

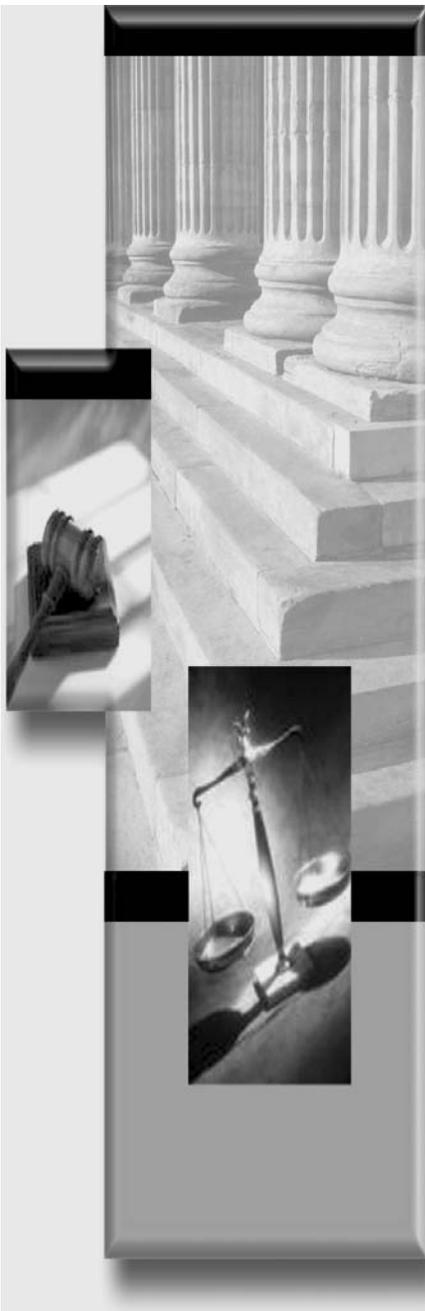


COUNTY OF LOS ANGELES
DEPARTMENT OF CONSUMER AFFAIRS

CONSUMER AFFAIRS INSTITUTE

2008 CONSUMER LAWS DIGEST

(The laws listed in this Digest go into effect
January 1, 2008, unless noted otherwise.)



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Consumer Affairs Laws

AUTOS: FUEL CHARGES FOR RENTAL VEHICLES

(Business & Professions Code Section 13800)

Effective January 1, 2008

Existing law does not regulate the use of vehicle fuel gauges as a measuring instrument in rental vehicle transactions.

This new law lets rental car companies use the fuel gauge to calculate charges for refueling the rental car.

Important Tip:

DCA investigates complaints against car rental companies

AUTOS: HIGHER RESTOCKING FEES FOR CAR BUYERS WHO BUY THEIR LEASED CARS

(Civil Code Sections 1812.84, 1812.85)

Effective January 1, 2008

The Car Buyer's Bill of Rights, enacted July 1, 2006, requires a car dealer selling a used car for less than \$40,000 to offer the buyer a cancellation option contract. A buyer who buys a cancellation option contract can return the car without cause within two days. If the buyer returns the car, the dealer can charge him or her only a limited restocking fee. The dealer has to disclose the restocking fee upfront.

The Car Buyer Bill of Rights created the following unanticipated scenario, which could allow car lease customers to avoid paying for excess mileage, wear and tear, or damage fees at lease termination:

Mr. Smith signs a three-year car lease. The lease allows Mr. Smith to drive the car 12,000 miles per year, or 36,000 throughout the lease. At the end of the lease, Mr. Smith has driven the car 56,000 miles, causing a \$4,000 excessive mileage charge. To avoid paying the \$4,000 charge, Mr. Smith exercises his option to buy the car at the end of the lease. He also buys a cancellation option contract. Two days later, Mr. Smith returns the car to the dealer under his option to cancel the contract. He argues that he does not have to pay the \$4,000 excessive mileage fee because his obligation to pay the fee ended when he exercised his option to purchase the car. If Mr. Smith



is right, the dealer would be required to take the car back without collecting the excessive mileage fee.

This new law provides that if Mr. Smith buys the car at the end of his lease, and buys a cancellation option contract, the dealer can increase the restocking fee by the amount he would have had to pay at the termination of the lease for excess mileage, damage to the car, or excess wear and tear. This means that if Mr. Smith returns the car within his 2-day right to cancel, he'll have to pay the extra restocking fee.

Important Tip:

DCA investigates complaints involving violations of the Car Buyers Bill of Rights. DCA has a tip sheet on our Web site on the Car Buyers Bill of Rights.

AUTOS: LEMON LAW PROTECTION FOR SOLDIERS

(Civil Code Sections 1791, 1795.8)

Effective January 1, 2008

California's "Lemon Law" provides a number of protections for consumers who buy new and used cars covered by a manufacturer's express warranty.

The Lemon Law applies only to cars sold in California.

This bill applies the Lemon Law protections to cars purchased by soldiers, regardless of the state of purchase or registration, if these two things apply:

- The soldier purchased the car from a manufacturer, or from an agent or representative of that manufacturer, who sells cars in California, and
- The soldier was stationed in or was a resident of California at the time he or she purchased the car or at the time he or she filed an action pursuant to California's Lemon Law.

Important Tip:

DCA investigates Lemon Law complaints

AUTOS: PROTECTIONS FOR CONSUMERS WHO TRADE-IN CARS

(Vehicle Code Sections 11604, 11703, 11705, 4456.3, 12200)

Effective July 1, 2008

Many consumers who trade in their used cars when they buy a new car often still owe money on the trade-in. The understanding between the consumer



and the dealer is that the dealer will pay off the balance owed on the trade-in so that the consumer will incur no further charges.

Typically, however, the sales or lease contract for the new car does not specify any time for the dealer to pay off the trade-in. If an unscrupulous or financially strapped dealer does not pay off the balance on the trade-in quickly, the consumer remains liable on the old contract while having to make payments for the new car.

In addition, some dealers also fail to remit to the state license and registration fees paid to the dealer by consumers. This results in the consumers being unable to register their new vehicles.

In yet other situations, some dealers who sell vehicles on consignment for consumers fail to pay consumers the sale proceeds.

If a dealer who engages in the above practices goes out of business or files bankruptcy, consumers are unable to recover money directly from the dealers and thus incur substantial financial loss.

This new law establishes a program to compensate consumers if a dealer shuts down or files bankruptcy before paying off the trade-in, license and registration fees, or sales proceeds from a consigned vehicle.

To accomplish the above, this new law created the Consumer Motor Vehicle Recovery Corporation (CMVRC), which will administer a restitution program for motor vehicle consumers. The law requires the Department of Motor Vehicles (DMV) to charge dealers a \$1 fee on each vehicle they sell or lease. Dealers may not pass on this fee to consumers. DMV is required to transfer the fees collected to the CMVRC. Starting July 1, 2008, consumers can apply to the CMVRC to recover losses of up to \$35,000 per vehicle for unpaid trade-ins, registration and license fees, or consigned vehicles.

Important Tip:

DCA counsels consumers on how to file claims with the CMVRC

AUTOS & CELL PHONES: TEENAGE DRIVERS CAN'T TALK AND DRIVE
(Vehicle Code Sections 12810.3, 23123, 23124)

Effective July 1, 2008 all drivers can use only hands-free phones while driving, unless they are making an emergency call.

Effective July 1, 2008, persons under the age of 18 years old are prohibited from driving a car while talking on the phone, even if the phone is hands-free. Emergency calls are exempted.



A violation of this law is an infraction with a fine of \$20 for the first violation, and \$50 for each subsequent violation. The driving records of violators will not be affected.

CREDIT: INTEREST CHARGES LIMITED ON PAYDAY LOANS TO SOLDIERS AND THEIR FAMILIES

(Financial Code Sections 1241, 14960, 22345, 23038; Military & Veterans Code Section 394)

Effective January 1, 2008

Federal limits the interest on short term loans to soldiers and their families. Although the states are specifically allowed to enforce these federal law provisions, California has now made violations of these federal laws a state offense.

This new law caps the annual interest rate on short term loans to soldiers and their families at 36%. This cap applies to payday loans, vehicle title loans, and refund anticipation loans.

Important Tip:

DCA takes complaints against payday lender that violate the law.

CREDIT REPORTS: PUBLIC RECORD INFORMATION EXEMPT FROM CREDIT REPORT FREEZES

(Civil Code Sections 56.06, 1785.11.2, 1798.29, 1798.82)

Effective January 1, 2008

Existing state and federal law regulates consumer credit reports. Existing state law permits a consumer to place a security freeze on his or her credit report by making a request in writing. A security freeze prohibits the credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer.

This bill allows a credit reporting agency to disclose public record information in a consumer's credit report, even if the consumer has placed a security freeze on his or her credit report. This law, however, does not prohibit a credit reporting agency from electing to apply a security freeze to the entire contents of a credit report.

Important Tip:

DCA counsels consumers on how to freeze their credit reports.



DEAD PEOPLE: BUSINESSES MAY NOT REQUIRE THAT CANCELLATION OF SERVICES BE DONE IN PERSON

(Probate Code Section 217)

Effective January 1, 2008

Current law does not provide a standard way for businesses to cancel services, such as gas, electricity, water, and telephone when a person dies. As a result, some businesses require in-person cancellations, while others accept cancellations by telephone, fax or mail.

A requirement that the cancellation be done in-person may be stressful or inconvenient for the person handling the affairs of the deceased person.

This new law prohibits businesses from requiring in-person cancellations. This law provides that an oral or written request from a family member, attorney, or personal representative of a deceased person is sufficient to cancel services. This law defines "services" to include gas, electrical, water, sewage, cable, satellite, telephone, or cellular telephone service.

Important Tip:

DCA investigates complaints against businesses that require in-person cancellations.

GIFT CERTIFICATES: REDEEMABLE FOR CASH IF LESS THAN \$10

(Civil Code Section 1749.5)

Effective January 1, 2008

Existing law prohibits the sale of gift certificates that have an expiration date. Existing law also provides that any gift certificate sold after January 1, 1997 is redeemable for cash or subject to replacement with a new gift certificate.

This new law gives consumers the right to redeem any gift certificate for cash if the gift certificate has a cash value of less than \$10. Donated gift certificates are exempt.

This law also prohibits gift certificates for food items from having an expiration date or service fee, unless the gift certificate is for perishable food products.

Important Tip:

DCA investigates complaints against businesses that violate this law.



LANDLORDS AND TENANTS: LANDLORDS MAY NOT ASK TENANTS THEIR IMMIGRATION STATUS

(Civil Code Section 1940.3)

Effective January 1, 2008

Existing law regulates the terms and conditions of residential tenancies.

This new law prohibits local governments from passing ordinances compelling landlords to inquire, report, or take any action concerning the immigration or citizenship status of a tenant, occupant, or prospective tenant of residential rental property. This law also prohibits landlords from independently performing any of these acts.

This law does not prohibit landlords from complying with any federal law or from requesting information necessary to determine or verify a tenant's identity or financial qualifications.

Important Tip:

DCA investigates complaints against landlords that violate the law.

LANDLORDS & TENANTS: LOCKING MAILBOXES REQUIRED IN RESIDENTIAL HOTELS

(Civil Code Section 1941.1, Health & Safety Code 17958.3)

Effective July 1, 2008

Existing law requires that rental residential property be fit for occupancy. This law is known as the "Warranty of Habitability," and it gives tenants certain rights if their rental units aren't fit for occupancy. A rental property is not fit for tenancy if it lacks any of the following facilities that are up to code and in good working order:

- Waterproofing and weather protection
- Plumbing or gas facilities
- A water supply capable of producing hot and cold running water and an approved sewage disposal system
- Heating facilities
- Electrical lighting and wiring
- Building and grounds kept clean, sanitary, and free from debris, filth, rubbish, garbage, rodents, and vermin



- An adequate number of appropriate receptacles for garbage and rubbish
- Floors, stairways, and railings maintained in good repair

If a property owner breaches the warranty of habitability, a tenant may make repairs and deduct the costs from the rent. In addition, if a local code agency has cited the property as uninhabitable and repairs are not made in a timely manner, the owner may not collect rent or issue a three-day notice of non-payment of rent. This also subjects landlord to a presumption of breach of contract in an eviction action.

This new law adds to the warranty of habitability a requirement that all residential hotels provide, by July 1, 2008, a locking mailbox for each unit. This law also requires that the mailbox meet the accessibility requirements of the Fair Housing Act and allows a city or county to enact ordinances that provide greater protections, additional standards, and increased remedies.

NOTARIES: MUST PROVIDE JOURNAL INFORMATION WITHIN 15 DAYS
(Government Code Section 8206.5)

Effective January 1, 2008

Current law requires a notary public to keep a journal of all the official acts he or she performs, and to include in the journal information of every document he or she notarizes. Current law also requires a notary public, upon a written request of any member of the public, to provide a copy of any line item contained in the journal.

This new law requires a notary public to provide a copy of the line item to the requesting member of the public, or acknowledge that the line item does not exist, within 15 business days of receipt of the request.

Important Tip:

DCA investigates complaints against notaries that break the law.

NOTARIES: STRICTER REGULATIONS

(Civil Code Sections 1185 and 1189; Government Code Sections 6203, 8201.1, 8201.2, 8201.5, 8202, 8206, 8213.5, 8213.6, 8214.1, 8214.2, 8214.15, 8221, 8225, 8228, and 8228.1, 8214.21, 8214.23)

Effective January 1, 2008

Existing law requires notaries to keep a journal of all their official transactions, and to keep copies of notarized documents. When notarizing the signing of a deed, quitclaim deed, or deed of trust affecting real property, notaries are



required to get the thumbprint of the signing person. This new law applies the thumbprint requirement to all notarized documents. Failure to get a thumbprint subjects notaries to a penalty of up to \$2,500 enforceable by the Secretary of State or any public prosecutor.

Existing law requires notaries to determine from personal knowledge or satisfactory evidence the identity of the person acknowledging the document being notarized. This new law deletes the personal knowledge provision, and requires that the determination be from satisfactory evidence. Failure to obtain satisfactory evidence subjects notaries to a civil penalty of up to \$10,000, enforceable by the Secretary of State or any public prosecutor.

Existing law requires notaries to notify the Secretary of State of any change of address of their principal place of business or of any name change. This new law makes failure to notify the Secretary of State of a change of address or name punishable by a fine of not more than \$500. This new law also prohibits notaries from using a commercial mail receiving place or a post office box as their principal place of business or residence.

Existing law requires peace officers to get a warrant in order to seize a notary's journal. This new law authorizes peace officers to seize a journal without a warrant, as long as the peace officer has probable cause that a crime has been committed.

Important Tip:

DCA investigates complaints against notaries that break the law.

PRIVACY: COURTS AND TAX COLLECTOR MUST DISPLAY ONLY LAST FOUR DIGITS OF A PERSON'S SOCIAL SECURITY NUMBER

(Civil Code of Procedure Section 674, Revenue & Taxation Code 2191.3)

Effective January 1, 2008

Existing law requires abstracts of judgment to contain the full social security number and driver license of the judgment debtor if the judgment creditor knows them.

Property tax law authorizes a county tax collector to file liens on unsecured property for delinquent taxes, which may contain the property owner's social security number.

This new law deletes the requirement that abstracts and lien filings contain full social security numbers, and instead requires only the last 4 digits of the person's social security number.



WATER VENDING MACHINES AND BOTTLED WATER

(Health & Safety Code 111070, 111115, 111130, 111170, 111071, 111198)

Effective January 1, 2009

Existing law establishes quality and labeling standards for bottled water and vending machines. The State Department of Public Health (DPH) is responsible for enforcing these regulations.

Existing law establishes a fee schedule for annual bottled and vended water licenses, and sets the fee for water-vending machines at \$10.25. This new law increases the annual license fee for a water-vending machine to \$40.

This new law also requires water-bottling plants to prepare an annual bottled water report in English, Spanish, and in other languages that exceed 10% of the state's population. The water-bottling plant is required to make the report available to each customer upon request.

Existing law requires DPH to require that each water-vending machine, retail water treatment plant, water hauler vehicle and facility, and private water source be maintained in a clean and sanitary condition. This new law requires water-vending machines to be cleaned and serviced at least once every 31 days. The bill requires that maintenance and complaint records be kept by the owner for a minimum of 2 years and be made available to DPH upon request.

This law requires DPH to conduct annual inspections of not less than 20% of the licensed water-vending machines in the state. The law authorizes DPH to take the machine or issue a fine if a violation is found. The bill also authorizes DPH to conduct re-inspections to prevent repeated or continuing violations.

Existing law requires water bottles and water-vending machines to be clearly labeled. This new law requires labels to also include the name and contact information for the bottler or brand owner and the source of the bottled water. This new law also requires bottlers that distribute directly to consumers to provide a statement on each billing statement with contact information and how to obtain information relating to water quality.

Existing law requires that each water-vending machine, retail water facility, and private water source display a telephone number for information, service, or complaints. This new law requires that the number be toll-free or local. The notice needs to also include the toll-free number for DPH's food and drug branch and the company's maintenance, and container information.

Important Tip:

DCA investigates complaints against water-vending companies.



Real Estate Laws

APPRAISERS: UNLAWFUL TO INFLUENCE APPRAISERS

(Business & Professions Code Section 11323, Civil Code Section 1090.5)

Effective October 5, 2007

The Real Estate Appraisers' Licensing and Certification Law prohibits licensed appraisers from engaging in any appraisal activity in connection with the purchase, sale, or transfer of real property if the appraiser's compensation is affected by the sales commission generated by the transaction for which the appraisal was made.

This new law prohibits licensed appraisers from engaging in any appraisal activity in connection with the purchase, sale, transfer, financing, or development of real property if his or her compensation is dependent on or affected by the value conclusion generated by the appraisal.

This new law also prohibits anyone with an interest in a real estate transaction involving an appraisal from improperly influencing through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

Important Tip:

The California Department of Real Estate takes complaints against appraisers and real estate agents and brokers

HOMESTEAD EXEMPTIONS: PROTECTIONS EXTENDED TO DIVORCING SPOUSES WHO MOVE OUT OF THE HOME

(Civil Procedure Code Section 704.720)

Effective January 1, 2008

Homestead exemptions protect some equity of a debtor's principal home. To qualify for the exemption, the debtor, or his or her spouse, have to continuously live in the home from the date the lien is recorded against the home until the court rules that the homestead is exempted.

When spouses decide to separate or divorce, one spouse often moves out, while the other continues to reside in the family residence. The homestead law provides, however, that if the judgment debtor or his or her spouse reside



in separate homesteads, only one homestead is exempt upon entry of the dissolution of marriage judgment.

This means that the "out-spouse" loses his or her homestead exemption at the time the dissolution of marriage judgment is entered. In many cases, however, the division of community property does not occur until well after the dissolution of marriage judgment. In these cases, the "out spouse" loses his or her homestead protection even though he or she still owns the home. This result is particularly unfair where the judgment debtor moved out to avoid physical abuse.

This new law provides an automatic homestead exemption to the "move out" spouse until a judgment or agreement is entered between the spouses dividing the community property.

Important Tip:

DCA counsels consumers on the homestead exemption. DCA's Website has a tip sheet on homestead exemptions.

MOBILE HOMES: SELLERS MUST SUBMIT FINGERPRINTS TO THE DEPARTMENT OF JUSTICE

(Health & Safety Code Sections 18050, 18070.3)

Effective January 1, 2008

The Mobile homes-Manufactured Housing Act of 1980 requires manufacturers, distributors, dealers, and sellers of mobile homes, manufactured homes, and commercial coaches to be licensed by the Department of Housing and Community Development.

This new law requires the above to submit fingerprints in order to get a license.

Important Tip:

DCA investigates complaints against mobile home sellers

PRESERVATION OF RECORDS BY COUNTY CLERKS

(Business & Professions Code Sections 6403, 22351, and 22452)

Effective January 1, 2008

Existing law requires legal document assistants and unlawful detainer assistants to be registered with the County Clerk in the county in which their principal place of business is located and in any other county in which they



operate. Existing law requires process servers and professional photocopiers to be registered with the county clerk of the county in which they reside or have a principal place of business.

Existing law lets the County Clerk destroy any non-judicial documents or records if authorized by a resolution of the Board of Supervisors and if the records are copied or recorded for public use. Existing law requires the County Clerk to retain any papers or documents for at least one year before they are destroyed, unless another provision of law requires that they be retained longer.

This new law requires, in the case of a legal document assistant, unlawful detainer assistant, process server, or professional photocopier, require the county clerk to retain an application for registration or certificate of registration for a period of 3 years following the expiration date of the application or certificate. This new law authorizes the county clerk to destroy the application or certificate if they are scanned. This law further requires that the county clerk retain the scanned image for a period of 10 years, after which time the county clerk may destroy the image.

Important Tip:

DCA investigates complaints against legal document assistants, unlawful detainer assistants, process servers, and professional photocopiers.

REAL ESTATE LICENSES: CONVICTED FELONS CAN'T GET ONE
(Business & Professions Code Sections 10177, 10562)

Effective January 1, 2008

Existing law authorizes the Real Estate Commissioner to suspend, revoke, or deny a license to a person who is convicted of a felony or a crime involving moral turpitude.

This new law authorizes the Real Estate Commissioner to suspend, revoke, or deny a license to a person who is convicted of a felony or a crime related to the qualifications, functions, or duties of a real estate licensee.

Important Tip:

The California Department of Real Estate takes complaints against real estate agents and brokers



Small Claims Laws

SMALL CLAIMS COURT: PEOPLE CAN FILE PAPERS ELECTRONICALLY AND PAY FEE BALANCES BY PERSONAL CHECK (Code of Civil Procedure Sections 116.230, 411.21)

Effective January 1, 2008

Existing law allows a plaintiff to commence an action in small claims court by filing a claim under oath with the clerk of the small claims court in person or by mail.

This new law would, in addition, allow a plaintiff to commence an action in small claims court by filing a claim by fax or by electronic means.

Existing law provides that if a person files a complaint or other first paper accompanied by payment by check in an amount less than the required fee, the clerk has to accept filing, but cannot issue a summons until the court receives full payment of the required fee. Existing law requires the clerk to send a notice to the person telling him or her about the amount owed. The notice needs to say that payment for the balance has to be in cash, by cashier's check, or by other means specified by the court but not by traveler's check or personal check.

This new law allows the person to pay the balance by personal check.

Important Tip:

DCA Small Claims Advisors counsel litigants on the above and other Small Claims Court-related issues.

PROCESS SERVERS: STRICTER SERVING REQUIREMENTS (Code of Civil Procedure Sections 488.080, 512.030, 699.080, AB 859)

Effective January 1, 2008

Existing law requires registered process servers who serve writs of attachments and writs of execution to file the following documents with the levying officer within five days after performing the levy:

- The writ of attachment or execution



- An affidavit of the registered process server stating the manner of levy performed
- Proof of service of the copy of the writ and notice of attachment on other persons
- Instructions in writing

This new law changes the title of the "affidavit" to "proof of service." The bill also specifies that the required documents for writs of attachment and execution must be filed within five court days after performing the levy.

Existing law provides that prior to a hearing on a noticed motion for a writ of possession, the defendant shall be served with the following documents:

- A copy of the summons and complaint,
- A notice of application and hearing,
- A copy of the application and any affidavit in support thereof

Existing law provides that if a defendant has not appeared in an action for a writ of attachment, and a writ, notice, order, or other paper is required to be personally served on the defendant, service shall be made in the same manner as a summons is served.

Existing law provides that if a writ, notice, order or other paper is required to be personally served in order to enforce a judgment, service shall be made in the same manner as a summons is served.

This new law provides that if a defendant has not appeared in an action for a writ of possession, and a writ, notice, order, or other paper is required to be personally served on the defendant, service shall be made in the same manner as a summons is served.

Important Tip:

DCA Small Claims Advisors counsel litigants on the above and other Small Claims Court-related issues.



2008 New Laws

- Consumer Affairs
 - Real Estate
- Small Claims Court



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