

/* Here's the full text of the Federal Trade Commission's Holder in Due Course Rule. This is one of consumer's most important protections in the never ending battle between consumer's rights and bad business. Under this rule, virtually every consumer transaction in which a loan is made, if the finance contract is assigned to a lender, then the lender IS SUBJECT TO ALL OF THE CLAIMS that the consumer has against the original seller. This means that if you enter into an agreement and then properly refuse to pay because the merchandise is defective, then if the finance contract has been assigned, you nevertheless may assert the same claims against the holder of the contract. In other words, in a consumer transaction where this notice appears, a bank or other lender that later purchases your finance contract cannot tell you to bring your complaints against the original seller, and that it's not their problem-- because it is. Of course, a business transaction is NOT subject to these rules. */

Part 433 of 16 Code of Federal Regulations
PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Section 433.1

Definitions-

- (a) "Person." An individual, corporation, or any other business entity.
- (b) "Consumer." A natural person who seeks or acquires goods or services for personal, family, or household use.
- (c) "Creditor." A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis. Provided, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.
- (d) "Purchase money loan." A cash advance which is received by a consumer in return for a "Finance Charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or in substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.
- (e) "Financing a sale." Extending credit to a consumer in connection with a "credit sale" within the meaning of the Truth in Lending Act and Regulation Z.
- (f) "Contract." Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.
- (g) "Business arrangement." Any understanding, procedure,

course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) "Credit card issuer." A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) "Consumer credit contract." Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e) of this section.

(j) "Seller." A person who, in the ordinary course of business, sells or leases goods or services to consumers.

Section 433.2

Preservation of consumers' claims and defenses-

In connection with any sale or lease of goods or services to consumers, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for a seller, directly or indirectly, to:

/* Every sale of something by a person in the business of selling is going to affect commerce, since they have used the telephones, mails or other instrumentalities of commerce at least once, or, at least, have had a customer from across a state line or a delivery from across a state line. */

(a) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

or,

(b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loans is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold fact, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.