

Caveat Emptor (“Let the Buyer Beware”) Becomes Caveat Venditor (“Let the Seller Beware”): New Jersey Consumer Fraud Act

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You have likely heard of the old phrase “Buyer Beware” or even the Latin Phrase “Caveat Emptor”. In New Jersey, the Consumer Fraud Act has leveled the playing field, making it “Caveat Venditor” or “Seller Beware”.

In fact, the New Jersey Consumer Fraud Act has for years been one of the country’s most far-reaching and comprehensive consumer protections laws. New Jersey Courts have consistently construed the Consumer Fraud Act liberally in favor of consumers. Many of the unscrupulous business practices you encounter or see on television such as the “Shame on You” type of news reports are likely included and fall into the Consumer Fraud Act.

The Consumer Fraud Act was drafted and has been amended to punish wrongdoers and does not take into consideration the good faith of business owners or merchants. It is because of this, that all business owners need to be aware of this law and how it could be held against your business - particularly car dealerships, lending institutions and contractors.

What is the Consumer Fraud Act?

The Consumer Fraud Act prohibits any business from using deceptive or fraudulent practices which may mislead, deceive or cause damage to a consumer (or his/her wallet) in connection with the advertisement or sale of any merchandise or real estate. Some examples include misrepresentation of a product, price, durability, repair or one-sided transactions.

Most importantly, it is not necessary to provide that the merchant ***intended*** to engage in the unlawful conduct. If the conduct is likely to deceive it is sufficient to allow someone to sue under the Consumer Fraud Act. The Consumer Fraud Act does not define the term consumer. However, it has been interpreted to include individuals and merchants. So even if it is a business that is engaged in a transaction as a consumer, the business can bring a claim against a merchant.

Who can a Consumer Bring a Claim Against?

Consumers can only bring a claim for damages under the Consumer Fraud Act against a merchant. Practically speaking, most of the consumer transactions we engage in involve merchants. Generally, a merchant is defined as a professional seller of goods, even if only on a part-time basis. Examples of merchants include banks, residential and commercial landlords, businesses, franchisors and franchisees. (The Consumer Fraud Act does not include buyers of goods and services (as opposed to sellers) and individuals engaged in individual one-time sales of goods such as a single sale on Ebay)

Does the Consumer Fraud Act Apply to Contractors?

The Consumer Fraud Act applies to any contractors engaged in the business of making or selling home improvements. The Home Improvement Practices Act requires that all contractors engaged in home improvement to be licensed with the State of New Jersey. All home improvement contracts in excess of \$500 and change orders must be in writing and signed by the parties. Failure to provide a written contract is a per se violation of the Consumer Fraud Act. All home improvement contracts must include a detailed description of the work to be performed, materials used, a start and end date, the total cost and the warranty.

What Constitutes a Sale of Merchandise under the Consumer Fraud Act?

The Consumer Fraud Act is applicable to consumer transactions involving the sale or rental of merchandise. Merchandise includes goods, information, services, real estate, travel, insurance or securities. A sale of goods or services includes a sale, rental or offer to sell or rent.

What Conduct is Prohibited by the Consumer Fraud Act?

As set forth above, acts of deception, fraud, false promises, acts of misrepresentation and unconscionable commercial practices are unlawful. Some examples include misrepresentation of a product, price, durability, repair or one-sided transactions. Importantly, it is not necessary to provide that the merchant intended to engage in the unlawful conduct. If the conduct is likely to deceive it is sufficient to set forth a claim under the Consumer Fraud Act.

What is the Statute of Limitations for a Consumer Fraud Act Claim?

The Consumer Fraud Act is governed by a six year statute of limitations.

What Damages can a Claimant Recover under the Consumer Fraud Act?

To recover under the Consumer Fraud Act a claimant must show that he or she suffered an ascertainable loss of money that was proximately caused by a violation of the Consumer Fraud Act. Ascertainable loss is generally the amount of money to make a claimant whole. However, the Consumer Fraud Act limits damages to those that are economic in nature, thus excluding damages for emotional distress and pain and suffering. A successful claimant is entitled what is called treble (three times), which is punitive in nature. An award of treble damages is mandatory for successful claimants. In addition to treble damages, a successful claimant is entitled to reasonable counsel fees.

Whether you are a consumer or merchant in New Jersey, it is important to be aware of the implications of the Consumer Fraud Act. Whether you think you have been the victim of unscrupulous business practices or whether a claim has been made against you or your business, you need an attorney with experience to evaluate the claim.

Have you ever been taken advantage of by a business? If you are a business, have you ever been accused under the Consumer Fraud Act? Let us know below.