



UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP) FACT SHEET



Have you ever purchased a product or automobile and felt you were being deceived through fraud or misrepresentation? Were you kept in the dark about certain terms? Ever dealt with a business you thought was treating you unfairly? Unfortunately, sometimes, you are actually just a victim of a savvy sales pitch and you just entered into a bad deal. Most times, courts will not let you out of a “bad deal” and buyer’s remorse if the terms were in the contract. However, there are times when businesses, salespeople and lenders go too far and violate laws designed to prevent unfair and deceptive acts.

The Unfair and Deceptive Acts and Practices (UDAP) is a general label for a variety of statutes with broad applicability to consumer transactions with the intent to prevent deception and abuse in the marketplace. UDAP Statutes cover a wide range of consumer topics and can range from sales practices, to advertising, warranties and credit offers. The federal UDAP grants regulation and enforcement to the Federal Trade Commission; however, every state has passed at least one statute that deals broadly with most consumer transactions in this area.

Because the state law UDAP principles often are the more applicable laws for consumers, this Fact Sheet will discuss and focus on the Georgia version titled Fair Business Practices Act, found at O.C.G.A. Sections 10-1-390, et seq.

Georgia’s Fair Business Practices Act (FBPA)

Georgia’s FBPA prohibits unfair and deceptive acts or practices in the marketplace. This law applies to consumer transactions involving the sale, lease or rental of goods, services or property mainly for personal, family or household purposes. The Governor’s Office of Consumer Protection (OCP) is the enforcement authority, and you can access their information and file an online complaint at <http://consumer.georgia.gov/about-us/statutes-we-enforce>.

Unlawful activities that are prohibited by the Fair Business Practices Act include:

Passing off goods or services as those of another (*example: representing that a product or service is manufactured or provided by company X, when in fact it is manufactured or provided by company Y*).

Claiming that goods come from a particular place, when in fact they do not (*example: representing that products are manufactured in the U.S.A. when they are manufactured elsewhere*).

Representing that goods are new when they are actually used.

Claiming falsely that goods or services are of a particular quality or grade, or that products are a certain style or model (*example: selling 10K gold jewelry as 14K*).

Making false or misleading statements about another business or its products or services.

Advertising goods or services with the intent not to sell them as advertised (*example: using "bait-and-switch" tactics*).

Advertising goods or services without having enough merchandise on hand to meet expected demand, unless the advertisement states "quantities limited."

Making false or misleading statements about sale prices (*example: advertising "On sale today only," when the item has been offered at that price for the past month*).

The FBPA also contains specific provisions relating to the following areas types of businesses and practices:

- Health clubs and fitness centers
- Promotional contests/giveaways
- Telemarketing fraud
- Fraud committed over the Internet
- Price gouging during a declared state of emergency
- Credit reports
- Going-out-of-business sales
- Vacation prize offerings
- Odometer Tampering

Special Georgia Court Rules for UDAP Cases

Georgia courts require consumers to show not only that they were cheated, but that the practice *affects other consumers*. In other words, before a case may move forward, the consumer must prove an impact on the public and prove the business cheats consumers frequently with their methods. The statute also imposes a special *advance notice requirement* by the consumer to the adverse party. Additionally, the Georgia law prohibits consumers from joining together in a class action (all affected parties suing as a group), and Georgia courts have also interpreted the statute as providing a blanket exemption for insurers.

If you need assistance filing a complaint or understanding enforcement and protection under specific UDAP statutes, please contact our office at 706-545-3281 in order to schedule an appointment with one of our attorneys.



Office of the Staff Judge Advocate
Legal Assistance Office
6930 Morrison Avenue
Bldg 130
Fort Benning, GA 31905
706-545-3281