sign this contract if there are any blank spaces.”**

**In addition, in any contract entered into between a contractor and a homeowner, the contractor must inform the homeowner: (i) of any and all necessary permits; (ii) that it shall be the obligation of the contractor to obtain such permits; and (iii) that homeowners who secure their own permits will be excluded from the guaranty fund provisions of the Home Improvement Contractor law.**

You may also write on the contract any other matters on which you both lawfully agree, but this cannot include a waiver of any rights provided to the owner by the Home Improvement Contractor law or other state or federal laws.

**No** contract may include an “acceleration clause,” where the contractor can demand full payment of amounts not yet due. A contract may provide, if the contractor deems himself insecure, that as a condition of continuing work the balance of funds due under the contract, which are in the possession of the owner, shall be placed in a joint escrow account requiring the signature of the owner and the contractor for withdrawal.

The contract may also provide that the contractor may initiate alternative dispute resolution by any private arbitration services approved by the Director of the Office of Consumer Affairs and Business Regulation. If this is included, each party to the contract must separately sign and date this section. (Consumers are automatically entitled under the law to seek arbitration through the program at the Office of Consumer Affairs and Business Regulation—this provision is for contractors who desire to use this process.)

### **What is the Guaranty Fund?**

The *Guaranty Fund* is a fund maintained by the Commonwealth, supported by registrant contributions. After certain conditions are met, any owner whose contractor violates any provision of the law may receive some or all of their damages from this fund. The responsible contractor must repay the fund for these payments or else he risks suspension or revocation of registration and administrative penalties and fines.

What are some of the key provisions of the Law:

- Any contract with an owner above \$1,000 must be in writing and must contain certain provisions as specified in the law.
- Contractors/subcontractors cannot act as mortgage brokers or represent lenders.
- Building permits, contracts, and advertising for residential contracting must contain the registration number of the contractor.
- Contractors/subcontractor is responsible for conduct of employees, salespersons and subcontractors within the scope of their contract with the owner.
- All building permits shall clearly state that persons contracting with unregistered contractors do not have access to the guaranty fund.
- Provisions can be made in the contract for contractors to use alternative dispute resolution through any private service approved by the Office of Consumer Affairs and Business Regulation.
- Action to enforce provisions of this law or to seek damage can be brought in superior court, district court or in the small claims court.
- *Responsibilities of Owners*
- Owners not using registered contractors or obtaining their own permits cannot receive payment from the guaranty fund.
- Owners must have a court or arbitrator judgment and have made diligent efforts to collect damages before a claim can be made against the guaranty fund.
- The maximum award from the fund is the lesser of: the actual damages or, \$10,000 (Ten Thousand Dollars)
- Any one job and up to \$75,000 (seventy five thousand dollars) against any one contractor.
- Owners MUST have a written contract for work over \$1,000

# **Additional Considerations when Paying for Goods or Services**

## **Credit Cards and Checks—Some Traps for the Unwary**

### **Credit Card Scams**

Anywhere credit cards are accepted, an unscrupulous employee has the opportunity to make a quick buck. The next time you use a credit card, keep this in mind: If the amount of the sale is \$15.00, the employee could enter a different amount if the sale is not automatically rung up by the register and entered into the electronic database. Some credit card slips, particularly for services like restaurants, where you may leave a tip on a separate line, do not enter the final total on the slip you are given—you need to write it on the customer slip, adding it to the charge for the food, so you will remember what you agreed to, or ask for a slip that enters the total amount, with tip—or leave a cash tip. In a retail store, you should check your credit card slip against your sales receipt to see that they are the same if the slip was not generated by the register as the sale was rung up. Unless you retain your sales and credit card slips and reconcile your monthly statement, incorrect or fraudulent charges can go undetected.

### **Avoiding Problems:**

- Examine imprinted amounts on charge slips before you sign. If the charge slip does not include an amount for a particular entry, such as a blank separate line for a tip, consider whether you might simply want a final statement including the tip instead, or to pay the tip in cash.
- Keep all charge slips and reconcile your account each month.
- Notify your credit card company immediately of any unauthorized or inaccurate amounts that appear on your statement. You have only 60 days from the date you receive your statement to correct billing errors, and you must notify the credit card company at the address given in your statement for billing errors. This address may be different from the address for paying your bill, so be sure to read the statement for the correct address. Writing a note on your bill with payment is not sufficient to bring the matter to the attention of the credit card company.
- Check the account information entered on the slip given to you—it should only have the last 4 or 5 digits of your credit card number printed on it, not the whole number. This is to prevent identity theft if you happen to drop or lose your slip.

## Stolen Checks

If someone steals one or more of your checks and uses it, what rights do you have? Although it is possible to receive reimbursement from the bank on stolen and forged checks, the law does not always hold the bank responsible.

### How to avoid problems:

- Safeguard blank checks.
- Safeguard bank statements and cancelled checks; they reveal your account balance, signature, and check design, as well as your account and bank routing numbers.
- Be sure to reconcile your checking account promptly and report any discrepancy immediately.
- If you make an error on a transaction slip, tear it up into little pieces, or better yet, take it with you and run it through a cross-cut shredder at home.
- Having Social Security and other forms of payment deposited directly to your account makes it much more difficult for a con artist to obtain information about your financial affairs.
- If you do not have a bank account, you may also be able to access Social Security benefits through Direct Express, a prepaid debit card. This way you do not need to carry cash, maintain a bank account, or use costly services to cash your check. Lost or stolen cards can also be replaced. For more information, go to [www.USDirectExpress.com](http://www.USDirectExpress.com).

*Remember, all a determined thief needs is your checking account number and bank routing number to process a “demand draft,” which is a document that looks a lot like a check and is processed through the automated clearinghouse system. This is all the more reason to safeguard your checks and checking account information.*



# **PROTECTING YOURSELF FROM IDENTITY THEFT**

# Tips to Protect Your Credit Cards & Other Personal Information

“Identity theft” is when someone uses your personal information to obtain some kind of benefit for himself or herself—often to your disadvantage. Most often, the benefit is financial—for example, an identity thief uses your personal information to open a credit card account, but has the bill and goods sent to another location, so you do not become aware of the fraud until you are contacted by the company because you have not paid a bill you never received, for goods you did not order, for an account you did not open. Or you find a fraudulent charge on your bill—because someone found out your credit card number and ordered goods, shipping them elsewhere. Or someone uses your checking account information to have a “demand draft” drawn up, which accesses your account without there even being a physical check from the account. Even if you can convince the credit card company that there has been fraud and you end up not owing the money, you must spend a good deal of time, and sometimes money, contesting the charges or other damage inflicted by the identity thief.

Scam artists search for personal information in a variety of ways—by “dumpster diving”—looking in trash for discarded bank or credit card account information; by “shoulder surfing”—looking over your shoulder while you stand at an ATM; even by using sophisticated “skimming” devices to make copies of your information while you use a credit card; or “eavesdropping” on unsecured sites when you access a credit card or bank account by WiFi. They also create phony web sites or e-mail messages, “spoofing” the authentic entity, such as your bank, to get you to part with a piece of information they need to complete their fraudulent profile. Your best protection is to secure your information, destroy copies of financial documents once the period you need to retain them has passed, and be aware of your surroundings. Here are some pointers:

- Don’t give your credit card number or expiration date over the phone unless you initiated the call.
- Credit card or debit card numbers are never needed for “identification purposes.” Terminate the call if you hear that line from the caller.
- Don’t “confirm” your credit card expiration date, your credit card’s “security code” number (the number on the back of the card), or your ATM or debit card PIN (personal identification number) if someone contacts you for that information. Your credit card company or bank issuer has that information already.
- Never leave your credit cards, receipts, or billing statements lying around.

- Make a list of everything you carry in your wallet, including credit card numbers and the telephone number you are to call if the card is lost or stolen. Keep this list separate from your wallet or purse.
- If your card is lost or stolen, report it immediately.
- Save your receipts and check them against your monthly statement. Don't give your personal information when using your credit card at a store. A customer's address, phone number or license is not required as terms for using the card for payment, though a business may ask for your address and phone for delivery purposes.
- Make sure you get all bills and expected checks on time—call the company if a bill or check is late. If it was mailed on time, call your post office and report possible postal theft.
- Use a mailbox with a lock on it. Deposit your outgoing mail in a United States Postal Service mailbox, not simply in the mailbox in your driveway.
- Shred any material that you are throwing out that identifies you in any way—bank statements, extra copies of records, bills, letters regarding financial matters, and similar documents. Get a personal “cross-cut” shredder, that cuts up paper into small confetti-like pieces. Though it is time consuming, thieves have been known to re-assemble paper that has simply been cut into narrow strips.
- Get a copy of your credit report at least once a year, to make sure the information is accurate and complete. You are entitled to one free report a year from each of the three major credit reporting agencies—stagger the reports over the year, so that you are monitoring over a greater period of time than if you ordered all of the reports at once. The three major credit reporting bureaus are: Equifax, Experian, and Trans Union.
- You can order a credit report online at [www.ftc.gov](http://www.ftc.gov); go to Free Annual Credit Report (*not* “Free Credit Report.com” which is a web site that requires payment for its offered services)
- Phone the FTC at 877-322-8288
- Mail to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281

If you suspect identity theft, place a “fraud alert” on your credit report by contacting: **Place a "Fraud Alert" on your credit reports, and review the reports carefully.** The alert tells creditors to follow certain procedures before they open new accounts in your name or make changes to your existing accounts.

The three nationwide consumer reporting companies have toll-free numbers for placing an initial 90-day fraud alert; a call to one company is sufficient:

- **Experian: 1-888-EXPERIAN (397-3742)**
- **TransUnion: 1-800-680-7289**
- **Equifax: 1-800-525-6285**

### **Shopping for a new credit card?**

Beware – if a deal sounds too good to be true, it probably is. Always read the fine print. Keep in mind that if a card offers incentives, it may come at a higher interest rate than a card with no frills. Choose a credit card plan that best suits your long term needs, and pay the bill off in full, or in the largest amount you can afford each month, to keep interest charges to a minimum. New rules have recently gone into effect, limiting the amount of charges you can be assessed for late payment, over-the-limit fees, and requiring your credit card company to apply payments over the suggested monthly minimum in a certain way, if you have a credit card account with more than one interest rate applicable to it. More information is available at the Federal Reserve Board website: [www.federalreserve.gov/consumerinfo](http://www.federalreserve.gov/consumerinfo).

### **Pre-Paid Value Cards/Gift Cards**

One of the newer forms of payment is a “stored value” or “pre-paid value” card, sometimes sold as a gift card. These are the cards that resemble credit cards, may well have a bank logo on them, and that are used as payment devices for benefits, including for insurance reimbursements and for certain federal or state benefits, for rebate payments on certain retail purchases, or even as a payment device for paying workers their wages. You can buy such cards as gift cards in a variety of places, including at some financial institutions and at retailers. The cards have an embossed identification number on them, and may or may not have the name of the person in whose name money has been credited on the card. Usually you can enter the number on the card and possibly a personal identification number (“PIN”) online at a related web site, to check the balance on the card.

Such cards are generally not identified to a specific “account” in the name of an individual, but may have money deposited in a larger, general account, collecting deposits for a number of individuals. While you may not have a specific account, the identification information on the card is important, so be sure to copy and keep in a safe place all of the identifying information for the card, including the number embossed on the card, the name of the person identified with the card, if any, and any PIN related to the card, along with any other information you might need to report the card lost or stolen, or to check balances. The cards can function like cash, making it easy for someone who picks up a dropped card to spend down its value instantly.

Recently, rules related to these cards have changed. New protections include: no “dormancy” fees can be assessed against the card for not using the card, unless there has been at least 12 months of non-use, and no more than one “dormancy” or “service” fee can be charged against the card in any one month. Cards must retain their value, minus fees and whatever value you have spent, for at least five years. The card must have disclosure of any fees or other limiting terms with it when it is sold—usually these terms are in a “sleeve” in which the card is sold. State law prohibits deducting fees from cards used for payment of wages, and requires that cards retain their value for seven years, minus fees and charges, but the application of state law is limited; state law does not cover gift cards issued by national banks.

### **Considering Legal Action**

If you have entered into a contract that has not turned out as planned, your best first step is to try to negotiate a resolution with the business. If you have not received goods or services in a timely fashion, if you paid by credit card, you may also want to consider contacting your credit card company to dispute the charges—you need to do this within 60 days of receiving your statement with the charge on it. You may want to consider informal mediation—the Attorney General offers free mediation services through a network of 19 Local Consumer Programs and 9 Face-to-Face Mediation Programs serving all 351 cities and towns in the Commonwealth. For more information about the programs, and to find the program serving your community, go to [www.mass.gov/ago](http://www.mass.gov/ago), or call the Attorney General’s Hotline at (617) 727-8400.

If the conduct at issue seemed to be unfair or deceptive, you may want to consider sending the business a Demand Letter, under Massachusetts General Laws Chapter 93A, the Consumer Protection Act.

### **30 Day Demand Letter**

If you are unable to resolve a complaint with a merchant informally, then you may decide to take legal action. If your problem involves an unfair or deceptive practice, which is a violation of the Massachusetts Consumer Protection Act, the law requires you to send the merchant a letter 30 days before filing a claim in court. ([M.G.L. c. 93A](#)). The letter must outline your complaint, the harm you suffered, and how you want the problem resolved. This is called a 30 Day Demand Letter.

The merchant must make a good faith response within 30 days, or it could subject him/her to triple damages and attorney’s fees. The 30 Day Demand Letter serves to encourage the merchant to negotiate and settle the claims out of court. It also establishes the amount of monetary damages you can recover if the charges are proven in court.

## Taking the First Step

You must send a 30 Day-Demand Letter whether your action will be brought in Superior Court, District Court, [Small Claims Court](#) or Housing Court. You do not need to send this letter if the merchant does not maintain a place of business or keep assets within Massachusetts. You also do not need to send this letter if you assert the claim in a counterclaim or cross-claim response to a merchant taking legal action against you.

### Information that Must be Included in the 30-Day Demand Letter

To meet your legal obligations, include the following information in your 30 Day Demand Letter:

1. **Your full name and address**
2. **The description of the unfair or deceptive act or practice** including all the unfair or deceptive practices claimed, the dates involved in the transaction, and any other important facts. If you know the regulation number of the regulation violated, you may wish to include it. However, you are not limited to written regulations or laws.
3. Clearly explain the **injury you suffered** as a result of the unlawful act such as:
  - Failure to return a security deposit which results in the loss of money.
  - Sale of a defective household appliance results in the ownership of a useless and worthless product.
  - Failure of the TV repairman to repair a broken set results in payment for services improperly performed.
  - Purchase of goods through "bait and switch" tactics results in owning unwanted goods which are more expensive than originally planned.

Unfair and deceptive practices under [Chapter 93A](#) are defined in regulations available from the State House Bookstore (617/727-2834).

4. **The demanded relief** including the amount of money you are demanding to recover.

Although it is not required by law, the 30-Day Demand Letter should be sent by certified mail, return-receipt requested, so that you will have proof of delivery. Send the letter by regular mail also, and keep a copy for your files.

## Written Offer of Settlement

Once you mail the 30 Day Demand Letter, the merchant has thirty days to respond in writing. You then must decide to either reject or accept the merchant's offer. If you reject an offer which the Court later finds to be reasonable, then the Court may limit the

amount of money you can collect. The Court may limit your recovery to the amount the merchant originally offered to you.

The Court may find in your favor because either the merchant never sent a settlement offer or sent you an unreasonable offer. You then may be able to recover your actual monetary damages, or \$25, whichever is greater.

The Court may also find that the merchant's violation of the Consumer Protection Act was "willful or knowing," or that the merchant's refusal to settle with you was made in bad faith. In either case, you may receive between two and three times the amount of your actual damages, or \$25, whichever is greater.

If the Court finds in your favor, you are entitled to reasonable attorney's fees and costs. However, the Court may not award you attorney's fees if you initially rejected a reasonable settlement offer.

### **Asserting Your Rights**

If you and the merchant are unable to reach an agreement on your own, you have several options.

#### **Mediation**

This allows both parties to reach a mutually acceptable solution with the help of a facilitator. Mediation is voluntary, requiring both parties' consent. You may apply for mediation through your local consumer group, which is affiliated with the Attorney General's Office.

#### **Court**

You may also pursue your claim through the court system. For claims under \$2,000, Small Claims Court is the least costly option. Consumer Affairs publishes a Small Claims Court brochure available upon request. Larger claims may be more suitable to District or Superior Court. You should seek legal advice for all claims.

# Sample 30-Day Demand Letter

Your name  
Your address  
Your telephone number  
Date

Name of Merchant  
Merchant's address

Dear Merchant:

Under the provisions of Massachusetts General Laws, Chapter 93A, Section 9, I hereby make written demand for relief as outlined in that statute.

On or about {date}, the following unfair or deceptive act occurred:

*{EXPLAIN WHAT HAPPENED}*

This unfair or deceptive act or practice is, in my opinion, declared unlawful by Section 2 of Chapter 93A, (you may want to give regulation number, if applicable) which reads as follows:

*{Quote text or section. Remember: You are not required to quote written regulations or laws to support the assertion that the merchant's conduct was unfair or deceptive; it is, however, desirable. You will want to include all the regulations which you believe were violated.}*

As a result of this unfair or deceptive act or practice, I suffered injury or loss of money as follows:

*{Indicate Injury or Money or Property Loss}*

Therefore, I hereby demand the following relief:

*{Indicate Relief, or Payment for Damages, Which is Sought}*

Chapter 93A gives you the opportunity to make a good-faith response to this letter within thirty (30) days. Your failure to do so could subject you to triple damages, attorney's fees and costs if I decide to institute legal action.

Sincerely,

Your Name

## **Statutes of Limitation/Statute of Repose**

One additional consideration when taking legal action, or when responding to a legal action filed against you, is what is known as a “statute of limitation” or a “statute of repose.”

This simply means that some law (statute) provides that a legal action cannot be filed in court against someone after a certain amount of time has elapsed since the event to be sued on.

Different “causes of action”—legal concepts on which one can sue or be sued—have different statutes of limitation.

A statute of limitation is a defense against legal action, and it does not arise automatically—the party asserting that he or she is protected from suit by the applicable statute of limitations must claim this as a defense.

While this legal defense provides what some refer to as a “technical” defense to a lawsuit, it is intended to provide some certainty to those who otherwise might be surprised by a lawsuit which they never anticipated, given the passage of time since the events in question.

You need to check with someone with legal knowledge to determine the statute of limitations for the legal theory or law under which you choose to proceed, or under which someone is attempting to pursue you in court. While a party may be successful in defending against a lawsuit by raising the applicable statute of limitations, this does not generally mean that the lawsuit itself was unlawful unless it was proven to have been pursued with knowledge that the suit was “time-barred” (outside the applicable statute of limitations). Having a lawsuit be time-barred does not mean, however, that one may not still try to collect on say, a debt, by means other than by going to court. However, debt collectors cannot violate debt collection rules in seeking to collect, and egregious conduct in seeking to resolve a dispute may be in violation of other laws.

# Fraud

## Why Seniors are Victimized

The victimization rate for fraud is very high among older people. Although adults of all ages are swindled every day, con artists often select older people because some may seem more trusting, appear to be lonely, give the impression that they are easily confused by fast talk, or appear to have time to listen to the “pitch” of the con artist. Many older people also have relatively easy access to their savings, while many younger people have committed their money to educating money or paying for their homes. Unscrupulous scam artists also prey upon older people’s desires to provide for their loved ones, suggesting that they can help seniors increase their savings so they can help younger family members succeed in providing for their families. They also prey upon elders’ concerns with maintaining their finances to last them through their lives.

## Why Fraud and Confidence Schemes are So Successful

No individual is immune to a clever con artist, and people of all ages and backgrounds have been swindled. Con artists are successful for several reasons:

*Con Artists are Very Skillful:* Many have the abilities of professional actors and can convincingly present themselves to their potential victims.

*Complacency:* Most people believe they are too clever to be swindled. Older adults can become complacent if they believe their years of experience will help them detect a con artist.

*Hard to Detect:* Con games are very difficult to detect. There are two reasons for this: First, frauds are committed without violence. Unlike a shooting or assault, people in the vicinity will normally be unaware that a fraud is being committed. Second, frauds are seldom reported to authorities. Reporting rates for this crime are estimated at between 3% and 8%, which is the lowest of any major crime. Many victims are embarrassed to report that they have been swindled, and others may conclude that there is nothing the police can do to catch the culprit and recover their money. This is what the con artist depends on: Your cooperation by complete silence.

*Difficult to Prosecute:* Con games are very difficult to investigate and prosecute. First, people who swindle others cannot easily be traced. Con artists usually do not have ties to the communities in which they operate. Even when the con artist can be identified, successful prosecution is difficult because of the crafty way many con games are carried out. All too often, con artists are able to hide their intent behind excuses.

### Three Elements of a Fraud Promotion

All frauds consist of three elements, which must be accomplished if the scheme is to succeed. If even one element is defeated, the scheme will fail. These elements are:

1. *Disguising the Criminal Intent*

Con artists decide they want to steal from people, and then develop ideas for a scheme to succeed. They must disguise their frauds by, for example, producing phony, official-looking documents or coming up with a believable story. The various schemes that they use have usually been developed over time, gradually getting more and more difficult to penetrate, and looking more and more official. Think of the allegations against investment advisor Bernie Madoff—he is alleged to have created years of false documentation of investments and other business dealings, to cover his tracks if his clients began to suspect that the profits he said he was generating seemed “too good to be true.”

2. *Taking Advantage of Human Traits*

Con artists have a good working knowledge of human nature and use it to take advantage of people. They manipulate certain human traits that influence people to part with their money: goodness, trust, greed or fear, and rationalization of seemingly conflicting facts. Swindlers learn to prey upon these human motivations.

3. *Voluntary Participation of the Victim*

Con artists have one objective: To induce people to participate voluntarily and hand over their money!

### Defeating Fraud

Two of the elements described above reveal areas where we can take steps to defeat fraud.

*Voluntary Participation of the Victim:* Fraud is a crime over which potential victims can exercise almost total control. If they refuse to cooperate, they cannot be swindled. People can always say “no” to a con artist. If they refuse to cooperate, they cannot be swindled. The challenge to the con artist is to convince people that the proposal is not a fraud. The challenge to you is to avoid being manipulated.

*Taking Advantage of Human Traits:* To exploit the human traits of goodness, trust, greed and fear, the con artist must resort to a pattern of promises or claims that can be readily identified. These can serve as warning signs that a con game is taking place. When people become aware of these warning signs, they will be able to detect swindles, and simply say “no, thanks.”

## Consider the Following Warning Signs:

WHAT THE CONS SAY	WHAT THE CONS REALLY THINK	A GOOD MINDSET FOR YOU
Get rich quick!	Well, <i>we</i> get rich quick, at your expense.	Be realistic. There are probably simple steps you can take with appropriate advice to improve your quality of life. Speak with trusted advisors and consult with professionals.
Cash only.	We don't want a check or other form of traceable payment that makes it harder for us to cover our tracks.	Never pay for <i>any</i> large purchase, investment, or charity in cash. Big cash is the currency of thieves.
We need your Social Security, credit card, or bank account number for identification purposes.	We couldn't care less about identification. If we get your credit card number, we can charge you for our bogus service. If we get your bank account number, we can make unauthorized withdrawals from your account. With your Social Security number, we can create another you, and open up accounts in your name without your knowledge, sending goods to ourselves at a bogus home address for you. We can sell your credit information on the internet and let others do the same.	<i>Credit cards:</i> Using credit cards for identification purposes can turn out to be a costly mistake. Con artists with your account information can make unauthorized charges against your card. However, it is <i>recommended</i> that you use your credit card for purchases from familiar, established businesses. Using a credit card in this manner can help to protect you in the event you have difficulty receiving the product or service. <i>Bank account number:</i> It is a myth that people cannot take money from your bank account without written authorization. Merely giving someone your checking account number may result in their making

		<p>withdrawals from your account by issuing a “demand draft” to your bank, claiming you authorized the withdrawal. The bank may pay it, even though the draft lacks your signature.</p>
<p>We will send someone to your home or office to pick up your payment so you will get your prize faster.</p>	<p>We will pick up your payment so we will get your money before you have time to change your mind or figure out what a scam this is.</p>	<p>Legitimate charities and businesses <i>never</i> pick up your money by courier or messenger. Don’t ever let a courier pick up your money—no matter how official it sounds, no matter how many identification numbers the voice on the other end of the phone gives you. The messenger pick up is the expressway of the scammer.</p>
<p>We can recover the money you already lost, for a small fee.</p>	<p>We got you once, and now we are trying to get you again, because, like the gambler, you might be enticed to try to get your money back.</p>	<p>Beware! If you have lost money in the past, you may be targeted again by “Recovery Companies,” who promise to help you recover money you lost, or a prize you did not receive. Remember, it is illegal to demand payment to improve your credit or recovery your lost money <i>before</i> the person delivers. Once you are taken advantage of, it is almost guaranteed that you will be contacted again by another scam artist. Report your initial victimization to authorities, and never try to improve your credit or</p>

		recover lost funds over the telephone or the internet. Only deal with trusted financial professionals, who will produce results prior to your paying for their complete services.
We have a secret plan to ensure you profit.	Our real secret? You don't stand a chance of getting a dime!	Unless someone can explain a situation, investment or other expense to your complete satisfaction, do not become involved. Excuses such as "It's too complicated" or "You don't need to worry about the details" are strong indicators the proposal is a total loser.
We represent a law enforcement agency, and we need your help in an investigation. This is your chance to put a crook behind bars; to recover lost money; etc. But you can't tell anyone about this!	Just because we sound official means you are likely to believe us. We tell you to keep it a secret to prevent you from going to real police officers to uncover our scam.	Remember: Legitimate law enforcement agencies rarely involve older citizens in undercover investigations, and they absolutely <i>never</i> ask a citizen to put up money during an investigation.
Make a quick decision.	Without the pressure to decide quickly, you will figure out how bogus our offer really is!	Remember, if it's worthwhile today, it will be worthwhile tomorrow. Take at least 2 hours to consider the deal and talk to someone you trust about the proposal.
Too good to be true.	If you buy that line, it <i>is</i> too good to be true—for us!	Such an offer is bound to be neither good nor true.
Something for nothing. Also known as Have I Got a Deal for You!	The old standby, which sometimes still produces results!	Any time you are promised something for nothing, you typically get the opposite—nothing, for <i>your something</i> . The variation, offering

		enormous discounts for reasons that don't hold water, are also popular, in sales promotions of all kinds—home improvements, investment schemes, door-to-door sales, “estate auction” and “art auction” and “going out of business” sales, and earning opportunities such as stuffing envelopes or making small crafts at home.
No written information available.	How can we write something logical about a scheme that's bogus to begin with? We would not dream of writing something down that could later be used as evidence of our false claims.	<i>Insist on getting documentation.</i> Often just the simple request for written information will scare off the scam operator. <i>However</i> , you should still be cautious. Do not assume that fancy brochures ensure a legitimate enterprise. Ask yourself: Do I understand exactly what is being promised? Have I spoken with someone I trust about this proposal? Can the company supply me with references and hard evidence about its proposal?

# Person-to-Person Schemes

## **The Bank Examiner**

This scheme usually begins with a telephone call, from someone identifying him or herself as a bank examiner, a federal agent, or some other official-sounding title. You are told that some bank accounts, including yours, show large withdrawals. The caller suspects a dishonest bank employee and wants you to help trap the thief.

The phony examiner may ask you to meet him somewhere near the bank, where he will show you some official-looking identification. You will then be asked to withdraw money, which is to be delivered to the “examiner,” who will go through a show of recording serial numbers. The “examiner” will inform you that the money will be immediately re-deposited. The victim will only learn of the swindle when he goes to the bank and finds out the money has not been re-deposited, and the bank is unaware of any investigation or any examiner.

This scheme is so successful that there are many versions of it. The story may be that a teller is suspected of stealing money from a customer’s account and the bank has set up a new account in the victim’s name. The phony examiner asks the victim to empty the old account, so the examiner can do a “controlled redeposit” of the customer’s money into the new account to see whether the dishonest teller will try to transfer money back into the old account. Confusing? It’s meant to be. The idea is to confuse victims with fast talk. Another twist is the story that a teller is suspected of giving counterfeit money to depositors withdrawing cash, then stealing the same amount from their accounts.

## **The Home Repairman**

Usually, the “home repairman” will arrive at the victim’s door and inform the homeowner that her driveway, siding, or maybe the roof is in very poor condition. He explains he has just finished a job and has extra material that he could use to fix the problem. He claims he can do this inexpensively because he won’t have to charge for materials.

If any work at all gets done, it will usually be of poor quality and with inferior materials. Often the repairs are not even needed. The entire operation is just a way to get money by convincing victims that they are getting something at a reduced cost. In the worst cases, the victim will be driven to the bank to get cash to pay the inflated cost of the work, right then and there.

Never accept any unsolicited offer of repair services. If you need work done, there are several precautions that you can take to avoid problems with contractors. Massachusetts law requires home improvement contractors to be registered. This requirement covers

house painters, siding installers, roofers, and carpenters and many other contractors to be registered, and many of these same contractors also need a construction supervisor's license. Check with the Office of Consumer Affairs and Business Regulation ([www.mass.gov/consumer](http://www.mass.gov/consumer) or (617) 973-8787) to see if the contractor you are thinking of hiring needs to be registered or licensed, and if so, if he is. For licensing of contractors, you will also need to check the Department of Public Safety (617-727-3200), and for licensing of other professionals, such as architects, you can check with the Division of Professional Licensure (617-727-3074). To check for complaint histories, contact the Attorney General's office at 617-727-8400.

### **The Ruse Entry**

Another variation on the contractor ploy is for the fraudulent home repair contractor's "workman" to come up with an excuse to enter the victim's home and, while he distracts the occupant, his accomplices will go through the house and steal valuables. Phony "meter readers" may also use this method of gaining access to a victim's valuables. Remember to always ask for identification, and if you feel uncomfortable, call the company or agency that you are told has sent them for confirmation.

### **The Fake Accident Ploy**

In the fake accident ploy, the con artist tells the elder, either over the phone or in person, or even by e-mail, that the elder's child or other relative has been seriously injured and needs money for medical treatment, or that the relative is in jail and needs money for bail. Once the elder is hooked, the con artist escorts the elder to the bank for a large withdrawal, or more commonly has the elder wire money to a far away location, where an accomplice, not the family member, is the actual recipient.

### **Offers to Newly Widowed Persons**

Some con artists use obituary columns to find victim. Recently widowed persons can be quite vulnerable to certain con games. Cons may claim that, before the victim's spouse died, he or she ordered something, often a religious object. In memory of the deceased spouse, a widow or widower may be inclined to purchase the item, although it is vastly overpriced. Con artists also attempt to sell widowed persons insurance policies, investment products and land development schemes, to take advantage of the widowed person's vulnerability and perhaps lack of broad knowledge of finance.

# Mail Fraud

For over 100 years, the U.S. Postal Inspection Service has been the primary federal agency responsible for investigating fraudulent schemes conducted through the mail. These swindles include conducting phony contests and sweepstakes; selling misrepresented or nonexistent investments in annuities, stocks, securities, precious metals or real estate; touting worthless or dangerous medical cures; soliciting money for phony charities; promoting participation in fraudulent work-at-home plans; and selling “dream vacation” packages that turn into nightmares. This is not an all-inclusive list, but it represents the extensive variety of mail fraud that can victimize seniors and younger people as well.

If you or someone you know receives what could be a fraudulent solicitation, you should simply write on the envelope “Forward to Postal Inspector,” and leave it for the mail carrier to pick up.

## Telemarketing Fraud

Telemarketing swindlers call victims to ask for money in exchange for services or products that are never furnished or are priced far above their true value. Phone fraud is a multi-billion dollar activity, deceiving or defrauding millions each year.

## How Does Telefraud Work?

*The “Boiler Room”* Telefraud operators employ many people, often in banks of phones that are referred to as “boiler rooms.” More commonly now, telefraud operators use untraceable cellphones that they buy in bulk, with phone cards, then discard when it appears that consumers are on to the fraud. These callers use well-rehearsed, high-pressure sales pitches to convince consumers to buy overpriced products, invest in fictitious enterprises, participate in contests to win worthless prizes, or contribute to phone charities.

## Use of the Mail to Set Up the Call

Telefraud promoters often use the U.S. mail as the first step in their scheme. They use the mail to give the impression of legitimacy by sending out enticing letters or postcards to lure victims with promises of contest awards and prizes. They may even put handwritten notes on “stickies” attached to the letter, which seem to indicate that the recipient is more favored than

## Sweepstakes Fraud

A common fraud involves calling people and telling them they can win a fabulous prize if they pay to enter a sweepstake, purchase selected products, or pay the tax and

handling charges for a prize they've already won!—without having entered a contest, as far as the consumer can recall.

It is illegal for sweepstakes promotions to require any type of purchase or payment in order to enter the sweepstakes or be eligible to win a prize. All entrants, whether they are purchasing merchandise or not, must have the same chance of winning. It is a great misconception to believe that you have a better chance of winning if you make a purchase. In fact, if the promoter requests that you make any purchase as a condition of participating or winning, then the promotion is a scam!

It is also illegal to enter a foreign lottery by mail or over the internet—so calls telling you that you have won the Irish Sweepstakes, or El Gordo, or similar sweepstakes in foreign countries-- but that you need to pay the taxes or some other fee to collect your winnings—are frauds.

### **What Are You Likely to Hear During a Fraudulent Telemarketing Call?**

The longer prospective victims allow callers to go through their scripts, the more difficult it is for many to resist. Fraudulent telemarketers rely on human nature to induce consumers to sell them a bill of goods. Consumers may feel that it is rude to hang up on the caller, even when they are not interested in what is being offered. The telemarketer may try to establish a friendly relationship, or a sense of urgency, or even sell a hard luck story to build up a rapport, in order to get a reluctant consumer over the finish line. Common approaches used by telefraud “salespeople” include the following:

- “Your recently departed (husband or wife) would have wanted you to buy/have this”;
- “You have been specially selected for this offer”;
- “You’ll get a wonderful free bonus if you buy our product”;
- “You’ve won a valuable prize”;
- “This investment is low-risk and pays higher interest than anywhere else”;
- “We will guarantee your investment or buy it back”;
- “You’ll have to make up your mind right away”; and
- “Just put the shipping charge on your credit card/debit card.”

The specific order or product might involve the following: The “opportunity” to invest in oil or gas leases, gemstones, precious minerals, rare coins, and stamps; the offer to test-market a product such as vitamins or a medical device (all the consumer has to do is send money for shipping and handling charges); notification that the consumer has won a contest and valuable prize (again, the victim has to send money for shipping and

handling, or for “taxes”); and the chance for a dream vacation either free or at a reduced price.

### **Con Artists have answers and techniques to overcome doubts and suspicions:**

**“Feel free to check me out”** Con artists may offer to let prospective customers call them back, to confirm they are a “real business,” or refer them to one of the firm’s many “vice presidents.” They may even give you a number of a person to call who they represent is a “satisfied customer.” Be very wary of this dodge, as the “customer” is simply another con artist.

**“Send no money”** To confuse people, many telefraud callers ask for credit card numbers, assuring them that if they do not like the products or decide to return them, they can simply cancel the sale and no money will be lost. Others claim that they need the card number to verify the consumer’s address or confuse individuals by asking for the number at the same time as they ask for the address for shipping purposes. The consumer’s money is lost the minute the credit card number or bank account number is released.

### **What do we know about victims of telemarketing fraud?**

Virtually anyone can be affected by fraud. AARP surveys on telemarketing fraud have found that:

- Nearly a third of the victims had college degrees.
- Two-thirds of seniors who had been victimized could not distinguish legitimate offers from fraudulent ones.
- Those defrauded did not want the telephone solicitations, but found it very difficult to hang up and end the telemarketer’s pitch.
- Those defrauded were frequently too embarrassed to report their exploitations to authorities.

### **How to protect yourself**

Sign up for the state and federal “Do Not Call” lists. Doing so will vastly cut down the number of calls that you even receive in the first place. There are exceptions to the “Do Not Call” list, allowing some calls—such as calls requesting charitable donations, calls for surveys that do not involve the sale of any products, calls for most political purposes, and calls that involve a pre-existing business relationship between the consumer and the business. However, even for these calls, you can simply ask the caller to put you on their own “do not call” list the first time they call you, and they must honor your request. *Be aware that* there is some lag time between your signing up for the Do Not Call lists and having the telephone numbers you have designated being actively on the list. Also be aware that unscrupulous telemarketers, who often are not even located in the United States, will flout the laws and call you, despite the fact you

are on the Do Not Call lists. The fact that you get a telemarketing call from someone you have not called yourself first once you have signed up for Do Not Call is its own tip-off that the business is probably not legitimate.

### **Feel free to hang up**

Once you receive a call, feel free to tell the caller that you do not conduct business over the phone, and that you would like written materials to review. Do not feel obligated to listen to a long explanation about the product, about why no written materials can be sent, or the temporary nature of the offer. You can simply say again “I do not conduct business over the phone. Thank you, good-bye.” Report the call to your local police department and to the Office of the Attorney General, so they may alert others to such calls. Be prepared to hang up if:

- I say no, but the person keeps talking.
- The caller wants money for a prize I am told I have won.
- The caller offers to send a courier to pick up my check.
- The caller wants my credit card or bank account or debit card number.
- The caller insists I make an immediate financial decision.
- The caller offers—for a fee—to recover money I lost previously.
- I just begin to feel uncomfortable.
- I suspect a fraud. Then I should call:
  - My local police department
  - The Attorney General’s complaint line: (617) 727-8400
  - The National Fraud Information Center: 1-800-876-7060.

# Timeshare Re-sales

You may receive a card or letter in the mail, or a telephone call from someone who offers to resell your timeshare, or even represents that he or she already has a buyer for your property. How did he find you, and is the offer legitimate? Some unscrupulous persons look in Registries of Deeds, public notices, and other locations that offer information about ownership rights to property and other assets, and then contact the owner with an offer *that seems too good to be true*. That is because it is not true. Particularly when times are tough, or when consumers are older and may no longer want to use vacation interests they did when their families were younger, or continue to pay taxes and upkeep, offers come out of the blue to help divest consumers of their no longer wanted asset. You can be pretty sure that if someone you do not know calls you and offers to help you—but just needs some money or access to your bank account “up front,” that the deal is not a good one.

If you want to sell something you own, contact an appropriate seller. For your timeshare, call the company itself to see what you could arrange, and if the company cannot assist, contact a licensed real estate broker. For other items, consider appraisals from trusted experts before listing an item for sale, and consider whether you will have recourse if problems arise—for example, can you contact a re-sale site easily, by telephone instead of relying on e-mails that could more easily go unread.

# Internet Fraud

Many of the unfair or deceptive practices that telemarketers engaged in over the phone moved to fax machines when those were the new technology; now they have moved to the internet, and have been augmented by new fraudulent schemes.

***Phony charitable solicitations.*** You may receive an e-mail asking you to donate to charity, or to a person who tells you a sad story about someone who needs your help. The same rules apply here as in any charitable solicitation—check with the Attorney General’s office to see if the charity is registered in Massachusetts, and with the BBB’s Wise Giving Alliance to see information about the charity. The BBB also has a seal of participation in its Wise Giving Alliance; you can check on a charity through <http://charityreports.bbb.org>.

***Phishing.*** “Phishing” scams involve e-mails in which the “phisher” attempts to get you to provide important personal information, often by making the e-mail look as if it is from a government organization, a retailer with whom you have an account, or a financial institution. The e-mail may include a link, which takes you to a “spoof” web site, which looks very like the actual site of the real entity. The link provides a form for you to fill out--allegedly to assist in detecting fraud; to permit you to access prizes; or some similar inducement for you to part with information you should protect, such as your user name or password, your Social Security number, your date of birth and maiden name, or a government-issued i.d. account number. The phisher can then use this information to create an identity, to obtain cash or benefits in your name, but with the benefits re-directed to an address or account established by the scammer. If you receive such an e-mail, either delete it immediately, or call the real entity, at the number YOU look up, not one in the e-mail, to confirm whether it has contacted you.

***Malware.*** Beware of clicking on pop-up links, especially to businesses you don’t know, or that purport to test your I.Q., offer you loans, enter you in contests, and similar opportunities. Sometimes these links will result in having malicious software installed on your computer, that can allow the installer to track your internet use, capture your personal information, or even re-direct your computer to form a part of a controlled “bot net,” that will automatically and autonomously engage in “denial of service” attacks with other coordinated computers, shutting down active web sites, or will be used to send “spam” to others—messages that appear to come from you.

***Business Opportunities & Foreign Lotteries.*** Just as in the physical world of newspaper advertising and mail service, the same phony business opportunities, worthless “miracle cures,” foreign lottery prizes that require you to pay “taxes” in order to receive the prize, all form a part of the continuation of traditional scams to the internet. Remember to exercise the same caution and skepticism when reviewing offers on the internet that you do when you receive something in the mail, read it in the paper, or receive a telemarketing call. Research the background of the offerer, and consult with a trusted advisor before agreeing to spend any money, or accept any goods or services from any company or person on the internet.

***Advance Fee promotion.*** Particularly if you are facing financial difficulties, you may be approached by telephone, or you may read over the internet, offers to provide you with a loan—for some kind of payment up-front while the person offering you the loan “researches” whether you are eligible—for “debt management”; for “credit repair”; for “tax relief”; for “foreclosure rescue,” among other possible schemes. What to watch out for:

- Any fee, tax, retainer, or any agreement to pay money in advance. Federal law prohibits fee payments in advance for promises to manage your debt, or repair your credit; Massachusetts Attorney General Regulations prohibit advance fees for “foreclosure rescue.”
- “Debt management” involves “pooling” the equivalent of your monthly unsecured debt (credit card debt, usually) for some time, then attempting to negotiate with your creditors to accept a lump sum, less than you owe, to settle the debt once and for all. Problems arise when you are told not to contact your creditors, not to respond to calls from them, or to pay on time—your creditor may well sue you for the money due, and for interest and costs of suit if you stop paying them while the “debt manager” says he or she is saving your money or “negotiating.” *You* have a far better chance of negotiating directly with your creditor, and the fees that the debt manager charges you could put you deeper in debt, instead of resolving your problems.
- “Credit repair” involves contacting the 3 major credit reporting agencies to challenge entries on your credit report, in the hopes of having some of the negative information removed. Remember, if information in your credit report is true, it cannot be removed, unless the creditor has mistakenly reported it for longer than allowed, which is generally seven years; ten for bankruptcy. *You* can best challenge stale or incorrect information, simply by writing to the credit reporting agencies yourself. If the information is correct, but you wish to provide some kind of explanation, you have the right to write a one-hundred word statement to be placed in your credit file, that must then go out with each credit report sent out about you.

- ***Tax Relief.*** You may have seen the advertisements on tv or the internet, or heard them on the radio—a “professional” will work on your behalf to reduce what you owe in state or federal income taxes. While there is a procedure to pay taxes owed over time, or to seek a reduction in taxes, some unscrupulous services either misrepresent the character of the person working on your behalf, the amount that you might save, and/or their success rate. For help if you have problems paying the taxable amount due, review the information on the state or federal department of revenue sites. They discuss “final offers in settlement,” “offers in compromise,” appeals processes, and even suggest ways to choose a tax professional to assist you. You can also speak with representatives—preferably during quiet tax times, to ask questions about the processes available.
- ***Foreclosure Rescue.*** Perhaps you or someone you know has missed a mortgage payment, or anticipates not being able to pay a mortgage payment on time, for any number of reasons. The first thing you should do is contact the creditor, to see if you can make arrangements to skip a payment, or re-write a loan to reduce payments. Does it make sense for you to sell the property and move to a smaller place, or to a rental unit? Speak with a trusted financial expert to explore possible next steps. Once notice of foreclosure has been published, you may be contacted by someone offering to rescue you from your financial problems. Be very wary! It is unlawful to offer to engage in a “buy and leaseback” deal, where the “buyer” then takes out a loan, you pay the buyer a monthly amount for “rent” while your credit is “rehabilitated,” with the promise you can buy back the property once you have made a number of timely payments. This plan will not work—the amount you pay may be more than you were unable to meet before, and the buy-back amount will be higher than you owed before. Also beware of offers to negotiate on your behalf with your lender for an advance fee—no one can guarantee your lender will agree, and you may end up owing the lender and the negotiator, with no results. It is generally unlawful to request fees up front for such services, even if the negotiator is a lawyer.

# Attitudes and Actions To Protect Yourself Against Fraud

Although there are hundreds, even thousands, of confidence games and swindles, people can protect themselves if they develop certain attitudes.

## **Be Aware**

Be aware that con games are perpetrated on thousands of people every day. Even though you have been provided with information about what to look for, do not become complacent.

## **Be Cautious**

Be cautious of anything that sounds especially enticing. Examine the offer and determine whether it contains any of the obvious trademarks of con artists, such as terms with the concept of “get rich quick” or “something for nothing.” Also, be cautious of letting strangers into your home. Verify their identities before you open the door. Don’t engage in cash deals or give your credit card or bank account number to a caller, or agree to make a quick decision without consulting others.

## **Be Realistic**

Accept as a basic rule of life that almost nothing is free; somebody pays for everything and it will most likely be you if you believe a con artist. The “free” prize you have won will quickly disappear once you tell the con artist that you will not pay a shipping charge or taxes.

## **Ask Yourself Questions**

Hang up the phone or close the door on anyone offering any type of deal, prize, or investment if you can answer “yes” to one or more of the following questions:

- Am I being pressured for a quick decision before I have time to make up my mind?
- Is the salesperson refusing to mail me any written information?
- Does the salesperson ask for my credit card or my bank account number for an immediate payment?
- Is there an apparent inconsistency – for example, am I told that I have to pay to win a “free prize,” enter a “contest,” or receive a “gift” of some type?

## **The 24 Hour Rule**

Wait at least 24 hours between the time you hear a proposal and the time you accept. This 24 hour “buffer zone” acts to protect you from making a hasty decision or succumbing to your emotions. It gives you time to consult with others, and to consider the logic and clarity of the proposal. Con artists consider time their enemy, because careful consideration may reveal that their proposals are nothing more than swindles.

### **Get Written Information and Insist on Written Agreements**

If someone is not willing to put the offer and terms of the transaction in writing, do not get involved. This is true with any transaction whether it involves a stranger or a family member. People wrongly assume that they are being rude or overly cautious when they insist on a written agreement. In truth, taking this precaution can often save you from future heartache from a deal gone bad.

### **Save copies of mailings you receive, including the envelopes**

It is helpful for investigators to have as much information as possible when looking into possible fraudulent activity. Save all communications you receive, including the envelopes they arrive in and copies of your cancelled checks if you buy something that turns out to be a scam. The postage marks or address on an envelope, or the bank routing number of the bank that cashes or deposits your check can help pinpoint where the con artist is located, or even who it is.

### **Learn to Say “No”**

It is *your* money. Do not allow yourself to feel pressured into parting with it just because someone else, usually a stranger, has asked for it.

### **Talk to Someone**

Do not make important decisions by yourself – seek advice from people you trust. If someone offers to involve you in a situation concerning money, always say “no” until you discuss the matter with someone you trust. A con artist will almost always have many reasons why you should not seek advice from someone else. This is a sign that you are being conned.

### **Do Not Give Out Your Credit Card or Bank Account Number**

**Never** give your credit card number or bank account number to unsolicited callers.

### **Monitor Your Assets**

Keep track of everything you own that is a financial asset. Monitor credit accounts, bank statements, stock and pension fund statements, properties you own, and similar assets. That way you will note any discrepancies that may require you to investigate further.

### **Call the Police**

If you have been the victim of a swindle, or even if you think you have been approached by a con artist, call and cooperate with law enforcement authorities. Do not be embarrassed about how you were swindled; it happens to people all the time.

## Helping Others Who May Be the Victims of Fraud

While you may not be the victim of fraud, you probably have family and friends who may be susceptible, even without your necessarily knowing so. Be aware of the signs that may indicate that an acquaintance has been approached by a con artist. The next time you visit with a friend or family member:

### Be on the Lookout For:

- Stacks of sweepstakes mail proclaiming them a “guaranteed winner” or offering lottery tickets for sale;
- An unusual number of packages containing inexpensive costume jewelry, plastic cameras or wristwatches, or some other inexpensive merchandise;
- Unsolicited telephone calls from fast-talking operators offering “fantastic opportunities” to claim prizes or make sure-fire investments;

### Offer to

- Help family members balance their checkbooks, and ask about any questionable checks, or sudden, large withdrawals;
- Go over credit card statements to see that only authorized purchases are listed;
- Pick up the mail to see if they are receiving unsolicited sweepstakes or lottery offers. If so, they may be on a variety of “sucker lists” being circulated by con artists. Have a trusted family friend help check the mail every day.

Reporting Fraud	
Type of Fraud	Appropriate Official
<b>In person schemes</b> , such as the bank examiner, home repair, inspectors, etc.	Call your local police department immediately at 911
<b>Mail Fraud</b>	Boston Office United States Postal Inspection Service 485 Summer Street, Suite 600 Boston, MA 02210 US Postal Police: 1-800-300-3492
<b>Telephone Fraud</b>	Attorney General’s consumer Hotline: 617-727-8400 The National Fraud Information Center: 800-876-7060

# **SAFETY AT HOME AND AWAY**

# Protecting Yourself Against Crime

Criminals and crime are an unfortunate fact of life, but it is important that you not become obsessed by thoughts of crime. Taking precautions to protect yourself against crime make good common sense, and being alert and aware of your surroundings and the people with whom you come in contact will go a long way to contributing to your overall well-being.

The National Crime Prevention Council reports that two-thirds of seniors believe they will inevitably be victims of crime. They also report that almost half of those 75 or older are afraid to leave their homes after dark, and that many seniors alter their lifestyles because they fear being victimized. Despite having the lowest victimization rates of all age groups, older Americans have a higher rate of fear of crime than any other age group. Seniors also often see themselves portrayed in the media as victims, or at least as being vulnerable.

## **Statistics continue to demonstrate that:**

- Older people are not victimized to a greater extent than the rest of the population, and with respect to violent crimes, are actually are victimized less than younger people.
- The crimes we all fear the most are crimes of violence, but those are the types of crimes that happen least often.
- Concern over crime can be healthy, if it leads to positive steps to reduce the chance of your being victimized.
- The FBI reports a 5.3 percent decrease in violent crime and a 4.6 percent drop in property crime during 2009 over the statistics for 2008.

## **Crimes Against Seniors**

The most common types of crimes involving seniors are:

- Property crimes—burglary, larceny, auto theft, petty theft
- Violent crimes—robbery, assault
- Elder abuse—physical, sexual, emotional; neglect, abandonment, financial exploitation
- Financial crimes—fraud, scams, identity theft

# Crime Prevention at Home

## Home Security—Locks, Entryways, Lighting, Landscaping

Fundamental crime prevention in the home requires the installation of simple security features.

- **Lock up:** reports indicate that 30-50% of residential burglaries occur because someone did not lock a door or a window, or may have even left one open. Remember: a lock is no help unless you use it.
- **Light up:** it is easier to break into a home if you cannot be seen from the street or from a neighbor's home. Light entrances and walkways, and consider installing motion sensor floodlights in the back yard to illuminate the area when you or a pet go out. Floodlights will help alert you, and your pet if you have one, to unusual sights in the yard, and will help limit barking to real problems, not imagined shadows.
- **Listen up:** be aware of new or odd noises around your home. Chat with neighbors from time to time, so that you will be familiar with their customary travel habits as well as your own, and so that both you and they will know when one of you plans to be out of town.

## Doors

- Install deadbolt locks.
- Chain locks should be supplemented with additional locks. A chain lock will not withstand much force on its own.
- Have locks replaced if you lose or misplace a key.
- Replace locks if you move into a new residence, or if someone moves out of your home—you do not know how many old keys may be floating around.
- Do not attach a name or address tag to key rings.
- Install and use a *wide-angle peephole* to identify people who come to the door.
- Have adequate lighting at all exterior entrances, and remember to check and replace burned out bulbs immediately.
- Ask service people for an identification card before you open the door. If you are uncertain about a “meter reader” of any kind, contact the business or town office that they tell you has sent them, to be sure they have sent out such staff.
- Never open the door to strangers or let them know you are alone.
- All outside doors should be solid-core construction, or metal-clad.

## Windows

- At night, keep enough curtains and blinds drawn so that rooms will not be completely visible from the street or from the back or side yards.
- Remember to close and lock your windows when you are leaving, even if only for a short time. Special window locks are available to provide extra security for windows that are easily accessible from the ground, from the roof or fire escapes, and so on.
- Make sure your windows and house number are visible from the street. Illuminate doorways and walkways.
- Ask the police department to perform a security survey of your home.
- Ask the fire department to perform a safety survey of your home.

## Living in Apartments or Other Group Sites

If you live in an apartment or a retirement facility, you may not be able to implement some of these suggestions. However, you can speak with the manager about a specific plan to improve security in your building. It will probably be most effective if you get several residents together when you approach the manager. Official security standards have been adopted by some cities and towns and should be of assistance to you in your discussions. You can request a copy of such standards from your municipal housing office if your town has implemented them. Keypad entry systems, security personnel, and ground floor security systems are some of the modern innovations that can help safeguard you in your home.

## Dogs as Alarm Systems

A dog, even a small one, can protect your house while you are away, and alert you to outdoor activity of concern while you are at home. One of the alert breeds that make a lot of noise when someone comes to the door is one of the best alarm systems you can have.

## Protecting Valuables

- Keep large amounts of money and securities in a bank, not at home.
- Have any Social Security or pension checks direct-deposited into your account by the issuing office.
- When possible, mark valuables with an easily traceable identification number, such as your driver's license number. Put "MA" before and/or after the number, to identify the locale of the license, in case you move. ***Do NOT use your social security number to mark your valuables***, as this puts you at greater risk for identity theft.

## Telephone and Computer Trickery

- If you receive a “wrong number” call, hang-up call, late night calls from strangers, or other unusual calls, notify the police.
- Don’t give personal information to strangers over the telephone. Never allow yourself to be drawn into a conversation with an unknown caller, “survey taker,” “census taker,” “bank” or “Social Security representative,” in which you reveal your name, address, marital status, or anything to indicate you live alone. Although there are legitimate telephone surveys, it is wisest for you not to participate. If survey takers or census takers come to your door, ask to see credentials.
- Never give out credit card numbers, bank account numbers, or other information about your financial affairs. If someone calls telling you they are calling about “fraud on your account,” do not confirm account numbers, expiration dates, or other information. Your financial institution already *has* this information.
- Tell all telephone callers who want information, or want you to buy or subscribe to something or want a donation to mail their request and you will review it.
- The same tips apply to your computer—do not respond to e-mails informing you that your account(s) may have been subject to fraud. Your financial institution already *has* your information. Often these e-mails will direct you to a look-alike website that is not truly your financial institution, and you will be asked to enter some data that can confirm that you have an active account, and make you give the one final piece of information an unscrupulous person needs to access your account, or to create a fraudulent account in your name.
- If you wonder if any entity has sent out e-mails, or made phone calls or in-person visits for information from you (bank, credit card company for example), or to provide services (water department, utility for example), find the contact information for the entity in the phone book or on a neutral internet site, and call to ask questions about the approach made to you.

## Considering Alarm Systems

An alarm system can be very helpful, especially if it will give you greater peace of mind. Sometimes, however, disreputable businesses may play on an elder’s fear in order to sell shoddy alarm systems at inflated prices. If you are considering an alarm system, carefully select the installer to assure that you receive adequate protection, but not a system far more costly than you need.

- Get written cost estimates to compare companies and check their reputations.
- An effective alarm system should protect all points of entry into your home.

- Price is no guarantee of quality. Your local police department may be able to help you determine the best system for your needs, as may your home insurance company.

## **Tips**

- The monitoring service you choose may be limited based on what system you buy. Consider choosing the service before the system. Do you want or need 24 hour monitoring, with a monthly fee? Less expensive systems may simply dial up pre-listed contact numbers, which may be all you want or need.
- With a key-chain remote, you can disarm the security system, turn on lights and unlock the door--all from your car in the driveway.
- Check that your security system has a battery for backup power.
- Ask how often you have to perform maintenance tests.
- More and more false alarms are forcing police to change their priorities on answering alarm calls. Contact your police department to find out what their policy is.
- If any alarm or security system representatives come to your home, ask to see identification.
- Hardwired systems require drilling into your home, and if you need to make changes, the holes may have to be re-drilled in new locations. Consider wireless systems, and ask about any restrictions or limitations these may have because of interference from other signals.

## **Outside Your Home**

Now that you have protected inside your home, you need to consider the outside area, so that a burglar will not have an easy opportunity to get in.

- Trim all trees, bushes and shrubs that offer a place to hide.
- Install outside lighting to eliminate dark areas around doors or windows.
- Before an extended absence, ask someone to watch your home, collect the mail and papers, and cut the lawn or shovel the drive. This will give your home a “lived in” look.

# Home Safety Tips—Your Physical Safety

## Accident-Proofing Your Home

- Do not run electrical wires under carpeting. If you walk back and forth over wires repeatedly, they may crack or fray, and you will be unable to see the damaged wire.
- Try to keep wires in your walking paths to a minimum, to avoid tripping over them.
- Cover unused outlets. Covers can both avoid shock if you should inadvertently touch an outlet with a wet hand, and can help keep cold air infiltration down, an added bonus in saving energy costs.
- If you do not already have one, get a handrail or grab bar installed in your bathtub. You may also want to consider a grab bar near the toilet to ease your access.
- Use nightlights judiciously. It is always helpful to have a “flight path” as you try to move about in the dark while getting to a light switch.
- Be sure to replace batteries in smoke and carbon monoxide detectors regularly, at least once a year.
- Use only appropriate bulbs in lighting fixtures; do not go over recommended wattages.
- If your washing machine or dishwasher overflows, turn off the electricity to the unit while you mop up the spill—water and electricity are a dangerous combination. Remember to clean dryer lint filters often to avoid fires.
- Minimize the use of throw rugs, and be sure to use rugs with a non-slip backing.

Periodically check handrails inside and outside your home, to be certain they will support you as intended.

# Crime Prevention When You Go Out

Fear of being victimized when out of the home is a common concern, but it need not prevent you from leaving your home to enjoy what your community has to offer. The important thing is to take steps to minimize your risks. This does not mean that you cannot go shopping or take other trips you enjoy; it simply means taking appropriate common sense safety precautions.

## Tips before you go out

- Leave an outside light on if you will be returning after dark.
- Do not leave a note saying when you will return.
- If you will be away overnight, use an automatic timer or ask a trusted neighbor to turn on your lights at night and off in the morning. Vary the lights you leave on – bathroom one night, kitchen the next, and so on.
- Lock all doors, windows and the garage and basement.

## On buses, the subway and trains

- When you use public transportation, it is always safer to travel with at least one other person.
- Hold onto packages; do not put them down on the floor.
- If you use a bus regularly, learn the schedule to minimize the length of time you have to wait at the stop.
- Take an aisle seat in the front of the bus, near the driver.
- Get off at busy, well-lit stops. If you must get off in an isolated area, arrange to have someone meet you.
- Speak up! If someone harasses you, alert the driver, transit police and other passengers.
- Do not enter an empty train car; look for one with several people in it.

## On planes

- If you can, it is always best to travel with another person.
- Get to the airport with plenty of time to clear security, and arrange in advance for any special services you might need, such as the use of a wheelchair, for your personal safety and mobility.
- Arrange in advance for connecting flights & transportation to & from the airport.
- Do not leave your packages unattended, and do not take packages or watch luggage for anyone you do not know.

## **At the Bank**

- While waiting in line, keep cash, checks, and other valuables hidden. Be aware of the people in line.
- At the teller's window, count your money and place it in your purse or side pocket *before* you leave. When you leave the teller's window, make a complete turn, checking out your surroundings for any suspicious person.

## **At the ATM**

- Look over the area. Use only well-lit machines that are away from hedges or other hiding places.
- Be wary of strangers. This includes anyone who might crowd you or try to watch your transaction.
- Stand sideways. Never completely turn your back to the street.
- Be sure to block the line of sight for the ATM screen so that others cannot "shoulder surf" to get your personal information.
- If you have any doubts or fears, cancel your transaction and leave at once.
- Take all of your deposit or balance acknowledgment slips with you when you leave the ATM. Count and secure your money before walking away from the ATM.
- Do not let others into the secure space in which the ATM is located (if any) while you are doing your banking. If the machine is in an area secured by a door, don't open the door for anyone who appears to be looking for his or her bank card.

## **Protecting Your Wallet or Purse**

- Leave your purse at home if possible. A purse is often carried from force of habit. It might be worth breaking that habit in order to reduce the opportunity for crime.
- Carry your wallet in a safe inside pocket. A front jacket, pants or skirt pocket is safer than a hip or breast pocket.
- Carry your house key separately from your purse or wallet. That way if your purse or wallet is stolen, the key will not be there along with your address.
- Do not use a purse with a shoulder strap—if it is grabbed, you may be knocked to the ground and injured.

# Protecting Yourself While in the Car

## When Driving

- You are much less likely to run into trouble if you travel well-lit and busy streets, even if it takes a few more minutes to get home. Plan your route in advance. For unfamiliar destinations, carry a map, or go to a public place to ask for directions.
- Do not leave a purse on the seat beside you when driving. Place it on the floor.
- If you are harassed at an intersection or on the road, do not respond. Drive away as soon as you safely can. Do not be afraid to pull into a gas station or police station if the trouble continues or if you think you are being followed. Do not drive home, as you will only be disclosing where you live. Stick to public, fully lit areas.
- Always keep your car doors locked and windows rolled up far enough to keep anyone from reaching inside.
- Never pick up a hitchhiker, even if the hitchhiker is in uniform or it is a holiday eve. The odds are that it is a bad idea.
- Help avoid emergency stops by keeping your car in good running order.
- Don't pull over for flashing headlights, or if a motorist says something is wrong with your car. Emergency vehicles have red or blue flashing lights.
- Don't pull over if "bumped" from behind. Drive to the nearest public area, and call the police.
- Carry a cell phone for emergencies. You can get inexpensive pre-paid cell phones for just such purposes. Be aware that pre-paid cards offered for these phones have expiration dates, after which you must replenish the card, or buy another. Keep track of such limitations, so you will not be caught without a useable phone.
- If you're confronted by someone who wants to steal your car, if you cannot summon aid immediately, hand over the keys. Your car is not worth your life. Carjacking can lead to a violent confrontation.

## **When Parking Your Car**

- Park as close to your destination as possible. Look around before leaving the car. If something looks suspicious, wait, or move your car.
- Don't leave bundles, bags or any other tempting articles in plain sight in a locked car.
- Choose an area that will be well-lit when you return.
- Roll up the windows, lock the doors. Securing your car, even if you are parked in your driveway or leaving the car for just a minute, can be enough to discourage many would-be auto thieves.
- When you return, have your key ready to unlock the door without any long pause.
- Consider installing tracking or security devices in your car, such as a "kill" switch that will prevent the car being started by anyone but you.
- Take part in car theft prevention programs that allow police officers to stop your car if it's being driven during hours when you don't normally drive.

# Crime Prevention When You Travel

Many criminals focus on the homes of people who are away. If they are planning on breaking into a house, the job is easier where they are sure that no one will confront them. The key is to not broadcast that you will be away, and to make your home look lived-in when you are gone.

- Do not discuss your trip with strangers in public before you go.
- Do not use social media, such as Facebook or Twitter, to announce your whereabouts before you go or while you are away. You can share the details of your vacation when you get home.
- When you leave your home for an extended period of time, discontinue delivery of mail, milk, bottled water, newspapers, and anything else that you have regularly delivered. Do this ahead of time by phone or in person.
- Set some lights on timers, inside and outside your home.
- Arrange to have your lawn tended on a regular basis, and have someone remove advertising circulars, packages, or anything else that might be left for you.
- Check to be sure you have locked all means of entry into your home before you leave.

## Robbery

Robbery is taking a person's goods or money through force or threats. Robbery is a crime that can result in physical harm, emotional trauma, and property loss. Robbery can happen anywhere—on the street, at work, near your home, in stores, almost anywhere. Be smart and exercise caution.

## How to Prevent Robbery

- Don't go out walking at night, if you can avoid it. Darkness gives robbers the advantage. If you must walk at night, stay on well-lit, well traveled streets. Plan your route.
- Walk with someone. Robbers often seek victims who are alone.
- Travel light—leave extra cash, obvious or expensive jewelry and other valuables at home. Carry only what you need – avoid using large shoulder bags. Don't make yourself a target.
- Avoid shortcuts. Cutting through parks, alleys, school yards, etc. can lead to trouble.
- Step with confidence. Keep your head up and walk with a sure step. People who look lost, scared or unsure of themselves are more attractive to robbers.

- Look out in shopping malls. When carrying packages to your car, be alert for anyone who may be following you; they could be planning to rob you.
- Carry only the cash and/or credit cards that are immediately needed.
- Avoid loiterers and people in groups. Trouble often lurks nearby. Steer across the street, and take another route.
- Walk in the middle of the sidewalk. This is especially important at night. It can foil robbers hiding in storefronts, doorways, alleys, and between or under parked cars.
- Head toward people if you think you are being followed. Walk toward any public place or business.
- When traveling, check with hotel staff about areas that should be avoided.
- If you are confronted by a robber, hand over your money or valuables. They are not worth your life.

### **What to Do If You Are Robbed**

Law enforcement officials and criminals who have been interviewed say the same thing: cooperate. Do not resist, stay calm, and cooperate with the robber. Namely, do not pull out a weapon; this is no time for heroics. Your money, jewelry and other valuables can be replaced; your life cannot.

### **Reporting Suspicious Activity or a Crime**

Many elders believe they are bothering the police when they call. This is not true. The police are there to serve you, and you should not be reluctant to support suspicious activity or a crime in progress. When you call, you will be asked for your name, address and telephone number. This information is requested in case additional contact with you becomes necessary. You can remain anonymous, if you wish. Bear in mind that the following information is critical:

- **What** happened?
- **When** did it happen?
- **Where** did it happen?
- **Was** anyone hurt?
- **Description** of suspect(s)?
- **Description** of vehicle(s)?
- **License plate** number and state?
- **Time and direction** of escape
- **Additional details and circumstances you can recall.**

Above all, remember that with your help in reporting suspicious activities, law enforcement agencies can more effectively protect the rights of all citizens. Know that your help counts. Even information about suspicious activity can help police establish patterns and, if necessary, eventually make arrests.

If someone you know is the victim of robbery or any other crime, offer to listen, but never blame the victim for what happened. Encourage the victim to report the crime and go to the hospital. It really helps if you accompany the victim to the police station, hospital, or court. However, if you are unable to do this, the police and prosecutor in your area have victim advocates who can help a great deal. Victim advocates are trained to be supportive and to listen, and to direct victims to additional resources that will help get them back on their feet, emotionally and physically.

# PROTECTING YOUR HEALTH

# Health Care

**Health insurance requirements:** The Massachusetts Health Reform Act, enacted in 2006, requires all adult Massachusetts residents to have health insurance if they can afford it. Residents without health insurance face a tax penalty.

Massachusetts residents with limited incomes may be eligible for MassHealth or Commonwealth Care. For other residents, the state determines how much you should be able to spend on health insurance each year, based on your income and family size.

The Massachusetts Health Care Reform Law requires all adult residents age 18 and older to have health insurance. To meet the state's requirements, the insurance must include certain basic benefits known as Minimum Creditable Coverage (MCC).

You meet the insurance requirements if you have any of the following health care coverages:

- MassHealth (any coverage type except Limited)
- Commonwealth Care or Commonwealth Choice (any plan)
- Medicare Part A or B
- Student Health Insurance Plan (SHIP)
- TRICARE or Veterans Administration Health Program
- tribal or Indian Health Service plan
- VISTA, AmeriCorps, National Civilian Community Corps, or Peace Corps coverage
- any individual or group health plan that meets MCC requirements

Most residents without health insurance must pay a penalty. However, people who cannot afford a health plan, or who qualify for a religious exemption or hardship waiver, do not have to pay a penalty.

The Commonwealth Connector has an online affordability tool to let you see how much you should be able to pay for a health insurance plan based on your income and family size, and if an affordable plan is available for you. You can find out more at: [www.mahealthconnector.org](http://www.mahealthconnector.org).

## Questions to Ask When Choosing a Health Plan

Before you decide on which health plan you might want to purchase, you should consider just what it is that is most important to you. Here are some issues to consider.

1. What are your specific health care needs?  
What are your present and future needs?
2. Will the plan's benefits and services meet your specific needs?
  - Ask for a list of covered benefits
  - Do you have existing medical conditions that require specialized care?

- Ask how any medical conditions you have now are covered by the plan.
  - Do you have specific needs such as eyeglasses, mental health, or prescriptions for which you need coverage? Ask how these might be handled.
3. Is your choice of doctors limited by the plan?
- Does the plan require you to have one physician coordinate all your care?
  - Is the physician of your choice accepting patients under the plan?
  - Will you be seen by the same physician or caregiver every time?
4. Is your choice of hospitals limited?
- Ask for the list of participating hospitals and physicians.
5. What is your monthly premium?
- Find out how much you must contribute to the total cost of your health care, including monthly premiums, deductibles, co-pays, and other out-of-pocket expenses.
  - Are there limits on your out-of-pocket expenses?
  - Are there dollar limits on the amounts of coverage the plan will provide?
6. Does this plan provide quality health care?
- Ask your health care provider his or her experience with the plan.
  - Do you know anyone who belongs to the plan? Ask their opinion.
  - Is your physician given financial incentives to coordinate care?
  - Are there guidelines on the length of hospital stays, etc.?
7. Will you need your plan's approval before seeking care?
- What are the plan's rules on seeing specialists and seeking care?
  - Does the plan have claim forms or other paperwork?
  - How do you appeal a claim or a denial of care?
8. What should you do in an emergency?
- Do you need to contact the plan before or after receiving emergency care?
  - For what medical problems can you go to the emergency room?
  - Are you covered for emergency care away from home?
  - If you travel out of state or out of the country, how does the plan work?
9. Who do you call if you have a question?
- Is there a 24-hour telephone number for assistance?

# Medicare—Medigap

**Medicare** is a federally administered system of health insurance. The Centers for Medicare & Medicaid Services (CMS) administers Medicare, the nation's largest health insurance program, which covers nearly 40 million Americans. Medicare is a Health Insurance Program for people age 65 or older, some disabled people under age 65, and people of all ages with End-Stage Renal Disease (permanent kidney failure treated with dialysis or a transplant). Information about eligibility, applying, and benefits offered is available at [www.Medicare.gov](http://www.Medicare.gov), and Medicare offers a valuable booklet entitled “Medicare and You,” which provides a summary of Medicare benefits, coverage options, rights and protections, and answers to the most frequently asked questions about Medicare, available through the web site, or by contacting “1-800-Medicare.”

There are two ways to get Medicare health coverage.

1. Keep **Original Medicare** and go to any doctor, hospital or other provider that accepts Medicare.
2. Enroll in a **Medicare Advantage Plan**, which replaces your Medicare plan and may also cover extra services not covered by Medicare such as vision, hearing, dental, or health and wellness programs. You must have Medicare Part A and Part B to enroll in a Medicare Advantage Plan. Medicare Advantage Plans may be HMO plans, which means that you would need to use the HMO network of providers and get plan authorization to use some services.

## Medicare Supplement - Medigap

If you choose Original Medicare, you may purchase Medicare Supplement Insurance (Medigap) to cover some of the out-of-pocket costs (gaps) in Original Medicare. Medigap plans are sold by private insurance companies and are available to you if you have both Medicare Part A and Medicare Part B. In Massachusetts, Medigap plans are guaranteed renewable, which means that the insurance company cannot cancel your plan, even if they stop offering Medigap plans in the state, unless you stop paying the premium or provide false information on your application. The insurance company may increase your Medigap premium once a year, and insurers cannot charge a different premium based on age or health.

Insurance companies offer two standardized plans in Massachusetts: Medicare supplement Core and Medicare Supplement I.

## **Prescriptions Drug Plans**

If you want prescription drug coverage, you must choose and join a Medicare Prescription Drug Plan. These plans help pay for your prescription drug costs if you have Medicare. Medicare prescription drug plans are sold by private companies approved by Medicare. Most Medicare Advantage Plans offer prescription drug coverage (Part D) usually for an extra cost. If you don't join a Medicare prescription drug plan when first eligible, you may have to higher premiums when you do join.

## **Free Counseling Services**

For free personal health insurance information, counseling and assistance and help comparing and choosing a plan/s that best satisfies your health insurance needs, contact a SHINE(Serving the Health Information Needs of Elders) Health Insurance Counselor at 1-800-AGE-INFO(1-800-243-4636), TTTY/TDD: 1-800-872-0166. SHINE is a State Health Insurance Program (SHIP) and part of a nation-wide network of SHIP programs. The SHINE Program is partially funded by Centers for Medicare and Medicaid Services and is administered by the Massachusetts Department of Elder Affairs.

# End of Life Planning and Advance Directives

Decisions regarding where you live and with whom; how you spend, save or invest money; and which doctor or hospital you go to, may not seem significant to you now, but what if, in the future, someone else had to make these decisions for you?

What if, as a result of ill health or disability, you were unable to make or communicate these decisions yourself? Who should make them for you? How can you ensure that your wishes are known so that the decisions that are made for you are the ones you would have made for yourself?

This section of the manual discusses some of the options which you as a citizen of the Commonwealth of Massachusetts have in shaping your future. It also alerts you to some of the things which might occur if you do nothing at all.

## Power of Attorney

### What is a Power of Attorney?

A power of attorney is a written document by which you (the Principal) grant to an Agent of your choice (sometimes called the “Attorney in Fact”) the legal authority to manage your financial or personal affairs in the event you become incapacitated, or otherwise are unable to handle those affairs yourself.

There are two basic types of power of attorney documents, each designed to accomplish different purposes:

#### 1. “Conventional” Power of Attorney

This power of attorney document is designed to give temporary authority to the Agent to manage the Principal’s financial affairs, or to exercise limited authority with respect to specific tasks; for example, to sign a deed. Such a power of attorney grants authority that terminates (1) at the incapacity or death of the Principal, (2) when the Principal revokes it, or (3) when it expires by its own terms.

#### 2. The Durable Power of Attorney

The durable power of attorney also grants general or specific authority to the Agent, but it is “durable” in the sense that it survives or continues to be in effect after the incapacity (defined as serious mental illness or other disability) of the Principal. The document must contain language specifying that it will survive the incapacity of the Principal. You may sign a durable power of attorney document, which gives authority to the Agent as of the date that you sign it, or you can sign a “springing” power of attorney document, which springs into action if you, the Principal, become mentally and/or physically incapacitated. Under a durable power of attorney, your Agent is authorized to make business and financial decisions for you in accordance with your wishes. This person cannot, however,

make decisions about your health or health care. You must make a separate authorization in a health care proxy, which is discussed in the next section.

### **Who Should I Name as My Agent?**

The power of attorney can be given to any person you choose: a family member, a trusted friend, an advisor, an accountant, an attorney; but you should choose a person whom you trust, and who will conduct your financial, personal, and legal affairs in accordance with your wishes.

### **How Do I Create a Power of Attorney?**

It is recommended that you seek expert advice in preparing the power of attorney document. Decide who is to serve as your Agent, what authority you wish to grant, and when the authority is to become effective. You should have your power of attorney document notarized, keep it or copies of it in a safe place, and give your Agent a copy, so that everyone involved is aware of your decision. Your Agent may even need the original of the document in order to conduct business for you.

### **When Should This Document Be Signed?**

In order to ensure that your affairs will be managed by someone you trust, you should sign such a document while you are in good health. It can never be too soon.

### **What Should I Consider in Deciding About Creating a Durable Power of Attorney?**

Remember that this is an important legal document, giving another person authority, which you now have, over your own affairs. So, you should decide:

- Who should serve as your Agent.
- Whether you want to grant authority now or when you become incapacitated.
- Whether you want to give your Agent broad authority or narrow authority for specific tasks or responsibilities.
- Whether you want to set a time limit on your Agent's authority.

### **“Undoing” a Power of Attorney**

The power of attorney document can be changed, amended, or revoked at any time. If you decide to make a change or revoke your power of attorney, you should instruct the Agent to return all copies to you. In addition, you should notify all persons or entities (for example, banks, stockbrokers, etc.) who may have any dealings with your Agent of any change, amendment, or revocation. The revocation must be in writing, and should be sent to all parties with whom the Agent may have contact on your behalf.

# Health Care Proxy

## **What is a Health Care Proxy?**

A health care proxy is a written instruction by a person, referred to as the “Principal,” who appoints a health care Agent to make medical or health decisions when the Principal is unable to.

Every person has the right to accept or decline medical care, and, so long as you are able to communicate your wishes to a medical authority, those wishes must be honored. If you are unable to communicate your wishes, your health care proxy Agent will be able to make medical decisions for you, for as long as you are unable to do so.

## **Who Should Serve as My Health Care Proxy Agent?**

You should select a person whom you trust to follow your wishes as to what medical care you want to receive and what medical care you do not want. This trusted person should be prepared to make medical decisions based on your values, not on his or her own values.

## **How Do I Create a Health Care Proxy?**

A health care proxy document must be in writing and must be witnessed by two people who are 18 years of age or older. If you are in a hospital or a nursing home, a staff member may serve as your witness, but not as your Agent. You may give specific instructions to your Agent or you may simply give your Agent full authority to make all medical decisions. Once you have signed a health care proxy document, you should give or sent a copy to every doctor who treats you, a copy to your Proxy Agent, and a copy to all immediate family members, or to any person whom medical authorities are likely to confer with if you are involved in a medical emergency.

## **Must a Doctor Honor My Health Care Proxy?**

You alone have the right to refuse or accept medical treatment. Every doctor must honor that right and obtain your consent before providing care or treatment. In the unusual situation where a doctor has some ethical or religious objection to your or your Agent’s decision, the doctor is legally obligation to refer your case to another doctor who will honor your or your agent’s request.

## **When Does My Agent Have the Authority to Act for Me?**

Your Agent’s authority to act for you begins only after your attending physician states in writing that you no longer have the capacity to make or communicate your own health care decisions. Further, your Agent’s authority remains in effect only for as long you cannot make your own decisions.

# Guardianship/Conservatorship

## **What is a Guardian?**

A Guardian is a person who is appointed by the Probate Court to take responsibility for the care and supervision of another person, called the “Ward,” who has been shown to be unable to care for him or herself or his or her assets or estate.

## **Why Would I Need a Guardian?**

If you become incapacitated, are unable to make decisions to care for yourself, and are unable to make decisions or care for your assets or estate, you will need someone to do these things for you. If you have executed a durable power of attorney document, the person whom you nominated can take charge of your financial affairs. If you have executed a health care proxy document, the person whom you nominated can take charge of your medical needs. If you have done neither, however, only the Probate court has authority to appoint someone else to manage your affairs.

## **What Does a Guardian Do?**

The person who becomes your Guardian is responsible for taking care of you and safeguarding you and your estate. The Guardian pledges to do whatever is best for you and your property. The Guardian is charged with seeing that you are in a safe environment and that your estate is not dissipated.

If you are in a hospital or nursing home, the Guardian should ensure that you are receiving appropriate care. Once the Guardian is appointed, he or she must file an inventory of your assets or property with the Probate Court, must manage your affairs, and must file an annual accounting of his or her stewardship.

## **How is a Guardian Appointed?**

If you are incapacitated and unable to manage your affairs, two relatives or friends may file a petition with the Probate Court to ask that a suitable person (whom they propose) be appointed to serve as your Guardian. In support of their request, the Petitioners must submit a medical certificate in which a doctor asserts that you are not capable of caring for yourself and your estate. The person requesting to be appointed as Guardian must file a bond, which assures the Court that he or she will be faithful to the Ward’s interests. The petitioners must give notice of their petition to the Ward, to the heirs at law of the Ward, to the Department of Mental Health, to the Office of Veteran Affairs, if appropriate, and usually must publish a legal notice in the newspaper.

### **Who May Become My Guardian?**

The Court should appoint as Guardian someone who is familiar with you and your situation; a family member or friend, who is an adult, and who is willing to take on the responsibilities of Guardian. The Guardian should be someone who can be trusted to act in your best interests.

### **Do I Have Any Control Over Who Will Be My Guardian?**

If you have nominated a person to serve as your Guardian, in either your Durable Power of Attorney or your Health Care Proxy, the Court will give great deference to your wishes. Your nominee would be appointed, unless the Court was persuaded that he or she was not a suitable person to serve in that capacity. The Ward has the right to petition to have the guardianship dissolved if the incapacity has ceased, and the health of the Ward has been restored.

### **What is a Conservator?**

A Conservator is a fiduciary, like a Guardian, appointed by the Probate Court, but has responsibility to manage only the Ward's financial affairs or estate. A Conservator only makes decisions about financial matters. Unlike Guardianship, the Ward may assent, or agree, to the petition, if the medical certificate asserts that the Ward understands the nature of his or her assent.

### **Who Can Serve as My Conservator?**

As in the case of a Guardian, a family member or trusted friend, a lawyer or other professional, or any person with a suitable background may serve as a Conservator.

### **What if I am Asked to Serve as Someone Else's Guardian or Conservator?**

In order to serve as the fiduciary of another, you must understand and be willing to take on the responsibilities of looking after the interests of the Ward. If you agree to serve as a Guardian, you should seek out appropriate counsel to prepare and file the necessary papers: the petition, the medical certificate, and the bond with sureties. You also must be prepared to tell the Court why a Guardian is needed and what you plan to do to protect the Ward. You should be prepared to give the Ward the care and attention that you would expect if the situation were reversed.

### **To Learn More about Power of Attorney, Guardianship and Other Legal Matters**

If you want more information, you should consult with an attorney who practices Elder Law. If you do not have an attorney, you may contact your local bar association, which may have a lawyer referral program, or the Massachusetts Bar Associations Referral Service at (617) 542-9130. You may also contact the Massachusetts Chapter of the National Academy of Elder Law Attorneys at (617) 762-0077. Your local Council on

Aging may also be able to help direct you to additional resources. Call the Executive Office of Elder Affairs at 1-800-882-2003 (or, for the hearing impaired, call 1-800-872-0166) to obtain the number, or check your city or town directory, or call 1-800-AGE INFO, or go to: <https://www.800ageinfo.com>

## **How Do I Find Out More About Health Care Proxies?**

To learn more about health care proxies, you can contact Massachusetts Health Decisions at (617) 784-1966, or at Massachusetts Health Decisions, PO Box 417, Sharon, MA 02067. In addition, your doctor and your local hospital will be able to provide you with the necessary document. Choice in Dying, Inc., a non-profit organization, can provide you with a free copy of any state's health care proxy and/or living will (which is another legal document for the same situation). You can reach them at ([www.choices.org](http://www.choices.org)) you can download each state's living will forms, keep current on end-of-life issues, and track down related resources. Contact Choice in Dying, Inc., 1035 30th Street, NW, Washington, D.C. 20007; 1-800-989-9455.

# Elder Abuse and Neglect

Everyone has the right to be safe in their home, whether they live in the community or in a long-term care facility. Unfortunately, elder abuse can occur anywhere and can happen to anyone. It is important to know what is available in Massachusetts if you or someone you know is being abused, neglected or financially exploited.

## In the Community

In Massachusetts, there is a law that requires certain professionals, such as physicians, social workers, police officers, firefighters and social workers, to report suspected incidents of elder abuse. To respond to these reports, the Executive Office of Elder Affairs (EOEA) oversees 22 local Protective Services Agencies throughout the state as well as a 24 hour Elder Abuse Hotline which takes calls and makes sure that the appropriate agency is notified.

Elder abuse includes physical, emotional and sexual abuse; neglect by a caretaker, self-neglect, and financial exploitation. In Massachusetts, all elders (persons aged 60 and above), regardless of income, who live in a community setting are eligible to receive Protective Services if they are abused, neglected or exploited. Protective Services are designed to help elders who have an on-going personal relationship with the person who is abusing them. This is significant because elders are most at risk from people that are known to them such as spouses, adult children, grandchildren, other family members, friends and caregivers. Elders who are victims of random street crime or scams by unscrupulous contractors or others are referred to law enforcement agencies for assistance. However if an elder cannot meet their basic daily needs as a result of a scam, they may be referred to Protective Services due to self-neglect.

In Massachusetts, **Physical Abuse** is the non-accidental infliction of serious physical harm, or the threat of physical harm made by someone who is capable or carrying out the threat. **Emotional Abuse** is the non-accidental infliction of serious emotional injury using verbal or non-verbal threats or insults. **Sexual Abuse** includes sexual assault, rape, sexual exploitation or sexual misuse. **Neglect** is the failure or refusal by a caretaker to provide one or more of the necessities essential for physical well-being such as food, clothing, shelter, or adequate health care. If an elder is not able to meet his or her own basic needs, and is resistant to assistance, they may be referred to protective services for **Self-Neglect**. **Financial exploitation** is a non-accidental act or omission by another person, without the consent of the elder, which results in a substantial monetary or property loss to the elder, or gain to another individual. Financial Exploitation may include gaining control over an elder's assets.

Protective Services was established as a short term crisis intervention program. The goal of Protective Services is to prevent, remedy or eliminate the effects of the abuse or neglect on an elder. While the primary focus is on ending or alleviating the abuse, the

program also seeks to provide safety and freedom, with the least disruption of lifestyle and the least restrictive care. Throughout a case, the rights of an elder to accept or decline a particular course of action are protected to the fullest extent possible. This right to self-determination is fundamental to the program. Protective Services case-workers work with the elder, family and community agencies offering services that may include counseling, safety planning, homemaker/health aid services, emergency food or fuel, transportation, housing, medical services, legal assistance or financial assistance.

### **In Long-Term Care Facilities**

For residents who live in nursing homes or rest homes there is a different procedure for reporting abuse and neglect. Any individual should contact the Department of Public Health (DPH) anytime at **617-753-8150** or within Massachusetts at **800-462-8840** to report suspected abuse of a resident in a Long Term Care facility.

Other concerns in Long Term Care can be reported to the State Long Term Care Ombudsman Program. The State Ombudsman oversees 24 local programs that in turn regularly go into Long Term Care Facilities to serve as resident advocates.

Ombudsmen receive, investigate, and work to resolve complaints so residents can live their lives with dignity and respect. Ombudsmen work with the resident, family and facility staff to resolve issues that affect quality of care and life.

Ombudsmen are required to notify DPH when they receive a report of suspected abuse, neglect, misappropriation and mistreatment.

For more information on the Long Term Care Ombudsman program call **617-727-7750**.

### **Signs of abuse, neglect, self-neglect or exploitation**

Some of the warning signs of abuse, neglect, self-neglect or exploitation are:

- Slap marks, unexplained bruises, broken bones, pressure marks or certain types of burns or blisters;
- Lack of medical care, malnutrition or dehydration
- Withdrawal from normal activities, unexplained changes in alertness or other unusual behavior changes;
- Unexplained sexually transmitted diseases or bruises around the genital area;
- Sudden change in finances and accounts, altered wills and trusts, unusual bank withdrawals, checks written as 'loans' or 'gifts' and loss of property;

## What Can I Do

### **In the community:**

Unfortunately, elder abuse, neglect and exploitation are seriously underreported. It is estimated that only 1 in 14 cases of elder abuse, neglect and exploitation are reported. Many elders who have been abused never report.. Because abusers are often family members or caretakers, elders are afraid that if they report they may lose the little support they have. By not reporting however, many elders do not get the help they need. If you have reason to suspect that someone has been abused, please report your concerns. The Elder Abuse Hotline number is **1-800-922-2275**. You may also call 1-800-AGE-INFO or go to the website [800-ageinfo.com](http://800-ageinfo.com) to locate the appropriate Protective Services Agency. If someone you know is in immediate, life-threatening danger, call the police or dial 9-1-1 immediately. If you have been the victim of abuse, exploitation or neglect, you are not alone. Many people care and can help. Please tell a trusted person, your doctor, a friend or a trusted family member, or call the Elder Abuse Hotline at **1- 800-922-2275** or access 800ageinfo by phone or on the web. Ask for assistance, and stay in touch with available resources.

### **In long-term care facilities:**

Phone numbers for DPH are posted in every facility to report abuse, neglect, misappropriation and mistreatment. Individuals can also call the Long Term Care Ombudsman Program and the Attorney General's office regarding any other concerns about life in the nursing home or rest home.

To report suspected abuse in a long-term care facility, call the DPH 24 hour call line at **617-753-8150** or in Massachusetts **800-462-8840**.

### **Helpful Resources**

There are a number of programs and services that provide access to information and services at the local and state level to assist elders, individuals with disabilities, caregivers and family members.

Information and Resources Unit (*[www.800AgeInfo.com](http://www.800AgeInfo.com), Information and Referral and Community Care Ombudsman Program*)

### [www.800AgeInfo.com](http://www.800AgeInfo.com)

The website is a source of information designed specifically for elders, caregivers, and service providers throughout the Commonwealth. Jointly owned by the Massachusetts Executive Office of Elder Affairs and Massachusetts Home Care, [www.800AgeInfo.com](http://www.800AgeInfo.com) website has web pages that elders can use to obtain information on community service providers, Aging Services Access Points, Councils on Aging, and other elder-related websites, including the Massachusetts Aging and Disabilities Information Locator known as MADIL ([www.madil.org](http://www.madil.org)). The [www.800AgeInfo.com](http://www.800AgeInfo.com) website is a wonderful tool that can lead individuals to other sites with a variety of health topics and promote the many events that are important for elders and individuals with disabilities, family members, caregivers, and professionals to attend.

### **Information and Referral**

The Older Americans Act requires that all older persons and their caregivers have reasonable convenient, direct access to free or very low cost information and referral services that are available to help them identify, understand and effectively use the programs that comprise the human service delivery system. It is the role of the Information & Resources (I&R) Specialists to help people understand their problem and make informed decisions about possible solutions. They may advocate on behalf of those who need special support and reinforce the individual's capacity for self-reliance and self-determination through education, affirmation, collaborative planning and problem solving. I&R Specialists are able to assist elders and families with getting the information they need, whether looking for health insurance counseling, caregiver services, service complaints, or finding a nursing facility or rest home. To locate an I&R Specialist in your area contact: **1-800-AGE-INFO (800-243-4636) or TTY/TTD (800) 872-0166 or contact Elder Affairs at: 617-727-7750.**

### **Community Care Ombudsman Program**

Are you 60 years old or over? Are you receiving home or community care? Do you have a problem with the care you are receiving? The purpose of the Community Care Ombudsman Program is to assist elders and their families in the community by investigating and resolving their complaints. Covered community care programs include: programs of medical, functional, or social support services that are provided to an individual living in their home, apartment, in a day care program, or a managed care demonstration program under the Social Security Act. Also covered is home health care services, community based Medicaid programs, the state home care funded program and federally funded and private pay elder care programs specified.

The Community Care Ombudsman responds to inquiries from elders and their families, educates consumers about their rights and responsibilities, counsels consumers about concerns with their services, refers consumers to appropriate sources for help, and

investigates and resolves complaints through mediation. To contact the Community Care Ombudsman Program call: **1-800-AGE-INFO (1-800-243-4636) or Elder Affairs at: 617-727-7750.**

### **Options Counseling Program**

When an older person, or an adult of any age with a disability, faces the need for supportive services to help with basic activities such as personal care, transportation, nutrition or medication management, locating and evaluating options for care can be an overwhelming task for the individual or their family member or caretaker. The process can be made more manageable with the support of knowledgeable, caring counselor who provides unbiased information about the range of community and institutional services and how to access them, and who supports the individual during the decision-making process by helping to determine a plan and the steps to achieve it. This may be accomplished in a single session or over several sessions.

This free short-term planning service is available to seniors age 60 and above, and persons with a disability, age 14 and over, of any income. The service can be provided at home, at an agency or at a health care facility, including a hospital, rehabilitation center or a nursing facility. This statewide service is available through 11 Aging and Disability Resource Consortia (ADRCs). Since 2003, the Massachusetts ADRC model specifies collaboration and equal partnerships between local Aging Service Access Points (ASAPs) /Area Agencies on Aging (AAAs), Independent Living Centers (ILCs) and other community-based agencies. The primary mission of the ADRC model is to improve consumer access to services through a “No Wrong Door” policy and approach creating a seamless, coordinated system of information and access to community based long term care supports.

**Locate an Options Counselor - contact one of the following agencies at:**

<b>ADRC</b>	<b>Member Agency</b>	<b>Phone</b>
<b>Berkshire County</b>	Ad-Lib	(413) 442-7047
	Elder Services of Berkshire County	(413) 499-0524
<b>Cape Cod and the Islands</b>	Cape Organization for Rights of the Disabled (CORD)	(508) 775-8300
	Elder Services of Cape Cod & the Islands	(508) 394-4630
<b>Central Mass</b>	Center for Living and Working	(508) 798-0350
	Central Massachusetts Agency on Aging	(508) 852-5539
	Elder Services of Worcester Area	(508) 756-1545
	Montachusett Home Care Corporation	(978) 537-7411
	Tri-Valley, Inc.	508) 949-6640
<b>Greater Boston</b>	Boston Center for Independent Living	(617) 338-6665
	HESSCO Elder Services	(781) 784-4944
	Minuteman Senior Services	(781) 272-7177
	Mystic Valley Elder Services	(781) 324-7705
	Somerville/Cambridge Elder Services	(617) 628-2601
	South Shore Elder Services	(781) 848-3910
	Springwell, Inc.	(617) 926-4100
<b>Greater North Shore</b>	Elder Service Plan of North Shore (PACE)	(781) 715-6608
	Greater Lynn Senior Services	(781) 599-0110
	Independent Living Center North Shore & Cape Ann	(978) 741-0077
	Mystic Valley Elder Services	(781) 324-7705
	North Shore Elder Services	(978) 750-4540

<b>ADRC</b>	<b>Member Agency</b>	<b>Phone</b>
	SeniorCare, Inc.	(978) 281-1750
<b>Merrimack Valley</b>	Elder Services of Merrimack Valley	(978) 683-7747
	Northeast Independent Living Program	(978) 687-4288
<b>Metrowest</b>	BayPath Elder Services	(508) 573-7200
	Central Massachusetts Agency on Aging	(508) 852-5539
	HESSCO Elder Services	(781) 784-4944
	MetroWest Center for Independent Living	(508) 875-7853
	Minuteman Senior Services	(781) 272-7177
	Springwell, Inc.	(617) 926-4100
	Tri-Valley, Inc.	508) 949-6640
<b>Pioneer Valley</b>	Franklin County Home Care Corporation	(413) 773-5555
	Greater Springfield Senior Services	(413) 781-8800
	Highland Valley Elder Services	(413) 586-2000
	STAVROS	(800) 804-1899
	WestMass ElderCare	(413) 538-9020
<b>Southeastern MA</b>	Bristol Elder Services	(508) 675-2101
	Coastline Elderly Services	(508) 999-6400
	Old Colony Elder Services	(508) 584-1561
	Southeast Center for Independent Living	(508) 679-9210
<b>Southern MA</b>	Bristol Elder Services	(508) 675-2101
	Independence Associates	(508) 583-2166
	Old Colony Elder Services	(508) 584-1561
	South Shore Elder Services	(781) 848-3910

<b>ADRC</b>	<b>Member Agency</b>	<b>Phone</b>
<b>Suffolk County</b>	Boston Center for Independent Living (BCIL)	(617) 338-6665
	Boston Senior Home Care	(617) 451-6400
	Central Boston Elder Services	(617) 277-7416
	Chelsea/Revere/Winthrop Elder Services	(617) 884-2500
	Ethos	(617) 522-6700

# Massachusetts Family Caregiver Program

Are you caring for your spouse, parent, other relative or friend who is age 60 or older, or who has Alzheimer's disease? Are you a grandparent age 55 or older who is caring for a child age 18 or younger? Are you over the age of 55 and caring for a disabled individual who is not your child? You are not alone. According to the National Conference of State Legislatures, there are over 600,000 informal caregivers in Massachusetts. Caring for a loved one can be overwhelming at times - stressful, even isolating; yet it can be meaningful and rewarding as well. You may be experiencing or expecting changes in your caregiving role. Making adjustments and coordinating what is needed for your loved one is not an easy task. If you are a caregiver and would like to learn more about support services available to you then contact the Massachusetts Family Caregiver Support Program at: **The Executive Office of Elder Affairs at (617) 727-7750, 1-800-AGE-INFO (800-243-4636) or TTY/TTD (800) 872-0166.**

## Councils on Aging (COAs)

With more than 300 senior and drop-in centers – ranging from a part-time volunteer staffed room in town hall or a meal site to extensive multipurpose facilities with state-of-the-art amenities – senior centers are truly a “home away from home” for many of the Commonwealth's 1.2 million elders. They are a safe place for elders to remain active, independent and contributing to community life for as long as possible.

There are 349 municipal Councils on Aging (COAs) in Massachusetts providing more than 536,000 elders, families and caregivers with direct services annually. They are the only public social service agency in most cities and towns in the state. Since 1956, COAs have sustained and enhanced community life through linking elder needs and resources by offering direct services, education, activities, opportunities and advocacy for seniors, families and caregivers. While each COA is unique, most COAs offer information and referral, transportation, outreach, meals (congregate and/or home delivered), health screening and fitness and recreation programs.

A number of COAs offer health insurance benefits counseling (SHINE), food shopping, transportation, telephone reassurance, friendly visiting and other in-home assistance, peer support groups, computer classes and educational opportunities, supportive day care, minor home repair, case management and intergenerational programs among many other activities and services. Local COAs have the information you need. To contact a COA in your area call: **The Executive Office of Elder Affairs at: 1-617-727-7750 or 1-800-AGE-INFO (1-800-243-4636) or TTY/TTD (800) 872-0166.**

## **Serving the Health Information Needs of Elders Program (SHINE)**

Are you about to turn 65 or retire? Would you like to save money on your health insurance or prescription drugs? Do you wonder if you are getting the best plan for the coverage you are buying? Would you like to receive unbiased, comprehensive information about your options? SHINE provides free health insurance information counseling and assistance to Massachusetts residents with Medicare and their caregivers. In Massachusetts, there are currently 13 SHINE Regional Programs that supervise and train over 500 volunteer health benefit counselors who provide information and assistance regarding health insurance and benefits to elders, disabled Medicare beneficiaries, family members, and professional caregivers. SHINE counselors work at senior centers, elder service agencies, hospitals, and other community locations. For information and location of a trained SHINE counselor near you call:

**800-AGE-INFO (1-800-243-4636) or [www.800ageinfo.com](http://www.800ageinfo.com).**

# Prescription Advantage

Prescription Advantage, administered by the Commonwealth of Massachusetts Executive Office of Elder Affairs, is a prescription drug insurance plan that is available to Massachusetts residents age 65 and older, as well as younger individuals with disabilities who meet income and employment guidelines.

## **For Individuals with Medicare**

Prescription Advantage supplements the Medicare prescription drug benefit by helping to pay for prescription medications that are covered by the members Part D plan. When a member's Prescription Advantage coverage begins is based on membership category. Once coverage begins, members pay no more than their Prescription Advantage co-payment amounts.

- There is no additional monthly premium for Prescription Advantage coverage. In certain circumstances, a yearly enrollment fee may apply.
- Prescription Advantage will help to pay for prescription drugs when members reach the Medicare coverage gap (or "donut hole").

For more information on how Prescription Advantage will work with Medicare prescription drug plans, see "How Prescription Advantage Works with Medicare's Prescription Drug Coverage (Part D)."

## **For Individuals with Creditable Coverage**

Prescription Advantage members enrolled in creditable coverage plans, coverage that is equal to or better than Medicare prescription drug coverage, may receive assistance with plan co-payments. For members in these plans, as for Medicare prescription drug plans, Prescription Advantage is the secondary payer; the creditable coverage plan is the primary payer.

## **For Individuals Not Eligible for Medicare**

*Prescription Advantage* provides prescription drug coverage for members who are not eligible for Medicare.

- There is no monthly premium for this coverage.
- Members pay a quarterly deductible and co-payments until an annual out-of-pocket spending limit is reached. At that time, *Prescription Advantage* will pay the full cost of the member's covered prescription drugs through the end of the Plan year.

**For more information call: 800-AGE-INFO (800-243-4636). Customer Service Representatives are available to answer questions Monday-Friday, 9 am–5 pm EST.**

## **MassMedLine**

Need help with your prescriptions? The MassMedLine Pharmacy Outreach Program is a community service program of the Massachusetts College of Pharmacy and Health Sciences (MCPHS). The goal of MassMedLine and MCPHS is to foster medication compliance and adherence through education, evaluation and outreach. By calling a toll-free help line, visiting the walk-in center located at 25 Foster Street, Worcester, MA, or accessing the web site ([www.massmedline.com](http://www.massmedline.com)), patients will receive information about their medications, prescription drug coverage, including the Medicare Drug benefit, and assistance with accessing affordable prescription drug programs. MCPHS Pharmacy Outreach Program's staff of professional case managers and licensed pharmacists can:

- Educate and counsel patients, answering medication related questions
- Inform and evaluate patients about state and federal programs that provide free, low cost or discounted medications, including the Medicare Drug Benefit, and patient assistance programs sponsored by pharmaceutical companies and private foundations
- Assist patients through the enrollment process for prescription assistance programs and insurances
- Follow up and monitor patients, providing a comprehensive medication therapy management evaluation
- Coordinate and participate in statewide outreach events to increase awareness of our programs and services
- Provide presentations on general health, disease related topics and up to date information on health and prescription coverage, assistance programs and legislation

To learn more about this program, please contact MassMedLine toll free at:

**(866) 633-1617 or (508) 373-0031 | Fax (508) 373-0032 | E-mail:**

**[MassMedline@mcphs.edu](mailto:MassMedline@mcphs.edu)**

## **Additional Resources**

**Consumer issues: OCABR Hotline: (617) 973-8787; (888) 283-3757**

**Consumer Mediation: Attorney General's Hotline: (617) 727-8400**

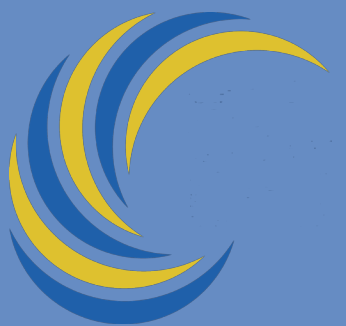
**Attorney General's Elder Hotline: (1-888-243-5337); TTY: (617) 727-4765**

**My Notes:**

## My Notes:

**My Notes:**

# CONSUMER UNIVERSITY



Consumer University is a program created by the Patrick-Murray Administration's Office of Consumer Affairs and Business Regulation, with support from the Executive Office of Elder Affairs. For more information or additional copies of this brochure, contact the Office at:

(888) 283-3757

[www.mass.gov/consumer](http://www.mass.gov/consumer)

[diane.lawton@state.ma.us](mailto:diane.lawton@state.ma.us)