

# **Texas Deceptive Trade Practices-Consumer Protection Act**

## **What Is The "Deceptive Trade Practices Act"**

The Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") was enacted on May 21, 1973. The full text can be found starting at section 17.41 of the Texas Business and Commerce Code. The primary purpose of the DTPA is to protect consumers against false, misleading, and deceptive business and insurance practices, unconscionable actions, and breaches of warranty. It does so by prohibiting certain acts and practices that tend to deceive and mislead consumers.

The DTPA provides for both public enforcement and private remedies. Public enforcement is done by the Texas Attorney General, who can seek a court order prohibiting further deceptive practices. A private citizen may seek redress for damages caused by certain specific acts and practices listed in the DTPA.

Because the DTPA is very broad and is constantly being interpreted by the courts, it is impossible to explain its complete meaning and impact in this short handbook. If you believe that you are the victim of a deceptive trade practice, please consult an attorney.

## **Which Transactions Does the DTPA Apply To?**

Most consumer transactions are covered by the DTPA. Although the DTPA does not cover every deceptive or unconscionable act or practice, it is quite broad. The DTPA provides that "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

The DTPA prohibits certain acts or practices "in the conduct of any trade or commerce." This is a very broad provision. "Trade and commerce" means "the advertising, offering for sale, lease, or distribution of any good or service, or any property, tangible or intangible, real, personal, or mixed, any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state." The term "goods" includes tangible things or real property purchased or leased for use. The word "service" includes work, labor, or services purchased or leased for use, including services furnished in connection with the sale or repair of goods. The DTPA does not apply to the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion or similar professional skill.

The term "unconscionable" appears frequently in the DTPA, and in this handbook. The DTPA defines an "unconscionable action" as one that "takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree."

So what does this all mean? The DTPA has a very broad application. The DTPA can be used by someone that is charged for an unnecessary \$50 car repair; it can be used by someone buying a used car; it can be used by a homeowner buying a home; it can be used by a small business

purchasing materials; it can be used by a business buying a \$400,000 franchise; and it can be used in all transactions in between. Simply put, the DTPA was enacted to protect consumers in small transactions and businesses in rather large transactions.

### **Who Is Entitled To Protection Under the DTPA?**

Other than the Texas Attorney General, only consumers are allowed to file under the DTPA. The phrase "consumer" means an individual, partnership, corporation, or governmental entity who seeks or acquires by purchase or lease any goods or services. It does not cover a business consumer that has assets of \$25 million or more or that is owned or controlled by a corporation or entity with assets of \$25 million or more.

### **The Element of Knowledge or Intent**

The DTPA makes many practices illegal without requiring proof that the defendant intended to do something wrong or illegal. Unless the section involved requires otherwise, the consumer is not required to prove that the defendant "intentionally" or "knowingly" violated the DTPA. This makes it easier to prove a violation of the DTPA, and provides a strong incentive for sellers of goods and providers of services to refrain from engaging in the prohibited acts and practices.

Nevertheless, the DTPA provides that if a defendant acts "intentionally," the judge or jury may award the consumer "additional damages" in an amount not exceeding three times the actual damages suffered by the consumer.

### **What Is Included Within the "Laundry List" of Acts and Practices Made Illegal by the DTPA?**

The DTPA contains a "laundry list" of specific practices that are prohibited. This laundry list is found in section 17.46(b) of the Texas Business and Commerce Code. It contains 27 acts that violate the DTPA and for which consumers may sue, if the consumers relied on the act to their detriment. These twenty-five acts are described on the following pages.

**(1) Passing off goods or services as those of another.**

It is illegal to advertise or represent goods or services under a different company than the company in which the good or services were made.

**(2) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.**

This section prohibits acts that tend to confuse consumers. First, this section prohibits acts that tend to cause confusion regarding the source of goods or services. This section is broader than section (1) because the consumer need not prove that the defendant was actually "passing off" goods or services as those of another. Instead, all the consumer must show is that the defendant caused confusion regarding the source of the goods or services.

This section also prohibits acts that cause confusion regarding the sponsorship, approval, or certification of goods or services. It prohibits people from representing a product has the approval of an organization that has not really approved it. Certification is a formal process that often has significant meaning to consumers. Examples of certification includes various seals of approval, such as the Good Housekeeping Seal and the U.L. or Underwriters Laboratories certification for electrical products.

**(3) Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.**

This section prohibits acts or practices that cause confusion regarding the affiliation or relationship between the seller of goods or the provider of services and some other organization or person. For example, this section prohibits business owners from giving the impression that their company is closely connected with another business or with the state government or an agency of the state government.

**(4) Using deceptive representatives or designations of geographic origin in connection with goods or services.**

This section prohibits people from stating that products come from a certain country or location when, in fact, they did not. This would include stating falsely that a certain wine is from France, a fine watch was made in Switzerland, or a certain coffee is made from beans grown in Columbia.

**(5) Representing goods or services that claim to have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities but do not or a person claiming to have a sponsorship, approval, status, affiliation or connection but does not.**

This section has two main parts: one concerning misrepresentations about goods or services and the other concerning misrepresentations about authority.

It is illegal to represent that goods and services have sponsorship or approval when they do not. This is similar to section (2) above. It is also illegal to represent that goods and services have characteristics, ingredients, uses, benefits, or quantities that they do not. For example, it is illegal to represent that a product is made out of steel when it is really made out of aluminum. Moreover, this provision forbids a salesman from telling you that goods have features that they do not have or that the goods can do things that they cannot do.

Misrepresentations about quantities include misstating the number of acres being sold in a real estate transaction and misstating the number of items contained in a box of candy. Misrepresentations about benefits of goods or services include misrepresentations about the ailments that a medicine can cure and the effect upon one's self after only three visits to a health spa. Misrepresentations about ingredients include stating that a product contains vegetable fat when it really contains animal fat.

This section also prohibits misrepresentations regarding the sponsorship, approval, status, or affiliation of an individual. It prohibits misleading and false statements about the nature and authority of a person. For example, an accountant may not claim to be a Certified Public Accountant if that person has not taken and passed the CPA exam. Also, physicians may not represent themselves as qualified specialists when they are not.

**(6) Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or second-hand.**

This section prohibits sellers from passing off secondhand or reconditioned goods as new. This section affects many types of goods which might be sold, used on a trial basis, returned and then resold again as "new." The Federal Trade Commission has guidelines regarding the amount of prior use that is allowed before a good can no longer be sold or advertised as "new."

**(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.**

This section covers statements made to induce a consumer to choose a certain item. It prohibits misrepresentations concerning certain specific quality or model designations. A very general statement, such as "this is a high quality product" or "this is a top-of-the-line model" may not violate this section, even if the good is of poor quality because the representation is too broad and too vague. But the statement that meat being sold is U.S. Choice when, in fact, it is only U.S. Good, or that certain electrical wiring or equipment has a wattage rating of 1000 when, in fact, the rating is 700, is probably a violation.

**(8) Disparaging the goods, services, or business of another by false or misleading representations of facts.**

A seller may not attempt to get your business by putting down a competitor, unless the negative comments are true. If a salesperson starts disparaging a competitive product, ask for proof to support the negative comments.

**(9) Advertising goods or services with intent not to sell them as advertised.**

This section prohibits advertisers from using misleading advertisements to attract business. Perhaps the oldest technique of this kind is the so-called "bait and switch" -- a seller advertises a certain low-priced item but when a customer tries to buy that item, the seller talks the customer into buying a more expensive item by claiming that the lower-priced item is out of stock or is inferior.

**(10) Advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisement disclosed a limitation of quantity.**

This section is designed to prevent one of the main methods by which unscrupulous sellers have employed the "bait and switch" technique. Some businesses advertise a certain product at a very low price, when in fact they have only a limited quantity of that product in stock. For example, a consumer enters a store specifically to purchase the advertised item ("bait") and the sales clerk tells them they're out of the item and suggests ("switch") a better product that just happens to be available. Sellers can avoid liability under this section by advertising the number of items on sale, or by indicating that quantities are strictly limited and that purchasers will be satisfied on a first-come-first-serve basis

This section is also violated when a store with several outlets in the same metropolitan area fails to disclose that the sale item can be found only in one of its stores.

**(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions.**

This section has three parts. The first prohibits misleading advertisements about the reasons for price reductions; for example, a store that advertises "going out of business sales" every few months.

The second also prohibits misleading statements about the existence of price reductions. A seller cannot advertise that prices are being reduced by 50 percent unless the item has previously been offered by the same seller at the stated regular price. Likewise, sellers cannot advertise that prices are marked 50 percent off suggested retail price unless the representation is accurate.

The third prohibits misrepresentations about the amount of price reductions. When a seller advertises "X percent lower prices," those representations must be true.

**(12) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.**

This section prohibits misrepresentations or false statements about a written contract. For example, a seller may not state that a contract contains a full warranty or a right to return the product when the contract does not have such a warranty or right. Similarly, when a person attempts to return a product based on the warranty, the seller cannot tell a consumer that the contract does not contain such a warranty. This provision is also violated when a seller sends threatening letters to a buyer claiming that the seller may repossess the property or force the forfeiture of the prior payments made for the goods when, in fact, the agreement confers no such rights. It is important to note that this section covers false statements regarding the rights conferred by the agreement or contract that are made at the time of the contract and even those statements that are made after the contract or sale has been signed or taken place.

**(13) Knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service.**

This section prohibits repairpersons from representing that certain work or parts are needed when they are not. To violate this section the repairperson must have made the misrepresentation "knowingly." This is required because there may be honest differences of opinion regarding the need for some repairs.

**(14) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a consumer transaction.**

This section is designed to prevent salespeople from misrepresenting their ability to commit their employer to the terms of a purchase contract. For example, it is illegal for automobile salespeople to agree to sell a car for a certain price, say that they need to check with their boss, and then say that the boss will not agree to that price, but will agree to a price of \$500 higher.

**(15) Basing a charge for the repair of any item in whole or in part on the quantity or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charges for the warranty or guaranty, if any.**

If a seller is going to charge an additional amount of money for a certain guaranty or warranty, over and above the actual charge for the part or labor involved, the seller must disclose that charge separately and clearly.

**(16) Disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge.**

It is illegal to tamper with the odometer on any motor vehicle and thereby reduce the apparent number of miles on the vehicle when it is sold.

**(17) Advertising of any sale by fraudulently representing that a person is going out of business.**

This section is similar to section (11). Under this section, it is illegal for any person to advertise "fraudulently," with knowledge that the statement is false and with intent that a person seeing the advertisement will rely upon such false representation, that the seller is going out of business. All that is necessary to constitute a violation of this section is a false statement that the seller is going out of business.

**(18) Advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:**

- (A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;
- (B) the seller does not represent that the card provides insurance coverage of any kind;and
- (C) the discount is not false, misleading, or deceptive.

**(19) Using or employing a chain referral sales plan in connection with the sale, or offer to sell, of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and, in connection with the purchase, receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods.**

The chain-referral sales device has been used in many different forms, including promotions of swimming pools, home siding installation, and home encyclopedia sales. An unreasonable price that the consumer normally would not pay for the merchandise is somehow made acceptable by the promise that the buyer will receive a price reduction for each prospective buyer whose name and address is supplied to the seller. A crafty salesperson using this technique will create the impression that consumers are going to get some kind of tremendous discount after all the people whom they have listed as prospects are contacted by the seller, without disclosing to the buyers that they will get these discounts only if certain things happen after they have committed himself to the transaction. Usually, the buyers are given the impression that they are going to get credit for all of the sales, but then none of the sales occur and the consumers are stuck with higher prices.

**(20) Representing that a guaranty or warranty confers or involves rights or remedies which it does not have or involve; provided however, that nothing in this subchapter shall be construed to expand the implied warranty or merchantability as defined in Section 2.314 and 2.318 of the Business and Commerce Code to involve obligations in excess of those which are appropriate to the goods.**

If a salesperson says that you have certain warranty rights when you purchase an item, and you later discover you have no warranty rights, this section probably has been violated.

- (21) Promoting a pyramid promotional scheme, as defined by Section 17.461.**
- (22) Representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced.**

While section (13) prohibits persons from "knowingly" making false or misleading statements concerning the need for parts, replacement, or repairs, this section requires no proof of knowledge or intent. Instead, it is illegal for a repair shop or service person to tell you that certain parts have been replaced or certain services have been performed, when they have not.

- (23) Filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided however, that a violation of this section shall not occur where it is shown by the person filing such suit he/she neither knew nor had reason to know that the county in which suit was filed was either the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract.**

This section prohibits "distant forum abuse." Companies sometimes make a promissory note payable in a city far away from the place where the consumer resides. To fall under this section, you must have signed a "written obligation," such as a contract, invoice, or promissory note. Also, the transaction must be a "consumer transaction," which includes purchases and loans or extensions of credit. The key factor in determining whether a transaction is a "consumer transaction" is whether the money loaned or the goods or services provided are "intended primarily for personal, family, household or agricultural use." If you bought a car for personal or family use in El Paso, or a television set for household use in Houston, and you live in one of those counties, you cannot be sued in Dallas for the unpaid balance on those purchases, even if the documents that you signed state that your payments are due and payable in Dallas, Dallas County, Texas.

- (24) The failure to disclose information concerning goods or services known at the time of the transaction and was used to induce the consumer into a transaction whom otherwise would not have entered had the information been disclosed.**

This section prohibits a seller from failing to disclose information known by the seller at the time of the transaction if such withholding of information is intended to induce the consumer into a transaction, and if the information is such that had the consumer known it at the time of the transaction, the consumer would not have made the purchases. However, if the information which is not disclosed by the seller would be unimportant to the consumer, or if the seller does not intend to induce the consumer to make the purchase by such omission, there is no violation of the statute. For example, the section may be violated by a homeowner or real estate agent who knows that the home has foundation damage but fails to disclose that to a potential buyer, or when an auto dealer knows that a car has been in a wreck and fails to disclose that to the potential buyer.

- (25) Using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction.**

A company cannot state or indicate that it is a corporation if it is not. For example, a company that is not a corporation cannot call itself "\_\_\_\_\_, Inc." or "\_\_\_\_\_ Corp."

- (26) Selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act or is not registered with the Teacher Retirement System of Texas as required by Section 8A of the Act.**
- (27) Taking advantage of a disaster declared by the Governor under Chapter 418, Government Code, by: (A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or (B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.**

Our legislature recently added this section to the DTPA, in response to widespread "price gouging" following disasters.

Conclusion: Laundry List

Throughout this section about the "laundry list" of prohibited acts and practices, an attempt has been made to present easily understandable examples and to restate the statutory language in plain English. The descriptions are intended only for guidance in determining whether a DTPA has occurred. But facts and circumstances vary. To determine whether you have a right to sue, consult an attorney. Even if an act or practice seems to be covered by the DTPA, and even if your attorney has advised you that the practice is covered it is possible that the court, in interpreting the DTPA, may rule against you. You should consider and discuss this possibility with your attorney.

## **What Remedies Are Available Under the DTPA?**

If you feel that a DTPA violation has occurred, what are your remedies?

The remedies of the DTPA are not exclusive. Instead, they are in addition to remedies provided in other laws. In fact, violations of certain other laws may also constitute violation of the DTPA. You may not, however, recover under the DTPA and under some other law for the same alleged wrong. In other words, you cannot recover twice for one violation.

Remedies under the DTPA may not usually be waived, and an attempt to make a consumer waive DTPA remedies is expressly made void and unenforceable unless specific requirements are met. This provision is particularly important when consumers buy goods "As Is." Often, consumers may still be able to recover under the DTPA even if the consumer buys the goods "As Is." If you have such a situation, you should seek the advice of an attorney.



## **Public Remedies**

The DTPA provides both public and private remedies for violations. Public remedies are those enforced by the Consumer Protection Division of the Texas Attorney General's Office. Public remedies include temporary restraining orders, temporary or permanent injunctions, and monetary penalties of up to \$20,000 per violation. The courts are further authorized to enter orders or judgments necessary to compensate identifiable persons for actual damages caused by their wrongful acts. In the event the person ordered to make restitution fails to do so within three months from the date of the order, the court may appoint a receiver or take possession of the assets of the person violating the order. Anyone found guilty of violating an injunction shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation, not to exceed \$50,000.

The DTPA authorizes local district and county attorneys to provide assistance to the Consumer Protection division in the commencement and prosecution of such actions. All of those authorities, however, must notify the alleged violator at least seven days prior to instituting an action and inform the alleged violator in general terms of the alleged unlawful conduct.

The DTPA provides an exemption for certain advertisers such as newspapers, magazines, radio stations, etc., except when the advertiser has actual knowledge of the false statements or has a substantial financial interest in the transaction.

Anyone wishing to report an activity believed to be in violation of the DTPA and subject to the above described public remedies, should contact the Consumer Protection Division of the Attorney General's Office in Austin, Texas, or in larger cities, contact the local Attorney General's Office.

## **Private Remedies**

When consumers suffer actual damages, they may sue under the DTPA for any of the following:

1. violations contained in the "laundry list", so long as the consumer relied on the act to his or her detriment;
2. breach of an expressed or implied warranty;
3. unconscionable action; and
4. certain violations of the Texas Insurance Code.

What may you as a consumer expect to recover in the event you are successful in a DTPA lawsuit? First, the DTPA provides for recovery of economic damages. If the court finds the wrongful conduct was "knowingly" committed, it may award up to three times the amount of economic damages, in addition to damages for mental anguish. If the act was committed "intentionally," up to three times the mental anguish damages may be awarded. The question of whether a violation was "knowing" or "intentionally" is determined by the court or jury, after considering all the facts and circumstances relating to the transaction. Also, a consumer who prevails "shall be awarded court costs and reasonable and necessary attorney fees."

Let's use an example to illustrate. Assume you prove economic damages in the sum of \$3,000. Let's further assume it was proved that the conduct of the violator was "knowingly" committed. The court or jury could then award a maximum amount of three times the economic damages. Therefore, in this example, a maximum damage recovery could be obtained in the sum of \$9,000, plus mental anguish damages, court costs and attorney's fees.

Before filing a DTPA lawsuit, a consumer must first give written notice to the alleged violator, advising the violator of the consumer's specific complaint and the amount of actual damages and expenses, including attorney fees, if any, reasonably incurred by the consumer in asserting the claim. The alleged violator has 60 days to respond; suit should not be filed during this 60-day period. But there are two exceptions: the first when it is necessary to immediately file suit in order to prevent the running of a statute of limitations, and the second when the consumer asserts the DTPA claim as counterclaim in an existing suit.

The alleged violator may, within 60 days from receipt of such notice, offer the consumer a written offer of settlement including an offer to reimburse the consumer for the attorney's fees, if any, reasonably incurred in asserting the claim up until the date of the notice. If a prior notice is not required to be given because of one of the two exceptions described above, the alleged violation may tender such settlement offer within 60 days after the service of the suit or counterclaim.

The consumer has the option of accepting or rejecting the settlement offer. In the event the consumer takes no action for 60 days after receipt of such settlement offer, the offer is deemed to have been rejected. A rejected settlement offer may be filed with the court together with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found, then the consumer may not recover an amount in excess of the tendered amount or the amount of actual damages found, whichever is less. The DTPA specifically provides that a tender of a settlement offer is not an admission of guilt and may be used only to determine the reasonableness of the offer.

## **Mediation**

After a DTPA lawsuit is filed, the consumer or the defendant may obtain a court order requiring mediation of the case. If a defendant makes a settlement offer at mediation or soon thereafter and the offer is rejected by the consumer, the court can limit the consumer's recovery at trial. If mediation is not requested, the defendant has a second opportunity to make an offer of settlement. The defendant may make the offer up to 90 days after the answer to the consumer's suit is filed. Then, the consumer has the option to accept or reject the offer, as set forth above.

## **Defenses**

The consumer may face certain defenses and even be liable for certain damages if he or she loses the lawsuit. If the court finds that an action by a consumer was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorney's fees in defending the action plus all court costs.

As discussed above, a finding that a settlement offer is the same or substantially the same as the actual damages found, will constitute a defense to the additional damage provisions of the DTPA. Further, an offer made by the defendant within the 60-day period of the full amount claimed including expenses and attorney's fees constitutes a complete defense to a lawsuit by the consumer.

### **How Long Can You Wait to File a Suit?**

A DTPA lawsuit generally must be filed within two years after the date on which the false, misleading, or deceptive act or practice occurred. If the deceptive act took place over a period of time, then, to be safe, you should begin suit two years from the date of the first such action. Some violations of the DTPA, by their very nature are concealed or difficult to detect. In these cases, the consumer has a longer time within which to file suit; two years after he or she discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the false, misleading, or deceptive act or practice.

Finally, there is a special provision stating that, if the consumer proves that failure to begin the lawsuit within these time limits was caused by the defendant knowingly engaging in conduct solely calculated to induce the consumer to refrain from or postpone the commencement of the suit, the right to file suit may be extended for an additional 180 days. In other words, if a violator of the DTPA strings you along by promising to make good, and does this intending to make you wait past the two-year time limit, and then "changes his or her mind" once the time limit has passed, he or she may not be able to get away with the trickery.

Questions regarding the statute of limitations or time limit for filing suit are often difficult and confusing. Consulting an attorney is strongly advised. Remember that you should make your demands for correction of the problem or violation right after you discover it. If you do not get your complaint satisfied within a reasonable period of time, and after giving the alleged violator a good faith opportunity to make good, you should promptly contact a lawyer to protect your legal rights. In general, two years is the absolute maximum allowed for filing suit, but you should never wait to take action until the last minute, because you might be wrong, and thereby lose your legal rights.

### **When Should You Consult a Lawyer to Protect Your Rights?**

The safest and simplest answer to this question normally is "as soon as possible." If you wait too long, you can lose all of your legal rights. However, you generally should first make reasonable effort to have the violator correct the problem. Send a letter demanding correction of the problem and making good on the damages you have suffered. Be as clear, specific, and factual as possible. Send the letter by certified mail, return receipt requested (or hand deliver it, and get a signed receipt), and be sure to keep a copy of the letter. Talk to the appropriate people in charge, without getting angry and shouting, calmly telling them why you feel you have been treated wrongly and explaining what should be done to remedy the problem.

Give the person or business to whom you are complaining an amount of time, reasonable under the circumstances, to make good. If they flatly turn you down, or seem to be "stringing you along" without actually doing anything, then you may have no choice but to take legal action.

Individuals (but not partnerships or corporations) may represent themselves without a lawyer. For very small amounts of damages you may be able to file suit and represent yourself in the small claims court. If you do this, you should obtain a copy of the Texas Young Lawyers Association's pamphlet, *How To Sue In Small Claims Court*, by writing to the address given on the back of this handbook.

Although you have the right to represent yourself, the Texas Young Lawyers Association strongly recommends that you hire an attorney to represent you on claims filed under the DTPA because the language and procedures of the DTPA are sometimes complex and may be confusing.

In order to provide an incentive for consumers to enforce their rights under the DTPA, the Act provides that a plaintiff who wins will recover the reasonable attorney fees incurred for bringing suit. This, plus the additional damages, is intended to encourage consumers with valid cases to seek legal correction. You should never file unfounded lawsuits. Litigation is expensive and you may have to pay, at the very least, court costs. Further, as explained above, if you bring a groundless suit in bad faith or for harassment, you may have to pay the defendant's attorney fees. If you do not know an attorney to handle your case, ask a friend or an associate for a recommendation. Also, you may locate one through your local Lawyer Referral Service listed in your telephone directory, or through the State Bar Lawyer Referral Service by calling (toll free) 1 800-252-9690.

This information is not intended to be a substitute for the legal advice of a licensed attorney. If you have any questions regarding a particular issue or topic we suggest you seek legal counsel.

The above information is adapted from the brochure "A Guide to the Texas Deceptive Trade Practices Consumer Protection Act," prepared by the Texas Young Lawyers Association and published by the State Bar of Texas. Contact the State Bar of Texas at 1-800-204-2222 for a copy of the publication.