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Form #3

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NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Attorney General TITLE NUMBER: 142

CITE AUTHORITY W. Va. Code 46A-6-103 and 46A-7-102(1)(e)

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ~~25~~ 21

TITLE OF RULE BEING PROPOSED: Legislative Rule on Consumer Lease Disclosures in Rent to Own Transactions

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Mario J. Palumbo

$100.00 for 6.00 rule
Comments
4

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rule on Consumer Lease Disclosures in Rent to Own Transactions

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency Attorney General Address 812 Quarrier Street, 6th Floor, Charleston, West Virginia 25301

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$ 0	$ 0	$ 0	$ 0	$ 0
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

The rule involves neither the collection of any additional revenue nor the expenditure of any additional state funds. Enforcement of the rule would be met by existing staff and agency budget.

3. Objectives of these rules:

To require that certain rent-to-own transactions be treated as consumer leases and require relevant disclosures to consumers about such lease terms which arise from rent-to-own transactions.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Will require the rent-to-own industry to substantially modify its practices by making various disclosures.

C. Economic Impact on Citizens/Public at Large.

Will provide consumers with information for comparative shopping purposes and give them various protections.

Date: Sept 4, 1992

Signature of Agency Head or Authorized Representative

Timothy A. Wirth

DATE: September 18, 1992

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TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Office of the Attorney General

LEGISLATIVE RULE TITLE: Proposed Legislative Rule on Consumer Lease Disclosures in Rent to Own Transactions

1. Authorizing statute(s) citation

W.Va. Code 46A-6-103 and 46A-7-102(1)(e)

2. a. Date filed in State Register with Notice of Hearing:

August 5, 1992

b. What other notice, including advertising, did you give of the hearing?

Copies of the proposed rule and notice of hearing were distributed to interested persons

c. Date of hearing (s): September 9, 1992

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 18, 1992

f. Name and phone number of agency person to contact for additional information:

Timothy C. Winslow

Senior Assistant Attorney General

Office of the Attorney General (558-8986)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

      Not applicable

   b. Date of hearing: Not applicable

   c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

      Not applicable

   d. Attach findings and determinations and reasons:

      Attached Not applicable

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 AND 46A-7
SERIES 15

TITLE: PROPOSED LEGISLATIVE RULE ON CONSUMER LEASE DISCLOSURES IN RENT TO OWN TRANSACTIONS

Section 1. General

2. Definitions

3. Disclosures for Rental-Purchase Agreement Consumer Leases

4. Exclusions

WEST VIRGINIA LEGISLATIVE RULE
ATTORNEY GENERAL
CHAPTER 46A-6 AND 46A-7
SERIES ~~15~~ 21

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PROPOSED LEGISLATIVE RULE ON CONSUMER LEASE DISCLOSURES IN RENT TO OWN TRANSACTIONS

§142-15-1. General.

1.1. Rule Designation. -- This rule is legislative.

1.2. Scope. -- This legislative rule sets forth specific disclosure requirements for certain types of rental-purchase agreements as consumer leases, and defines certain deceptive acts or practices.

1.3. Authority. -- W. Va. Code §46A-7-102(1)(e) and Code §46A-6-103.

1.4. Filing Date. --

1.5. Effective Date. --

1.6. Repeal of Former Rule. -- Not applicable.

1.7. Penalties. -- Except as otherwise indicated, a violation of this rule constitutes an unfair and deceptive act or practice in violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 et seq.

1.8. Construction. -- This rule shall be liberally construed to effectuate the purposes of the West Virginia Consumer Credit and Protection Act, W. Va. Code §46A-1-101 et seq.

1.9. Severability. -- If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this rule or the application thereof to any person or circumstance is held unconstitutional or invalid, such holding shall not affect other sections, subsections, sentences, clauses, phrases, or provisions which are hereby each declared severable.

§142-15-2. Definitions.

2.1. "Lessee" means any natural person who leases or purchases personal property under lease agreement, including a rental-purchase agreement.

2.2. "Lessor" means any person or organization who, in the ordinary course of business, leases, offers to lease, or acts as

an agent for the leasing or sale of personal property under a lease agreement, including a rental-purchase agreement.

2.3. "Rental-purchase agreement" means an agreement for the use of property by an individual lessee for personal, family or household purposes in which the lessee has an option to renew the agreement by making additional periodic payments after an initial period, and that permits, but does not obligate, the lessee to become the owner of the property.

§142-15-3. Disclosures for rental-purchase agreement consumer leases.

3.1. In any consumer lease structured as a rental-purchase agreement, the lessor shall disclose in clear type at least one half inch high on a tag prominently attached to every item of property displayed or offered for rental-purchase:

3.1.1. The cash price;

3.1.2. The amount of the periodic payment and any tax on the periodic payment;

3.1.3. The length of each payment period;

3.1.4. The total number of periodic payments required to complete the purchase under the rental-purchase agreement;

3.1.5. The total amount the lessee must pay to complete the purchase under the rental-purchase agreement including taxes, which may be separately itemized;

3.1.6. The imputed interest rate expressed as an annual percentage rate calculated from the difference in the cash price of the item and the total amount required to be paid, excluding taxes, delivery charges, and bona fide maintenance or service fees, in the agreement's schedule of payments, and as otherwise in accordance with proper determination of the annual percentage rate under federal law; and

3.1.7. Whether the good is new, used, or previously rented.

3.2. In any consumer lease structured as a rental-purchase agreement, the lessor shall disclose in clear bold type at least one-eighth inch high in the agreement, all information required in W. Va. Code §46A-2-111 or by subsection 3.1 of this rule, and in addition thereto state:

3.2.1. Whether the lessor is responsible for maintenance due to normal wear and tear;

3.2.2. The amount of any credits, if applicable, for sums paid pursuant to a previous rental-purchase agreement between the lessor and lessee for the same or replacement property and the amount of any credits for a trade-in allowance, including, if applicable, the number of additional payments required to obtain ownership;

3.2.3. The amount, if applicable, of any delivery charges, taxes, and other sums which are required to be paid by law, and the description and amount of all other initial payments which must be paid at the beginning of the rental-purchase agreement in addition to the initial periodic payment;

3.2.4. The amount, if applicable, of all other charges, individually itemized, which may become payable by the lessee to the lessor that are not included in the disclosure of initial or periodic payments;

3.2.5. The amount, if applicable, of all maintenance or service fees, individually itemized, which may become payable by the lessee to the lessor and the amount such fees comprise of the periodic payments;

3.2.6. The party who is liable for loss or damage in excess of normal wear and tear;

3.2.7. The right, if any, of the lessee to reinstatement; the length of time the lessee has to reinstate, and the payments the lessee must make to reinstate the rental-purchase agreement or the manner in which such sums are calculated;

3.2.8. That the lessee has the option to accelerate the purchase of the property early during the lease term and the price or the formula or method by which such price will be determined;

3.2.9. Whether there is a transferrable manufacturer's warranty on the goods; and that if any part of a transferrable manufacturer's warranty exists on the rental-purchase property when the lessee acquires final ownership of the property, that warranty will be transferred to the lessee;

3.2.10. The amount of any late fee which may be charged by the lessor, which amount shall be in conformity to that permitted by W. Va. Code §46A-3-112 for a precomputed consumer credit sale; and

3.2.11. That the lessee may, but is not required, to purchase insurance or liability damage waiver with regard to damage

or loss beyond normal wear and tear, where the lessee is made liable for such damages.

§142-15-4 Exclusions.

4.1. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where such agreements are subject to the Federal Truth in Lending Act, 15 U.S.C. §1601 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule.

4.2. Rental-purchase agreements and lease agreements with an option to purchase involving transactions of consumer goods including, for example, those involving musical instruments, automobiles, or telecommunications equipment where such agreements are subject to the Federal Consumer Leasing Act of 1976, 15 U.S.C. §1667 et seq., and the regulations pursuant thereto, are excluded from the provisions of this rule: Provided, such agreements require a further consideration or final payment of more than a nominal amount to acquire ownership.

ORIGINAL

BEFORE THE WEST VIRGINIA ATTORNEY GENERAL'S OFFICE

IN RE:

TITLE 142, SERIES 14, INTERPRETATIVE RULE PERTAINING TO THE TREATMENT OF RENT TO OWN TRANSACTIONS AS CONSUMER LEASES OR CONSUMER CREDIT SALES

TITLE 142, SERIES 15, LEGISLATIVE RULE ON CONSUMER LEASE DISCLOSURES IN RENT TO OWN TRANSACTIONS

Transcript of proceedings had at a public hearing in the above-styled matter on Wednesday, September 9, 1992, commencing at 1:07 p.m., at the State Capitol Complex, Room 215, East-Wing, Charleston, West Virginia, pursuant to notice.

APPEARANCES: TIMOTHY C. WINSLOW,
Senior Assistant Attorney General
Consumer Protection Division
Charleston, West Virginia 25305

DONALD L. DARLING,
Deputy Attorney General
812 Quarrier Street, 6th Floor
Charleston, West Virginia 25301

N. JOAN THAXTON COURT REPORTERS, INC.
7715 SISSONVILLE DRIVE
CHARLESTON, WEST VIRGINIA 25320
(304) 988-3970

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P R O C E E D I N G S

MR. DARLING: Good afternoon ladies and gentlemen. My name is Donald Darling. I am Deputy Attorney General with the Consumer Protection Division, and this is a public hearing to take comments on two proposed regulations under Title 142 of the Code of State Regulations, more particularly Proposed Rule 14, which is an interpretive rule pertaining to treatment of rent to own transactions as consumer leases or consumer credit sales and Proposed Rule 15, which is a legislative rule on consumer lease disclosures in rent to own transactions.

During the course of today's hearings we will be taking comments from anyone who wishes to make an oral comment and/or submit any written comments. There are sign-up sheets at the end of the table here for anyone who wishes to make a comment, and also even if you are here only as an observer we would like to have you sign the sheet so that we will be able to note your attendance for the record that is being made of today's hearing.

We are going to commence today with an opening statement from Senior Assistant Attorney General Tim Winslow and then Mr. Winslow will take over the conducted receipt of the statements of members of the public.

So I would like to turn the proceedings over now to Mr. Winslow.

MR. WINSLOW: Thank you, Don. I want to thank everybody for coming today. Before going into an explanation of the rule and its purposes, I would just like to first state that contrary to the view that has been expressed by some that these rules are from the staff of the Attorney General, I would like to reiterate in fact that these rules are those of the Attorney General, and after we hear comments today and make any changes that we feel necessary, if they are adopted by our office, they will be adopted because the Attorney General of the state, Mario Palumbo, wants them to be adopted to protect the consumers here in West Virginia RTO transactions.

That being said, the purpose of the

rules that we have proposed is to provide a place in law for rent to own transactions in West Virginia. As you know, rent to own has fallen sort of between and betwixt two federal laws dealing with consumer leasing and Truth in Lending Act disclosures.

In interpreting our act it is our view that certain rent to own transactions should be viewed as consumer credit leases and others should be in fact viewed as consumer credit sales and subject to the 18 percent limit, and those even viewed as leases should have various disclosures including an imputed APR.

The purpose of the APR law in federal law and the reason why we like to have these types of rules and consumer things is so people can look at various credit that is being offered and they can compare and they can make informed decisions.

That is really the purpose of those rules, not to prevent transactions as much as to make sure that consumers are fully informed of what they are entering into and to be able to comparison

shop to the extent that it limits some transactions from taking place over 18 percent.

This in fact will put the business of rent to own on equal footing with other businesses here in the state. It is not particularly fair that they are subject to an 18 percent limit and others are not. Last year there was a legislative proposal and it failed to be enacted. It was a compromise that almost made it through, but at the last minute it did not.

Because of that we have decided to move forward with the rule so that everyone understands what the Attorney General's position is and to put a level playing ground for both all retailers here in the state and provide the consumers with information.

I am going to summarize the two rules. As proposed the interpretive rule would affect rent to own transactions involving less than a thousand dollars. They would be treated as consumer credit sales and subject to the interest limitations contained in law for such sales. Rent

to own transactions that would not be considered consumer credit sales would fall under consumer leases and subject to the disclosure provisions set forth for consumer leases when it is the intention of the parties to transfer ownership by having the consumer make payments over a scheduled four month period.

Essentially what the law does now in consumer leases, it says that you are a consumer lease if the lease goes for over four months. Most rent to own transactions the terms are actually week to week or month to month, but the reality is the consumers who are renting to own who have the intention to actually rent to own, and when they enter into the agreement it is their view that they are putting in the money so that they can rent to own, the schedule of those payments are going to go over four months even though itself it is just a week to week or month to month transaction.

That is an evasion of the purpose of the law and, therefore, we believe the law incorporates them for the same reason as any federal

law that deals with money being deposited at a bank. Over $10,000 in cash has to be reported. You can't have a bunch of people line up at the bank window and have $9,099, have their next friend have $9,099. That is simply a way of looking around the law and the purpose of the law, and we don't think that should work here as well.

The legislative rule then deals with the disclosures having to be made when you are considered a consumer lease. In the law now we have various disclosures that have to be made when you are a consumer lease, but they were not drafted with rent to own transactions in mind.

Therefore, we have drafted up a legislative rule that would detail various disclosures that would have to be made in consumer leases, the most pertinent of which really is an imputed APR so that the consumer would be aware of what they are really paying ineffectively in an interest rate.

This hearing will in fact combine the record on these two rules. When people speak,

we will assume that they are really commenting on both rules unless they specify otherwise. We are keeping a record of this, and the same record will be kept in both.

There have been some written comments received on the rules to date. AT&T has filed some written comments which I would like to submit into the record at this time. Gorby's Music has also submitted some comments that I would like to submit in the record at this time, and West Virginia Bankers Association also has filed some written comments which I would like to submit in the record at this time.

(WHEREUPON, the documents referred to were marked for identification as Exhibit A-1 and is hereto attached.)

I have spoken to others who have indicated that they would have written comments to submit. They have not yet been submitted. Therefore, provided that there is no problem with meeting the September 18 deadline on which we have

to get the rules before the legislative rule making committee, I will extend the written comment period for one week to allow these other people who have indicated they were interested in submitting written comments to do so. Clearly on the interpretive rule we can do that without any problem.

At this time, too, I wish to also introduce into the record some various articles about the rent to own industry that have been in our files and have helped really prompt us to view this industry as one that is in need of some regulation and one where consumers are often entering into transactions without full knowledge.

There is an article by the Charlotte Observer on "Rating on Rent to Owns" I would like to introduce at this point; Consumer Reports about purchasing TVs on rent to own; an article in the Morning Journal of the eastern panhandle on debt collection practices, the rent to own industry; a Herald Dispatch article from Huntington from December 1990 that I would like to submit that talks about rent to own and in fact went around to the

Huntington stores to see what the cost of actually renting to own items were; a similar type of article that appeared in the Charleston Gazette, February of '90 also dealing with rent to own and how much it costs the consumers; a Better Business Bureau report on the rent to own on May of 1990; and an article called, "The Rent to Own Industry of Consuming Interest to North Carolina" that was put out by North Carolina Insight in June of '88, and it dealt with North Carolina's attempt to regulate the rent to own industry; and finally there is a bulletin that has been put out by the American Association of Retired Persons on renting to own and talking about the problems and disclosures that consumers need to find out to make an informed transaction here.

(WHEREUPON, the documents referred to were marked for identification as Exhibit A-2 and is hereto attached.)

That having been said, I am going to open the floor up for comments. If anyone also has written comments that they would like to submit at

the time of their speaking, please feel free to bring them up and do so.

The first person that we are going to hear from today is Dave McMahon from the West Virginia Legal Services Plan is here to speak. Those are written comments?

MR. McMAHON: Written comments. Exhibits to my oral comments.

MR. WINSLOW: Thank you.

MR. McMAHON: Before I start my actual testimony I would like to thank the Attorney General for letting me go first. I would much prefer to go last so I can respond to the other comments. However, I have to leave at 3:00 today because at 3:30 tomorrow morning I have to put my daughter on a plane for Peking in National Airport in D.C. So my daughter has told me what the priorities are, and I am going, and I appreciate the Attorney General letting me go first.

Now to begin my official comments, I would like to thank the Attorney General's Office for inviting my comments on this. The legal aides

in the state do see rent to own complaints. I am familiar with the difficulties, and I think I will be able to add to it.

I should state I am David McMahon. I am the Litigation Coordinator for the West Virginia Legal Services Plan, a program which is primarily federally funded which provides low income legal services to poor people for their civil legal problems.

I would also like to have placed in the record a number of exhibits to my testimony which I have handed to the Assistant Attorney General and ask that they be placed in the record. I will refer to some of them as I proceed.

(WHEREUPON, the documents referred were marked for identification as Exhibit B-1 and is hereto attached.)

I will start out by saying that I strongly support both the interpretive and the legislative rule that the Attorney General's Office is coming forward with. I will later in my remarks

have some technical comments of how I think they might even be stronger and perhaps some drafting problems, but low income consumers desperately need this in the State of West Virginia and the legislature having not been successful, I think it is good that the Attorney General has stepped in.

The first kind of preliminary comment I want to make is that I am sure that you will hear these folks come up here this afternoon and talk about the rent to own industry. One of my hobbies is reading history. I probably read a book every month or so. I have read all about the industrial revolution, and I haven't heard rent to own mentioned once in all the histories of the industrial revolution.

Rent to own is a marketing scheme for appliances and furniture and those kinds of things for low income people. It is not an industry. There are not many consumers here today, rent to own consumers, and I don't find that surprising at all. There are a number of reasons for that, primarily because rent to own transactions

and dealers do not feel themselves covered by the disclosure provisions, and in fact they are not under law disclosed under the Truth in Lending Act and, therefore, rent to own consumers because they do not have disclosures do not understand how badly they are being taken. Many of them do not because of the very slick way in which they have avoided the other consumer disclosure laws and consumer finance charge cap laws. Most of these folks don't even know.

They are fooled, because they think here is the friend getting me started when I can't get anywhere else -- kind of like the Iraqis listening to Saddam Hussein, that is the only news that they get -- because they are not required to give disclosures and because they don't shop anywhere else.

The rent to own industry will by its own admission say that their target is the lower 40 percent of the population economically. These folks, and they are not here, they don't do lots of things. They don't vote much. They don't have the

resources to get here. They don't read papers and know about these things much, but that doesn't mean that we shouldn't protect them.

There is still a problem. I can speak personally. I lived on the west side of Charleston for three years. About once a week I got a flyer in the mail box or on the porch stoop, because they take things around by hand, they don't mail them to you actually in the mail, you know, saying come down and rent to own, and when I walked around the neighborhood and I was in the stores and in the liquor stores and wherever I was you heard complaints about rent to own.

The complaints are out there, and it is too bad that low income people are not more vocal so they could make their needs better known and appreciate the Attorney General's Office and the state as they should sticking up for them. There are some others. Some don't come because they essentially don't understand. They are fooled. Some don't come to hearings like this simply because they don't have the resources, et cetera, and some

don't come because they feel trapped and they are afraid to cross the rent to own dealers that they have talked to.

I get calls where people say I don't want to make you mad because they won't rent to own to me any more, and that is because that consumer really has no place else to go and probably even with a rate cap and all the protection in the world that consumer would have no place to go because they probably shouldn't be -- because all their money is being consumed by their rent and utilities anyway, and so there are some people that are being really taken advantage of and those people feel trapped and so they are not going to come here.

Actually there are three kinds of consumers that deal with rent to own. First are those consumers that do have the income to be able to afford to make payments and they also have either a credit rating or a down payment so they could shop elsewhere at a normal retail installment sales outlet like Sears or Montgomery Ward or Circuit City or Sodaro's, all of them around town.

There are also those that do have the income to make the payments but do not have the credit rating or the down payment to enable them to deal with a normal retail installment sales contract.

Finally, there are those consumers who don't have enough income to make the payments really at all and, of course, also do not have a credit rating or a down payment, but all three are targets. All three need protection, some a different kind of protection than others.

I am going to talk about all three of those consumers and the particular kinds of protection that they need. First there are those that do have income, that do have a credit rating or a down payment and could go to the normal retail installment sales outlet. Why don't they go someplace else? Because they don't understand how badly they are being taken advantage of by the exorbitant finance charges that rent to own dealers charge.

I think many of us have forgotten

since the Truth in Lending Act came in -- the Federal Truth in Lending Act and since the West Virginia Consumer Credit Protection Act of 1974. It used to be when you went to a retail installment sales contract outlet you didn't know whether the interest rate that they quoted was add on interest, discount interest, simple interest or APR. All of them were calculated differently, and it was amazing confusion.

The Federal Truth in Lending Act and the West Virginia Consumer Credit Protection Act straightened it out and said everybody has to disclose finance charges in terms of an annual percentage rate, APR, and that is the way the cap is written in West Virginia for credit cards and retail installment sales. That is according to one of the exhibits in there. It is 18 percent.

Rent to own comes up with a new name. What they have is essentially a 50 percent to equity, and you can tell that by most of the contracts is you can pay it off early if you pay half of the total payments that are left. That is

essentially 50 percent to equity.

To show you how confusing that is, the lower the percent to equity the higher the APR. So even in the past at least you knew if discount or add on was higher it meant something better, but now higher is -- it meant something bad, and now higher is better. So it is incredibly confusing if the consumer could even understand what is in the contract but, of course, there is no disclosure at all.

Fifty percent to equity, if you calculated it out for 18 months, is about 200 percent APR, about six times the consumer annual percentage rate of cap, and the disclosure as the Attorney General's rule properly does, needs to be right there on the price tag before you agree to start shaking hands with the guy and before they say okay it is a deal and sit down and then see the papers you are going to sign.

You need the disclosure before that happens, because by the time you sit down to sign the papers the buyer is already comeitted to the

deal. He needs to have the disclosure before he is committed to the deal either by the oral agreement with the salesman or by the sales tactics that all salesmen use to try to get people locked into a deal and then finish the sale.

The comparison needs to be APR so that someone can compare. I don't think anyone sitting here could compare add on and discount and know which is better. Consumers certainly cannot compare APR and percent to equity or whatever else may actually be disclosed on the paperwork.

So the APR needs disclosed. Also important is the total of payments needs to be disclosed. The APR so that the consumer can compare, the total of payments so the consumer can know what the consumer is getting into, how much you are finally going to have to pay. All that should be disclosed along with others. The cash price, the fair market value, et cetera, should be disclosed on the price tag.

That is for the consumers that really can shop somewhere else that do have the

income to make the payments and do have the credit rating so they can compare. There is also those consumers that I mentioned, that second group that says we do have income. They do have income, but they have no credit rating or they don't have a down payment, and they cannot get nice stuff on credit anywhere. It is the 18 percent cap that is important to them.

The disclosure is good. So they know what they are getting into, can make a decision whether or not to get into it or not. It doesn't help them compare because they can't go elsewhere very often, though they could buy used goods, et cetera, at stores or the Ad Bulletin, but if they want the new stuff, then they need the cap.

Now I have heard it argued and I have even seen editorials in the paper -- you know, well, these poor people, if they are foolish enough to get into it, why should we protect them? Well, that is what rich people say about poor people, but I notice when I talk to those rich people or even middle income people I tell them this -- and this is

what low income consumers are seeking -- they only want the same protection that credit card consumers have.

Credit card consumers have a finance charge cap of 18 percent APR, and they have disclosure so they know what it is and what they are getting into. Low income people that are renting to own don't have either of those. Low income people don't want more than well-to-do people have. Low income people want the same thing that well-to-do people have.

The interest rates out there are outrageous. I have attached in my exhibits a number of complaints that I have filed, one that will be filed which set out facts which I have incorporated into my testimony, facts with specific situations.

One of them is a Parkersburg case. The annual percentage rate on that case if you figure it out based on the payoff after the first month compared to the total of payments, is 130 percent. One in Charleston is 240 percent.

There is one from a Huntington

lawsuit where the interest rate on one of them was 234 percent, but I think the actual dollars are also revealing in that case. In one year for items with a $700 cash price -- in one year the consumer had paid about $1,200, and the rent to own dealer still wanted another $700 before he would get it paid off. So you add up the $1,200 and $700, $1,900 on a $700 cash price item, and I have to tell you that after the suit was filed I later found out that that wasn't the first contract he had signed on that item. He had paid money on contracts before that that they had lost records of, and he was still paying on it.

So the interest rates that are being charged are outrageous. If there was disclosure, certainly they would come down. If there was disclosure, certainly there would be competition, and the people that can't go anywhere else need a cap.

The argument is also made that these people need to have rent to own in order to buy refrigerators and TVs. Make your own judgment about

that. Do they need rent to own to buy furniture, to buy jewelry? That is your own value judgment, but what they don't need to do is pay more than middle income people do for the same financing.

If you are on a credit card and you buy a $300 TV, over 18 months if you work out the APR, it is about $340/$360 total of payments, but as is disclosed in many of the surveys that were done by not only just the Charleston Gazette but the Huntington paper, you will see that for the $300 TV the consumer pays $700 or a $1000, again a finance charge six times the rate for credit cards for middle income people.

So you may agree or not agree with the argument that low income people need to have rent to own to be able to buy new things. What they do not need under any circumstances is to pay six times the finance charge of middle income people.

Now, there is the third group of consumers. I have talked about the group of consumers who have the income to make the payments and has credit to go elsewhere, the second group

that has income to make payments and does not have the credit rating to go elsewhere, but there is a third group, and that is the group of consumers that do not have the income, that do not have the income to even make the payments, let alone not having the credit rating to go elsewhere, and there is enclosed in my exhibits at Exhibit 18 a speech that was taken from a convention of rental dealers that is called "Introduction to Account Management."

It is hard to get a direct quote out of that, but you can definitely see what that guy is talking about when he is lecturing rent to own dealers about what to do, because what he says is -- you hear him talking he says -- you know, you figure out how much income this person has. You figure out minimum wage. You think about what that would be and then think about what their utilities would be and think about what their rent would be and now he has the payment to you, and you can obviously see that he is talking about someone whose expenses for food, for utilities and for rent consume all of his income, and what this guy says is so what we need to

do is be sure and get that money for our rent to own payments before he spends it on those other things, and then he says in essence -- you know, and we are doing them a favor, because when this is all done then they will own the TV -- that they paid a whole lot of money for. I don't know what they have done about their utilities or rent.

So there is this third group of people, and that is people that really do not have the income to make any payments for these kinds of items. It would be nice if they could have your basic color TV, but they simply don't have the income, but rent to own dealers target them too.

When rent to own dealers talk about the need to have more overhead because of the difficulty of collecting payments from low income people, well it is true to the extent that if you have someone who all of his income is needed for the rent and utilities, then you have got to do a whole lot of work to collect that money from them for your rent to own payment before they pay their utilities and their rent. So they don't need to have the

amount of income that makes it possible for them to do that.

There are some people to whom they should not be renting, who should not have rent to own. It is sad but true. I would like to see people in that income category have your basic color TV for the kids, but it just can't always happen.

A lot of these practices are typical of what we saw years ago -- again, a lot of people in this room will not recall it -- in the small loan industry, particularly during the holder in due course years, again solved by the 1974 Consumer Credit Protection Act where the renting to own or back then the getting of the loan is merely a hook to be able to use collection tactics, high pressure collection tactics to get money from these people that they really needed to be spending elsewhere, and doing away with holder in due course and the 1974 Consumer Credit Protection Act ended many of those practices.

The small loan industry that preyed upon people who really weren't able to make the

payments is not here, and rent to own people who perhaps should be here -- again, a value judgment anyone can make -- for those people that cannot get retail installment service, they should not be there for people who cannot afford to make the payments because they need to make payments for the basics of life.

One of the particular problems that comes from the fact that the rent to own dealers sell to these people is that it results in the high pressure collection tactics and a lot of abuses. Although this rule does not specifically deal with abuses, because I believe that collection abuse practices under the West Virginia Consumer Credit Protection Act are already covered, but the fact that this exists makes abuses occur a lot more often, and we see it regularly.

Again, in the complaints that I have attached as exhibits certainly the most outrageous is the Martinsburg which is the subject of a newspaper article which is unusual but not unheard of. One complainant was arrested in front of their

children, and before they could post bond another complainant served several days in jail. One of those two complainants -- I think the second one -- the TV had burned up in a house fire. The rent to own people said we don't believe your TV burned up in a house fire. Well, that is fine. Have a civil dispute, but they are continuing to use criminal. They use criminal complaint, criminal warrant collection actions in the state to collect, and where they don't actually do it they threaten it a lot.

One of the complaints in there is a Parkersburg case, a Wood County case which we are hoping to file shortly and, in fact, one of the exhibits, Exhibit 20, is a written statement from the rent to own dealer to our client that said since you have not -- I better get it and read it exactly.

It says, "Your account is now 34 days late." It doesn't say that we tried to come and get it and you won't let us get it. It just says your account is late. "The merchandise is now categorized as stolen." While not explicitly clear,

implicitly threat, and I can tell you that it was a threat to use criminal tactics because her testimony will be that she called on the phone and was told that if she didn't make payments, "they were going to throw her ass in jail." I quote.

So there are those abuses out there. The Evans complaint, someone was called repeatedly at work after being told they were not supposed to be called at work. There was a case in Beckley which I was not able to come up with the paperwork for today where people went and told neighbors that they were not paying their bills.

All clear violations. All should be covered under law, but these abuses go on because rent to own dealers do not have to do the disclosure, and they do not have the caps so that they are able to sell to and to lure these people that really can't afford to make the payments in, and then they use these tactics to squeeze them because their bosses upstairs tell them you have got to collect these accounts.

So those who could go elsewhere need

disclosure, so they can compare, and a cap like other middle income consumers have. Those that cannot go elsewhere though they have the income, they need the cap for protection. Those who should not be renting to own at all need to have a cap so that the practice of drawing them into payments that they cannot afford and then squeezing the payments out of them will be stopped.

Now, I next go on to some technical responses I have, and one of the exhibits in my exhibit batch is my written technical responses, but I want to go over those briefly.

I will start first with the lease disclosure of the legislative rule, and it talks about disclosure of the annual percentage rate which is good. However, it does not define cash price and define cash price to be the fair market value. Therefore, the rent to own dealer will be able to have the same total of payments but reduce the calculated annual percentage rate by raising the cash price.

Now, normally you would think retail

installment sales people don't do that because they compete on cash price. Well, that is true, but again remember the RTO customers, they can't go elsewhere. Therefore, they don't shop. They don't go to the RTO and see what the cash price is and then go to Sears and then go to the local retail installment sales place and compare cash prices, because there is no sense going there. They can't shop there. They can't get the credit. So they just go to the RTO place.

Because they can't compare cash prices, they also can't compare quality of goods. So when they see a TV that you and I would know is only worth $300 priced as $500, they may not recognize that and, in fact, one way in which a lot of these people judge the value of things, some of which they have never had in their lives before, is by looking at the price tag. Look there I can get a $500 TV set. It is only worth $300.

So the rent to own dealer has no incentive to make a low cash price because his customers do not shop at retail installment sales

places. He has an incentive to raise the cash price to make them think they are getting fancy goods, and unless the cash price in computing APR is made at fair market value, he will have an additional incentive to make it high, because that will make his interest rate low. He will get under the cap and continue to charge the same amount of money that the rent to own dealer was before.

Another important disclosure in there which I applaud the Attorney General on is the disclosure of credits when someone trades in one thing they are renting for something else they are renting or when they get behind on one contract and they let them sign a new contract. That practice was called flipping in the loan industry before 1974. That does need disclosed so people can see how much credit they are really getting for what they have paid. However, the disclosure does not provide that the disclosure should be in terms of the total of payments, and again, the rent to own dealer will be able to raise the cash price of the new goods and not give the consumer the credit that

they should for payment on the old goods unless you make it a total of payments disclosure.

There is a wear and tear technical provision that I covered in my written documents. On the interpretive rule, the consumer credit sale rule, I criticize it because it does not go far enough. I applaud it that you say that a consumer credit sale that a rent to own transaction with a total of payments under a thousand dollars is a consumer credit sale, and I understand the legal basis for making that argument, but I think there is also a legal basis and it is also true that if you go over a thousand dollars rent to own deals are still consumer credit sales. They should have the same protection. They should have the same cap. They should have the same APR disclosure.

Also I point out that I believe that the four month requirement is a loophole. We will merely see contracts that provide under four months and you have got to come back in and sign it again. I will try to give a little more detail on that.

If a contract has to be over four

months in order to be covered, then simply rent to own dealers will say well, the state says we can only do this to you for four months. Then if you come back in, you can maybe sign another contract, and it is just a loophole.

A similar thing happened in North Carolina where it was kind of reversed. It had to be under four months, and so in North Carolina in order to be covered -- they would not be covered if you had to pay the first four months, even if you are otherwise a rent to own transaction, and so all the rent to own contracts in North Carolina now say you have to pay the first four months and then you can quit at any time.

Again, a cash price definition needs put in there. I also made a technical comment on the Code reference. I think it was probably more properly placed somewhere else.

Now, I know that while I had to go first and I am not able to respond, I am certain that the industry will get up here and say that rent to own transactions are not sales. Rent to own

transactions are sales. They are consumer credit sales. The students of propaganda say that one way to convince somebody of something is if you tell a big enough lie, people will believe it. So they say we are not sales; we are rental, but look at their name, rent to own. It doesn't say rent for the week or rent for as long as you want or rent for a while and maybe you can -- it says rent to own. It is in their name. They are into sales.

Included in my exhibits is an article by David Grant, a lawyer in my position in Minnesota who is involved in litigation. Much of the litigation he is involved in he is not allowed to tell me about because there is a gag rule, but somebody is and they have done a study. Forty percent of -- and read the article to get the exact facts, but 40 percent of the goods in an RTO inventory go to the first renter, 40 percent go to the second renter. Most of the goods are out of inventory in a year.

This does not sound like a place that keeps TVs and rents them and rents them and

rents them. They are trying to sell people. They want people hooked on long term. They want them to feel committed, particularly these people that could go elsewhere, that first category. They pay for a while, and they pay for a while, and they pay for a while and, of course, the weekly payments are always low, and that is what draws you in -- or the monthly payments are low.

What they don't realize is how long you have got to pay, much longer than you would have to pay at 18 percent interest. So I am not saying that the payments should be lower. I am saying that the amount of payments they have to make should be fewer.

Also notice where these places are located. They are not located near places where construction workers live temporarily and need to have a TV set, and I would challenge the industry to come and show us your marketing -- the data that you use to show where you want to put stores. That is really revealing about what the industry's intent is, not all the fancy statistics about the keep

rate, which is again something that can be -- which we don't think is an accurate statistic.

How do you decide where to put stores? If you look around, it is easy to tell they locate them near housing projects and low income areas.

Another example of why do we know they are a sale and not rent to own, again one of my exhibits -- why they are a sale and not a rental -- again, in one of my exhibits you will note that Colortyme rents to own wedding rings. Either that is a sale or -- that is a sale.

The legal arguments are very simple. You look at the definitions of consumer credit sale and sale of goods in the West Virginia Code, and that is what we are trying to find out, what the legislative intent was back in 1974 when most of the industry that catered to low income people was still doing retail installment sales and playing games with add-on and discount rates, but then after the Truth in Lending and the West Virginia Consumer Credit Protection Act came in, then the people that

market to the low income began to find other ways around those regulations and what they are currently attempting is the rent to own, but consumer credit sale, what was the intent of the legislature then?

Well, it is real clear, because a consumer credit sale is one species of sale of goods, and the sale of goods definition in the Code, 46A-1-102-39 is sale of goods includes any agreement in the form of a bailment or sale of goods. Now, beyond that I know the industry makes an argument that well, there is no debt, but I think that the intent of the legislature is easy to see from the fact that there a sale of goods includes a bailment, which is a legal word for exactly what rent to own is.

Now, the industry will get up and say -- and I will take them on even on their technical arguments about debt. They will say there is no debt because the consumer pays in advance and pays only one week or month at a time and can get out at any time, but there is a debt, because the consumer has to give the TV back, and particularly

if you are two or three payments from the end and the debt they are saying that they don't have that does exist in retail installment sales contracts will be the deficiency judgment.

That is, if you have a retail installment sales contract and you just pay one month and then you turn the goods back in, then there is still a deficiency. There is still a debt that you have that you are going to have to pay, something that you lose, and they say there is no such thing in rent to own, but there is.

You have got to give the TV back even after a month, and let's say you have 18 month rental and you pay 16 months. Then you have to give the TV back, and you don't give part of the TV back, you give all of the TV back. Any equity that you would have built up is gone. So not only do you lose what would be a deficiency judgment early in the retail installment sales contract, you lose the equity in the rent to own and they don't even have to try to collect it from you. It is in the TV when they get the TV back.

Some miscellaneous things: Is rent to own good for the economy? The people that rent to own are going to spend all their money this month anyway. They are not going to put any more money in the economy. They are unlikely to save. Of course, for the economy savings is good. Rent to own again is just a marketing scheme.

There is comment from the music business that they should not be subject to the rent to own disclosures. I have this to say: If the Gorby's letter that was submitted recently is similar to the Gorby's letter that was submitted during the legislature, they defeat their own argument -- again, a copy of that is attached to my exhibits -- because the Gorby's contract that they sent does Truth in Lending disclosure.

Gorby's does what the music industry wants to do and complies with the law currently, and because they comply with the Truth in Lending Law I would think they would not have to -- they should either comply with the Truth in Lending Law or the rent to own disclosure. If they do one, then they

are either functioning as a rent to own with disclosures or functioning as a retail installment sale with those disclosures, they can already get by as a retail installment sale. Gorby's does. Some of them may not, but Gorby's is an example of how they can do it under current law.

Another thing the industry will say that requires a higher price is that they service the goods. I think one of the major factors that has allowed the rent to own industry to grow up is the increased reliability of appliances these days.

I mean, it doesn't seem like it when yours breaks down, but when you think back about having -- I can remember having to call the repairman to put new tubes in the TV on a pretty regular basis, but goods in this country now are much more reliable than they used to be. There is much lower maintenance.

Also, you know when you buy a retail installment sales contract -- Circuit City, I guess I mention Circuit City because that is where I usually go -- they will sell you a maintenance

contract, and it is a whole lot less. It is a whole lot less than six times the 18 percent finance charge. It simply cannot justify the total amount of finance charges that they make.

I am sure they may have financial data. Again, the key thing is the marketing surveys to show why they place their stores where they do.

Finally, another argument you are going to hear a lot today -- I am trying to anticipate because I had to go first, and I'm sorry to take so much time up front -- however, is the jobs argument. I think that is false. I don't think that anything that the Attorney General is proposing today is going to put every rent to own dealer in the state out of business.

Those that try to cater to people who can't afford it, people who can't afford the payments, they may not be able to afford the overhead it takes to squeeze payments out of people who can't afford it, but the whole industry will not go out of business, but even if it didn't -- I will assume that just momentarily for the sake of

argument -- you know, we could have had casino gambling in this state, but this state has consistently rejected casino gambling.

Would it create jobs? It would create lots of jobs. Would it move money through the economy? It would move money through the economy, but we don't have casino gambling because too many people would abuse it and be abused by it.

The same with rent to own. Too many people abuse it and are abused by it, and all of the fallout that comes from gambling is determined to be bad, because you end up with people more destitute than they were when they started, and again, rent to own -- you know, people get sucked into paying the rent to own payment before they get the utility payments. Again, that is fallout that falls on us.

So do we need jobs? Yes. Is there a better way to create jobs? There must be. I mean, there must be a better way to create jobs than to charge poor people four times the finance charges that middle income people have to pay.

Thank you very much for this

opportunity to comment.

MR. WINSLOW: Thank you, David. Next I believe Roger Sharp from the West Virginia Rent to Own Association would like to speak.

MR. SHARP: I am assuming that I have about 50 minutes so that I get equal time, but I don't think I have that many comments to begin with. So I would like to take it out in credit with a one-to-one confrontation meeting with the Attorney General if I could request that at this time.

MR. WINSLOW: I will pass along the request.

MR. SHARP: Thank you, Tim.

Good afternoon. My name is Roger Sharp, and I am a native West Virginian living in Huntington, West Virginia. I have been a rental dealer since 1980 and am currently President of the West Virginia Rental Dealers Association. With my partners I employ 37 people. These people rely on our rental company for their livelihood. They will be greatly affected by the position the Attorney General is proposing.

Previously I have had seven years management experience with finance companies. This unique combination of experience highly qualifies me to speak on the topic before us today.

I am against the rules as they are proposed today. I want to make that clear from the very beginning. Everyone here, no matter which side of this issue, has spoken of disclosures governing RTO transactions. Our association initiated the request for consumer disclosures in West Virginia in 1988. We all acknowledge that there have been several industries throughout history which have been regulated with disclosures.

Disclosures are meant to educate people about the transactions they are considering. In this way consumers are able to make intelligent decisions on their own. Disclosures are not and never were meant to recharacterize the industry that they were intended to regulate. Disclosures are not and never were meant to eliminate the industry that they were intended to regulate.

Mr. Attorney General, one of the

main issues you must address is, if the disclosures contained in these rules you propose prove to recharacterize the RTO industry, will you then knowingly eliminate the RTO industry with the adoption of these rules?

An examination of the Federal Truth in Lending Act and the West Virginia Consumer Credit Code reveals that these rules do recharacterize and eliminate RTO transactions. For instance -- and I quote from the Federal Truth in Lending Act at 15 United States Code, Section 1667, under Consumer Leases, Notes of Decisions, which reads:

"Agreement which provided for rental of TV set at a weekly fee which obligated the lessee to pay only the first week's rental which was terminable by each party under certain circumstances and which provided that if the lessee rented the TV for a period of 78 consecutive weeks, the television would belong to him, neither was a credit sale nor a consumer lease for the purposes of this section."

That was backed up in a decision out of Arkansas in 1981, LeMay versus Stroman's,

Incorporated. The West Virginia Consumer Credit Code with sections on credit sale and consumer lease patterned directly from the Federal Truth in Lending Act was the basis for a summary motion ruling in the Circuit Court of Cabell County that RTO transactions are not credit sales.

The proposed rules are evidence in and of themselves that RTO transactions are not credit sales nor credit leases within the meanings of the West Virginia Consumer Credit Code. That must mean that there are three separate and distinct transactions, credit sales, consumer leases and RTO transactions. Is that not correct?

If there are not three separate and distinct transactions here, then what is the purpose of these rules? The proposed rules recognize going in that there are three separate transactions, but they only allow two of these transactions to survive the ruling. So the ruling recharacterizes RTO transactions into either credit sales or consumer leases.

This conclusion is not made by

either the Federal Truth in Lending Act or the West Virginia Consumer Credit Code. Once assimilated as either a credit or sale or consumer lease, further recharacterization is still needed because RTO transactions are not capable of making required APR and interest disclosures. So in an attempt to comply with these required disclosures a fictitious imputed interest figure is invented.

Never before in the history of consumer protection has an erroneous term been required as a disclosure. Why would the Attorney General's Office want to require such confusing and erroneous terms in consumer protection disclosures? Why do these rules request an erroneous misleading figure of imputed interest as a required disclosure?

What is the invention of imputed interest for if not for the recharacterization of RTO? The original RTO transaction and the rule changed RTO transaction bear no resemblance one to the other. Now that it is known how completely these rules will metamorphoses RTO transactions, I must again ask, will these rules be allowed to

eliminate this legitimate industry?

So, Mr. Attorney General, I challenge you to regulate RTO transactions for what they are. I am surprised and disappointed that the Attorney General's Office did not first meet with representatives of our industry before proposing these rules. I especially don't understand this when our industry has made numerous attempts to arrange such a meeting.

So now we are facing potential rules that have no input from our industry and that will eliminate our industry. I am sure these rules will have the full support and input of a small group of current and former legal aide members. Legal aide has but one stated agenda for RTO, and that is RTO has no right to exist.

It has been this group that has prevented RTO disclosures for the last four years. In 1989 the RTO bill passed the Senate 34 to nothing, and the House Judiciary 22 to 1. A threatened filibuster by Mr. Grubb prevented a full house vote, thus killing the bill and depriving the

people of West Virginia RTO disclosures.

In 1990 the House passed the same RTO bill as the '89 version 66 to 33. The Senate Judiciary sent it to the full Senate with recommendations that it pass. After first reading, a member of the Rules Committee had the bill pulled off the calendar even though there were 20 to 25 senators ready to vote for this bill. Again the people of West Virginia were deprived of RTO disclosures.

Last year the proposed bill was not a regulatory bill. It was an RTO elimination bill. The elements that made the bill an elimination bill are contained word for word in the proposed rules before us today. The House members recognized this and voted it down. I can only hope that in your wisdom you can see through the smoke screen that the eliminate RTO advocates have amassed before you.

The decision today is not just to provide disclosures on RTO to consumers. The decision is are we going to eliminate an industry? Are we going to eliminate a five million dollar tax

base for this state? Are we going to eliminate 400 jobs in West Virginia? Are we going to take the consumer's right of choice away? Are we going to ignore the request of 573 RTO consumers not to eliminate their options to own?

For the record, I would like to submit those 573 letters from RTO customers. The answers to all these questions will be seen clearly in the final form that these proposed rules take if adopted.

(WHEREUPON, the documents referred to were marked for identification as Exhibit C-1 and are hereto attached.)

RTO dealers are not preventing disclosures. We want them. However, we will fight disguised so-called disclosures that ultimately eliminate RTO by their adoption.

Let me paint a picture of what will result if these rules stand as written. RTO dealers would have to supply free loaners, free repair service, no credit checks and at the same time pay

property tax on each unit on rent and do all this at the same price as retail credit sellers. These retailers do not provide these services; nor do they pay these taxes, and they have a mandatory requirement for customers to make payments to the full-term of the contract.

RTO dealers cannot require that their customers keep paying to the full-term, because RTO dealers have a non-obligation contract. It makes no business sense therefore to remain in that type of situation. RTO dealers will be forced by these rules to take one of three business options.

One, drop options to own and become rent to rent dealers; two, become retail credit sellers with no obligation option dropped; three, go out of business. All three of these options eliminate RTO. Why is the interpretive rule being proposed in direct opposition to the Federal Truth in Lending Act, the Federal Leasing Act of 1976, the Federal Reserve Board, the Federal Trade Commission, the West Virginia Consumer Credit Code, 31 other

state laws that are regulating RTO now, West Virginia Business Privilege Tax Regulation?

All these laws, regulations or agencies currently recognize RTO transactions as true leases and not credit sales. What then makes West Virginia rent to own transactions different from those recognized as true leases?

Why is it of all the leases that are allowed in West Virginia only RTO leases are required to make disclosures of APR and interest?

I am proud to represent the RTO dealers of this state. Members of the West Virginia Rental Dealers Association are honest, hard-working people. Their businesses are neighborhood stores. Their customers are their friends, neighbors and relatives, people that these businesses know and respect. Rent to own dealers have no problem with providing them with meaningful disclosures. So how can the Attorney General provide consumer disclosures without eliminating RTO? RTO dealers believe that proposed legislation on RTO by the Council of State Government is the answer.

The West Virginia Rental Dealers Association requests that the Attorney General's Office study the Council of State Government's proposal and explain why it cannot be the answer to the dilemma of these rules posed today.

I would like to submit my comments. Also, I have a list of questions that I would like to submit to the Attorney General's Office for this hearing. I have disclosures from the 31 states of which none of these states require an interest rate or an APR be disclosed on rent to own transactions that I would like to submit, and the suggested state legislation that I mentioned in my talk, I would like to submit it also for your study.

(WHEREUPON, the documents referred to were marked for identification as Exhibit C-2 and are hereto attached.)

I want to thank you for your time and attention. I would be happy to answer any questions you might have.

MR. WINSLOW: Thank you for

speaking. I do have some questions. First, I might as well respond with some answers to some of the questions you had for us.

As we both know, the rent to own industry grew up after the Truth in Lending Act was passed as a way around its provisions.

MR. SHARP: I don't know that it was a way around the provisions.

MR. WINSLOW: Well, it didn't seem to be covered, and it was very confusing as to whether that it should be covered or not. Various courts --

MR. SHARP: Confusing I would agree with and also would agree that that is the reason why we sought disclosure regulation to begin with.

MR. WINSLOW: The courts went both ways at first on whether RTO was going to be a consumer credit transaction covered by the Federal Truth in Lending Act or not, and the Federal Reserve Board eventually came out in Regulation Z after courts had gone both ways and said well, to their mind it wasn't going to be considered a consumer

credit transaction.

They then looked at it as a consumer lease then, and a statute similar to ours talked about being for more than four months, and they said well, it is not for over four months, even though everybody knows it is week to week, month to month, and it is going to extend for more than four months, and the Federal Reserve Board once again said well, we aren't going to consider it a consumer lease either, Regulation M.

Essentially what we have done by the interpretive rules here today that we have proposed is to say we do not agree with the Federal Reserve Board's views on those two provisions. It's true they can interpret the federal law and their rule stands. We interpret West Virginia law, and that is the interpretation that we are putting forward and we think is more accurate of what the intent of this legislature was when it passed the Consumer Credit Act.

Primarily one of the reasons it differentiates our statutes from the federal

statutes is this state unlike the federal government and unlike some other states when faced with the inflation rates of the 70's and what not decided to get rid of their usury rates and get rid of their interest caps, this state did not. This state maintained an 18 percent credit limit on most consumer transactions.

Therefore, our state legislature has shown a different way of how they want consumers protected. RTO, in the end the argument for allowing it is that it provides people who would normally not be able and have access to credit to get such credit.

That is fine if you forget about usury laws. The usury laws do have the intended purpose that at a certain rate consumers should not be charged as being overbearing, and that will inevitably price some consumers out of the market, and that is true, but by keeping a usury rate in the state this legislature basically said we understand that trade off, and we will take it, and we are not interested in having a way around it by changing how

you call the document.

It is primarily a consumer lease with a purchase option at the end, and I can state this today because when I write up the regulations to try to cover it I get notes from the banking industry and from the auto industry and from the music industry talking about well, this seems like it is going to cover us as well, and maybe we have to specifically provide for exemptions for that. In the written comments they asked for such, and I am tending to agree provided they are complying with the Federal Truth in Lending Act and the Federal Consumer Leasing Act, but it just goes to show that there is really no difference.

So when you write a rule covering you, it almost inevitably covers all these other people who are doing lease purchase transactions because that is what it really is.

Now, as to considering consumer credit transactions for under a $1000, the reason for that is fairly simple and has been stated in our rule. West Virginia has a provision that states

that for election of remedies if the sale of the consumer was less than a $1000 on the item and the item is repossessed, that is the end of it. That is the end of the debt, and the same thing happens with an RTO transaction for the same item. We take back the TV, nothing else owed.

All RTO is essentially trying to do to some extent is to declare in its contract up front that it is going to use its election of remedy of repossession and then wants to be treated differently than the retailers. As far as imputed APR, imputed APR has come about because you guys have invented this system. I don't like it --

MR. SHARP: We didn't invent imputed interest.

MR. WINSLOW: Well, you invented the rent to own and we now have to allow consumers to see how much they are essentially paying to buy the item to allow comparisons. That was the whole purpose of the APR, was to allow comparisons.

MR. SHARP: Is imputed interest the same thing as interest as discussed in the Federal

Truth in Lending Act and the West Virginia Credit Code?

MR. WINSLOW: I will have to examine that. Imputed APR, what it comes down to is the same type of thing that what the consumer pays as opposed to what it would cost him if he bought it for cash to what he is going to have to pay to own the item later on down the road.

That is what is happening, and if I walk into Sears or if I walk into an RTO, the question I have is 18 months down the road how much am I going to have to pay to own that item and figure that out --

MR. SHARP: And every RTO contract I have ever seen shows that amount. In fact, mine quotes --

MR. WINSLOW: It shows the total amount in dollar amount, and that is fine, and we like that disclosure, and that is great and that is part of the state legislature, and let the record correctly reflect that you have met with me and talked about the state Council of Government's

proposal before.

MR. SHARP: I requested a meeting with the Attorney General, sir. Even in the meeting with you I requested a meeting with the Attorney General.

MR. WINSLOW: And the Attorney General did not grant that request, but you did meet with me --

MR. SHARP: Several times he has not granted that request.

MR. WINSLOW: -- and that is really sort of the crux of the problem. You've talked about disclosures in previous legislative sessions and, of course, the most recent legislative session, and the one disclosure that no one ever wants to make is the APR or imputed APR so the people can actually compare the contract and figure out what they are actually having to pay in essentially interest.

MR. SHARP: How do I spend an APR?

MR. WINSLOW: How do you spend an APR? All I am asking is you tell these people so

they can know how much they're paying.

MR. SHARP: I think the people of West Virginia know what a nickel, a dime, a dollar and ten dollars are, but they don't know how to spend an APR.

MR. WINSLOW: Well, then why does the federal government and why do all the states require APRs? It is to allow for consumer comparison, and that is exactly what we are trying to do here.

Now, you claim that these rules would force the closure of the RTO industry, and I would like to know on what basis of that, given the fact that for transactions over a thousand you would simply just have to make disclosures, as long as you put -- and the one you are not going to give and the other ones you are really through other legislative agreements with different states and proposals that you have talked about with our legislature, you almost don't have problems with it.

There is really only one, and that is the imputed APR.

MR. SHARP: That is correct.

MR. WINSLOW: So as long as you stated the imputed APR, I am not putting you out of business at all. You could write that same contract for an item that is over a $1000, have it do the same exact thing, charge them the same price per month, have the same total, and as long as you told the consumer we are charging you 200 percent APR essentially, and under our rule you would be okay.

So how are we putting you out of business if all you have to do is make that disclosure? All you have to do is write it. How does that put you out of business?

MR. SHARP: How does writing a disclosure down there -- a disclosure is confusing and it is misleading to the consumer.

MR. WINSLOW: Misleading?

MR. SHARP: Yes, very misleading.

MR. WINSLOW: Misleading is -- they don't know how -- they want to compare what they would have to pay here as opposed to someplace else. How is it misleading?

MR. SHARP: But your rule says you compute it from the cash price to the total rent to own price.

MR. WINSLOW: Right.

MR. SHARP: Even the Federal Trade Commission and the Federal Reserve Board just this past June said that that is not interest. There are service charges within that figure. There are service charges within that figure. You want the whole thing thrown over into imputed interest, which -- where is there any other consumer --

MR. WINSLOW: If someone financed -- you say there is a service portion to it. If someone bought an extended service contract along with their item and they financed that as well, that would all be in the APR as well.

MR. SHARP: You know, it is funny that you would mention that. That is one that is very easy to see within that figure. Let's look at some of the things that I mentioned in my talk here today. We have to pay personal property taxes on the merchandise, not the consumer. That is another

expense to us that is included in the cost above, the total price.

The retailer doesn't pay property insurance once he sells his merchandise even if it goes out on a credit sale. He doesn't pay property taxes on that unit. I do.

MR. WINSLOW: Well, if we had our rule and said it was a consumer credit sale, could you then go to the Tax Department and say I don't owe property taxes on things that I essentially sold?

MR. SHARP: So what you are saying then is your rule will cost the state some tax dollars?

MR. WINSLOW: You are bringing it to my attention that it might. That is what you seem to be saying.

MR. SHARP: I mean, like any business person, whatever your cost of doing business is you have figured into your price.

MR. WINSLOW: Yes.

MR. SHARP: Our cost of doing

business is figured in the difference between the cash price and what the total rent to own charges are.

MR. WINSLOW: So you are passing that tax on to the consumers anyway, and since the consumer is going to pay it one way or the other, will the --

MR. SHARP: But you are not allowing me to do that. You are wanting me to quote all that as an imputed interest. You are saying, hey, you are going to go ahead and pay those property taxes, but you are going to call it interest in your contract. Pay all those property taxes. The retailers don't have to do it, but you have to say that it is interest and figure it as interest and add it to the annual percentage rate in the rule that you are proposing.

You are trying to create a level playing field here is what you are saying.

MR. WINSLOW: And I am willing to and, therefore, I would like to meet with you further at some point and discuss that very issue.

MR. SHARP: Okay, that is fine.

MR. WINSLOW: That is fine. You claim that this rule would eliminate jobs and hurt the West Virginia economy, correct? That is one of the arguments that --

MR. SHARP: Yes, sir.

MR. WINSLOW: But isn't it true that a person on an RTO contract would spend that money elsewhere if he didn't have the contract with you? I mean, he only has so much discretionary income. Are you saying that he wouldn't be spending that?

MR. SHARP: Well, Mr. McMahon made the statement earlier that they don't shop anywhere else. I don't quite agree with that. I believe that they do shop right now, and that one of the choices that they have is rent to own contracts that are fully disclosed.

MR. WINSLOW: The question is wouldn't they spend their money somewhere else, on food or rent or --

MR. SHARP: I think they have got the opportunity to do that right now. Those 573

people have the opportunity and have asked you to let RTO stay the way it is.

MR. WINSLOW: But what I am getting at is if someone is spending the money whether they are spending the $15 on a rent to own contract for a week or whether they are spending that -- if there is no RTO if they are spending that $15 on extra food or clothing or what have you --

MR. SHARP: I don't think there is anybody that is going hungry because they are renting to own, if that is the question.

MR. WINSLOW: No. The question isn't that. The question is, since they are going to spend the money -- they don't have a lot of discretionary income but the type of consumer that basically comes into the stores are the type of consumers who are tight on the bone who are having to spend pretty much everything they make.

MR. SHARP: Okay.

MR. WINSLOW: Since they spend that money, whether they spend it on RTO or whether they end up having -- if RTO goes out of business, spends

it down at the local grocery store or spends it down at the local video rental shop, what have you, the reality and the aggregate of the economy is nil. That money gets spent on the West Virginia economy, whether it is given to you or whether it is given to somebody else.

The fact that your business may suffer simply means that someone else is going to get that money into their business. So the aggregate West Virginia economy won't be effected at all, will it?

MR. SHARP: Okay. That is assuming that you have somebody tell you how to spend your money. Who in this United States do you want --

MR. WINSLOW: Are you saying they are going to save the money or spend the money?

MR. SHARP: It doesn't matter because it is their option. It is their money. Let them do with it what they want.

MR. WINSLOW: If they spend the money it is obviously not a difference, because they are spending the money and someone else is getting

money other than you, and if they save the money, the reality is if they have that type of money to save, these people would by and large be better off saving up for the down payment on the item from the store.

MR. SHARP: Well, then what your reality for these rules is saying is these consumers are too dumb and ignorant to know how to spend their own money. I don't believe that.

MR. WINSLOW: I am not saying they are too dumb and ignorant. I am just saying the economic effect on West Virginia --

MR. SHARP: The ruling brings that about though.

MR. WINSLOW: -- the economic effect on West Virginia is nil as far as hurting the overall economy since that money gets spent somewhere else in West Virginia and, therefore, it just goes to another West Virginia businessman and, therefore, the West Virginia economy as a whole is not hurt at all in the aggregate.

MR. SHARP: No, sir. If these rules

go into effect -- as I told you before, my store is in Huntington, West Virginia. Guess what, Ohio has rent to own laws. Do you know where my money is going to go to? Do you know where the West Virginia consumer is going to take his money and spend it with RTO out of Huntington, West Virginia?

MR. WINSLOW: I think the RTO people in Ohio are going to have a problem if they start entering into contracts here.

MR. SHARP: They don't have to. The rent to own customer will cross the river to enter into contracts in Ohio.

MR. WINSLOW: With the West Virginia consumer and everybody knows the transaction is really going to take place in West Virginia?

MR. SHARP: The transaction takes place in a rent to own store.

MR. WINSLOW: I think they may have problems.

One of the things that I often hear is that these people have no place else to go for their things, that they don't have an option, they

can't get credit and that is why they are at the RTO place.

MR. SHARP: Mr. McMahon made that statement. I don't believe that. I believe they have got retailers they can go to. They can go to second-hand stores. They can go to flea markets. They can go -- rent to own is so common now I have got seven stores in Huntington alone.

MR. WINSLOW: If it is such a good deal, then why are you worried about giving them a comparison APR?

MR. SHARP: Because an APR has no relationship to a rent to own transaction that's a true lease. A lease has no obligation. Without obligation there can be no debt. Without a debt you can't figure an annual percentage rate. It is that simple.

MR. WINSLOW: But we all know that it takes so much money to buy the item after so much time.

MR. SHARP: Well, let me ask you this --

MR. WINSLOW: Now the Muslim society for years -- in fact, our Christian society a long while back decided that interest was no good. You couldn't have charged interest. It was wrong. All interest was in fact considered usury. We diffused ourselves of that notion long ago, and the idea of usury developed as to how much interest are you charging.

Now, in some strict Muslim societies, Saudi Arabia, they still hold the view that interest is wrong.

MR. SHARP: And they rent.

MR. WINSLOW: No. They have other names for it, but it all comes down to the same thing. Because society needs an interest rate, they came up with different ways of how banks loan you and you pay them a fee and what have you, and no matter what you call it, no matter how you structure it, everybody knows that the Muslim banks charge interest. They just call it something different, and that is essentially what RTO has seemingly done. They have created a new little beast and said well,

we won't say it is interest and, therefore, it can't be compared.

For the consumer the real problem is being able to compare what it really costs to other items, and allowing that comparison is helpful.

MR. SHARP: For the sake of argument just for a moment, I am going to give you that point and say then well, if it is interest and there is an obligation there, that means that I can sue every one of my customers including the one that comes in to rent a VCR for a weekend and returns it because I have got a 78 week contract.

MR. WINSLOW: If the question is does he have an option to cancel the contract after a while --

MR. SHARP: Yes. Does he?

MR. WINSLOW: Yes.

MR. SHARP: He has an option to cancel the obligation?

MR. WINSLOW: If you want to rent -- U-Haul obviously rents week to week, month to month type of things. You know, places do that all the

time.

MR. SHARP: We do that.

MR. WINSLOW: Fine. Draw up a contract that says that and you won't have a problem.

MR. SHARP: Our contract already says that.

MR. WINSLOW: They operate here now. That is fine. If someone just wants to rent it for a weekend, you guys can rent it for a weekend.

MR. SHARP: That is what our contract says.

MR. WINSLOW: I sometimes hear that because one state, Pennsylvania, has an APR limit of 18 percent on RTO that --

MR. SHARP: Thirty-one other states don't.

MR. WINSLOW: -- that RTO has gone out of business in Pennsylvania.

MR. SHARP: Yes, sir.

MR. WINSLOW: And you know that that is not true, don't you?

MR. SHARP: That is true. There are no rent to own contracts in Pennsylvania to my knowledge.

MR. WINSLOW: But they simply changed the style of their contracts and they still operate?

MR. SHARP: They are rental companies.

MR. WINSLOW: And they still operate and they have either rent to rent or they try to manipulate around even the Pennsylvania law.

MR. SHARP: I don't know anything about manipulation. I don't operate in Pennsylvania.

MR. WINSLOW: But the reality is that if I went to Pennsylvania and wanted to rent a TV for a week or a month or for 24 months, I could find that.

MR. SHARP: You could find that at any video store, probably, in West Virginia too.

MR. WINSLOW: And there's a nice option for the consumer. So you're not out of

consumer so you are not out of business.

MR. SHARP: There is another option you just came up with that I overlooked.

MR. WINSLOW: Maybe that is the business you should be in.

MR. SHARP: Not like Mr. McMahon has said, they have got other places to shop. They prefer to come to us.

MR. WINSLOW: If they prefer to come to you and you are such a great deal, then I don't understand why writing on a piece of paper a figure that will allow them to comparison shop is going to make it so they won't go to you. That doesn't make sense. You can't have it both ways.

MR. SHARP: You are right, you can't have it both ways, and the thing about it is that what you are wanting me to write on a piece of paper is not an interest that has any basis in fact. Why should I want to lie to my customer? Why do I want to lie to my customer?

MR. WINSLOW: We are not asking you to lie. We are asking you to give him a figure by

which he can more accurately compare what he is really spending for the TV, and that is reality. You know that and I know that.

MR. SHARP: That is why you call it imputed interest; is that correct?

MR. WINSLOW: Yes.

MR. SHARP: Okay.

MR. WINSLOW: The North Carolina Attorney General, when they did the study back in '86, found that about 51 percent of the goods sold in RTO stores were used. Is that about the same number in West Virginia or would you estimate?

MR. SHARP: I wouldn't have any knowledge one way or the other, but I wouldn't dispute that number.

MR. WINSLOW: That would be about right?

MR. SHARP: Because all of our contracts, whether the unit is new or used anyhow, we quote -- we tell people that to begin with, and most of the times used products get lower prices anyhow or lower terms, one way or the other.

Different companies look at it different ways.

MR. WINSLOW: And in that same study they also found that about 22 percent of RTO contracts ended in sales, at least the first time around.

MR. SHARP: That is still a constant figure. The 22 percent is a fairly decent number. So basically what you are telling me, these rules are to govern those 22 percent that do go to term and obtain ownership, and the other 78 percent of our business that is rental has to quote these --

MR. WINSLOW: We both know that a lot of these things would have gone to term except for they are dealing with consumers that, as Mr. McMahon already said, can't afford it and at some point fall behind, and that is not because it isn't the intention of the parties to rent to own. The problem is their finances give out or they realize it was a bad deal and for one reason or another the contract doesn't go through to a complete sale.

MR. SHARP: Well, that is one reason why the rental dealers in this state offered for

those that their intentions were to obtain ownership, if they returned the merchandise while they couldn't pay for it, they could pick it back up, either that unit or a unit of equal value, without losing any rental payments that they had in it and pick up as if nothing had ever happened before.

Try to do that with a credit loan after somebody has repossessed it, and then you go knocking back on their door and say hey, look, I just had my car repossessed from you three months ago. I would like to start all over again. What bank is going to do that for you? I don't know any in this state.

MR. WINSLOW: What the bank has to do now is obviously sell the car, find out what the deficiency is, and in fact if they sell it for more than is owed, they have got to give him back that money.

MR. SHARP: How are they going to do business with the customer again? Rent to own dealers will. Banks and finance companies won't.

Big distinction there.

MR. WINSLOW: You are willing to offer people a price essentially --

MR. SHARP: It is in writing.

MR. WINSLOW: It is in writing?

MR. SHARP: Yes, sir. It has been in writing since 1988 that we have been willing to give them a reinstatement, is what we call it.

MR. WINSLOW: And there is nothing in law that requires that, although it has been proposed.

MR. SHARP: Nothing in law, no, except for contract law at this point.

MR. WINSLOW: Don't get me wrong. I do not like the fact that we are in the situation of having rules. They are not the more effective way to go as opposed to having an effective statute. There are parts obviously of the statute that would have been very nice for consumers to have. That would have been one of the sections of the statute that would have been nice to have. I look forward in the future --

MR. SHARP: There was agreement on lots of parts, but they are dead. There were agreements on lots of the parts, but it seems like this one thing that does not apply is a stickup to the 99 percent that isn't a stickup, and I am for the 99 percent. I was the one who was up here to begin with to propose these disclosures.

MR. WINSLOW: Well, the RTO industry came up with legislation that had disclosures and in return was favorable to them on other items that they felt strongly about.

MR. SHARP: Isn't that the sign of any good legislation though, that compromises are reached?

MR. WINSLOW: The question is, is it a good compromise, and the legislature hasn't passed one one way or the other. Now, in 1984 when our act was passed, the interest rate cap that we had was 18 percent, and were you aware that the inflation rate back in 1974 was running at about 9.7 percent?

MR. SHARP: No. I am not an economist.

MR. WINSLOW: I did research. That is from a New York Times article, quoting the President's Council of Economic Advisors.

MR. SHARP: For the most part I don't think you put non-facts into this record.

MR. WINSLOW: At any rate, so you have got 9.7 percent. So the real return on interest rates when we had our 18 percent cap was 8.3 percent because you had an inflation rate. So you had an interest cap of 18. If you were at Sears and you were renting at 18 -- or giving out a good and you are financing it and you had 18 percent, the real return was going to be 8.3 percent. That is 18 percent minus 9.7.

Now, inflation is down to 3.2, and we still have this 18 percent cap. So the real return on finance interest now is at 14.8. That is almost a 78 percent increase in the real return. Now, I don't understand how the real rate of return on an 18 percent interest can go forward and be in fact so beneficial to the person who is loaning it, and we are still offering and allowing an 18 percent

interest rate, and you guys can't make money on an 18 percent interest rate.

It used to be the stores made money and their only real return was 8.3. Now it is 14.

MR. SHARP: Part of the problem is your definition of imputed interest. You are limiting other services other than just payment for money the ability to defer a debt and make installment payments on it. You are including more in the imputed interest than what is included in the term interest and then putting the same cap on both of those. When you do that --

MR. WINSLOW: Just for certain transactions.

MR. SHARP: For what?

MR. WINSLOW: Just for certain transactions.

MR. SHARP: Yes, rent to own transactions.

MR. WINSLOW: Rent to own transactions under a thousand.

MR. SHARP: And if you other rule

goes through the legislature, even the ones over a thousand. I can't understand really the distinction between them.

MR. WINSLOW: No. The other rule wouldn't have a cap. The other rule on the leasing is simply going to have a disclosure. You can write your charge 150 percent APR on this item that the total cost is going to be $2000 on. As long as you disclose it, that will be fine with us.

MR. SHARP: You were asking about returns on investments.

MR. WINSLOW: Right.

MR. SHARP: I have in my hand a survey from the American Rental Association. Unfortunately I don't have a copy of this with me. What I quote from today, I will make a copy of it and see that you get it within the week that you have allotted for additional written testimony, and I want to quote to you in here Return on Investment, and I will start back in 1988 when this bill by RTO was originally proposed, 19.3 percent. That is not really that much higher than the 15 to 17 percent

that retailers get for cash sales.

In '89 it went up slightly to 19.8. In 1990 it dropped to 14.9, and just last year guess what, return on rental investment was 6.8 percent. Now, that is before taxes. Now, you show me where we are making as I saw in one newspaper article, we are making $500 on a single VCR rental. If I was doing that, I could take out the debt of West Virginia. I would be happy to.

You know, we have to prove everything we say up here. The outlandish statements that are made from the other side of the fence, they don't have to prove. In the last two days I saw quotes that said we charge 38 percent interest, charged 150 percent interest, charged 200 percent interest, charged 300 percent interest.

Why is it -- and they are all quoting from the same example, $300 TV set that brings in a $1000 in rent to own. You know, is APR so confusing that even the people that are proposing it don't understand it? Is that what the issue is all about?

MR. WINSLOW: No. The issue is figuring out APR can only be done one way, and a person --

MR. SHARP: I agree with you.

MR. WINSLOW: -- can go and figure out how much the TV actually costs if he bought it for cash and how much it cost to buy it over an amount of time. You figure out the amount of payments, and you figure out the finance charge, and you divide it. Then you look up in the table and you find it out.

I agree that APR isn't simple interest, but it is simply a method by which everyone can calculate what the finance charge is and, therefore, comparison shop.

MR. SHARP: Would you agree that rent to own is a hybrid transaction between rental and credit sale?

MR. WINSLOW: It certainly has attributes of both, but it is trying to evade the law which is why it was drawn up.

MR. SHARP: I don't agree that it

was trying to evade the law, and I don't want to get into that kind of testimony, but if you would go out and price a VCR at a video store somewhere and see what the comparative monthly price is to rent to own transactions and compare it to --

MR. WINSLOW: But the monthly price isn't the point. The price is how much you actually end up paying for the item. I mean, that is how you figure out what APR is.

MR. SHARP: And if you would take it to 18 months, they pay 10 times rent to own prices, and they don't even own it.

MR. WINSLOW: Now, you own it after you have bought it from Sears. Yes, you do.

MR. SHARP: You don't if you go out and rent it, just to rent it. That is what you are asking me to do.

MR. WINSLOW: I am not asking you to do that. See, that is what I don't understand. Our rule wouldn't prevent you from entering into your same type of contract. You simply make an APR. In fact, since we do not have -- as Mr. McMahon

explained, since we do not have a definition of cash price, do not have any limitation as to cash price, there would be nothing, absolutely nothing from you stopping and saying okay, I am going to sell you this TV. I can only charge 18 percent interest now since it is under a $1000 total payment.

MR. SHARP: Change it to a $1001, right.

MR. WINSLOW: Well, no. One way around it would simply say up front okay, the cash price today for that TV that I am selling you for if you want to buy it from me is going to be -- you know, in the neighborhood of $600, and you add 18 percent APR onto that. So the final total payments come out to $700 after your so many weeks, and you will have the same payment as you did before.

MR. SHARP: And I will have to pay the property taxes on it, and the retailer won't, plus other types of things that I have to do that he doesn't.

MR. WINSLOW: Well, that aspect I am certainly willing to hear from you on to deal with

any change to treat you the same as they are as far as taxation, but there is nothing that would prevent you from taking that TV first -- here is an actual example that I worked out. There was a rent to own ad, and it was $39.99 a month for 16 months and you could buy this TV.

MR. SHARP: You could own it after the 16 months you are saying?

MR. WINSLOW: Yes.

MR. SHARP: Is the TV the only thing you are getting in that transaction?

MR. WINSLOW: I would assume that you are getting that plus essentially a service contract perhaps.

MR. SHARP: That is it?

MR. WINSLOW: I would imagine.

MR. SHARP: You have a very limited view of rent to own then, and I can understand why these rules are being proposed then.

MR. WINSLOW: Well, enlighten me. What are all the things I get in that contract?

MR. SHARP: No. 1, you don't have

to -- one of the things, you don't have to pay property tax on that unit. I do that. The dealer does that.

No. 2, if it breaks down, not only do you get to have the unit serviced, I am going to bring you a loaner out to you. Sears don't do that. Montgomery Ward don't do that. Retailers don't do that. Now, I have got the expense of two TVs tied up in one transaction.

All right, once the loaner unit comes back in, you know, it has been used. I have got to refurbish it again now. So now I have got some added expenses there.

MR. WINSLOW: That is assuming that the loaner was new.

MR. SHARP: Sir?

MR. WINSLOW: That was assuming the loaner is new.

MR. SHARP: Even if it is used I have to refurbish -- anything that comes back in I have to send to my service shop to see if it is working properly. You know, service technicians

don't come cheap. I don't want to rent out an item to a customer and be embarrassed with the fact that as soon as they take it home and plug it in it doesn't work. I mean, that is embarrassing.

Plus now I have got extra time that I have got to spend to send a man back out to the house, the gas, his time, bring the unit back --

MR. WINSLOW: If you provide all this great service, then why isn't your market the rich and wealthy who can afford to pay for all this extra new service you are giving them, and why is your market in fact the people who cannot afford credit?

MR. SHARP: I would certainly consider former Governor Rockefeller in the rich realm. I have done business with him before.

MR. WINSLOW: Actually to purchase or just to rent?

MR. SHARP: Whatever he wanted to do. Right?

MR. WINSLOW: I think there is a distinction there.

MR. SHARP: And our contract allows that person to make that distinction. I am not going to say --

MR. WINSLOW: And you could draw up a contract that could still do that. I am not going to put you out of business from doing that. I won't even put you out of business from doing rent to own. That is what I don't understand. All you would have to do is change the cash price.

Now, the example I was giving you, you have got over 16 --

MR. SHARP: You want to tie me into something though that is not a part of our transaction. Everybody that has ever looked at this except for one legislative member in Pennsylvania and the Attorney General's Office in this state that have ever tried any types of proposals anywhere have said that there is no debt in this transaction.

What makes West Virginia --

MR. WINSLOW: You know that is not an accurate statement, because you know as well as I do that there was a bunch of controversy in state

court cases and in federal court cases until the Federal Reserve Board finally came out with its rule.

MR. SHARP: Yes.

MR. WINSLOW: So it wasn't like no one had a question as to where this fit in. A lot of people had a question as to where it fit in.

MR. SHARP: Yes. The court case that Mr. McMahon mentioned in his testimony out of Cabell County -- I don't have any problems naming names. It was Roger Gravely against RTO. Then --

MR. WINSLOW: I am talking about cases around the country. Cases around the country went both ways on whether RTO was a credit transaction. That is why the Federal Reserve Board had to come up with an interpretive rule, because it was so confusing.

MR. SHARP: In 1981 they said that it wasn't.

MR. WINSLOW: That is right. That is what they said.

MR. SHARP: Then why are we sitting

here discussing as to whether it is or it isn't today?

MR. WINSLOW: Because I disagree with what the Federal Reserve Board decided.

MR. SHARP: Now, we are getting somewhere. So one person in this state can dictate to all the other businesses in this state if they don't like the way somebody else has decided it, right?

MR. WINSLOW: No. The response to that is because -- what happens is you look at -- a lot of people have looked at this, and they have looked at it even since the interpretation by the RTO, and nobody has really been happy with that interpretation from the consumer side of it, not just me, not just our state --

MR. SHARP: I have got 573 people right there.

MR. WINSLOW: -- not just this state, and everybody went through legislative and decided to make compromises, what have you, but that interpretation was an interpretation based on the

federal rules and federal law having to do with making an agreement that served the purposes that the federal government was trying to accomplish at that time.

It did not take into effect what state laws were, what state policies were in regard to usury rates, what state laws were regarding --

MR. SHARP: How far back do you want to go, Tim, as far as years are concerned? You know, when is ancient history? Is three years ago ancient history? Is last June ancient history?

MR. WINSLOW: As to what?

MR. SHARP: As to whether this is a debt transaction or not. You said at the time they were looking at it that they decided that it wasn't a debt transaction. That is what you said.

MR. WINSLOW: At the time --

MR. SHARP: They were looking at it.

MR. WINSLOW: At the time that this industry grew up after Truth in Lending came into being and this industry grew up -- after the Truth in Lending Act was developed, because that is what

its primary purpose was, various courts went various ways.

MR. SHARP: Only since 1985 have they even started to legislate this industry. So is seven years ago ancient history?

MR. WINSLOW: No.

MR. SHARP: In that period of time in the last seven years they said rent to own -- overwhelmingly they have said rent to own is not a debt transaction.

Why all of a sudden are we out of the blue not even in the legislative level -- you know, we are going to take a rule that really -- let's try to carve it up a little bit and see if we can knock off the squares of it and fit it in a round peg and see if we can make this thing fit. Now, that is what we are doing here today, is seeing if we can make a square peg fit a round hole.

You are not even letting the legislature -- you are going to say, hey, legislature, your opinion doesn't mean anything. We have decided. This is what the interpretive rule is

saying, legislature, you don't know what you are doing. Therefore, we are going to decide for you on the rent to own issue. That is what this rule does.

MR. WINSLOW: No. That is a mischaracterization. This rule says this state is not -- and not unlike the 31 states that you like to say have decided this -- this state has obviously not decided, because we have not passed that act, have we not? Therefore, it is still an open question in this state. It has not been decided by the legislature.

Therefore, it is an item that can be looked at, and the Attorney General's Office since I have been here has never accepted the view that RTO is not covered in some sense a consumer credit transaction in the Consumer Protection Act. It has never taken that view. It has always opposed that view, but it has also at this point never done anything.

We have allowed the legislature to try to work out a compromise to see how they want to make it in, but nobody -- we are going along and we

are going along. Consumers meanwhile have no protection of any particular compromise legislation or anything else, and all they get from our office is, well, we think it could be covered.

Well now we are putting it to the test. We are saying we do think it is going to be covered --

MR. SHARP: The consumers have called your office.

MR. WINSLOW: -- these are the reasons that it is covered and this is why we think the consumers should be covered.

MR. SHARP: The consumers have called your office with a complaint and said, hey, I don't know what APR I am paying down at RTO? How many complaints do you have on file in your office that say I've got an RTO contract and they didn't disclose APR? How many complaints?

MR. WINSLOW: I would have to look.

MR. SHARP: I believe Mr. Darling just came out with a survey in a newspaper here last week, wasn't it, Mr. Darling?

MR. DARLING: I have not provided any information to the newspapers concerning complaints of any kind in this matter.

MR. SHARP: They printed the top ten list just this week. RTO doesn't appear in there, by the way.

MR. DARLING: Well, perhaps at sometime in the past I have provided the top ten list. I thought you were referring to complaints concerning RTO.

MR. SHARP: Do we have any complaints on APRs against RTO to your knowledge?

MR. DARLING: I have no knowledge about the breakdown on these complaints one way or the other.

MR. SHARP: Can that be furnished for this hearing for testimony to this?

MR. WINSLOW: We would be happy to.

MR. SHARP: Well, the thing about it is here you are saying the consumers want this. If they want it, where is the testimony coming from that says that they want it?

MR. WINSLOW: If it is such an unnecessary figure, then why are you so unwilling to provide it?

MR. SHARP: Because it is not a fact to an RTO contract, and I refuse --

MR. WINSLOW: If it is not going to effect their decision --

MR. SHARP: -- to lie to my customers.

MR. WINSLOW: Okay. At any rate --

MR. SHARP: I'm sorry. It is a topic that is heated because you are talking about my livelihood. No matter what you decide on this issue, if you decide to go ahead and put it through, you are still going to be down there in that office. You will be able to draw your paycheck from previous taxes that I paid, but if this ruling goes through, you will be seeing me on the unemployment list and going to the food stamp line, because I have got two stores in this state that will be closed down.

MR. WINSLOW: Because you can't write an APR on a contract that would --

MR. SHARP: Because I refuse to lie to my customers.

MR. WINSLOW: And tell him what he is really paying?

MR. SHARP: He is paying whatever he decides he wants to pay up to a certain dollar figure.

MR. WINSLOW: You can still charge that. I won't prevent you from doing it.

MR. SHARP: That is not what these rules say.

MR. WINSLOW: You know as well as I do in Pennsylvania they are still around. You know as well as I do --

MR. SHARP: There is no rent to own companies in Pennsylvania.

MR. WINSLOW: You know as well as I do -- well, then you would be surprised if I got a statement from Pennsylvania's AG testifying to the fact that they are then, wouldn't you?

MR. SHARP: Well, if that was the case, why doesn't he have them in court because they

have got a law that says it is illegal in that state?

MR. WINSLOW: As long as they provide certain disclosures and limit themselves to certain interest rates, it is in fact legal. That is why. All we would be doing is -- these rules would not prevent you on anything over $1000 from moving forward like you always have, just simply have your APR disclosure, whatever it was.

As for disclosures as to items over $1000 --

MR. SHARP: The legislative rule?

MR. WINSLOW: The legislative rule dealing with leases.

MR. SHARP: The legislative rule says that it has got an APR that will be computed and go by the ceiling.

MR. WINSLOW: No. The legislative rule goes only to leases and talks about leases and does not have an APR ceiling.

MR. SHARP: Okay. I'm sorry. I misunderstood that part. Then let me ask this

question: Why is it then that those leases in West Virginia are the only leases anywhere that have to quote an APR and interest rate? Why are they different than leases anywhere else?

MR. WINSLOW: Because the way they are structured --

MR. SHARP: They are no different structured than anywhere else.

MR. WINSLOW: -- they are really a consumer credit transaction, and that is why they have an imputed interest rate disclosure.

MR. SHARP: They are not structured any different from any of those others. We have got national companies that do business in this state that use the same contract that they use in any other state. Now, how is that transaction different in West Virginia just because it is over the borderline and makes it require an interest rate and an APR? There is no difference in the transaction even if it is under $1000 or over $1000.

MR. WINSLOW: Various states have various different disclosure law on businesses. Our

business, for example, here in West Virginia if you are an auto manufacturer or an auto repair shop rather, there is no rule that requires a big posting saying if we give you a written estimate over a certain amount it has to be this and all that.

So different states have different rules on disclosures, and that is what we are going to have or we are looking to have, but I am very interested in some of your questions regarding separate treatment, because we want to be fair and make sure that if we are going to treat you as a certain type of transaction, that you are treated fully and comparatively like all other businesses, because the object of this is to put everybody on a level playing field as far as businesses.

MR. SHARP: Who is everybody? Compare me with other rental dealers or rent to own dealers. That is what the other states have done. That is what the federal government has done.

MR. WINSLOW: That is not the issue here though.

MR. SHARP: Only because that is the

issue as you define it. You want to do away with that. I agree with you. It isn't the issue, because you want to change it. You want to change it to the point that you are saying rent to own leases aren't rent to own leases. They are either a credit sale or they are a consumer lease, and you are going to quote APRs either way you go. That has to be a recharacterization, because you are saying that up front -- your rule even says it.

You recognize that rent to own transactions do not fit right now into credit sale or to credit lease. You recognize the fact that rent to own transactions are a third distinct transaction, but those rules say, hey, guess what. After we make the rules there is only going to be credit sales and consumer leases. You have done away with rent to own.

You have done away with it. There is no doubt about it in my mind.

MR. WINSLOW: The rules in fact provide certain rent to own transactions will be treated as this. Obviously it anticipates the

survival of rent to own.

MR. SHARP: No. It doesn't, because you put qualifications on rent to own, but there is no way we can stay in rent to own. We will have to go, as I said in my statement, one of three different routes; to rent to rent, which the consumer loses all the way on that one. They lose their option to own.

Are you really up there --

MR. WINSLOW: I can propose two other things to you that would make it so that it wouldn't change anything. All it would be would be a requirement for you to reconfigure your contract. As for leases over $1000, the only thing other than some of the other disclosures you are going to have to make that in fact in the legislative compromise you have almost been willing to make, you would have them in there, and then you would have one that creates -- the problem is you just tell them what your effective APR is or imputed APR is, and that would be that, and that is how you could write your contract, and you would be fine in this state, and I

am not putting you out of business.

You could just tell everybody, this is how much it costs. I know you can't keep credit anywhere, you have a problem getting credit or maybe if you do this is competitive, what have you, and this is what it is going to cost total. All you have to do --

MR. SHARP: Can you make another provision?

MR. WINSLOW: The other part, when you are under $1000 and subject to the 18 percent cap, the way around that -- and you know it as well as I do, and it is a hole that Mr. McMahon has spoken to -- is just raise your cash price to a certain level. Then you can have the same contract essentially with the same amount of monthly payments and work it out the same, but at least the consumer is told up front what the real cost is going to be to him.

MR. SHARP: Will you make one other provision in there if I have to quote APRs and interest? Will you make a provision in there even

though it says in my contract that you have no obligation, Mr. Customer, that you are going to have an obligation and this dealer will sue you for the remaining balance? Will you add that?

MR. WINSLOW: If it is under $1000, you can't sue them in West Virginia for under $1000. You take repossession and that is it. Why should you be treated differently?

I have no further comments or questions. Thank you.

MR. SHARP: Okay. Thank you.

MR. DARLING: Do you have anything else, Mr. Sharp?

MR. SHARP: No, sir. I do want to present these to you and I do again thank you for your time and again apologize for my heated comments.

MR. DARLING: That is all right. Would you please stay at the dias for a moment --

MR. SHARP: Sure.

MR. DARLING: -- because I have a question or two concerning the submissions you are

making into the record so we make sure that they are recorded.

MR. SHARP: Yes, sir.

MR. DARLING: You have mentioned at various times I think a number, at least up to 573.

MR. SHARP: 573 consumer petitions there asking that the option to own be -- that these two rules not be adopted with annual percentage rates and interest structures because it would ultimately result in the rental companies dropping options to own.

MR. DARLING: These then are statements of individuals that you are submitting into this record on behalf of the various individuals who have signed these statements?

MR. SHARP: That is correct. They are from all directions of -- all parts of West Virginia.

MR. DARLING: And I wonder, if you know, sir, were these prepared individually by the signers of the documents?

MR. SHARP: The signatures, the

addresses and the datings at the bottom of the petition form were prepared by the individual petitioner.

MR. DARLING: And then the balance of the statement which appears to be --

MR. SHARP: Was a provided statement.

MR. DARLING: Provided by whom?

MR. SHARP: Rental Dealers Association of West Virginia, laid on counters in rent to own stores where customers had the opportunity to pick them up and sign them.

MR. DARLING: Were there any materials provided with this, any signs or anything that would explain the nature of the document, or were there any -- I'm sorry. Let me ask if you would answer that first question, please?

MR. SHARP: I am not aware of any signs being put up. A customer would come in, take a look at it on the counter, and may ask questions of store employees. I have not been reported back that there were.

MR. DARLING: Do you know whether store employees would solicit or direct the attention of their customers to the information?

MR. SHARP: No, sir. I couldn't even tell you that in the store that I was in, because there is a wall between me and where the store actually is located, and I certainly couldn't tell you for people that were up in Martinsburg or Parkersburg or Beckley or here in Charleston.

MR. DARLING: Okay. Thank you. Since you were providing those into the record of this hearing as the comments of other individuals besides yourself and the association you represent, I just wanted to clarify as to how those came to be in your possession to be submitted today so that we will have a clear record.

MR. SHARP: Okay.

MR. DARLING: And I also would just like to note for the purposes of the record that the questions regarding federal law and the laws of other states, while they may be informative or may be used to inform our deliberations, are not

necessarily controlling under the principles of federalism that are contained in the United States Constitution to the extent that except where Congress has explicitly or implicitly provided that federal law and regulations shall displace the laws and processes of a state and a particular area, then the state is still free to exercise its sovereign authority, and in various ways states are free to do so.

Here in West Virginia we have what I have found to be a rather unusual process in that legislation apparently comes about in two ways. That is that passed during the regular session or any extraordinary sessions of the legislature by that body, and then secondly through the process of review of legislative rules, and so to the extent that one of these rules is a legislative rule it ultimately if passed will be the expression of the legislature as if it were a matter of law.

On the matter of the interpretive rule, there again I would simply point out that Mr. Winslow was a little incorrect when he indicated

that it was his interpretation, that this is a matter taken under consultation with various members of the Attorney General's Office and the Attorney General also as to this matter, and our present Attorney General was also a member of the legislature in 1974 when the Consumer Credit Act was passed, so that there is more input into this than Mr. Winslow's, and so I just wanted to make sure the record was clear on that.

MR. SHARP: Let me ask a question on what you just said there. Does that mean that the North Carolina information that the Attorney General's Office put into record has no more bearing than any other state legislation that I have offered on behalf of my side of this issue?

MR. DARLING: That is correct.

MR. SHARP: Thank you.

MR. DARLING: Thank you very much, Mr. Sharp. You were quite a spirited advocate for your position.

MR. SHARP: Thank you.

MR. WINSLOW: I think you got your

equal 50 minutes in there.

We have four more speakers. I would like to get done today. Since we have heard, I think, primarily from one con side and one pro side, I don't want to go over and rehash the same ground. So I hope comments that will be provided can shed some new light, new information here.

Is Chris Korst here? He indicated he would like to speak. He is also from the West Virginia Dealers.

MR. KORST: I will endeavor to be brief. I realize the afternoon is late, and it has been a long day for all of us.

I have another reason for not waxing too eloquent or for very long. Mr. Sharp really had a lot to say and I think covered a lot of ground for all of us in a very informative educational process that I think that we can all benefit from.

Before I refer to my prepared remarks, I would like to take a moment to clarify or address some mischaracterizations and misrepresentations that I think have gone

unaddressed or unspoken to to this point in our afternoon's proceedings.

To begin with, references by Mr. McMahon to interest rates are absolutely misleading. Fewer than one in four consumers under rental purchase or rent to own transactions acquire ownership of the property. The balance, that is the remaining three-quarters of those transactions, are terminated, most of those within the first 100 days and the property is returned to the rental company. This is clearly not a credit sale as it would be defined under these regulations.

In addition on the interest issue, we don't extend credit or loan money to our customers. What we charge to our customers is a reflection of the costs associated with being in this business. It does not represent interest any more than the amount over the basic food costs or costs for food at a grocery store represent interest to a restaurant.

If I understood Mr. McMahon correctly in his testimony -- and I heard some of it

I believe out of you, sir -- he would deny middle and lower income consumers the dignity and the opportunity that the rest of us enjoy, and that is the opportunity to choose how we are going to spend our own money.

I am certain that Mr. McMahon if he were here would bristle and bridle very strongly and react very negatively if the government began telling him how he was going to spend his hard earned money. I also find it incredible to believe that the Attorney General of this state would stand behind a proposition that providing false and misleading disclosures to consumers is somehow appropriate and helpful to those consumers.

Contrary to the obvious contempt and pity that Mr. McMahon shows for middle and lower middle income consumers -- a group if I again heard him correctly he would characterize as being ignorant beyond belief and incapable of taking care of themselves -- we strongly believe in our customers, and we also strongly believe that we provide a very valuable, needed, important and

necessary set of opportunities and services to a historically under-served consumer base.

With regard to Mr. McMahon's convoluted argument that consumers in a terminable rental agreement are somehow in debt because they are obligated to return the merchandise to the lessor is, I think, analogous to saying that a customer who goes down to the airport and rents a car from Hertz is indebted to Hertz for that total amount that he or she would pay either to own the car if that was an option or whatever those options may have been.

By the way, with regard to the election of remedy statutes, they are in place in about a third of the states right now, and those election of remedy statutes are not the same thing as the rent to own transaction, because in the election of remedy statute, as you know, the options all run to the creditor, that is the seller of the goods.

The seller gets to determine the fate of that transaction. Now, the fact of the

matter is Sears isn't picking up televisions and refrigerators and bedroom furniture and bringing it back to their stores and refurbishing and selling it. The fact of the matter is Sears and other credit companies are opting under the election of remedy statute to sue for the balance on the note which is not something that occurs under the rent to own transaction.

In point of fact, rental consumers are never obligated to continue renting, and we in effect transfer that election of remedy to them, and as we all know, ownership of options is a very valuable commodity, whether it is for pork bellies or options to terminate and walk away without engaging in any debt transaction.

With regard to the comments of various persons regarding the persuasiveness or controlling effect of rules, regulations and decisions pursuant to and under the Truth in Lending and Consumer Leasing Acts of the federal government, I would simply refer to and ask the opportunity to read into the record portions of a letter that was

submitted by Mr. Bruce Cox to the Attorney General's Office regarding these proposed rules, which by the way Mr. Cox represents AT&T and they stand squarely opposed to these proposed regulations.

Quoting from this letter, "The West Virginia legislature in enacting the West Virginia Consumer Credit and Protection Act clearly stated its intention that the West Virginia courts be guided by the interpretations given by the federal courts to the various federal statutes dealing with the same or similar matters."

That is found at West Virginia Code Section 46A-6-102. Moreover, the legislature instructed the Attorney General to promulgate rules and regulations conforming "as nearly as practicable with the rules, regulations and decisions of the Federal Trade Commission and federal courts," West Virginia Code at 46A-6-103.

Construing lease agreements to be consumer credit sales as proposed in the interpretive rule would be inconsistent with the Federal Regulation Z, Truth in Lending. Regulation

Z explicitly excludes from the definition of a credit sale leases that are "terminable without penalty at any time by the consumer."

The definition of a credit sale in the West Virginia Consumer Credit and Protection Act is consistent with Regulation Z. However, the definition of rental purchase agreement in the proposed rules would include leases that are terminable at any time without penalty and then further include rental purchase agreements for goods under $1000 as credit sales.

In addition, construing rental purchase agreements as consumer leases is inconsistent with Federal Regulation M regarding consumer leases. Regulation M includes within its definition of consumer leases, agreements "for a period of time exceeding four months."

I think it is clear that those kinds of instructions and those kinds of decisions by the federal court and federal regulatory bodies authorized and empowered to issue rules and regulations under the federal laws were intended by

the West Virginia legislature when they enacted the West Virginia Consumer Credit and Protection Act to be very persuasive to the Attorney General's Office as well as to courts in this state, and we would suggest that these are wholly inconsistent with the approach that has been taken thus far.

With regard to my prepared remarks, we strongly oppose these rules as presently drafted for the following reasons:

First: The so-called interpretive rule is not really interpretive of the West Virginia Consumer Credit and Protection Act but is in fact a supra or non-legislative and wholly unwarranted expansion of that act's scope. We believe that the legislature of West Virginia is the appropriate forum for decisions of this nature. This purported rule making is in reality nothing less than an attempt to usurp the powers and functions of the legislature, the sole deliberative body constitutionally charged and empowered with the responsibility to make new laws in this state, and it is clear the rule reflects a contempt for the

fundamental constitutional principle of separation of powers and as such carries with it, in our opinion, critical and fundamental due process infirmities.

Second: The proposed rules, both legislative and interpretive, represent a thinly disguised attempt by the Attorney General's Consumer Protection Division to execute on the personal agendas of public interest attorneys to push a platform that is anti-business and is ignorant of the real interests and concerns of West Virginia consumers.

These rules are nothing more than major public policy legislation, an area constitutionally reserved to the legislature, dressed up as rules.

Third: As I stated before, the proposed rules are wholly at odds with every federal and state court interpretation and construction of statutes identical or very similar to the West Virginia Consumer Credit and Protection Act, at least as you pointed out earlier since 1982, which I

believe is now over 10 years old.

The rules are completely lacking in legal, factual or intellectual foundation and should be rejected.

Fourth: These rules were drafted without any input from or dialogue with industry representatives or consumers. Judging from the legislative and technical language used, these proposed rules reflect a bias against the very existence of the rent to own option held by individuals representing the legal services organization. Those individuals have repeatedly stated, both on and off the record, that this industry should not be allowed to exist in West Virginia.

It is unfortunate that the good offices of the Attorney General of the state have been used to promote this special interest agenda.

Fifth: The proposals as currently configured would exempt certain other consumer lease transactions from the onerous burdens these regulations would create. Additionally, we

understand the representatives of the Attorney General's Consumer Protection Division are, even as we meet here today, discussing with other businesses and industries how to remove them from the scope of these proposed interpretive and legislative rules.

We believe this may raise ethical as well as constitutional implications, and we cannot help but ask the question, why us but not them?

Finally, the proposed rules state that their effect would be revenue neutral. This is simply not the case. To begin with, some additional personnel would certainly be required in the Consumer Protection Division if this industry is as significant and dramatic a consumer problem as these sweeping rules would suggest.

The fact is rent to own is not presently and has never been an issue of any significance for the Consumer Protection Division, which may in part explain why no additional manpower is being anticipated.

Furthermore, these proposed regulations if made effective would have the effect

of eliminating this industry from West Virginia. Along with this industry elimination goes five million dollars in tax revenues to the state and nearly 400 jobs with an annual payroll of 10 million dollars. This proposal is not revenue neutral.

In conclusion, we strongly urge the Attorney General to withdraw these proposed rules and to direct his Consumer Protection staff to meet with the industry and its consumers. The goal should be to achieve stringent yet balanced consumer protection regulations which first and foremost protects the needs, desires and concerns of West Virginia consumers while at the same time recognizing the concerns and interests of this industry.

This is a goal to which the West Virginia Rental Dealers Association has dedicated itself to since 1988, and let me say in closing that I believe that fairness and justice, the ideals embodied in the constitutional principles of due process, require nothing less from the Attorney General of the State of West Virginia.

I would be happy to answer any questions you may have.

MR. WINSLOW: I just have a few comments just to try to sway some of your views, to try to put it in perspective where this office is coming from and why it has developed the position it has.

We don't view this as we are listening to a political football one way or the other. We are stuck with a situation of where does RTO fit in West Virginia law, and the Attorney General believes, and I believe rightly, that we have an obligation to try to determine where RTO fits in. When we proposed this rule part of the feeling was that rather than simply bring up charges against an RTO company for violation, to set forth the basis upon which we feel RTO should be covered, to listen to the industry and to find out their concerns, to make sure that we are being fair to everyone, and to provide a level playing field to the RTO and the other businesses.

MR. KORST: Did you say that was the

purpose of this hearing?

MR. WINSLOW: Yes.

MR. KORST: It certainly that hasn't happened yet in this process until today, has it?

MR. WINSLOW: We propose rules and we get comments on those rules, and that is in effect why you have the hearing.

MR. KORST: If it is an open question, how can you issue interpretive rules saying that it is not? You stated earlier that this is clearly an open question under West Virginia law, and yet you issue interpretive rules that indicate quite the contrary.

MR. WINSLOW: Because there is no Supreme Court decision one way or the other. The legislature has not enacted yet a provision providing this is how we are going to treat RTOs.

MR. KORST: Right.

MR. WINSLOW: If the RTO industry itself went around to the other states in measure to avoid what they call the gray area -- and this is a gray area, and so we are trying to interpret where

we feel we are right now, and that is why we --

MR. KORST: But it has to be your position that these are covered transactions without any expansion of the scope. Otherwise, the interpretive rule really in effect becomes a legislative rule, correct?

MR. WINSLOW: That is correct.

MR. KORST: So it is your position that these are covered transactions today.

MR. WINSLOW: This office has always taken a position against some of the bills that the RTO industry has produced, that we thought that the RTO industries were disguised consumer credit transactions. So we are setting forth that in a way that we can get comments on it and what not.

Now, you have mentioned about the federal rules and quoted from West Virginia statutes dealing with how we should follow those federal rules. We are very much aware of federal rules, both Z and M, and the statute in West Virginia, parts of which talk about how one can interpret it to the extent that we can follow federal

legislation, but that brings a caveat up to the extent that we can, and sometimes what the state legislature has written diverges in purposes and tone and has different provisions than federal law does. We think it does in this area.

MR. KORST: But isn't their statement that it doesn't and that is why they instructed both courts and the Attorney General to follow those rules? Isn't that an indication of legislative intent that it shouldn't diverge?

MR. WINSLOW: To the extent possible, and the question is --

MR. KORST: And it is not possible?

MR. WINSLOW: And it is possible. In fact, our legislature --

MR. KORST: It has to be possible. The Truth in Lending Act has been interpreted that way.

MR. WINSLOW: Our legislature did not get rid of usury. It has an 18 percent credit limit and stuck those credit limits in there. That is a whole different effect and a whole different

purpose and decision that was made by this legislature than the decisions that were made by the Federal Reserve Board and federal law.

MR. KORST: That is absolutely -- in fact the federal government does not regulate interest rates and state them in consumer transactions for the very purpose that those ought to be allowed to the state, and this state in this instance has said that is great, that is a great entitlement and we are going to take and keep it at 18 percent.

MR. WINSLOW: To show you where I am coming from, essentially the federal government has adopted rules and laws getting rid of interest rate restrictions and the whole movement back when they had the inflationary period was look, usury laws, since you have a certain amount of inflation -- you know, quickly became out of date when we had a six percent usury law and inflation was at 10 percent, and people aren't going to be loaning money. So that had to be changed, and the question then arises well, do we need usury laws any more? Do we set

flexible rates, and various states faced with the inflation of the 70s had different answers.

Some states decided they were going to get rid of usury. Other states did not. This state did not. Now to have an effect --

MR. KORST: Who decided that?

MR. WINSLOW: The legislature. The legislature put in that provision.

MR. KORST: It certainly would have the constitutional authority to do so.

MR. WINSLOW: And given that that is what they have done, it seems incumbent upon this office to try to effectuate their desire to have that rate there and not to allow an evasion of it.

MR. KORST: But doesn't the definition of a consumer credit transaction or consumer credit sale specifically -- and this is unusual to West Virginia and maybe two or three other states -- doesn't it specifically require a debt to be incurred on the part of the consumer? That is not a way around any statute. That is a simple fact of indebtedness or not, and the

legislature saw fit to draft that into its own definition.

So clearly there was some legislative intent that is not being viewed here as well when you talked about interest rates and what was applied and not applied to transactions back in '72 or '82 or whatever.

Why would the legislature have written that kind of specific requirement?

MR. WINSLOW: No one foresaw your industry taking a loophole and driving your truck through it, quite frankly.

MR. KORST: The legislature has the ability to draft laws, and they know what words mean. They regulated two leases with this law, and there was an option to regulate a third, a fourth, a fifth, a tenth or all of them, and they declined that option.

MR. WINSLOW: You mentioned an anticipated cost to this state both in enforcement, I guess, and lost tax revenue in your estimation. In our estimation there would not be extra cost nor

loss of revenue simply because it is clear that you could do the consumer lease over $1000, and I have got no restrictions other than a few disclosures and you write the APR.

MR. KORST: Given that, Tim, I can tell you this -- I am a lawyer, not a rental dealer, but I can tell you that these guys will tell you that a majority of their transactions -- and I don't know where that percentage falls over the majority, but a majority of their transactions are going to fall at or under $1000, particularly for used items, and so how do you deal with that issue?

MR. WINSLOW: Because the 18 percent -- since I don't have a cash price requirement that it only be a certain amount, you simply raise your cash price so that you meet the 18 percent limit.

MR. KORST: How can that be good for consumers?

MR. WINSLOW: It is not particularly other than to the extent that then the consumer is aware of that what he is really paying for the TV is this.

MR. KORST: I am confused.

MR. WINSLOW: That if he actually wanted to walk into your store and buy that TV for that price, that he can compare. He can say wait a minute. That TV you are saying is $650, but over here it is $300. Now, wait a minute. Is he giving me a good deal or not?

MR. KORST: But that is exactly the kind of disclosures we have already talked about.

MR. WINSLOW: And that is going to allow comparison shopping. I can't tell you what you are going to charge for your goods.

MR. KORST: It is exactly the disclosures we have already talked about.

MR. WINSLOW: And I can't prevent that, but I am going to at least have the consumer, and the rules will have the consumer, be aware of what you are really charging him.

MR. KORST: Why not fashion a statute that would bring all the credit sellers in the state in here and make them first and foremost give rent to own disclosure and secondly allow

terminability in every one of their transactions, because clearly if more information is better, whether it is applicable or not, which has to be is the theory of this APR, then credit consumers having rent to own disclosures makes a lot of sense too, doesn't it?

MR. WINSLOW: Only if they are going to do a rent to own type of thing. If Sears wants to go into the rent to own industry, they will have to do the same disclosures you do.

MR. KORST: How about terminability? Isn't terminability a good future to have for a consumer? You don't have bankruptcies over non-debt terminable transactions.

MR. WINSLOW: It depends on how much you have to pay for that termination.

MR. KORST: Well, what if you could do it at prices like Sears? Would it be a valuable commodity?

MR. WINSLOW: If Sears could make money on it --

MR. KORST: Bring them in. Bring

them in and ask them if these are the same transactions, Tim.

MR. WINSLOW: They aren't in the rent to own business is their answer.

MR. KORST: And I will tell you what else they would say, and we can't do what they do, and we can't do what they do with the different kind of customers they deal with, whether it is high end, low end, short term, long term or any mix the customer chooses. At least they can't do it under the restrictions that they have to operate under today.

MR. WINSLOW: Thank you for your comments. I have no further questions.

MR. DARLING: Mr. Korst, I understood you to say in your statement that you view that there have been ethical improprieties in this process?

MR. KORST: I think there may be a question as to the ethical nature of simply carving out a single industry and allowing others to go away.

MR. DARLING: Mr. Korst, I invite you to come with me to the offices of the West Virginia Ethics Commission immediately following the conclusion of this hearing and to file a complaint setting out your facts in detail or otherwise retract your statement.

MR. KORST: I will retract it.

MR. WINSLOW: The industries have sent in written comments and they have said well, we don't fall under it because of this. The only exceptions we are considering -- and this is to be fair to everybody -- is when they are going to end up falling under and are covered by the Federal Truth in Lending Act or covered by the Federal Consumer Leasing Act.

So if you want to change the way you do your transactions so that you are specifically covered by the Federal Truth in Lending Act or change your transactions so that you are specifically covered by the Federal Leasing Act, well then we are not going to have a problem either.

I am not considering exemptions,

saying you can do rent to own transactions and you don't have to do anything. I mean, the problem is you have got to fit in somewhere, and every industry has got to fit into a slot. You can't just be a nebulous -- well, we don't fit here, we don't fit there. We are not -- you know, nobody gets any protection, because we don't think that is the way our law should be read, and we don't think that is good for the consumer.

So to the extent that any industry has asked us to take a look and say that they think our rules ought to be changed or they should have exemptions so that they aren't covered by it, our criteria is and will be where is the consumer protection and how are they getting covered, and are they already covered by the Federal Truth in Lending Act, or are they already covered in complying with the disclosures of the Federal Leasing Act?

To the extent that they do that, well then we will say well, then that is where they fit. If you want to change your thing so you fall into one of those too, you will fit there.

MR. KORST: And so there won't be any consumer leases for under $1000 that aren't going to be exempted out?

MR. WINSLOW: Unless they fall under the Federal Truth in Lending Act.

MR. KORST: Or Consumer Leasing Act.

MR. WINSLOW: Consumer Leasing Act.

MR. KORST: But you just carved that up with the way the proposed rule is written, because any consumer lease that is for under $1000 is going to fall under the consumer credit definition without regard to whether it is covered by another statute.

MR. WINSLOW: And the question isn't to what coverage --

MR. KORST: What if a phone company is going to engage in a business that goes to consumers and they deal with $500 security systems or telephone systems?

MR. WINSLOW: If they have the Truth in Disclosure Act, then there is not a reason to bring them in under this other thing, because the

Federal Truth in Lending Act disclosure is essentially what we are trying to get here.

MR. KORST: But there is also an interest rate limitation on those lower transactions. There must be a reason for that being in existence as well.

MR. WINSLOW: Well, to the extent that they are under the Truth in Lending Act they will have an 18 percent cap in West Virginia.

MR. KORST: But if they are under the Consumer Leasing Act but not the Truth in Lending Act -- so you are going to apply that 18 percent interest rate cap to those transactions without regard to the identity of the lessor?

MR. WINSLOW: Yes. If anyone that falls under the Truth in Lending Act now and files all the disclosures like they are supposed to and says and it is 19 percent, we say wait a minute, no, no, the rule here in West Virginia is 18.

MR. KORST: But see, I don't think that is the way this law would set itself up. I think that is an interpretation that misses the

point of the rule itself, and that is to gather some transactions, however denominated now, and wrap them all into this consumer lease identity, but then say those that are under a thousand bucks we are going to also place an interest rate limitation on those without regard to wherever else they may be regulated.

I think that is the effect of this proposed rule or these proposed rules working hand in glove, and that means there are going to be security companies and phone companies and medical equipment companies and a lot of other people who are going to be very, very effected by this dramatically, as well.

MR. WINSLOW: Well, our intent is not to deal with a situation where one business gets a free ride. We will try to deal with everyone equally, and I will be interested in any comments, particularly if you can point out any specifics as to how that would work and why you think you would be treated differently than someone else, because our view is -- you know, you fall in and you say you

are regulated by the Federal Truth in Lending Act, that is going to be essentially a determining factor of getting you out of the need for this interpretive rule, because part of the major need for the interpretive rule is you don't qualify under the federal act according to Regulation Z at the moment.

So if you want to rewrite your contracts and fall under that, then you will be fine. Of course, you will also accept an 18 percent limit, because that is the rule in West Virginia.

MR. DARLING: Any further questions?

MR. WINSLOW: No. I am going to have Tim Dent -- is he still here? Tim Dent has left.

Then we have Rod Berry.

MR. DARLING: While Mr. Berry is coming to the podium, Mr. Sharp has submitted for the record additional information which he mentioned during his original testimony.

I might also take this opportunity to point out that while this is a public forum for public hearings that personal attacks or veiled

personal attacks are highly improper and to the extent that any others are forthcoming, don't expect it to pass without a comment or appropriate action.

MR. BERRY: Thank you. I had no intention of making any personal attacks.

My name is Rod Berry. I am a former legislator and former member of the House of Delegates. I am a small town attorney. I practice in Moundsville. I also represent the Rental Dealers Association.

I had a prepared statement, but I think that at this point in time prepared statements are probably nothing more than repetition, but I do have some comments.

Mr. Sharp gave me a rental purchase agreement, a sample. I practice small town law. I do a lot of bankruptcy work. I see a lot of retail agreements. I don't see too many rental agreements, but if you really want to talk about disclosure, this is truly disclosure, and I challenge anybody in this room to tell me what they are paying for a $350 TV on 18 percent APR.

Do it without a calculator or a computer and it is not going to work. Under this agreement you will know exactly -- exactly what you are paying for that $350 TV if you take it to term. I don't know what better disclosure there is than this type of agreement.

If you want to do something for consumers in the state, if the Attorney General actually wants to make consumers aware of what they are paying, forget APR. It is a fallacy, because nobody understands it anyway. Make the retail dealers actually show what the total payments are and how much it is going to cost. That is full disclosure.

What you are suggesting with this -- what you are trying to make these folks do is show APR in a contract that doesn't have any debt. It is a fallacy, and we all know that. There is no question about it. Whether they are charging 130 percent or 350 percent, as you in the Charleston Gazette may interpret, it is a fallacy. It just doesn't happen.

The Charleston Gazette today said something about these rent to own trucks being seen in the Orchard Manor area of Charleston. These are the type of people that the rent to own industry may or may not actually fit into, but where are these people going to go?

You are saying today that well, if the transaction is more than $1000, we are going to let them charge any interest rate that they decide to charge, notwithstanding the fact that it is not actually an interest rate. Then out of the other side of the AG's mouth it seems to be saying well, we are going to protect the usury law of the state by putting an 18 percent cap on transactions that are $1000 or less.

It is inconsistent, and to me it makes no sense. What you are saying is my poor Aunt Bessy, who may have a terrible credit record, wants to go and buy a TV from an RTO dealer and say that TV is used and it is worth $150. Now, she can't go to Montgomery Ward and buy that same TV because of her credit record, and she can't go to Circuit City

and buy that same TV again because of her credit record.

So what you are saying is well, RTO industry, if you want to do business with this woman, you are going to have to charge her no more than 18 percent under that particular contract, or if you want to, let's just kind of jack up the price of that TV to cover all those interest charges that you would otherwise charge, and that is not right.

That is not right for the industry, and it is certainly not right for my poor old Aunt Bessy. It is not fair. Now, Aunt Bessy wouldn't have a down payment. If she goes to Montgomery Ward, she is going to need one. If she goes to RTO industry as it is now, she doesn't need one.

She can't afford delivery charges, and if she goes to the RTO industry, she doesn't need one. She doesn't have to pay for those delivery charges. She can't afford an extended warranty, and if she goes to the RTO industry, she doesn't have to worry about an extended warranty, because that is covered under their agreement.

Again, have these retailers come to you and say whether they can operate under those same kind of circumstances, and they can't. What you are effectively doing by these rules on transactions of $1000 or less is just cutting out a large portion of our population who is not going to be able to avail themselves to those things that they would otherwise be able to have under the situation that now exists.

You are just going to eliminate a good tax paying industry in this state. You say it is not going to have any effect, and you say these people are going to spend the same money elsewhere. Well, perhaps that is so. So they are saving $15 a week and they go to the grocery store. Those grocery stores aren't going to hire those people that are laid off by the RTO industry, because they won't have to. They have enough people to take care of that extra $15 a week and any other industry they have. They are going to have those same people.

You are putting four or five hundred people out of work. You are going to lose those

payroll taxes. It is just inconceivable to me that the Attorney General's Office is going to get involved in this.

With all the telephone scams that are going on, all the dishonest and unlicensed car dealers that are operating in the state, the over sold cemetery lots -- my God! -- and the Consumer Protection Division of the AG's office is going to get involved in a system that is working, a system that you really don't have any complaints about, a system that may or may not be already regulated by the Consumer Protection Act.

As an ex-legislator, I wonder why you are doing that. I was involved -- when I came in the legislature in 1987 and '88 -- and there has been 134 legislators dealing with this for six years. They have had numerous public hearings. They studied the issues at depth. They have debated this openly, and eight weeks prior to an election the AG wants to usurp the legislature's authority.

If successful, what is it going to take on next? Are you-all going to take on

abortion, right to work, capital punishment? What are you going to legislate next? This issue belongs in the legislature. Let the legislature do its work. It has tried. Because of various problems it has not done it yet, but it will, and that is where this actually belongs.

As an attorney I think that you are overstepping the bounds of the office under the constitution, and I think this is a very bad policy decision on the part of the Attorney General. Thank you.

MR. WINSLOW: Thank you, Mr. Berry. Next we have a Steven Thomas from New Rents, Incorporated to speak.

MR. THOMAS: I am going to try to be the most brief of all, because really this has been covered over and over and over. I agree with a lot of what Mr. Berry has just said. I think that whether this action is appropriate particularly now is something that the Attorney General should consider based on the fact that we are going to have a new Attorney General in the next four months.

There is a very real possibility that that Attorney General may have his own ideas about whether or not these types of transactions ought to be subject to these interpretive rules. I believe you set up a potentially embarrassing situation if in fact the new Attorney General does not agree with the interpretation that is being given now.

From the standpoint of the rent to own industry, I think the points have been established that -- and they are of course subject to debate, and I don't want to get into another debate with you about whether or not this is really in the best interest of consumers.

You point to the example of Pennsylvania. I think the example of Pennsylvania would show that people that are entering rent transactions on a straight rent basis are actually paying more than what are being paid in rent to own transactions. So I will leave that to your wisdom as to whether or not that sort of thing is in the best interest of consumers.

From the standpoint of being a lawyer, I would urge you either to withdraw this or don't change a word, because as it is drafted right now I think it is a wonderful thing for us lawyers.

What you have done, you have got two and-a-half pages that deals with a -- and you can debate whether or not it is an industry or not -- but it is a specially segmented part of the market, and I think it is somewhat shortsighted to expect that in two and-a-half pages that you can adequately address all of the nuances such as the fact that the rent to own industry offers to service the merchandise that it rents, such as the fact that it pays taxes on the merchandise it rents, that it will give you a free loan on the merchandise that you are renting. None of these things are set out in these interpretive rules.

For that reason I don't think your interpretive rules are going to stand the test of a court decision when you couple onto that the legislative history that Mr. Korst cited to you. So from my standpoint again, I would urge you either to

withdraw the rules or don't change a word. Thank you.

MR. DARLING: Mr. Thomas, I'm sorry. You are here representing who?

MR. THOMAS: New Rents.

MR. DARLING: But you are an attorney?

MR. THOMAS: That is right.

MR. DARLING: What firm are you with?

MR. THOMAS: Kay, Casto, Chaney, Love & Wise.

MR. DARLING: Thank you very much.

MR. THOMAS: You are welcome.

MR. WINSLOW: I thought people wanted regulations that were short and to the point.

Does anyone else have any comments? No one else has marked that they wish to speak. Does anyone want to change their mind and now wish to speak?

If not, I'd like to thank everyone for coming, and I will certainly be talking with Mr.

Sharp and the association.

MR. SHARP: Just let me know when you want me to come back.

MR. WINSLOW: Okay, will do.

MR. SHARP: Thank you.

(WHEREUPON, the hearing was concluded at 3:43 p.m.)

BEFORE THE WEST VIRGINIA ATTORNEY GENERAL'S OFFICE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

I, David W. Sisson, a Court Reporter and Notary Public within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned hearing as set forth in the caption hereof.

Given under my hand this 18th day of September, 1992.



Court Reporter
Notary Public

My Commission expires June 28, 1999.

PUBLIC HEARING

OFFICE OF THE ATTORNEY GENERAL

SUBJECT: Proposed Interpretive Rule - Treatment of RTO Transactions as Consumer Leases or Consumer Credit Sales (Series 14)
DATE AND TIME: September 9, 1992 - 1 p.m.

NAME:	REPRESENTING:	PRO OR CON	CHECK IF MAKING STATEMENT:
David B McMahon	Wv Legal Services Plan	Pro	✓
Roger Sharp	W.V. Rental Dealers	Con	✓
Jim Simmons	Wv State Medical Assn		
Don Magee Jr.	RTO Rents	Con	
Ken Schamp	ALRENCO	CON	
Tonya Kirby	ALRENCO	CON	
Dave Jones	Alrenco	Con	
Chris Kurst	W.Va. Rental Dealers	CON	✓
E. Dennis	"	CON	
Jim Upchurch	Colortyme	CON	
Larry J. Lee	Rent-A-Center	Con	
Clark Taylor	Star Rentals	CON	
Terry Musick	National TV	Con	
Kevin M. Sarlock	Appalachian Rental	Con	

PUBLIC HEARING

OFFICE OF THE ATTORNEY GENERAL

SUBJECT: Proposed Interpretive Rule - Treatment of RTO Transactions as Consumer Leases or Consumer Credit Sales (Series 14)
DATE AND TIME: September 9, 1992 - 1 p.m.

NAME:	REPRESENTING:	PRO OR CON	CHECK IF MAKING STATEMENT:
JOHN HODGES	WV RENTAL DEALERS	CON	
Rod Berry	"	"	X
[illegible]	COUNCIL OF SENIOR WEST VIRGINIANS	P	[illegible]
STEVEN L. THOMAS	NEW TENTS	CON	✓

PUBLIC HEARING

OFFICE OF THE ATTORNEY GENERAL

SUBJECT: Proposed Legislative Rule - Consumer Lease Disclosures in RTO Transactions (Series 15)

DATE AND TIME: September 9, 1992 - 1 p.m.

NAME:	REPRESENTING:	PRO OR CON	CHECK IF MAKING STATEMENT:
David B. McMahon	W. Va. Legal Servs. Plan	pro	✓
Roger Sharp	W.V. Rental Dealers	CON	✓
[illegible]	[illegible]		
[illegible]	RTO Rents	CON	
Ken Schmidt	ALRENCO	CON	
Tonya Kirby	ALRENCO	CON	
Dave Jones	Alrenco	Con	
Chris Forest	W Va. Rental Dealers	Con	✓
E. DeMoss		Con	
CLARK TAYLOR	STAR Rentals	CON	
Jim Upchurch	COLORTYME	CON	
Craig J. Lee	Rent-A-Center	Con	
Terry Musick	National TV	CON	
Kevin M Sparlock	Appalachian Rental	Con	

PUBLIC HEARING

OFFICE OF THE ATTORNEY GENERAL

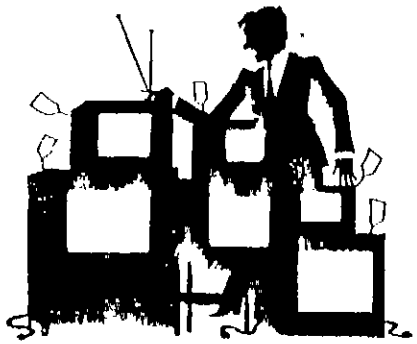
SUBJECT: Proposed Legislative Rule - Consumer Lease Disclosures in RTO Transactions (Series 15)

DATE AND TIME: September 9, 1992 - 1 p.m.

NAME:	REPRESENTING:	PRO OR CON	CHECK IF MAKING STATEMENT:
[illegible]	COUNCIL OF SENIOR WEST VIRGINIANS	P	✓
JOHN HODGES	UUV RENTAL DEALERS	CON	
Rod Berry	"	"	X
Dorothy M. Guest	AARP	Pro	
Steven L. Thomas	New Rents Inc	Con	✓

I N D E X

	TAB NO.
MATERIALS SUBMITED BY TIMOTHY WINSLOW, SENIOR ASSISTANT ATTORNEY GENERAL.	A
COMMENTS AND MATERIALS SUBMITTED BY GORBY'S MUSIC, INC.	B
COMMENTS SUBMITTED BY AT&T	C
COMMENTS SUBMITTED BY WV BANKERS ASSOCIATION	D
COMMENTS AND MATERIALS BY ROGER SHARP, WV RENTAL DEALERS ASSOCIATION.	E
COMMENTS AND MATERIALS SUBMITTED BY DAVID McMAHON, WV LEGAL SERVICES	F
COMMENTS SUBMITTED BY RICHARD FULLER, ESQUIRE MANSFIELD & TANICK	G
MATERIALS SUBMITTED BY ROBERT HOBBS, NATIONAL CONSUMER LAW CENTER	H



The Rent-To-Own Industry: Of Consuming Interest in North Carolina

by Anne Jackson

For most businesses, North Carolina law regulates interest rates and finance charges on furniture and appliance purchases. But for dealers in the state's growing rent-to-own industry, the sky may be the limit. While other businesses are limited to charging 24 percent on retail sales, these businesses often charge consumers what amounts to more than 100 percent—and sometimes more than 200 percent—on rent-to-purchase agreements. Are these charges fair, or should they be limited? What action, if any, should the 1988 General Assembly take when it convenes in Raleigh in June?

Jeanne Fenner didn't know much about the rent-to-own industry before 1982, when her housekeeper's sister asked her to look over a contract for a rent-to-own clothes washer. Fenner, then a Democratic state representative from Wilson, was dismayed to see that the contract called for 78 weekly payments of $14—a total purchase price of $1,092 for an appliance that would sell for about $350 at retail prices.

"She really didn't know rent-to-own from buying something on time," Fenner says now about the woman. Because she was living on what Fenner describes as "a very small disability check," the woman had liked the contract terms: no down payment and no credit check. But what she did not realize was that, like all rent-to-own agreements, she would own no equity in the appliance until the final payment was made. Neither did she know the actual cash price of the washer. Fenner says the rent-to-own dealer had refused to tell the purchaser.

Anne Jackson is a Raleigh writer who has covered the N.C. General Assembly for The New York Times *regional newspapers.*

Across North Carolina, scores of other consumers tell the same story—that they didn't know what they were getting, or what they weren't getting, for their money. The estimated 250 rent-to-own outlets in North Carolina—with names like Colortyme, Rent-A-Center and Remco—offer a variety of electronic equipment, furniture, and appliances. Old-line rental dealers—such as furniture rental companies which do not offer their items on a rent-to-own basis—have begun to describe themselves as strictly rental dealers, so they won't be confused with the rent-to-own industry.

But as the industry has grown in size and profitability, so has the controversy surrounding its practices. In 1984, the Attorney General's office obtained a $20,000 fine from Remco for mailing threatening notices to customers whose payments were overdue. (The industry blames the incident on a mistake by a secretary for a lawyer who was handling Remco's past-due accounts.) The mailgrams warned of felony prosecution unless Remco received "the cash market value of its merchandise within seventy-two hours." Other consumers have come home to find their homes entered and their appliances repossessed by dealers, while others complain of being harassed in their workplace and elsewhere.

Such hardball practices have stimulated a growing number of complaints over the past few years, and Fenner introduced the first proposal for regulating rent-to-own charges during the 1983 General Assembly session. Although unsuccessful, her effort began an on-again, off-again legislative debate that has spanned five years. When state lawmakers return to Raleigh this year, the thorny issue of rent-to-own regulation will be waiting for them once more.

> *"The Attorney General's office examined 342 contracts executed by one rent-to-own company in 1986. Fifty-one percent of the goods were used. Generally there was no difference between the stated cash price of the used goods and new goods, contrary to a representation made by the industry . . . ."*
>
> —Lacy Thornburg
> Attorney General

The Attorney General Intervenes

Last year, advocates of regulation won an influential ally in N.C. Attorney General Lacy Thornburg. Thornburg blasted rent-to-own agreements as a "cruel hoax" on "the poorest of our citizens." A study by his office's Consumer Protection Section determined that some rent-to-own contracts charged as much as 350 percent in "effective annual percentage rates" and that only about 22 percent of the contracts culminated in sales—a percentage confirmed by the industry. In other words, fewer than one in four consumers who enter into a rent-to-own contract actually wind up owning the merchandise. For the vast majority of rent-to-own consumers, the furniture, television, or washing machine goes back to the rent-to-own dealer—there to be rented again to another consumer.

Thornburg also said in a series of memoranda to the legislature that rent-to-own consumers often *aren't getting new merchandise.* As often as not, *it's used goods.* "The Attorney General's office examined 342 contracts executed by one rent-to-own company in 1986," Thornburg says. "Fifty-one percent of the goods were *used.* Generally there was no difference between the stated cash price of the used goods and new goods, contrary to a representation made by the industry . . . ."[1]

There's nothing wrong with offering used goods for sale, says Lawrence Davis, an attorney for Rent-A-Center. "So what [if it's used]," says Davis. "They tell 'em it's used." And under legislation the industry has backed in other states, he says, dealers would be compelled to say whether an item is used.

Thornburg last year urged the Senate Judiciary I Committee to support a House-passed bill that "closes a loophole through which a relatively small but growing number of companies are able to charge the least fortunate of our citizens, not 18 percent (the maximum credit card rate); not 24 percent (the maximum installment rate); not 36 percent (the maximum small loan rate); but 250 percent per year or more in finance charges when they are trying to buy washing machines, furniture, televisions, and other goods."[2]

Davis says that without rent-to-own businesses, poor people with bad credit ratings would have to do without televisions, videocassette recorders, basic appliances like refrigerators, and even such items as rental tires. Rent-to-own businesses, he notes, provide these items at relatively low individual payments so poor people can afford them.

In an interview, Edward L. Winn III, gen-

eral counsel for the Texas-based Association for Progressive Rental Organizations (APRO), criticized efforts to regulate rent-to-own charges. Winn characterized those attempts as price-fixing by "lunatic legal aid lawyers" and "radical consumer activists." Winn contends that legislation offered by consumer representatives would limit the prices that could be charged both for the items themselves and for what the industry argues are rental charges rather than interest—thus "fixing" the price.

"We are providing [people at] a certain economic level nicer things than they could have otherwise," Winn says. Current regulatory proposals, he warns, would drive rent-to-own dealers in North Carolina out of business, penalizing "the poor folks who don't get to watch TV and don't get air conditioners and don't have furniture."

The Prospect for Legislative Action

The starting point for legislative deliberations in 1988 will be a 12-page bill hammered out by a three-member Senate subcommittee after two months of debate and sometimes raucous hearings during the 1987 session.[3] That proposal would allow rent-to-own dealers to charge rates that would yield effective interest rates as high as 48 percent (on 18-month contracts), require dealers to apply 70 percent of every payment to the purchase price, and allow for reinstatement of a contract after a missed payment.

The Senate bill was drafted as a compromise after the House, by a vote of 92-1, passed a bill to treat rent-to-own agreements like retail sales. That bill would have limited allowable charges to the 24 percent interest rate that state law allows retailers to charge for installment purchases.[4]

Neither the House nor Senate bill is acceptable, industry lobbyists say. "We're going to have to go in there [to the legislature] and duke it out again, I reckon," Winn said. "It's a survival issue—make no mistake."

Key observers on both sides of the issue predict that if a bill comes out of the 1988 legislative session, it probably will be fashioned after a New York law that requires half of each payment—rather than the 70 percent in the Senate Committee Substitute—to go toward the purchase price. Under North Carolina law, that would allow rent-to-own dealers to charge as much as 103 percent per year in effective interest rates—more than *four times* the maximum installment payment rate now allowed on retail purchases (see Tables 1 and 2). That would not be much of an improvement, consumer advocates say.

"That would cut out the very worst, but that probably would not change the average of what is being done now," says James C. Gulick, the special deputy attorney general who heads the state's Consumer Protection Section.

Is the 50 percent, New York-style formula one the industry could live with? "Experience [in New York] would tell that we probably could. But I don't know," says Colortyme General Counsel W. Woodward "Woody" Webb of Raleigh.

Table 1. Effective Annual Interest Rates of Rent-To-Own Contracts Depending on Amount Applied to Equity and Length of Contract

Length of Contract	Percentage of Payment Applied to Equity						
	45%	50%*	60%	70%**	75%	80%	85%
	Interest Rates						
24 months:	92.38%	77.88%	54.81%	36.90%	29.29%	22.40%	16.35%
18 months:	122.33%	103.07%	72.42%	48.67%	38.65%	29.56%	21.22%
12 months:	181.06%	152.35%	106.72%	71.58%	56.73%	43.36%	31.14%
6 months:	348.01%	291.50%	202.61%	135.03%	106.74%	81.32%	58.20%

Note: Annual percentage rates for weekly, biweekly or semi-monthly agreements are slightly higher than those for equivalent monthly terms.

* As so-called "New York" proposal would allow

** As Senate Committee Substitute for HB 1108 would allow

Source: N.C. Legal Services Resource Center

> *"To compare rent-to-own dealers with retail merchants is just not fair. It's not comparable in any way."*
>
> —Lawrence Davis
> Attorney for Rent -A-Center

Consumer representatives says the industry is misleading the General Assembly, and that it could actually live with the Senate Committee Substitute, which requires that 70 percent of payments be applied to the purchase price. Both Gulick and Margot Roten of the N.C. Legal Services Resource Center point out that the industry last year cited a contract offered by a Raleigh rental dealer—Ted's TV—as typical of the industry. In that case, the industry said, Ted's TV offered rent-to-own contracts for appliances at about the same cost as a local furniture store did on retail sales contracts. Both Roten and Gulick say the Ted's TV contract applied the equivalent of 79 percent of the consumer's payments to equity—more than either the New York bill or the Senate Subcommittee substitute would require. "Obviously, they can live with even more than 70 percent," notes Gulick.

The experience of other states with new rent-to-own laws is still being judged. In New York, consumer representatives say they are studying the results. In Michigan, where the state requires that 45 percent of each payment be applied to owner's equity in the merchandise, Assistant Attorney General Fred Hoffecker says there are "very few complaints anymore." Hoffecker says Michigan's law, which took effect in 1985, also requires complete disclosure of terms and costs, ensuring that consumers realize "that it's a costly way to purchase something." Prior to adoption of the law, says Hoffecker, "We were seeing complaints on a regular basis, but now it's almost disappeared.

North Carolina Interest Rate Regulation

At the heart of the dispute between the rent-to-own industry and consumer activists is this question: Is a rent-to-own contract *just* a rental contract with an option to buy, as the industry maintains, or is it a sales contract with regular payments that accomplish the same thing as a sales contract with interest provisions, as consumer representatives contend?

Consumer protection specialists maintain that rent-to-own contracts perform the same function as loan contracts—they require regular payments by a consumer to purchase an item, the item winds up costing more than it would if it were bought on a cash basis, and the difference between the cash price and the ultimate cost when the contract is completed amounts to finance charges that are not really different from interest on principal. They point out that North Carolina has a structured interest-rate regulation system that limits other businesses in what they can charge (see Table 2), and that to be fair to all parties, rent-to-own dealers also should be regulated—to create what the N.C. Retail Merchants Association, a supporter of regulating the industry, describes as a "level playing field."

Under current state law, banks and businesses with revolving charge accounts can charge consumers no more than 18 percent in annual interest rates. Retail merchants who sell furniture, appliances, and other items are limited to charging 24 percent interest—a higher rate than banks, because their cost of money is higher. And small loan companies can charge consumers up to 36 percent—a higher rate than retail merchants—because small loan companies operate on a smaller profit margin and take higher risks in offering loans to consumers with risky credit records. Consumer specialists like Roten say the rent-to-own industry could probably survive if it were treated like finance companies and limited to 36 percent, but she notes that the rent-to-own industry does have some higher costs—and says that an effective interest cap of 48 percent might be appropriate. That's what the Senate Subcommittee substitute would allow.

But rent-to-own dealers reject any contention that they are lending money, or that they should be restricted in what they charge. "To compare rent-to-own dealers with retail merchants is just not fair," says Davis. "It's not comparable in any way. Unlike retail merchants' installment sales customers or small loan customers who could unwittingly sign up for excessive future obligations, the rent-to-own dealers' customers do not sign up for any future obligation except to return the merchandise at the end of the rental period of a week or a month for which payment has already been paid. There is no extension of credit and no loan is involved in any way. The



Table 2. Regulated Interest Rates for Other Types of Transactions

Type of Loan	Current Maximum Interest Rate	Statutory Citation
Credit Card Transactions	18 %	G.S. 24-11 and G.S. 25A
Retail Installment Sales	24 %	G.S. 25A
Small Loans	36 %	G.S. 53, Article 15
Rent-To-Own Contracts	No Limit	None
[Proposed Senate Subcommittee Substitute]	[48.67%]	[SCS for HB 1108]

customer is not required to make a long-term commitment which could be beyond the customer's means. The transaction is like a cash sale because payment is up front and is not truly comparable to an installment retail sale or loan, which would carry future payment obligations. The future ownership option does not substantially change this fact," Davis adds.

In a strongly worded memo to the Senate Subcommittee last year, industry attorney Samuel Choate said it was apparent that Attorney General Thornburg did not understand the rent-to-own industry.[5] Choate explained the industry's view that without debt, there can be no creditor-debtor relationship requiring interest. Because rent-to-own contracts can be interrupted at any time by the consumer, without further financial obligations by the consumer, rent-to-own contracts cannot be regarded as either sales or as loan contracts. Rent-to-own customers, he points out, "are given *an option* to own but *no obligation*."

Adds Choate, "It was disappointing . . . to discover that the Attorney General of North Carolina could not recognize the difference between a debt and a lease with an option to renew. It was equally as disappointing to see the Attorney General take the position that an item so uniquely a creature of debt as interest could be discussed in the context of a lease with no obligation."

Industry lawyers say dealers must charge higher prices on their goods than other retail businesses because their costs are higher—as much as 56 percent higher, the industry claims. And it says the reason so few consumers wind up owning merchandise is that many of them have no intention of owning—only 55 percent of rent-to-own customers plan eventually to own what they rent. Many consumers decide they cannot afford the item, decide they no longer need it, decide to switch to another item, or decide they only need it for a short period, says Choate.

The Fenner Treatment

Jeanne Fenner's 1983 bill would have treated rent-to-own contracts like retail sales, subject to the 24 percent interest cap. Like the similar bill that would come four years later in the 1987 session, it passed the House easily before running into trouble in the Senate. What emerged in 1983 was a law that merely encouraged dealers to disclose the cash price of rent-to-own merchandise and exempted most rent-to-own contracts from the retail installment sales act.[6] Rent-to-own contracts that required a final balloon payment of more than 10 percent of the item's cash price would not be regulated. The Senate "was pressured into adding that little loophole," says Roten.

Fenner's efforts only won her a place on the industry's political hit list.[7] The Wilson County Democrat lost her re-election bid in 1985 (in a special election mandated by a controversial redistricting plan) to Republican Larry Etheridge after political action committees funded by rent-to-own dealers from as far away as Texas poured more than $6,000 into Etheridge's campaign. That's an unusually large amount from one industry, especially in a

> *"A lot of people feel like it's a rip-off, and government has a place in regulating situations like that"*
>
> —Rep. Joe Hackney (D-Orange)

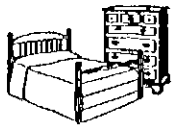
Table 3. State Regulation of Rent-To-Own Transactions

State	No Regulation	Rent-to-Own Transactions Exempt From Retail Sales Regulations	Rent-To-Own Transactions Subject to Retail Sales Laws	Requires That a Certain Percentage of Payment Be Applied to Equity	Requires Disclosure of Charges
Alabama					X
Alaska	X				
Arizona	X				
Arkansas					X
California	X				
Colorado	X				
Connecticut	X				
Delaware	X				
Florida	X*				
Georgia					X
Hawaii	X				
Idaho	X				
Illinois	X				
Indiana					X
Iowa					X
Kansas	X				
Kentucky	X				
Louisiana	X				
Maine		X			
Maryland	X				
Massachusetts					X
Michigan				X (45% to equity)	X
Minnesota		X			
Mississippi	X				
Missouri					X
Montana	X				
Nebraska	X				
Nevada	X				
New Hampshire	X				
New Jersey	X				
New Mexico	X				
New York				X (50% to equity)	X
North Carolina		X			
North Dakota	X				
Ohio	X*			X (50% to equity)	
Oklahoma	X				
Oregon	X				
Pennsylvania			X (18% rate cap)		
Rhode Island	X				
South Carolina					X
South Dakota	X				
Tennessee					X
Texas					X
Utah	X				
Vermont	X				
Virginia					X
Washington	X				
West Virginia	X				
Wisconsin		X			
Wyoming	X				
Totals:	32	4	1	3	13

* Disclosure legislation pending in current legislature.
Source: N.C. Attorney General's Office and Association of Progressive Rental Organizations

modest-sized county like Wilson. The same thing occurred in 1986, when Fenner ran for an N.C. Senate seat. Her opponent got $15,000 from rent-to-own industry officials in the 1986 race. "I think it certainly had its impact," she says. "You take away $15,000 from any campaign—it pays for telephone banks, it pays for a lot."

Etheridge spent $12,000 in his 1985 upset campaign, while Fenner spent about $2,000 in the general election and $5,700 to win an earlier four-way Democratic primary. The average winner in 1984 House races spent about $5,000.

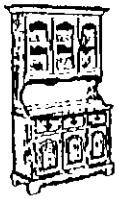


The APRO's Winn had a role in the 1985 election. Winn told *The Charlotte Observer* in 1985 that he "sent out a memo to North Carolina dealers saying, 'Jeannie Fenner's up for re-election. She's the one who tried to run you out of business.'" Contributions from across the state and the country poured into Etheridge's campaign, and when the dust settled, Fenner was out and Etheridge was in.

The rent-to-own issue slumbered through the 1985-86 General Assembly session, but awoke with a roar in 1987. Rep. Joe Hackney (D-Orange), with the backing of the Attorney General's office and the N.C. Legal Services Resource Center, introduced the bill that created the 1987 debate. Hackney's bill passed the House before industry lobbyists could marshal their forces against it. (In fact, hardly anyone was against the bill, including Etheridge. When the House voted 92-1 to pass the rent-to-own legislation, the new state representative from Wilson County did not vote. He was not on the floor at the time. Etheridge missed that and other votes because he was ill with pneumonia at the time.)

"I frankly thought on an issue like that, the more quickly it moved the better off we were," Hackney says. While the industry describes his bill as price fixing—it would limit the amount dealers could charge on transactions—Hackney points out that many consumers don't think such contracts are fair. "A lot of people feel like it's a rip-off, and government has a place in regulating situations like that," Hackney says.

By the time Hackney's bill got to the Senate, industry representatives were prepared. Winn flew in from Texas, Choate came from Washington, D.C., and former Speaker of the House Phil Godwin was summoned from Gatesville. The industry also signed on Davis, a former legislator and candidate for the U.S. Senate, and former N.C. Attorney General and 1984 gubernatorial candidate Rufus Edmisten, who once championed consumer protection legislation. At several meetings, the crowd of industry lobbyists and rent-to-own dealers spilled out of the committee room and into a hallway.



Sen. Charles Hipps (D-Haywood), the Judiciary I subcommittee chairman, recalls that at most meetings, lobbyists were "stacked up like cord wood," and he once quipped that the committee meeting would have to be moved "to the Dean Dome"—the 22,441-seat Smith Arena in Chapel Hill.

Choate proved himself to be a fierce opponent of the rent-to-own bill—even interjecting himself into the news gathering process. Once two reporters were interviewing Hipps after a committee meeting, and one scribe asked how much of a weekly payment might be applied to ownership. "That's not a fair question. He hasn't taken evidence on that in a subcommittee," interrupted Choate. Says Hipps, a lawyer himself, "I thought to myself, 'This isn't court. What is this nonsense?' That sort of ended most of our goodwill and rapport."

Davis says Choate later apologized to Hipps, but the damage was done. Legislators continue to grumble about "hired gun" lobbyists the industry

How Can a 25-Inch TV Cost $1100?

On Feb. 21, 1986, Ms. Lynda D.* decided to buy a television. She called Lion TV, a rent-to-own dealer, and asked them about the prices for various models. After some discussion, she agreed to purchase a 25-inch TV at a cost of $60 a month. The Lion TV salesperson said that the TV would be delivered to her home that afternoon for her inspection and that if she liked it she would be requested to sign certain documents. The television was delivered, Ms. D. signed the attached rental agreement, and paid Lion TV $60.

The agreement provided that payments could be made weekly, biweekly, or monthly. To purchase this television valued at $604.80, payments of $60 were required to be made for 17 months, plus an additional payment of $66.53 (for a total of $1,086.53). The *annual percentage rate* on this contract was in excess of *80 percent.*

Ms. D made irregular payments, sometimes weekly, biweekly, or monthly, all of which were accepted by Lion TV. Her last payment was made Dec. 20, 1986. She had paid a total of $561.

Although Lion TV had her home address and telephone number, and despite her request not to be contacted at work, on two occasions in late November 1986 a Lion TV employee confronted Ms. D. at her workplace and complained about her missed payments. She made two payments in December, which were accepted.

On Jan. 3, 1987, a Lion's employee swore out a criminal warrant against Ms. D. for failure to return rental property. The case was dismissed because no demand had been made to return the property. Immediately after the dismissal, a notice demanding the return of the property was left on Ms. D.'s front door, in plain view of all passersby. After an attorney intervened on Ms. D.'s behalf, the case was settled.

—Margot Roten
N.C. Legal Services Resource Center
Testimony supplied to Senate Judiciary I subcommittee on HB 1108 in 1987

* The consumer's name has been abbreviated for this article at her attorney's request.

What More Does a Free Enterprise System Require?

As the attorney for Lion TV in the matter of Lynda D., I state for the purpose of correcting the record developed by the N.C. Legal Services Resource Center (which was not, incidentally, even involved in the case) that the documents in the file show that:

- Ms. D. signed the rental agreement on Feb. 21, 1986, not in one place but in two places, attesting that she had read and understood the agreement and, in particular, the ownership option provision.
- The agreement clearly revealed that the 25-inch Quasar television set was new and had a cash value of $604.80.
- The agreement also clearly disclosed that Ms. D. would have to pay $60 per month for 17 months and one additional payment of $66.53 in order to own the set (i.e. to stop renting and acquire outright ownership). These terms were set out not once but twice in the agreement and specifically signed off on by Ms. D. At the time Ms. D. signed the agreement she was employed by Sears in "Ladies Security."
- The agreement clearly provided that rental payments were due on or before the last day of the previous rental period.

According to the store files, Ms. D. made exactly one payment on time (her first payment due on Feb. 21, 1986) in over nine months. A demand letter was finally sent on Nov. 16, 1986, requesting that the set be returned within five days for failure to make timely rental payments. As a matter of practice, if Ms. D. had brought her account current and agreed to pay her rent on time in the future, no further action would have been taken. Because Ms. D. did not return the television set or bring her account current, a warrant was applied for and issued on Jan. 3, 1987, by a Wake County magistrate.

The matter was ultimately settled when Ms. D. voluntarily paid Lion TV a sum certain to buy the set. The documents and store files referred to herein are available for inspection and verification by anyone at any time.

—W. Woodard Webb
Legal Counsel, Lion TV

brought in from out of state to fight the bill. And several legislators also have pointed out that, as of May 4, 1988, neither Winn nor Choate had registered to lobby with the legislature, according to the N.C. Secretary of State's office.[8]

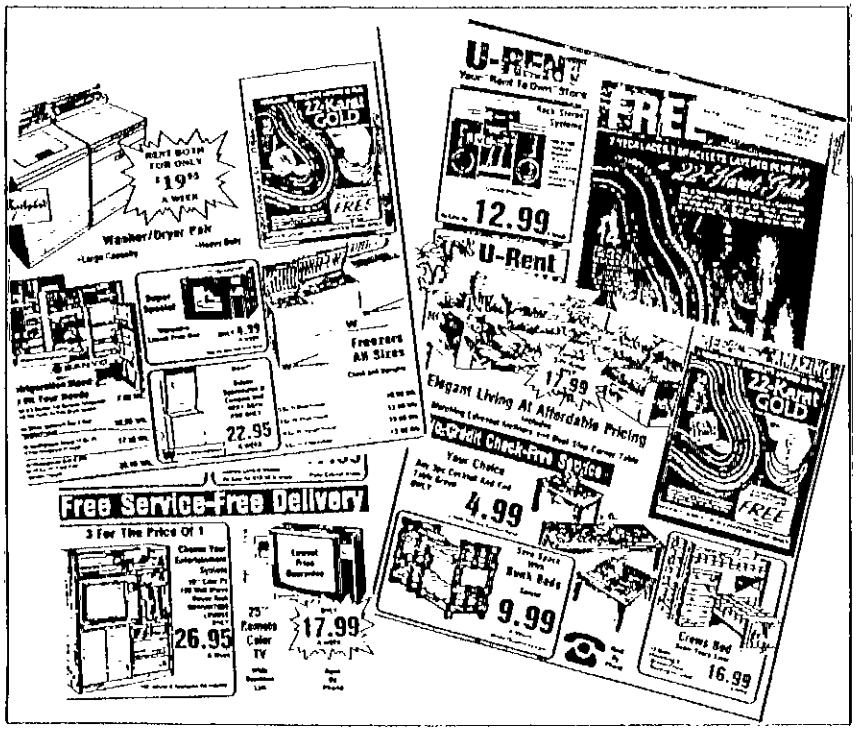
Rent-to-own dealers fought the bill by arguing that their profit margins are already slim because they provide service on rental items, and because they take a risk on low-income consumers that other merchants and lenders will not take. Choate told the legislators that under the Hackney bill, on an appliance with a retail price of $200, the industry could charge only $285 in fees over an 18-month lease—a margin of only $4.72 per month for the dealer. But committee members weren't impressed, pointing out that such an appliance with a "retail price" of $200 would have cost the dealer *far less* at wholesale prices—and would allow the dealer to make much more money on the transaction.

Hipps' subcommittee examined laws from other states and spent an estimated "50 or 60 hours," he says, in meetings and discussions with individual lobbyists. Hipps had asked the subcommittee staff to come up with what they believed was the toughest law in the nation. What the staff came back with was the New York law—requiring 50 percent of payments to equity, and allowing 103 percent interest rates on an 18-month contract. Hipps' subcommittee then beefed up that law to arrive at the 70-percent-to-equity formula, allowing an equivalent interest rate of 48.67 percent on 18-month contracts.

Hipps was pleased with the bill that emerged. "It was a consumer-oriented bill, but I didn't think it was a death-defying act," he said. "The subcommittee report is probably the toughest [proposed law] in the nation, yet it probably doesn't go far enough."

Barnes Balks

It went too far for some, however. Sen. Henson Barnes (D-Wayne), chairman of the Judiciary I Committee assigned to study the bill, thought the proposal went overboard, and he never called a committee meeting to act on the panel's report. "If they're going to have a bill that's going to wipe out the industry, I don't think we'd be doing North Carolina any good," Barnes says. "There are some folks who would not have furniture if they could not get it by paying for it over a period of time."



Barnes said he would instruct the subcommittee to go back to work in June 1988 and draw up a second compromise. He said he liked the New York law, which he has discussed with members of the Attorney General's staff in that state. "They think they've gone far enough," Barnes said.

While he agrees that the fee on some rent-to-own contracts "shocks our conscience," Barnes warned against over-regulation in a recent edition of *Barnotes*, a newsletter published by the N.C. Bar Association. "No one stops to question the idea that the customer can simply refuse to purchase the overpriced appliances . . .," he wrote. "If we are not careful, we are going to regulate everything from your civil rights to your rent."[9]

Table 4. Advantages and Disadvantages of Rent-To-Own Contracts

Advantages	Disadvantages
Poor consumers with bad credit can buy appliances and other goods they might not otherwise be able to afford.	Consumers are not often told (a) the actual price of the appliance, (b) how much they will have to pay the dealer, or (c) how much those charges would add up to in annual interest rates — as much as 350%.
Payments on rent-to-own contracts are low and can be made weekly, biweekly, or monthly.	Rent-to-own merchandise is often used, not new, and may have been used by more than one rent-to-own consumer in the past.
Dealers take care of delivery of appliances and provide free service when they malfunction.	Few rent-to-own consumers — fewer than one in every four — wind up owning the article they have contracted to buy and made payments for.
Consumers can halt their rental agreement anytime and return the item to the dealer without penalty.	Rent-to-own consumers often must pay a large balloon payment — sometimes nearly as much as they would have paid if they bought the item on a cash basis — at the end of the contract before they "own" the appliance.
	Consumers may be harassed by bill collectors if they miss payments, and may be prosecuted in criminal court for failure to return merchandise.

Industry representatives concur. "If the prospective clients are told up front exactly what they're getting into and they're free to turn around and walk out of the store . . ., why doesn't that satisfy all the requirements of a free enterprise system?" asks Webb, the Colortyme lawyer who also represents about 250 stores that make up the N.C. Association of Rent-to-Own Dealers.

Webb says regulations should be limited to disclosure requirements—not currently required in North Carolina, but which would be mandated under the pending committee substitute—because rent-to-own payments do not constitute interest payments. Since no equity changes hands until the final payment, "there is no debt upon which a finance charge can be fixed," he says. "That's the legal confusion

that seems to throw most people."

Attorney General Thornburg, however, criticizes such contentions. "With one breath the industry claims it offers poor people with poor credit the means to buy goods they could not otherwise afford," he wrote in a memorandum last year to members of Barnes' Senate committee. "With the next the industry denies it is in the business of selling."[10]



Adds Gulick, the consumer protection chief, "The ownership 'carrot,' if you will, is used as a selling come-on, and a great many customers enter into it because they want to buy." Rent-to-own dealers, he said, "sell ownership and yet they turn around and want to make it a rental contract."

The industry embraces another view, however. "We see it as a way to allow consumers to use an item" until the consumer exercises his final-payment option to buy, says Rent-A-Center's Davis.

Thornburg believes that simple disclosure of terms is not enough. The rent-to-own industry has supported such legislation in the past, he says, because those laws usually define rent-to-own sales as special contracts, not as installment loans or installment purchases. That puts rent-to-own businesses in a special category, he says. "Primarily these are disclosure statutes, which do little more than give official sanction to the industry's current practices," Thornburg told the committee in his memo. "I urge you to reject this approach. I do not think it will provide adequate protection to those customers...."

Nationally, four states—Maine, Minnesota, North Carolina, and Wisconsin—treat rent-to-own contracts like retail sales, but exempt them from rate regulation. One state—Pennsylvania—defines rent-to-own contracts as retail sales *and* applies a rate cap of 18 percent. Three other states—Michigan, New York, and Ohio—require that a percentage of every payment be applied to equity. New York and Ohio require that 50 percent be applied to equity, while Michigan requires that 45 percent apply to equity. Thirteen states have passed laws that recognize rent-to-own agreements as special contracts and require certain disclosures, such as the total of payments and the cash price (see Table 3). The toughest rate control law on rent-to-own businesses is Pennsylvania's. That law, which took effect March 1, 1988, was enacted in the closing days of the legislative session and took the industry by surprise. The APRO's Winn said the Pennsylvania law, if it stands, will mean the end of the rent-to-own business in that state. Overhead costs like delivery and free repair make it impossible for dealers to make a profit at such rates, industry spokesmen say.



"We're rent-to-rent dealers now [in Pennsylvania]," Winn said. "Customers no longer have a purchase option. They like to hope they get to own that

Criminal Courts: Chamber of Justice or Collection Agency for Rental Dealers?

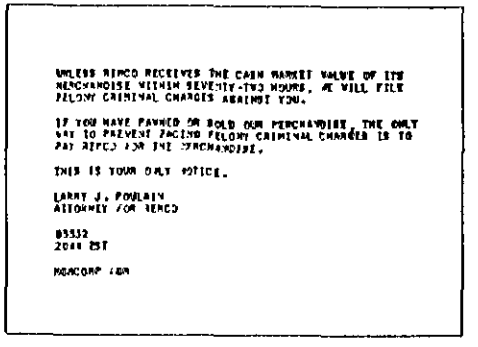
Should North Carolina's criminal courts be used as a collection agency for rent-to-own dealers whose customers are behind on their payments? It depends upon the circumstances, says the N.C. Attorney General's office, which hopes to prevent a deluge of collection cases from overwhelming the court system. The Attorney General has received several complaints from local district attorneys' offices that the courts are being used as collection agencies by rent-to-own dealers. "Our office has had a recent flood of cases charging failure to return hired property," notes James W. Copeland Jr., assistant district attorney in Wayne County.[1]

Copeland and others have complained that rent-to-own dealers are swearing out criminal warrants under G.S. 14-167, a state law that makes it a crime to fail to return rented property.[2] The law was written to protect dealers from customers who, for instance, rent a car and then fail to return it at the end of the rental period. But rent-to-own dealers are seeking criminal warrants against consumers who are late or who cease making payments on a rental contract and who do not immediately return property.

"In essence," says R. Alfred Patrick, assistant district attorney in Wilkes County, "the lessor [rent-to-own dealer] uses the criminal court as a collection agency; this can be quite aggravating since the equities are rarely [present] with the lessor acting as a prosecuting witness."[3]

In response, the Attorney General's office has advised prosecutors that they should wait until the stated end of the rental contract—not just until the consumer stops paying—before prosecuting such cases. "Prosecution under G.S. 14-167... would only be appropriate if the property were not returned after expiration of the lease...," says William P. Hart, an assistant attorney general.[4] Only if the dealer has evidence that the consumer has sold or otherwise disposed of the property should prosecutors pursue a case before the end of the contract.

That advice may relieve the courts of the burden of some rent-to-own cases. James Gulick, director of the Consumer Protection Section in the Attorney General's office, says those cases were running up to 20 a week in at least one judicial district. "We view the use of the criminal process in these cases as a big problem, and some of these companies are using it very widely."



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Meanwhile, legislation is pending in the General Assembly to accomplish much the same goal—permitting prosecution only after the rental contract's full term has expired.[5] Supported by the N.C. Legal Services Resource Center and backed by Rep. Dan Blue (D-Wake) and Sen. Joe Johnson (D-Wake), the legislation—which creates a new provision limiting criminal prosecution of rental contracts with purchase options—is pending in the Senate Judiciary II Committee, where it has a fair chance of passage in the 1988 short session.

Sen. Charles Hipps (D-Haywood), chairman of a Senate subcommittee dealing with other rent-to-own legislation, says rent-to-own dealers should pursue recovery cases in civil court, just as other businesses do, and not in the criminal courts. "We don't need to have collections in criminal court," says Hipps. "These merchants [rent-to-own dealers] are the ones who let this stuff out on contract, and their remedy should be in civil court, not criminal court."

FOOTNOTES

[1] Letter from James W. Copeland Jr., assistant district attorney, Eighth Prosecutorial District, to James Coman, Special Prosecution Division, Attorney General's Office, Feb. 18, 1988.

[2] G.S. 14-167 (Chapter 61, 1927 Session Laws, and amended in Chapter 1063, 1965 Session Laws, and Chapter 1224, 1969 Session Laws).

[3] Letter from R. Alfred Patrick, assistant district attorney, Twenty-third Prosecutorial District, to Lacy H. Thornburg, attorney general, Oct. 1, 1987.

[4] Letter from William P. Hart, assistant attorney general, for Lacy H. Thornburg, attorney general, to R. Alfred Patrick, assistant district attorney, Twenty-third Prosecutorial District, Oct. 15, 1987.

[5] HB 1240, "An Act to Make Certain Changes in the Law Regarding Fraudulent Disposal of Property," sponsored by Rep. Dan Blue (D-Wake); and SB 863, sponsored by Sen. Joe Johnson (D-Wake), pending in Senate Judiciary II Committee, 1987 General Assembly (Second Session 1988).

"If we are not careful, we are going to regulate everything from your civil rights to your rent."
—Rep. Henson Barnes (D-Wayne)

stuff that they rent. Now they can't do that."

Legislators and lobbyists agree that North Carolina is not likely to adopt regulations as stringent as Pennsylvania's. Hipps predicted that the regulatory issue will be resolved "more in line with Senator Barnes' theory (the New York bill) of where it should go than the subcommittee's theory of where it should go." Says the industry's Webb, "We're encouraged by the spirit of compromise we see from the Senate."

Hipps says that about 10 of the 50 senators—perhaps remembering Fenner's experience—had told him they were not eager to vote on rent-to-own regulations of *any* kind. But he adds: "If [a bill] comes out of committee with Henson's support, then there's a good chance it will pass."

But whether such a bill would be accepted by the House is another matter. Hackney is adamantly opposed to the bill that Barnes favors, and says he has already compromised by considering the Senate subcommittee substitute bill as a good alternative to his own bill. "We'd be worse off with [the New York style bill] than we would with nothing," contends Hackney. "Most of the dealers usually charge the same thing the New York bill would permit, so we won't have gained a thing."

But if the House is firm in its rejection of Barnes' approach, says Barnes, it may be the legislature will do nothing this year. "If they [the House] work it out, they can get a bill this year," says Barnes. "If not, maybe it'd be better to keep that sucker where it is right now [inactive in the Senate]."

This is an election year, of course, and some consumer advocates hope the prospects of facing the electorate will enhance chances for the Committee Substitute on HB 1108. But legislators have heard a great deal from the industry and very little from their other constituents about the rent-to-own issue, Hipps notes, and some don't like the notion of "playing Big Brother, trying to protect people from themselves," he says. "The average Joe Six-Pack doesn't know anything about that bill or care. He just wants that TV now."

Fenner, who attended many of the subcommittee meetings last year, agrees with Hackney that the legislature should take a strong regulatory stance. "I would dare say that if this was a middle-income [or] high-income problem, there would have been a law a long time ago," she says.

FOOTNOTES

[1]Memorandum from Lacy H. Thornburg, Attorney General, to Senate Judiciary I Committee Members, July 9, 1987, regarding HB 1108, p. 3.

[2]*Ibid*., p. 1

[3]Senate Committee Substitute for House Bill 1108, pending in Senate Judiciary I Committee, 1987-1988 General Assembly

[4]Retail Installment Sales Act, G.S. 25A (Chapter 796 of the 1971 Session Laws, as amended by Chapter 686 of the 1983 Session laws).

[5]Memorandum from Sam Choate, counsel to the North Carolina Rental Dealers Association, to members of the Senate Judiciary I Committee, July 14, 1987, p. 1.

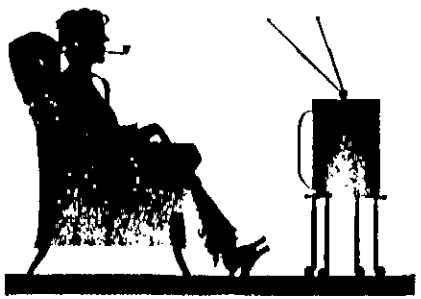
[6]See G.S. 25A-2(e) (Chapter 686, Sections 2 and 3, of the 1983 Session Laws).

[7]For more on the political impact of Fenner's bill, see Katherine White, "Rent-To-Own Firms Spent Freely To Defeat Legislative Foe," *The Charlotte Observer*, Special Reprint From *The Charlotte Observer*s of June 16-25, 1985, p. 5; and Jim Morrill, "Challenge Proves Costly," *The Charlotte Observer*, April 15, 1987, p. A1.

[8]G.S. 120-47 (Chapter 820 of the 1975 Session Laws), which requires paid lobbyists to register with the state. Failure to register, a misdemeanor, can bring a fine of from $50 to $1,000, plus up to two years imprisonment, and prohibits the individual from lobbying the N.C. General Assembly for two years following conviction.

[9]Henson P. Barnes, "Legislative Trends Affecting The General Practice Of Law," *Barnotes*, publication of the N.C. Bar Association, December 1987/January 1988, pp. 1, 6, and 7

[10]Memorandum from Lacy H. Thornburg, Attorney General, to Senate Judiciary I Committee Members, July 9, 1987, regarding HB 1108, p. 1.



RECOMMENDATION

North Carolina Should Regulate Rent-To-Own Contract Sales

North Carolina's rent-to-own industry provides a service to many consumers by making items available on a rent-to-own basis. However, many of these individuals are poor and cannot afford to purchase appliances and other items from conventional lenders, where they must pay annual interest rates ranging from 24 to 36 percent. Instead, they turn to rent-to-own dealers, and because state law does not regulate charges by this industry, low-income consumers pay prices equivalent to 100 percent or more and in some cases, more than 200 percent. The N.C. General Assembly has received testimony from retail merchants that would justify regulating rent-to-own contracts on the same footing as retail installment sales—at an effective rate of 24 percent on 18-month contracts. But because the rent-to-own industry must take greater risks on consumers with no credit ratings or poor credit records, some legislators believe they should be allowed to charge more than retail merchants, setting an effective annual interest rate cap at 36 percent, the same as small loan or finance companies.

Still others believe rent-to-own companies, with their higher costs of operating—including costs related to taking greater credit risks, providing free delivery, providing free service, and allowing consumers to cease making payments and terminate contracts without penalty—should be allowed to charge closer to 50 percent. Yet another alternative is legislation similar to that enacted for New York, Michigan, and Ohio which sets effective interest rate caps of roughly 100 percent. Such legislation might win the approval of the 1988 N.C. Senate, but House leaders have sworn to reject it in the short session of the N.C. General Assembly because, they argue, rates of 100 percent are unconscionable. They also say such rates would give the rent-to-own industry an unfair competitive advantage over other retail merchants.

Based on this research, the fact that rent-to-own purchases differ only slightly from credit and installment sales, and the desirable public policy goal of maintaining a competitive equilibrium among the various types of regulated business transactions in North Carolina, the N.C. Center for Public Policy Research recommends that the N.C. General Assembly adopt legislation regulating rent-to-own contracts as a separate type of sales transaction. This would impose the equivalent of an effective interest rate ceiling of 48.67 percent on rent-to-own contracts, giving the industry more than a 12 percent interest rate advantage over small loan companies, more than a 24 percent interest rate advantage over retail merchants, and more than a 30 percent interest rate advantage over bank credit card and other revolving charge account transactions.

The Center believes there are two reasons justifying a higher interest rate for rent-to-own transactions: (1) Such contracts include the cost of free servicing of the appliances or other items sold under the rent-to-own contract; and (2) the transactions involve customers who are greater credit risks than customers of other businesses. However, the Center could find no evidence that would justify interests rates as high as are currently allowed under North Carolina's system of token regulation of rent-to-own contracts. As William L. Rustin of the N.C. Retail Merchants Association puts it, "It would seem logical that this type of transaction, where equity changes from a seller to a buyer, should have some way to restrict the interest rate that is charged, and that rate should not be out of line with charges that

— *continued on page 16*

RECOMMENDATION

—continued

other businesses are restricted to in North Carolina."

The new law should require disclosure of all contract terms, require that at least 70 per cent of each rental contract payment be applied to the cost of the item rented, and direct the N.C. Attorney General to monitor rent-to-own transactions and report to the 1991 General Assembly. That report should gauge the industry's compliance with the law and make recommendations on whether interest rates should be reduced to match those of small loan companies (36 percent) or retail merchants (24 percent), or increased to ensure the viability of the industry.

Specifically, the law should require:

1. That consumers be told *in writing* the actual sales prices of the item they are renting-to-own, the total sum of the payments they will make to the dealer under the contract, and the effective annual interest rate equivalent that they will be charged.

2. That a minimum of 70 percent of each rent-to-own contract payment be credited to the consumer's ownership of the item (producing an effective equivalent interest rate cap of 48.67 percent on an 18-month contract); and

3. That the N.C. Attorney General be directed to monitor rent-to-own contracts to determine compliance with the new law, to determine whether there are abuses of the law, and to file a report to the 1991 Regular Session of the N.C. General Assembly on the status of the rent-to-own business in North Carolina, including recommendations on whether any further amendments are needed to correct abuses in the field or to ensure the industry's viability.

4. In addition, the N.C. General Assembly should adopt legislation to limit the use of the *criminal* courts as collection agencies for rent-to-own dealers. Rent-to-own dealers would continue to have full access to civil courts for past-due collection procedures, as other lenders have under current law, and would still have access to criminal courts where there is evidence of commission of a crime in the unauthorized disposal of rental property.

—Jack Betts
N.C. Center for Public Policy Research

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Old Enough to Drive a Car, Old Enough to Drive a Bus?

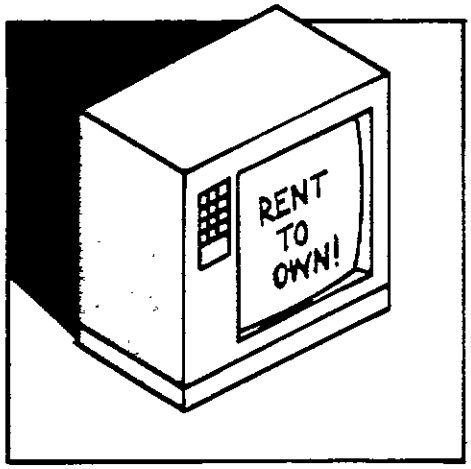
by David S. Perkins

Since the end of the Great Depression, North Carolina has allowed almost anyone with a bus driver's license and a few months' experience to drive a school bus. But nationally, many states have begun to raise the age for drivers of school buses. Now the U.S. Labor Department has decreed that North Carolina should join the ranks of those states requiring drivers to be at least 18 years old—but the N.C. General Assembly has to cough up $18.8 million to pay for more adult drivers. What's the state's safety record in school bus driving—and what other safety concerns should the 1988 legislature address?

SENIOR CONSUMER
FALL 1990
ALERT
A Special Bulletin for Complaint-Handlers

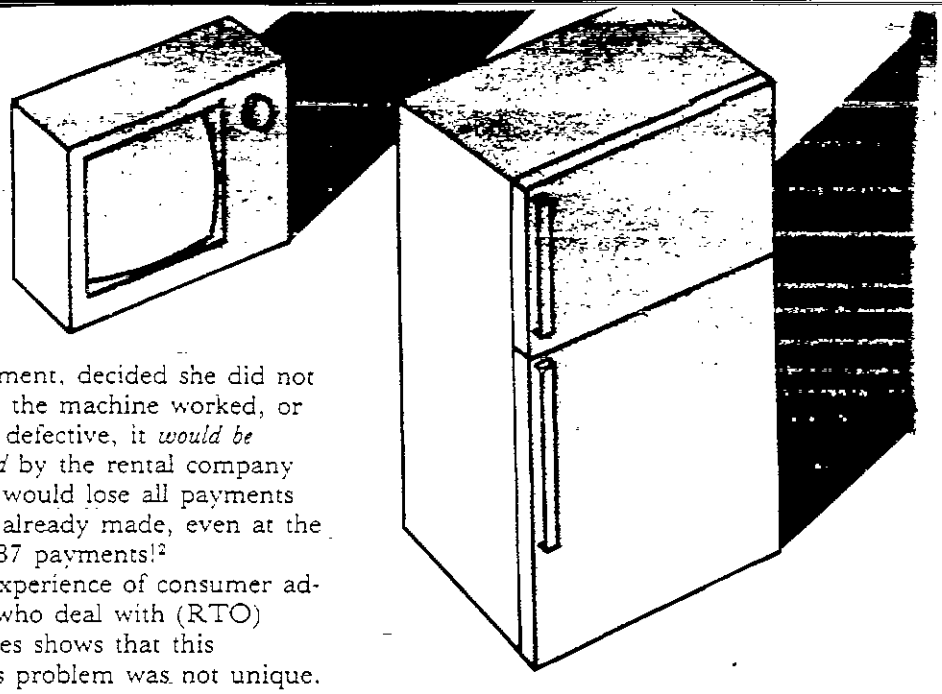
RENTING TO OWN:
Convenience or Just Plain Con?

Advertisements for rent-to-own (RTO) appliances (especially televisions) are conspicuous in local newspapers and during daytime television programs across the country. RTO and rental companies vary widely—from huge national franchises to a host of local establishments that rent a few appliances—primarily to retail customers who need temporary replacements for appliances being repaired. This Alert focuses on the RTO companies that market their merchandise as an alternative to buying—which proves in the long run to be a very poor alternative.



The language of these advertisements is strikingly similar: "No credit hassle!" "No long-term commitment!" "No down payment!" and "Free service in your home!" are the usual promises. What these ads don't tell potential customers is the enormous sum they may have to pay during the total contract period, often just for the opportunity to own previously-rented equipment. They also often fail to reveal the aggressive collection and repossession practices employed by many rental companies.

(Continued on the next page)



Older persons are prime targets of these (RTO) come-ons. The claims of "no credit hassles" and "no credit checks" are a blatant appeal to "people who *think* they can't get an appliance" on credit or a layaway plan from a standard retail or department store.[1]

A typical example is the story of a Jersey City, New Jersey, woman whose income consisted solely of Social Security benefits and who signed an agreement to purchase a portable washing machine from a local firm, Rental World. She was drawn by the claims of low weekly payments of $11.55, and the promise that she could *return the washer at any time* with "no penalty." After 87 weekly payments, the washer would be hers!

What the agreement and the company's representative failed to mention was how the washer's retail value (perhaps a few hundred dollars) compared to the total payments required to own it—$1,004.85! If the renter missed any payment, decided she did not like how the machine worked, or found it defective, it *would be repossessed* by the rental company and she would lose all payments she had already made, even at the 86th of 87 payments![2]

The experience of consumer advocates who deal with (RTO) companies shows that this woman's problem was not unique. A telephone survey of Boston-area companies[3] showed rental rates for a 19-inch color television ranging from about $44.00-$60 per month—with a total cost of $792-$1,080 over an 18-month lease—for a television that could be purchased from a local retail store for only $200-$400! Even worse, dealers might deliver a supposedly "new" set, and the renter could pay this exorbitant total for a set previously rented by several other people.

Some RTO companies have also engaged in abusive collection and repossession practices that may frighten many older persons. For instance, a North Carolina woman (who had fallen behind after making $750 in rental payments on a $450 television set) was threatened by the rental company with arrest. Another woman was arrested for failing to return an RTO freezer in a dispute over the property. A third woman found that employees of a rental company had entered her home in her absence (through a door supposedly left ajar) to repossess a rented washing machine.[4] In Pennsylvania, a company most recently known as Rent America allegedly engaged in flagrantly deceptive behavior by using uniformed city police to threaten renters who were behind with their payments, and by breaking into homes to repossess rented items.[5]

The incentive for this type of behavior by RTO companies lies in the enormous profit they have made in recent years.[6] A prime

[1]David Clark Scott, quoting Robert Hobbs, attorney at the National Consumer Law Center, "Renting items you plan to buy: sometimes its borrowing trouble," *The Christian Science Monitor*, July 17, 1984, p. 21.

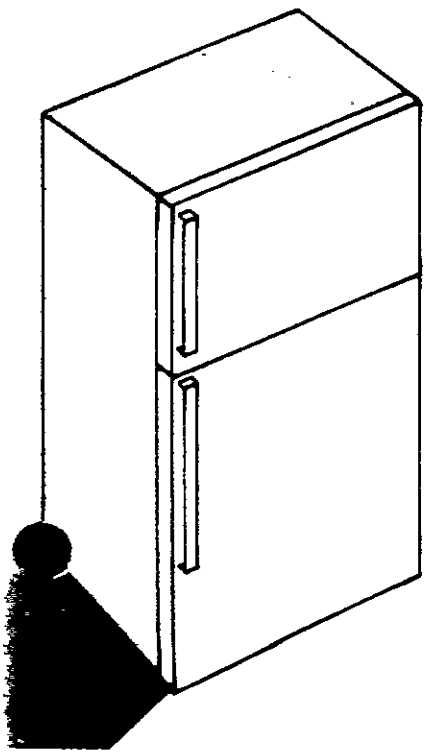
[2]*See* Michael Hinds, "Rent-to-own ripoffs," *Providence Journal-Bulletin*, Sept. 1, 1988, p. E-1. The rental company involved in this case agreed to refund four payments already made by an older renter who had realized the lease's ultimate cost, and to terminate the lease, but only after she threatened legal action.

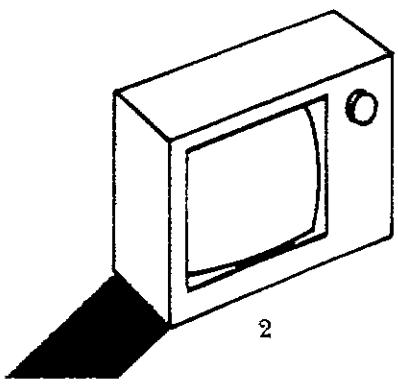
[3]Survey conducted by National Consumer Law Center (1989).

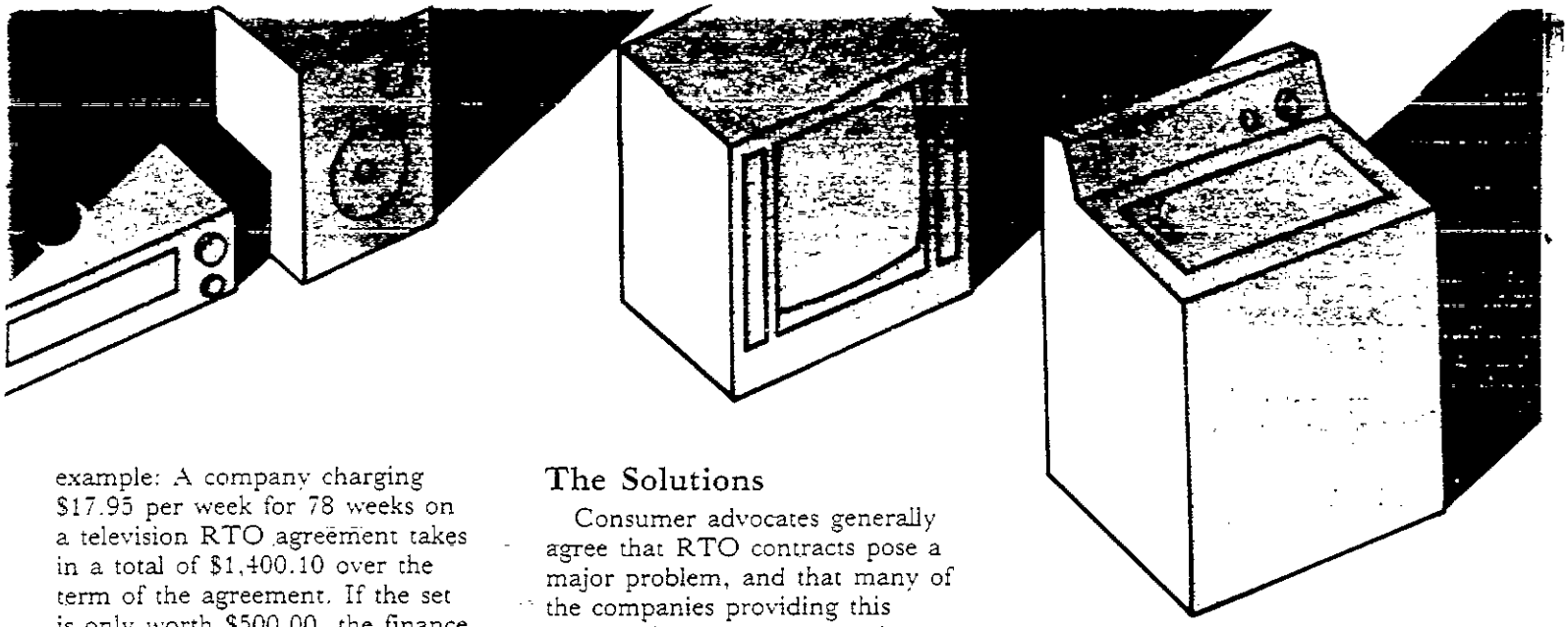
[4]Toni Joseph, "$448 TV costs rent-to-own patron $750 and threats": Raleigh, N.C., *News and Observer*, Aug. 10, 1987.

[5]Christopher Quinn, "Police get pay to repossess rented items," Harrisburg, PA *Patriot News*, Sept. 15, 1985, p. 1.

[6]An advertisement designed to interest RTO dealers in adding jewelry to their offerings lists as a potential benefit a yield up to 600 percent on their investment







example: A company charging $17.95 per week for 78 weeks on a television RTO agreement takes in a total of $1,400.10 over the term of the agreement. If the set is only worth $500.00, the finance charge is $900.10, and the effective interest rate is an amazing 180 percent![7] If the TV had already been used, and was consequently worth only $350, the Annual Percentage Rate (APR) on the same contract would be 275 percent.

In 1982, there were 2,000 rental-purchase outlets nationwide. By 1984, the number had grown to 4,000, generating $1.5 billion in income on television rentals and sales alone (this component comprised perhaps half of the companies' total business).[8] Not surprisingly, the margin of profit for these companies runs well above that of standard retail companies. Earnings ran below 4 percent of sales in a recent year for retailers such as Allied Stores, Woolworth, K-Mart, Federated Department Stores, and J.C. Penney. By comparison, the earnings reported by one national rental franchise, Rent-a-Center, ran as high as 7.46 percent of sales for that time period.[9]

[7]The Annual Percentage Rate (APR) calculations treat the first payment as a downpayment and assume 52.14 weeks per year.

[8]Stephanie Kraft, "The High Priced Models: Are Rent-to-Own Appliance Businesses Practicing Usury?," The *New [illegible] Advocate*, Feb. 13, 1985.

[9]Source: Moody's Industrial Manual (1985). This trend continued through 1987 for Rent-a-Center, at which time the company underwent a merger.

The Solutions

Consumer advocates generally agree that RTO contracts pose a major problem, and that many of the companies providing this "service" may attempt to circumvent the federal Truth in Lending Act and state credit laws that regulate interest rates and require disclosure of credit terms. These advocates see the RTO agreements largely as disguised credit sales, and make the strong argument that such transactions should also be subject to the limitations placed on other forms of sales. The RTO companies counter that the RTO agreements are *not* credit sales, and that their customers are not paying interest fees—they are merely being charged for "convenience and service."[10] The battle between consumer advocates and rental companies has been raging since the early 1980s on both the state[11] and federal[12] levels.

[10]See Hines, *supra 18*, referring to a statement by Edward Winn III, General Counsel of the Association of Progressive Appliance Rental Organizations.

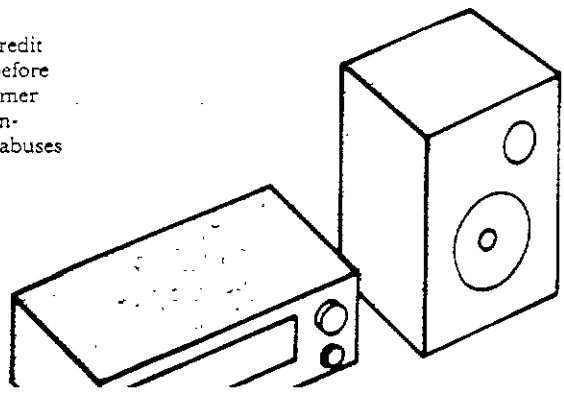
[11]The problem actually began more than 100 years ago. See *Caldwell v. Singer Mnf'g. Co.*, 4 Ohio Cir. Dec. 680, 7 Ohio C.C. 460 (1892), in which the Singer Sewing Machine Company was successfully sued.

[12]See Hearings on the Consumer Credit Protection Act (proposed S.1152), before the Senate Subcommittee on Consumer Affairs (July 19, 1983), at which consumer advocates recited a litany of abuses still practiced by many rent-to-own companies.

Legislation

The story of RTO legislation passed in North Carolina illustrates the tenacity with which rental companies cling to their profitable business. In 1983, North Carolina State Representative Jeanne Fenner sponsored legislation to regulate rent-to-own transactions by defining them as sales. Eventually, legislation was passed which now includes two types of lease contracts as sales contracts, thereby increasing consumer protection. However, in two subsequent state elections, Rep. Fenner was defeated by candidates who received large contributions from people representing RTO businesses in North Carolina and states as far away as Texas. A spokesman for these businesses warned that, "If she runs. . .again, we'll be there again."[13]

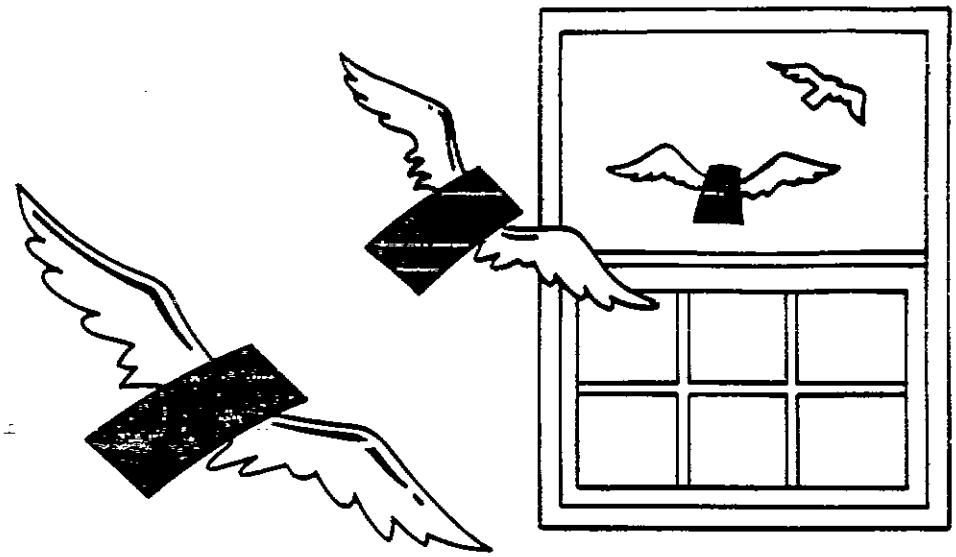
[13]Jim Morrill, "Challenge Proves Costly," *The Charlotte Observer (NC)*, Apr. 5, 1987, p. 1.



RTO transactions reflect a major gap in federal credit disclosure laws. During the 1970s, federal courts divided on whether RTO fell within federal Truth in Lending Act disclosure requirements. Then, in the early 1980s, the Federal Reserve Board (FRB), which administers Truth in Lending, decided that its disclosure requirements were inappropriate for RTO transactions and proposed an RTO disclosure scheme to Congress. The FRB's proposed disclosure was supported by the RTO industry and opposed by many consumer organizations.

The consumer organizations argued that the same Truth in Lending disclosures that are made in other retail credit sales should be made in RTO transactions. Disclosures such as cash price, finance charge, and annual percentage rate are significant in RTO transactions and should be required. More fundamentally, consumer organizations argue that any Congressional characterization of RTO transactions will greatly influence the states' decisions on whether to regulate RTO like other retail transactions or to legitimize their unique and often suspect practices. Privately, RTO industry officials admit that disclosures like those proposed by the FRB do not influence consumers.

Despite the political pressure from the RTO industry to prevent regulation of RTO transactions, many states have imposed at least some restrictions on them.[14] At least ten states[15] have passed legislation that requires specific disclosures to the customer, but generally does not limit the amount of finance charges that can be added onto the transactions. Several other states[16] amended their retail installment sales acts to expressly include RTO transactions. However, in at least one of these states[17] the statutory ceilings on retail installment sale contracts were removed, and five states[18] passed RTO laws establishing very high rate ceilings.



States that have recently dealt with RTO problems have tried to address some of the more troublesome practices of RTO companies. In Iowa, a 1989 amendment to the Consumer Credit Code requires that a lessee acquire ownership of the leased property as soon as the lease payments made are double a cash price for the property disclosed at the outset of the transaction. It also includes RTO agreements under the definition of "debt" for purposes of the state Debt Collection Practices Act, thus providing the customer with the possibility of damages for some of the practices described earlier.[19] A bill passed in Nebraska specifically applies to week-to-week leases (leases "for an initial period of four months or less" are covered), prohibits penalties for early termination of leases, and provides standards for advertisements.[20] Another 1989 statute passed in Oklahoma limits the amounts chargeable for bad check returns, initial fees, security deposits, and daily late charges. It also requires a state license for each office operated by a rental company.[21]

Private Litigation Remedies

Advocates for older persons should become familiar with the possible remedies under statutes and regulations specifically dealing with RTO agreements. In addition, they should explore remedies under other statutes and regulations, keeping in mind that RTO statutes in individual states may have an impact on analysis under other state statutes.[22]

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[14]The National Consumer Law Center, Boston, MA, has tracked the progress of this legislation, and can be consulted about more recent developments. See also *New York Times*, June 4, 1988 "Rent-and-Own Plans."

[15]Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Maryland, Tennessee, Texas, and Virginia.

[16]Maine, Minnesota, North Carolina, and Pennsylvania. In Wisconsin a court has held that the definition of "credit sale" on the books already encompasses rent-to-own transactions. In 1990 Minnesota enacted an RTO statute.

[17]Wisconsin.

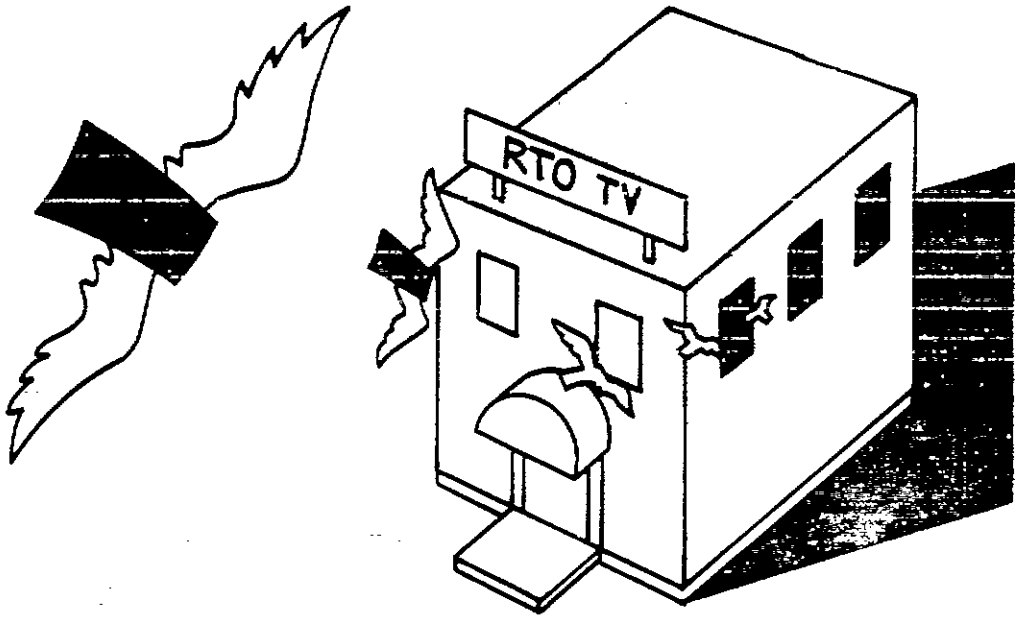
[18]Iowa, Michigan, New York, Ohio, and South Carolina. Minnesota has added an administrative rate setting process.

[19]*See* Iowa S.B.486, effective July 1, 1989 (as reported in Consumer Credit Guide, Report 549).

[20]*See* Nebraska Consumer Rental-Purchase Agreement Law, effective July 1, 1989 (as reported in Consumer Credit Guide, Report 549).

[21]*See* Oklahoma H. B. 1091, 1989, as reported in Consumer Credit Guide, Report 549).

[22]Particularly Article 9 of the Uniform Commercial Code (UCC) or state Retail Installment Sales Acts (RISAs), *infra*.



- **UDAP statutes and regulations.** State unfair and deceptive acts and practices (UDAP) statutes may be one of the more effective tools for advocates. For instance, a UDAP claim may be successful where the company claims "no down payment!" but charges initial fees, delivery charges, installation fees and security fees, or engages in other forms of "low-balling." Misrepresenting the savings of an RTO arrangement, or the terms of the agreement may be a UDAP violation, as may representing a used rental appliance as new and failing to disclose the total of payments. Other aspects of an RTO arrangement gone sour may also be vulnerable to UDAP claims: failure to repair or replace defective merchandise, improper collection or repossession practices, or trying to collect the full lease price upon default or other termination penalties not permitted under the contract.[23] The special value of UDAP is that in most cases the statute will apply to RTO transactions themselves, without a need for consumers to argue that the transactions are disguised sales, as is true for some other possible claims suggested here.
- **RTO statutes.** In the states which have enacted specific RTO statutes, compliance with those requirements should be checked, particularly if there are sanctions for violations.
- **State usury or retail installment sales acts.** There is a split in authority, but some courts have found RTO transactions to be in reality credit sales. As such, they may be subject to state usury or Retail Installment Sales Act (RISA) laws, and the RTO contract might be out of compliance with them.[24]
- **UCC Article 9.** Article 9 of the Uniform Commercial Code (UCC) applies to leases intended for security, and absent irrebuttable statutory presumptions,[25] sound arguments can be made that the default and repossession provisions of Article 9 should apply to RTO transactions.[26] Since RTO companies rarely comply with Article 9, statutory damages of the finance charge plus 10 percent of the cash price of the goods should arguably be available under UCC 9-507, if the lease is one intended for security.
- **Warranty Laws.** As with several other of the potential private remedies suggested here, the consumer may try to argue these are disguised sales arrangements subject to Article 2 of the UCC or the Magnuson-Moss Warranty Act[27] if the consumer has received defective goods under the RTO arrangement.[28] Even when they view RTO sales arrangements as genuine leases, as opposed to disguised sales, some courts have applied Article 2 warranty principles by analogy to leases.[29] Four states[30] have adopted the new UCC Article 2A on leases, drafted by the National Conference of Commissioners on Uniform State Laws, which has its own warranty provisions.

[23]See National Consumer Law Center, Unfair and Deceptive Acts and Practices §5.7.4.2 (2nd ed. 1988 and Supp.).

[24]See Id., §5.7.4.4; National Consumer Law Center, *Usury and Consumer Credit Regulation* §5.5.2.2 (1987 and Supp.). Remember, however, that some recent RTO legislation will directly resolve whatever questions may have previously existed about whether the RISA or other special usury statutes apply, or whether an RTO agreement is directly subject to a charge limitation.

[25]See, e.g. Ohio Rev. Code §1351-01(F), providing that RTO agreements shall never be intended as security.

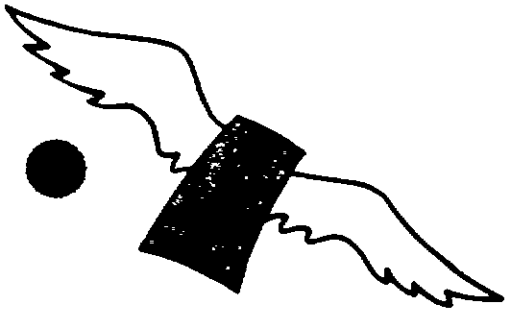
[26]See, e.g. *In re Puckett*, 60 B.R. 223 (Bankr. M.D. Tenn. 1986); *Broad v. Curtis Mathes Sales*, Co., Clearinghouse No. 36,375 (Me. Super. Ct. 1984); National Consumer Law Center, *Unfair and Deceptive Acts and Practices* §5.7.4.5 (2nd ed. 1988 and Supp.).

[27]15 USC §2301 et seq.

[28]See National Consumer Law Center, Unfair and Deceptive Acts and Practices §5.7.4.8 (2nd ed. 1988 and Supp.).

[29]See National Consumer Law Center, *Sales of Goods and Services* §8.8.2.2 (2d ed. 1989 and Supp.).

[30]California, Minnesota, Oklahoma, South Dakota.



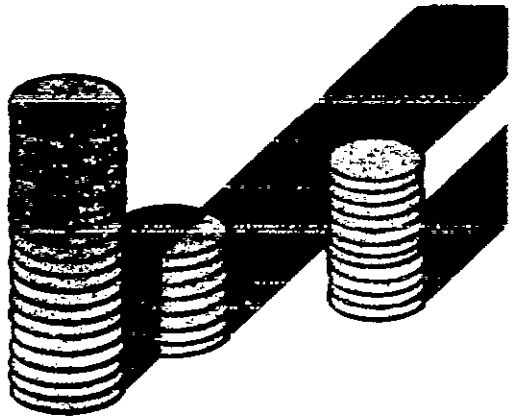
- **Truth in Lending.**[31] Truth in Lending (TIL) includes certain leases within its definition[32] unless they are terminable without penalty at any time by the consumer.[33] (Prior to the time this provision was added to Regulation Z, courts were split over whether RTO transactions fell within the scope of Truth in Lending.[34]) Most RTO transactions are drafted to avoid the imposition of explicit contractual termination penalties. However, there is an implicit penalty in early termination of any RTO transaction, since the customer would lose the benefit of all payments made toward the purchase option.

Nonetheless, one court recently held that the pattern of an RTO lessor's business should be examined to determine if customers actually used these agreements to purchase the property though continued lease renewal payments or if they generally terminated the leases and returned the property after short terms. In the former circumstance, these transactions could be viewed as disguised credit sales, subject to TIL.[35]

- **Debt Collection Laws.** Various statutory or common law theories relating to unfair or harassing debt collection practices may be brought to bear, depending upon the circumstances. If a third party or an RTO employee pretending to work for someone else (e.g. posing as a police officer) engages in improper collection activity, the federal Fair Debt Collection Practices Act may apply. Some state debt collection statutes may apply directly to the RTO company itself, and in egregious cases, tort claims such as intentional infliction of emotional harm may be appropriate.[36]

Of course, not all consumers wish to resort to litigation to resolve disputes. As with many other consumer problems, the advocate for an older person may find assistance from the state Attorney General's Consumer Protection Office invaluable.





Education and "Self-Help" Remedies

As with many other consumer problems facing older persons, the key to deciding whether to enter into an RTO agreement is: "**Information is power!**" There are situations in which renting an appliance may be the most practical choice—for instance, when the consumer wants a temporary replacement for an appliance being repaired, wants to try out a new appliance before buying one, or has some other short-term need. But, before signing a lease as an alternative to buying an item, one should be very careful to look at all of the other options available. For instance:

- Can the consumer delay the purchase until he/she saves enough money to pay cash?
- Is there a retail store which offers a layaway agreement for the item?
- Has the consumer actually tried to obtain credit to buy the item from a retail store? Because of the federal Equal Credit Opportunity Act and increased sensitivity by many businesses to the needs of older persons, it may be easier than one thinks to buy an item on credit, with a long-term warranty and an in-store service plan to cover the cost of any needed repairs.
- Could the consumer obtain a short-term consumer loan obtained from a bank or

[31] 15 USC §1601, Reg. Z §226. NOTE: The Consumer Leasing Act, sometimes called the Truth in Leasing Act, generally does not apply to RTO transactions, because it covers only leases with a minimum term of 4 months, which most RTOs do not have. 15 USC 1667; Reg. M, §213.

[32] A credit sale includes a lease if the lessee agrees to pay a sum at least substantially equivalent to the value of the property and the lessee has the option to become the owner of the property upon compliance with the agreement for "no other or nominal consideration." 15 USC §1602(g); Reg. Z §226.2(a)(16).

[33] Reg. Z. §226.2(a)(16), as amended 1981.

[34] See National Consumer Law Center, *Truth in Lending* §2.4.2.2 (2d. ed. 1989 and Supp.).

[35] *In re Hanley*, 105 B.R. 458 (Bankr. C.D. Ill. 1989).

[36] *See generally* National Consumer Law Center, *Unfair and Deceptive Acts and Practices* §5.7.4.7 (2nd ed. 1988 and Supp.); National Consumer Law Center, *Fair Debt Collection* Ch. 6 (1987 and Supp.).

purchase more cheaply? (See box)
— Would a cheaper, used item from a yard sale, the classified ads, or a second-hand or repair shop serve the household need?

If any of these options is available, the RTO agreement becomes less attractive. It is likely to be the most expensive option, and has proven disappointing to many customers. RTO industry advocates have repeatedly noted that only 25 percent of renters ultimately become owners of the merchandise.[37] In many cases, these renters may have paid several times the value of the item and still have nothing to show for their expense.

CONCLUSION

There are times when signing a rent-to-own contract may make sense. But, before signing, older consumers should think of this statement by the collection manager of one store in New Jersey:

"...Most people know there is a gimmick in there somewhere, but they don't quite understand it. People focus on the low weekly rate...I personally don't allow anybody I know to come into my store..."[38]

[37] *See* Michael Hinds, "Rent-and-Own Plans," *New York Times* "Consumer's World," June 4, 1988.

[38] *Ibid.*

Consumer Tips on Renting Products

If a consumer finds the idea of RTO appealing, urge him/her to call the company to see what kind of terms it's offering, then compare those terms to other options.[39] At a minimum, urge him/her to look at the consumer's responsibilities and liabilities in these areas:

- **Total of Payments** (as compared to the price one would pay by cash or store credit). Remember that the *real* total price for an RTO contract is determined by multiplying the amount of each rental payment times the number of payments required to become owner of the item at the end of the lease.

If a consumer is considering RTO as a way to purchase something, he/she can vividly demonstrate the exorbitant cost by simply taking time to do comparison shopping by phone.

The following sample comparison table for a new[40] 19-inch color TV both suggests the kind of information the shopper should seek, and gives an idea of the relative cost of three different ways to acquire the same TV.

- **Does the company guarantee that the item being rented is new?** If not, the customer should assume that he or she may be buying a used appliance and decide whether the payments total is fair in that case.
- **Can the customer buy the item outright at a reduced price at some point during the contract, or does he/she have to make the full total of payments to become the owner?**
- **Even though the company may provide repairs at no charge, does it also provide a substitute at no extra charge or stop payments during the repair period?**
- **Does the company require a large "balloon payment" for a renter to become an owner at the end of the lease?** If so, can the customer afford this payment? Can it be paid in installments? If he/she cannot afford it, and so does not become the owner, what would he/she end up paying for the privilege of merely renting the item up to that point?
- **If the renter misses one or more payments, can he/she reinstate the RTO contract without losing the investment up to that point? Are there large penalties charged?** Unlike most installment sales contracts, RTO contracts don't generally allow any grace period for payments, and it's easy to miss a payment that must be made every week, especially if illness or another emergency arises.
- **Does the company require the renter to purchase insurance on the rented item, even though the customer may already have home coverage?** A charge of $1.00 per week for insurance on a television set worth only $250 is exorbitant over an 18- or 24-month period (the equivalent of paying $20,000 a year to insure a home worth $100,000!).
- Is there a large penalty payment required if the lease is terminated before the end of its term?

As with other consumer transactions, it's wise to check with the local Better Business Bureau or Consumer advocacy office to see if there are pending complaints against the RTO company.

[39] See *supra* on education and self-help remedies. An excellent self-help guide in this area is "Rent-to-Own Facts," a pamphlet published in 1987 by the Michigan Consumers Council, 414 Holister Bldg., 106 W. Allegan St., Lansing, MI 48933, (517) 373-0947, (517) 373-0701 (TDD). Single copies free.

[40] Assuming the RTO company will assure the customer he or she will get a new, rather than used TV.

Sample Comparison Table

	RTO 78 wks./18 mos. to ownership	Credit Purchase 18 mos.	Cash Purchase
Cash Price	—	$331.76	$319.00 Price + 12.76 Sales Tax $331.76
Initial Payment/ Down Payment	First and last week's payment) $22.88	10% downpayment $ 33.00	—
Installment Payment	$11/wk. + 44 cents tax **$49.19/mo.**[1]	**$ 19.49/mo.**	—
"Extra $" (above the purchase price)	**$560.56**	**$ 52.11**	
	$11.44 × 78 = $350.82 loan payments + 33.00 down payment		
Total Cost	**$892.32**	**$383.82**	$331.76
Effective APR[2]	163%	21%	—

[1]The weekly payment should be multiplied by 4 3 weeks in a month, since assuming only 4 weeks per month would equal to a 48-week year, thus concealing the cost of 4 weeks' payments.

[2]The customer could not figure out the APRs without a special calculator, but comparing the relative total dollar costs is dramatic enough.

About This Publication . . .

Senior Consumer Alert is produced by the **American Association of Retired Persons' Consumer Affairs Section (Program Department)** and the **National Association of Attorneys General's Committee on the Elderly and the Law** (Chairman, Donald J. Hanaway, Attorney General, Wisconsin) in response to patterns of fraud or abuse detected nationwide affecting the older consumer.

To alert AARP/NAAG about subjects for future issues, please contact:

Robin Talbert
AARP Consumer Affairs
1909 K Street, N.W.
Washington, DC 20049
or Peg Schmidt
Steve Nicks
Office of the Attorney General
P.O. Box 7856
Madison, WI 53707

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AARP
Consumer Affairs
Program Department
1909 K Street, N.W.
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Senior Consumer Alert "EXTRA"

Readership Survey

Thanks to all of you who responded to our readership survey. Based on the comments we received, we will continue to make the Senior Consumer Alert useful to lawyers, consumer advocates, and AARP volunteers by including both general information and legal references.

AARP Friend of the Court Briefs

During the last year, AARP has participated as amicus curiae in three cases affecting the rights of older consumers.

- A brief was filed in support of a Washington State Insurance Department rule banning the sale of low-value life insurance products marketed to older people. A favorable decision was issued October 25, 1990 by the Washington Supreme Court. (*Omega National Insurance Company et al. v. Marquardt*)
- In a case which was originally brought by the Alliance for Senior Citizens and the Gray Panthers, the U.S. District Court of Appeals, D.C. Circuit, is considering whether to require the Department of Health and Human Services to require recipients of federal funds to conduct a self-evaluation to ensure compliance with the Age Discrimination Act. AARP filed an amicus brief in June of this year (*Action Alliance of Senior Citizens et al. v. Sullivan.*)
- In *California State Board of Optometry v. FTC*, AARP supported a Federal Trade Commission (FTC) rule that held that state laws restricting the practice of optometry were unfair acts or practices. In a decision rendered August 28, 1990 the Court of Appeals for the DC Circuit found that the FTC lacked authority to promulgate such a rule.

Recent Cases of Interest

A class action has been filed on behalf of hundreds of older persons who lost investments as part of the Lincoln Savings and Loan fiasco. The complaint alleges that older persons were specifically targeted for investments that turned out to be disastrous. *Shields et al. v. Keating, Lincoln Savings and Loan Association, et al.* is pending in the United States District Court for the District of Arizona.

In Pennsylvania, a class action has been filed on behalf of individuals who purchased pre-need funeral plans, alleging their funds were misappropriated by an investment scheme. *Lebron et al. v. Copple et al.* is pending in the Court of Commmon Pleas, Erie PA.

ABA/AARP Legal Rights Campaign

Public service announcements with celebrity spokespersons are part of a legal rights campaign sponsored by AARP and the American Bar Association. Copies of the tv and radio public service announcements, background materials, and consumer information are available. Topics covered include credit discrimination, employment discrimination, funerals, lifeline telephone assistance, Medicare appeals, nursing home rights, and planning for incapacity.

Report on Older Consumers Available

Older consumers are less skeptical shoppers than younger consumers, a new study finds. Limited copies of *Older Consumer Behavior*, a national survey sponsored by AARP, are available from AARP Consumer Affairs.

Previous Editions of Senior Consumer Alert

Back issues of the following Alerts are available:

- Pre-need Funeral Plans (DI3242)
- Medigap Insurance (DI3572)
- Home Environmental Scams (DI3749)
- Investment Fraud (DI3915)
- Credit Discrimination (DI3497)

Write AARP Fulfillment, 1909 K Street NW, Washington, DC 20049. Allow 6-8 weeks for delivery.

AG's Issue Warning to Consumers on Energy Scams

The National Association of Attorneys General (NAAG) has issued a warning to consumers to be alert for scams and rip-offs that try to take advantage of concerns about petroleum supplies. Schemes may range from phony gas-saving devices to oil and gas investment fraud. Contact NAAG, 444 N. Capitol Street, Washington, DC 20001 (202) 628-0435, or your attorney general for more details.

(Continued on the next page)

Telemarketing Fraud

The National Association of Attorneys General and the Federal Trade Commission have published a brochure to alert consumers about the problem of telemarketing fraud, which costs Americans an estimated $1 billion a year. The brochure describes some of the most recent and widespread telemarketing scams, recommends ways for consumers to protect themselves from fraud, and points them toward the appropriate authorities for reporting possible fraudulent calls. For a free copy of the Telemarketing Fraud brochure, write to the Federal Trade Commission, Public Reference, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

"Spotters Project"

Attorney General Don Hanaway of Wisconsin has released results of a six-week project designed to ascertain the types of charitable contribution solicitations older citizens receive. Hanaway hopes the project and related consumer education will assist consumers in ensuring their contributions are put to good use. For more information call (608) 266-1221.

EXTRAs?

If you would like more information on any of the above, or have items of interest for future "Extras," write or call AARP Consumer Affairs, (202) 728-4355.

COUNCIL OF BETTER BUSINESS BUREAUS
Standards & Practices Division

REPORT

RECEIVED AUG 13 1990

RENT-TO-OWN

May 1990

Advertisements for TV sets claiming "No credit check; only $14.99/week; you can have delivery today!" can be very appealing, especially for consumers who have difficulty getting credit. Appliances such as washers, dryers, televisions, stereos, and furniture are among the merchandise available to rent, with an option to purchase, via the growing "rent-to-own" industry.

There are several reasons for consumers to rent merchandise. For instance, consumers whose employers temporarily relocate them may need to rent furniture and appliances quickly. Some consumers may simply wish to try a particular product which is new to them before actually purchasing it. Also, consumers who cannot afford to pay cash or who do not have established credit may also rent merchandise under arrangements that permit them to acquire ownership at the end of the rental period. According to an industry trade association, the industry markets to the bottom 40% financially of the American population.

In the case of displaced employees, rental transactions are usually short-lived. Similarly, consumers who rent to "try out" a product will usually keep the merchandise a short time, after which they will decide whether to purchase it or a comparable product outright. When consumers "rent-to-own" as a means of purchasing products, a transaction we call "RTO," there are several pitfalls that need to be evaluated carefully.

Several problem areas with RTO transactions are discussed in this report. They include: the much higher cost of purchasing merchandise in this way, performance and repair difficulties, especially with regard to used goods, and the loss of any ownership build-up if the goods are repossessed. Steps taken by some legislators and industry members to correct these problems are also discussed.

The Council of Better Business Bureaus (CBBB) recommends that the rent-to-own industry assist consumers in making informed decisions in several ways, primarily through disclosure of all important facts concerning the RTO transaction. CBBB also suggests to industry members that they allow consumers rights to reinstatement after repossession of goods, even when not mandated by state law.

What is Rent-to-Own?

This type of transaction combines features of an installment sale and a lease. The RTO contract usually has either a weekly or a monthly rental period and provides that the contract is renewable at the end of each week or month. Companies take care of delivery of appliances and generally provide free service when the appliances malfunction. The consumer can return the property at the end of any rental term without penalty or further obligation to the rental company.

The consumer will own the goods after the specified number of payments, though sometimes one more final payment is required before ownership. Some companies charge deposits before delivery of the merchandise while others do not. Unlike an installment sales agreement, there is no ownership of the merchandise until the final payment is made, unless specific legislation provides otherwise.

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Many consumers may enter into an agreement with the expectation of buying the merchandise, rather than as a short term rental where the agreement is cancelled and the goods returned. In fact, according to the RTO industry itself, less than 30% of customers end up owning the merchandise they had been renting.

Major differences between rent-to-own and other ways of purchasing goods without full cash payment:

Using a ***credit card*** entitles the customer to immediate ownership of the merchandise at the time of purchase. Non-payment of the credit card bill can subject the customer to legal action, but the merchandise itself may not be repossessed. Interest rates for credit card transactions are subject to state regulation.

In an ***installment sale***, the customer receives possession and ownership once the installment contract is signed, though the seller may retain a security interest in the goods. The seller may repossess in the case of non-payment, but the goods can be redeemed once payments are resumed, sometimes with the consumer having to pay all past due amounts. Interest rates for installment sales are also regulated.

In the case of most ***RTO*** transactions, the customer takes possession at the time the contract is signed, but there is no ownership until the total of required rental payments is made. The goods can be repossessed, without a right to reinstatement in many states. "Implicit interest" rates are not regulated, with the exception of one state.

Total cost of merchandise

One of the most important aspects of the RTO transaction that makes it different from other ways of purchasing products is that consumers usually end up paying much more for the merchandise than if they bought the merchandise outright with cash, by credit card or through an installment sale. Although the advertised weekly or monthly amount may sound low and affordable, when that amount is multiplied by the number of weeks or months before the merchandise is owned, the total cost is far higher than for any other type of transaction due to what may be called "implicit interest."

"Implicit Interest"

We say "implicit interest" because the amounts paid over the course of the rental in excess of the cost of an outright cash purchase are not really interest payments. The cash price is not borrowed and the consumer is not paying for the use of the RTO dealer's money. These amounts are simply the cost of the RTO arrangement, which reflects, among other things, maintenance and repair costs, collection costs, interest payments on the company's capital investments, and profit. We compare these costs to true interest costs incurred in a purchase so that a fair association can be made between the costs of acquiring ownership through the different approaches. Indeed, the failure to disclose these additional costs in a manner comparable to the disclosures made in true credit arrangements masks the frequently higher costs of a purchase through the RTO transaction.

In many states 18% is the maximum annual percentage rate (APR) that can be charged for credit card purchases and 24% APR is the maximum for installment sales at retail stores. However, what amounts to an effective "APR" of 100% up to 350% may be charged by RTO companies, which are not generally subject by law to any interest rate limits. For example, if a television set which has a cash purchase price of $400 is rented over an 18 month period for $55.55 a month, the total amount paid to own the TV will be $1000. This difference of $600 amounts to an "implicit interest" rate of 145%. By contrast, if the same $400 TV was bought under an installment sales contract at 24% interest, also over 18 months, the total cost would be $480. Essentially, two TV sets could be purchased for the price of acquiring one TV in a rent-to-own transaction.

RTO Costs

An industry trade association cautions that the relative costs of ownership through a rent-to-own, credit, or cash transaction may differ by the type of product and regional market conditions. According to the source, "low-end" electronic products may, for example, be much more costly vis-a-vis retail pricing than might be the case with furniture or "high-end" electronics. In addition, retail pricing may also vary sharply. These variations in cost demonstrate the critical need for consumers to evaluate the total cost of acquiring ownership and to determine for themselves whether any higher costs are justified by the convenience offered.

Attached to this report as Appendix A is a chart, "Is the Convenience Worth the Cost?," from which the example of the $400 TV is taken. This chart demonstrates the higher cost of merchandise obtained through RTO contracts due to the "implicit interest."

Whether or not RTO companies offer goods for sale over time like retail stores and should thus be limited in the fees they charge for this service is a subject of great debate. The RTO industry maintains that it is different from the retailing industry as its customers are given an option to buy, allowing them to return the goods with no further obligation, but are not obligated to buy, as is the case in an installment sales contract. An industry trade association states that the difference between an item's cash selling price and the total RTO price is the cost of acquiring ownership via a rent-to-own transaction, or the "cost of leased services."

Although the industry is still unregulated in many states, in the last several years over twenty states have passed laws regarding RTO companies. These states have enacted laws that deal with the high cost of rental-purchase contracts by requiring certain financial information to be disclosed. Specifically, contracts must include the number of payments, amounts, due dates, or periods of scheduled payments, and the total cost of such payments under the agreement. These laws are intended to make the total cost of the transaction more readily available to the would-be purchaser before beginning the weekly or monthly payments.

Only one state, Pennsylvania, actually subjects rent-to-own contracts to an 18% APR interest rate limitation. It has accomplished this result by making RTO agreements credit sales. Pennsylvania's stringent law was contested by the industry but remains the only one with an interest rate the same as for retail merchants selling goods over time. Other states do not limit rent-to-own companies in "interest" fees they can charge through their state retail installment sales acts or through specific rent-to-own laws.

Included in some state laws is a section concerning advertising and the need to disclose certain financial information in ads, as well as in contracts. For example, if an advertisement states a required amount of payment or indicates a right to acquire ownership, then the ad must disclose that what is being advertised is indeed a rental-purchase agreement, the number of payments and total cost needed for eventual ownership, and the way in which a consumer can acquire ownership.

At the end of this report is Appendix B, a table of state-by-state regulations regarding RTO transactions. In states without rent-to-own statutes, the courts have divided on the question of whether rent-to-own companies are subject to interest and other legal limitations applicable to credit sales.

Used merchandise

Much of the merchandise consumers rent is used. As noted earlier, most transactions end up with the consumer not owning the goods. Returned merchandise is rented again to the next consumer. According to a study by the North Carolina Attorney General's Office, 51% of the goods in examined contracts were used. The Attorney General of that state also pointed out that the RTO contracts did not generally spell out a

difference in the cash price between used and new goods. Thus, consumers may have been paying as much for used goods as for new, and the difference in value between new and used merchandise further raised the cost of RTO transactions.

The subject of used goods is one that frequently arose in a review of complaints received by Better Business Bureaus. Some customers claimed that they were told they would be receiving a new appliance but received a used one instead. They signed contracts accepting the used merchandise with the understanding that new merchandise would be delivered in the near future; however, new items were not received.

One company's contract reviewed by the Council of Better Business Bureaus promised a new TV with a full manufacturer's warranty in exchange for the used one at the end of the leasing period, when all scheduled payments plus one additional payment had been made. Several customers complained that they had not received the new televisions after having made all payments.

The 20 or so states that have regulated RTO companies require that contracts clearly disclose if the merchandise is new or was previously rented. Without such disclosure, consumers might have mistakenly assumed the merchandise they would be receiving was new when it was not, and would consequently last longer and perform better.

The Better Business Bureau Code of Advertising, which is the Bureau system's voluntary industry guidelines, states that "a product previously used by a consumer should be clearly and conspicuously described as such." Many state consumer protection laws also require such a disclosure. Consumers should find out if the RTO merchandise is new or used. An industry trade association advises CBBB that RTO contracts universally state if merchandise is used, whether or not required to do so by state law. When used merchandise is indicated in contracts, consumers should not anticipate getting new appliances a few weeks down the road, as may be verbally represented.

Repairs and Warranties

Because most of the merchandise in RTO transactions has been rented before, it stands to reason that repairs would be needed more frequently as the merchandise gets older. According to contracts reviewed by CBBB, rent-to-own companies state that they will provide normal service to keep the merchandise in good working order. They also state that they are not responsible for any unauthorized repairs or damages to their merchandise.

Delays encountered when trying to get appliances repaired was the problem seen most frequently in the complaints reviewed by the Council of Better Business Bureaus. Consumers expressed frustration at paying for appliances that were not functioning properly and for having to use loaner items which they thought were of lesser quality than what was contracted for. Although RTO companies point to their servicing of merchandise as a major difference between rent-to-own transactions and regular retail sales transactions, complaints indicated that repairs are not always made in a timely manner.

Other complaints reported to CBBB concern an apparent lack of reconditioning of returned items that are later re-rented, including instances of chewed wiring or food on the merchandise. Consumers should, of course, always inspect merchandise to ensure that at least visually it is in acceptable condition.

If an RTO company breaches its contract by not performing repairs, some attorneys believe that consumers may have certain protections under the federal Magnuson-Moss Warranty Act or their state Uniform Commercial Code. An attorney familiar with warranty protection issues may be able to advise on the

likelihood of receiving redress for payments made while the RTO merchandise was out of service and repairs were not performed.

If a consumer pays the weekly or monthly amount for the required period under the contract, say 78 weeks or 18 months, and then owns the property, any manufacturer warranty still valid will be transferred to the consumer. However, because of the long rental period before ownership, there will probably be little if any time left under the warranty. Sometimes consumers do not understand that after ownership and expiration of the manufacturer's warranty the company does not have the same responsibility to make repairs as it did prior to ownership.

Repossession and Reinstatement

Most RTO contracts state that payments must be made on or before the due date and do not allow a grace period. When consumers are late with their payments, the contracts allow for repossession of the merchandise. When the industry was very new, and before state protections existed, repossession tactics were the subject of much concern. For example, according to the National Consumer Law Center's Consumer Credit and Sales Legal Practice Series, some RTO companies' contracts expressly provided that the companies could enter consumers' homes to repossess the appliances once payments were in arrears. In many cases, written notice was not given to the customer and the customer lost all money paid thus far toward ownership once repossession was made.

In order to avoid the repossession scenarios of several years ago, several state laws now afford certain consumer protections regarding how repossession can be carried out and how the contract can be resumed without losing any build-up of ownership. Typical regulations, for instance, prohibit contract clauses which say that the business can enter a consumer's home without the consumer's consent or breach the peace while repossessing merchandise. An industry trade association says that collection abuses are probably no greater in the RTO industry today than in the collections industry generally.

According to the states that have RTO regulations, consumers who are late with payments and have had the merchandise repossessed can generally pay all past due rental charges (within a certain time frame), reasonable costs of pickup and delivery, and a reinstatement fee (which often cannot exceed $5). They can then pick up where they left off in terms of how many more payments they must make before ownership. Upon reinstatement, the company must provide the consumer with the original item or with merchandise of similar quality and condition. In states where there is no specific regulation of RTO transactions, those who fail to make payments and have their merchandise repossessed may be unable to gain reinstatement. Such consumers may have no way of getting the merchandise back even if they had the money to make back payments and pay the other fees.

Early Purchase Option

Many RTO companies have a contractual provision allowing consumers to buy the merchandise before the end of the contract. There are several variations in the way early purchase options are treated, depending on state law, if any. Where there is no state law, such a contractual provision would not be required by the company. Most of the states that do regulate RTO transactions require that the contract disclose that the consumer has the option to purchase the rental property during the term of the rental-purchase agreement. The price, formula, or method by which the purchase price is to be determined must also be disclosed, though the method itself is not prescribed by law.

At the present time, only five states, Iowa, Ohio, Michigan, New York, and South Carolina, actually require that a certain percentage of the weekly or monthly payment be applied to ownership of the item. As an example, in New York a consumer can purchase the merchandise at any time after the initial payment by paying the cash price noted on the contract minus 50% of all rental payments already made. That is, if a consumer already paid $100 toward a television which has a stated cash price of $400, the consumer has to pay $350 more to exercise the early purchase option. In Michigan, a consumer can exercise the early option to buy by applying 45% of what was already paid toward the total rental-purchase price, and then paying the remaining balance due for the outright purchase price. Also according to Michigan's law, if at any time an amount equal to 45% of the total rental payments made equals the cash purchase price disclosed in the contract, then the consumer acquires ownership.

No Federal Protections

Federal laws regarding credit disclosures in contracts, and in advertising as well, are generally believed not to apply to rent-to-own companies. The federal Truth in Lending Act, for example, only applies to credit sales. The Federal Reserve Board has determined that rent-to-own contracts are not credit sales under the Truth in Lending Act because agreements are terminable at any time, without penalty to the consumer. The federal Consumer Leasing Act requires disclosure of certain information when specific "triggering terms" (like the amount of any payment) are used in advertising leases which are for a period of four months or more. The Federal Trade Commission advises that the Act does not apply to rent-to-own agreements as such agreements are from week-to-week or month-to-month and can be cancelled at any time.

Some contracts reviewed by CBBB state, however, that "although the Consumer Leasing Act does not apply to this rental agreement, we have disclosed below the information connected with this agreement." The disclosed information includes relevant financial data, such as the number, amounts, due dates, or periods of scheduled payments, and the total cost of such payments under the agreement and also information as to the purchase option.

CBBB Recommendations to Rent-to-Own Companies

The Council believes that certain actions, as indicated below, taken on the part of the RTO industry would assist consumers in any potential or realized transactions with RTO companies.

* When weekly or monthly rates are quoted in advertisements, full disclosure of all costs, such as the total cost for ownership, should be made. Advertising claims that there is no credit check should not be made, unless accurate.

* Rental-purchase contracts should include full disclosure of all pertinent facts relating to the transaction, including if the merchandise is new or used, financial information, such as the total cost of ownership and all charges involved, and information concerning an early purchase option. All contracts should be written in plain, easily understood language.

* Even when not required to do so by law, companies should adopt the practice of allowing customers who have failed to make timely contract payments and whose merchandise has been repossessed the option of reinstating the agreement with the payment of past due amounts and appropriate delivery and reinstatement fees.

* Repairs should be promptly made, as provided by the contract, and if an acceptable loaner is not provided, billing should be suspended until repairs are completed.

* Merchandise should be reconditioned (and cleaned) in between rentals to reduce the need for repairs while being rented.

* Claims that customers will improve their credit ratings should not be made unless payment information is routinely provided to credit reporting agencies.

Factors Consumers Should Consider About Rent-to-Own

* If you are going to be renting only for a short period of time, compare the costs between a regular rental and a rental-purchase plan.

* Compare RTO contracts of different companies as costs, including the total charges for ownership, and other conditions, like whether or not the item is new, can vary.

* The total cost of ownership through RTO should be compared to the cost of merchandise sold outright, on credit through installment sales, or by use of credit cards. Even if you cannot qualify for a regular credit card, you may be able to receive a collateralized or secured credit card. With a secured card, you must deposit in a bank a certain amount of money, for instance, $500, which serves as your credit limit. That money would be used by the bank to pay any credit card bills that you fail to pay. Merchants have no way of knowing if your card is a secured one and after a reasonable length of time, your collateral would be returned to you.

* You should ask yourself if you could find a lower interest rate somewhere else. Although RTO contracts do not contain a percentage figure for "implicit interest," by looking at the total cost entailed for ownership, as well as the chart provided in this report, you can approximate this figure. You should additionally ask yourself if you could buy the merchandise through a layaway plan or with personal savings. Also consider that used merchandise, costing only about as much as a few rent-to-own payments, could be found through classified ads, yard sales, or appliance repair shops.

* Make sure any contract you are considering contains all important financial information: the cash selling price of the merchandise, at the beginning of the contractual period or later; the amount and timing of rental payments; the amount of any other charges, such as deposits, delivery or reinstatement charges, late fees, and fees to be paid at the end of the contract before ownership; and the total cost of the agreement.

* Learn what will happen if your payments are late and the merchandise is repossessed. Some, but not all, states say that you can continue the contract where you left off under certain circumstances. Also, most contracts reviewed by the Council of Better Business Bureaus stated that there are no grace periods, meaning that the payments must be made before or on a certain date every week or month.

* Make sure the contract describes the merchandise accurately and notes whether it is new or used. Do not accept used merchandise with the promise of receiving new as soon as possible, unless you are willing to rent or buy the used item.

* Find out who is responsible for any necessary repairs and if you will get a loaner or the company will stop billing while the appliance is being repaired.

* Make sure the contract describes the conditions under which you can end the rental-purchase agreement. Most contracts allow for termination after the initial period of one week or one month; however, one contract we reviewed obligated the consumer to pay for three months, even if the property was returned to the company. Also learn if there is an early purchase option and how to take advantage of it.

* Don't assume that the rent-to-own company will automatically be reporting your good payment record to your local credit reporting agency, thus establishing a better credit record. Some consumers complained to local Better Business Bureaus that a company said it reported information to the credit bureau when it did not. One major credit reporting agency advised CBBB that it did not have any rent-to-own companies reporting information to it.

* Before signing any agreement, make certain that you understand all the provisions. Although some states now provide that contracts be written in "plain English," the contracts contain much information and can be confusing. Do not be afraid to ask questions to satisfy yourself on all terms and conditions.

* Always check with your local Better Business Bureau regarding the reliability of any rent-to-own company before signing a contract. The Bureau or your local consumer protection agency can also advise you of any regulations pertaining to the rent-to-own industry in your state.

Advantages and Disadvantages of Rent-to-Own Contracts

Advantages

* Consumers with poor credit or no credit can buy appliances and other household goods they might not otherwise be able to afford.

* RTO payments generally can be made weekly, every other week, or monthly, and periodic payments may be more affordable to many consumers than other arrangements.

* Consumers can end their contracts at any time and return the merchandise without penalty.

* Appliances are delivered and service is provided free when appliances are broken.

Disadvantages

* In most cases, it will cost consumers much more to acquire ownership from rent-to-own companies than from other sellers. Few RTO customers actually end up owning the merchandise they have been renting-to-own.

* Consumers may not be aware of the actual price of merchandise, how much they will have to pay for ownership, and how much the "implicit interest" adds up to.

* RTO merchandise is often not new and may have been used by several other customers previously.

* Generally depending on state law, consumers who miss payments and have merchandise repossessed may not be able to get the merchandise back and have their contracts reinstated.

Standards and Practices Division
Council of Better Business Bureaus, Inc.
May 1990

How to Compute Rent-to-Own Implicit Interest

TOTAL OF PAYMENTS OVER 18 MONTHS

CASH PRICE OF PRODUCT	$400 ($22.22 a month)	$600 ($33.33 a month)	$800 ($44.44 a month)	$1000 ($55.55 a month)	$1200 ($66.66 a month)	$1400 ($77.77 a month)	$1600 ($88.88 a month)	$1800 ($100.00 a month)	$2000 ($111.11 a month)	$2200 ($122.22 a month)	$2400 ($133.33 a month)	$2600 ($144.44 a month)
$200	103%	185%	258%									
$300	38%	103%	158%	210%	258%							
$400	0	56%	103%	145%	185%	222%	258%					
$500		24%	66%	103%	137%	169%	200%	229%				
$600		0	39%	72%	103%	132%	159%	185%	210%			
$700			17%	48%	77%	103%	127%	151%	174%	196%	217%	
$800			0	29%	56%	80%	103%	124%	145%	165%	185%	204%
$900				13%	38%	61%	83%	103%	122%	140%	158%	176%
$1000				0	24%	45%	66%	85%	103%	120%	137%	153%
$1100					11%	32%	51%	69%	86%	103%	119%	134%
$1200					0	20%	38%	56%	72%	88%	103%	118%

How To Use This Chart

By using this chart, you can estimate the implicit interest which you will be charged if you make enough rental payments to own the product. Along the left side of the chart is the "cash price," or the amount which you would pay to buy the product with one payment. Along the top of the chart are the total amounts which you would be paying to buy the product under a rent-to-own plan. In parentheses under each total amount is the cost of each monthly payment. All three of these amounts should appear on the rent-to-own contract.

To figure out the implicit interest, you should first find the cash price of the product you are buying. Then follow across the chart to the column that corresponds to the total amount you must pay to own the product. For example, if the cash price is $400 and the total amount which you must pay to own is $1000, the implicit interest would be 145%.

If your cash price or total payment amount falls between the numbers on the chart, you can use the chart to estimate the implicit interest. For example, if the cash price is between $400 and $500 and the total payment amount is $1000, your implicit interest will be between 103% and 145%. If the cash price is between $400 and $500, and the total amount to be paid is between $1000 and $1200, then the implicit interest would be between 103% and 184%.

This chart is based upon your paying the total amount needed to own the product in 18 months. If your agreement permits you a longer time to pay that amount, your implicit interest would be less than shown on the chart. If your agreement gives you less time to pay that amount, your implicit interest would be higher than shown on the chart. ■

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State Regulation of Rent-To-Own Transactions

State	No Regulation	Rent-to-own Transactions Exempt From Retail Sales Regulations	Rent-to-own Transactions Subject to Retail Sales Laws	Requires That a Certain Percentage of Payment Be Applied to Equity	Requires Disclosure of Charges	
Alabama					X	
Alaska	X					
Arizona	X					
Arkansas					X	
California	X					
Colorado	X					
Connecticut	X					
Delaware	X					
Florida					X	*
Georgia					X	
Hawaii	X					
Idaho	X					
Illinois					X	*
Indiana					X	
Iowa				X *(50% to equity)	X	
Kansas	X					
Kentucky	X					
Louisiana	X					
Maine		X				
Maryland					X	*
Massachusetts					X	
Michigan				X (45% to equity)	X	
Minnesota			X * (no rate cap)			
Mississippi	X					
Missouri					X	
Montana	X					
Nebraska					X	*
Nevada	X					
New Hampshire	X					
New Jersey	X					
New Mexico	X					
New York				X (50% to equity)	X	
North Carolina		X				
North Dakota	X					
Ohio				X (50% to equity)		
Oklahoma					X	*
Oregon	X					
Pennsylvania			X (18% rate cap)			
Rhode Island	X					
South Carolina				X *(55% to equity)	X	
South Dakota	X					
Tennessee					X	
Texas					X	
Utah	X					
Vermont	X					
Virginia					X	
Washington	X					
West Virginia	X					
Wisconsin		X				
Wyoming	X					
Totals:	26	3	2	5	18	

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** The Charleston Gazette, Monday, February 5, 1990

Rent-to-own firms' exemption may be costly for consumers

By Paul Nyden
STAFF WRITER

All $300 televisions bought over time don't cost the same amount.

Through a standard payment plan at 18 percent interest, customers of The Appliance Store pay $350 for a $300 19-inch color television over an 18-month period. Colortyme, a rent-to-own chain, charges its customers $935 for the same $300 set over 18 months.

Legal aid lawyer David McMahon presented these figures to the House Judiciary Committee last week. The committee still passed a bill sponsored by Delegate Rod Berry, D-Marshall, that exempts these stores from consumer protection laws because they allegedly rent, rather than sell, merchandise.

The exemption allows rent-to-own stores, which target the poor, to charge as much as they want in interest and other fees. Colortyme sometimes charges 400 percent interest per year for goods.

The Judiciary Committee approved the rent-to-own bill by a vote of 19-4. Delegates David Grubb and Tony Shepherd, both D-Kanawha, Andy Katz, D-Ohio, and Dale Manuel, D-Jefferson, voted against the measure. Supporting it were Judiciary Chairman John Hatcher, D-Fayette, and both United Mine Workers members on the committee, Delegates Ernest Moore, D-McDowell, and Jim Reid, D-Mingo.

Rent-to-own stores promise customers no credit checks and immediate delivery. Supporters of the bill say this is the only way many poor people can get large-ticket items like televisions, stereos and household furniture. Charleston has several rent-to-own outlets, including ALRENCO, Colortyme, Rent-A-Center and E-Z Television, Appliance and Furniture.

Deputy Attorney General Robert Lamont said Berry's bill hurts both consumers and business.

"It is not fair to the business community as a whole to require some merchants, but not others, to comply with consumer protection legislation. . . . The proposed bill is certainly not aimed at providing the consumer with greater protection," Lamont told legislators last week.

"It is intended to insulate the rent-to-own industry from ...

(Please turn to Page 2A, col. 5)

from page one

Exemption may cost consumer

laws that govern retail merchants."

Berry's bill would also exempt rent-to-own outlets from a state law that gives a cooling-off period to consumers who buy or lease products for their homes. State law now gives those purchasers three days to cancel such agreements with no penalties.

Berry's bill strips rent-to-own customers of any financial interest in their televisions or stereos until they complete all payments. For example, if a customer misses a final $50 payment on a $300 color television — even after paying $850 for it — the store could repossess it and rent it to someone else.

A colorful advertisement handed to potential ALRENCO customers at the Plaza East shopping center, in a poor section of Charleston, shows how companies lure customers. On the front, in large print, the flier promises "Big Savings" and special sales. On the back of the flier, in fine print, ALRENCO reveals how much a 19-inch Philco set will actually cost.

"Based on 18-month plan, ... total payments $874.10 plus tax, delivery and processing fee. Consumer acquires no ownership rights if the total to acquire ownership is not paid," the flier states. Customers pay $24.50 the first month and $49.95 each month thereafter.

Under The Appliance Store's 18-month payment plan, customers pay less than $20 per month for the set, according to the attorney general's office.

The rent-to-own bill may be debated on the House of Delegates floor as early as today. Grubb said, "All the poverty lawyers say the bill is bad. The attorney general says the bill is bad. Yet the committee voted 19-4 to report this bill out.

"If the Consumer Protection Act itself was up for a vote today, I'm not sure it would pass," he said.

EASTERN PANHANDLE
The Morning Journal

Rent-to-Own Company Seeks Debtor Arrests

By LAURA ERNDE
Journal Staff Writer

Donald and Vickie Walls lost everything in a fire in December 1989 that burned their Porter Avenue house, but spared the lives of them and their four children.

More than a year later, a local rent-to-own company had them arrested on felony larceny charges for not returning property lost in the fire. The charges were dropped last week when prosecutors learned of the situation.

The Walls were victims of the rent-to-own company, which is using a criminal law to prosecute its debtors, many of whom are simply too poor to make the payments, claimed Public Defender Jerome Dambro.

Dambro said such matters normally are handled through civil cases not involving criminal prosecution.

But Mark Reeder, owner of Rentworks in Martinsburg, the store that brought the charges, said the law only is used as a last resort when civil suits do not work.

"All we're trying to do is to get the return of our property," Reeder said. "You obviously can't run a business by continually losing money."

Dambro contends debts should be resolved in civil court, not criminal court.

"It's like a debtors' prison," Dambro said. "If they do that, they're going to have to fill up the jails with a lot of people."

Vickie Walls said her family, of 711 S. Raleigh St., Martinsburg, agreed to pay Rentworks $1,500 for the television, video cassette recorder and vacuum cleaner that were lost in the fire. The items were not insured by Rentworks.

"If we had the merchandise we'd give it to you," Vickie Walls said she told Reeder. But the items were all destroyed in the fire and their remains thrown away, she said.

Reeder said he knew about the fire but brought the charges because he was not convinced the merchandise was lost.

The Walls said they will consult a lawyer about bringing their own civil charges against the company for the harassment they said they endured.

The Walls' faced a penalty of one to 10 years in prison. And being arrested in front of their children was humiliating, she said.

"It really scared the kids," Vickie Walls said. Her children are ages 3, 4, 5 and 13.

She adds the family is willing to pay the debt at their own pace, but times are hard with both parents currently working part-time jobs.

The Walls' have paid about $500 of their debt to the company.

Besides the Walls, Dambro said he represents two other people who were arrested by Rentworks, 219 N. Queen St., under the same law.

Shirley Hemphill of 224 W. Race St., Martinsburg, spent six days in jail for not returning or paying for a $496 washer her boyfriend Robert C. Barth rented from Rentworks, Dambro said.

The contract was not in Hemphill's name, Dambro said, and that charge was dropped.

Rebecca McDowell, 242 E. Liberty St., owed Rentworks for a $248 television. She agreed to make payments after being arrested, Dambro said.

Neither McDowell nor Hemphill could be reached for comment.

"The law was not intended to bring charges against people in cases when they aren't able to make payments," Dambro said.

He said the law is intended for people who willfully obtain goods through false pretenses.

"They're abusing the process. Lots of people have had debts but they don't put them in jail for it."

Both Berkeley County Prosecutor Diana Risavi and Robert Lamont, who works in the consumer affairs department of the West Virginia Attorney General's Office, said they had not heard of criminal cases being filed in debt cases.

Reeder admitted his business appeals to lower-income families who cannot afford to buy items with cash or even on credit.

But Reeder said the customers sign contracts that outline the agreement that should be honored.

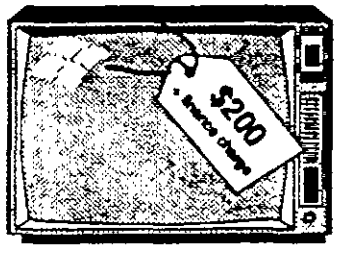
"I don't want to see them go to jail," Reeder said. "(But) as far as I'm concerned these people kind of beat the system."



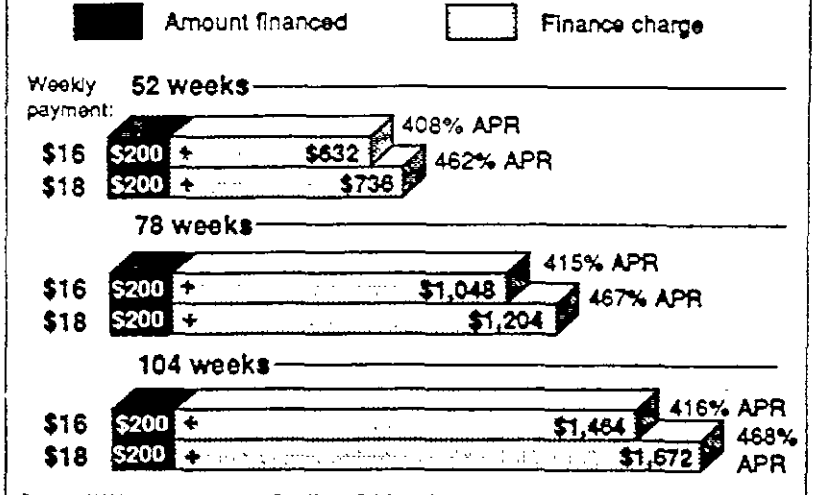
Journal photo by Laura Ernde

Vicki Walls, pictured with two of her children, had been embroiled in a legal battle with a local rental company over merchandise destroyed in a December 1989 fire.

Renting to own: how much does it cost?



Purchasing an item from a rent-to-own company can be very costly because of dramatically inflated finance charge rates. For example, a television with a retail value of $200 will cost $1,248 to $1,404 at $16 or $18 per week over 78 weeks.



Source: W.Va. attorney general's office, division of consumer protection

Gazette graphic by BRENDA PINNELL

The Herald-Dispatch

METR
FINAL

A GANNETT NEWSPAPER HUNTINGTON, W.VA., NOVEMBER 8, 1990 35 Cents

RENT TO OWN

Low payments conceal final costs double or triple retail, critics say

By KENNETH R. BLAKE
Of The Herald-Dispatch staff

Marlene Jeffers-Watts wanted a television set.

But she couldn't afford to pay cash for one, and her poor credit rating at the time made getting a loan impossible.

So when she heard that a store in Huntington would rent her a TV for $18.95 a week, she was interested.

When she heard she could apply her rent toward buying the TV, she was even more interested.

When she heard the company required no credit check, she was hooked.

She ended up paying $1,200 for a TV worth $499.

She's still angry.

"A lot of people ask me for advice about renting to own, and I tell them, 'No, don't rent to own,' " Jeffers-Watts, 33, said last week as she sat curled up in one of her living room chairs.

Across the room, the closing credits of an Andy Griffith Show rerun played across the television — a color Panasonic floor model — which she has owned for about a year now.

"I don't want to see them do the same stupid thing I did," she said.

It's called renting to own because customers get the chance to rent appliances, televisions, stereos, furniture and other items for weekly or monthly payments.

The customer can cancel the rental arrangement at any time with no penalty. However, if the customer makes a specified number of rental payments, the customer gets to keep the item.

Rental payments often are attractively low, but customers like Jeffers-Watts who make all the payments required to own an item usually end up paying two or three times the item's retail price.

That's certainly the case locally. A recent Herald-Dispatch study comparing the total cost of seven items at local rent-to-own stores with the cost of identical or comparable items at local retail stores found that the rent-to-own costs ranged from 126 percent to 320 percent higher.

The study also found that if the items were financed — say through a bank or a lending company — at the same terms set by the rent-to-own stores, interest rates on the loans would range from 125.7 percent to 318.9 percent.

Figures like those show that the rent-to-own industry is ripping off consumers, especially poor ones attracted by low monthly payments and the promise of no credit checks, critics say.

Some, like Dave Grubb, director of the West Virginia Citizen Action Group, say rent-to-own agreements actually are thinly disguised credit sales that charge outrageously high interest rates.

Rent-to-own dealers disagree, though, and during the upcoming legislative session, the two sides most likely will continue their two-year-old fight over how to regulate the industry in West Virginia.

Grubb and other rent-to-own critics have written a bill that basically defines renting to own as a credit transaction subject to the laws that cap interest rates at 18 percent.

However, rent-to-own industry representatives have written a bill that specifically exempts rent-to-own agreements from laws regulating credit sales.

The bill does, however, require that rent-to-own stores disclose certain information about each transaction such as the total rent-to-own cost of an item and the cash price of the item.

The bill also gives the consumer the right to return a rented item and then rent it again up to three rental terms later without losing any progress toward ownership of the item.

Both bills failed to pass during the last two sessions, and Grubb said the issue probably will be taken up again during the next session.

Meanwhile, another rent-to-own critic, Francie Roberts-Buchanan, says something needs to be done to keep the rent-to-own industry from preying on low-income people.

"Rent-to-own dealers don't ask the customer, 'What will you live without in order to live with this?' " said Roberts-Buchanan, director of the Information and Referral Service in Huntington, an agency which aids low income people.

Too often, clients come in with a bill for electricity, medicine or food that they can't afford to pay because they are on a rent-to-own program, she said.

Although getting the client to cancel the rental agreement in order to free up money for the bill is an option in theory, it often isn't an option in practice, she said.

"When they're paying 60 bucks a month to a certain rent-to-own place for a set of bunk beds or a VCR or a television or an entertainment center, and they've paid that for quite a few months and they've got all that money invested, it's hard for us to say, 'Give it all up and lose everything you've put into it,' " she said.

But rent-to-own dealers have neither the responsibility nor the right to decide how people should spend their money, according to Roger Sharp, president of the West Virginia Rental Dealers Association and co-owner of Appalachian Rentals in Huntington.

"There are people that shouldn't gamble. There are people that shouldn't drink. And I'm sure there are people that shouldn't rent to own," he said.

Also, saying that rent-to-own dealers charge excessive interest rates is both inaccurate and unfair, he said.

In a rent-to-own agreement, the customer is never in debt. Therefore, there can be no interest, he said.

Furthermore, comparing the final rent-to-own cost of an item with the local retail price of the same item is equally unfair, he said.

That's because rent-to-own customers get more than the item they rent, he said.

Rent-to-own dealers, for example, usually offer free service throughout the rental term and free use of a comparable item if a rented item needs repair.

They also must absorb the cost of processing a customer's weekly or monthly rental payment and refurbishing items that are returned when a customer cancels a rental agreement, he said.

Retail dealers have no comparable costs, he said.

Finally, rent-to-own customers pay for the ability to cancel the arrangement at any time with no impact on their credit rating, Sharp said.

"That non-obligation, that ability to keep your credit in good standing, has got to mean something. It's got to have some kind of value."

In fact, rent-to-own stores actually offer a necessary service to those who can't get loans because of poor credit, he said.

"I think the estimate I've heard is that about 35 percent of Americans today don't have access to any kind of credit. So there is a large market out there that is not being serviced," he said.

At a rent-to-own store, though, the same people can acquire new merchandise — merchandise that increases their net worth, he said.

He has many customers who, unlike Jeffers-Watts, are perfectly happy with their rent-to-own arrangements, he said.

"I'm not the type of person who could feel comfortable with myself or who would be able to sleep at night if I didn't think I was providing a service that the people I'm dealing with actually need," Sharp said.

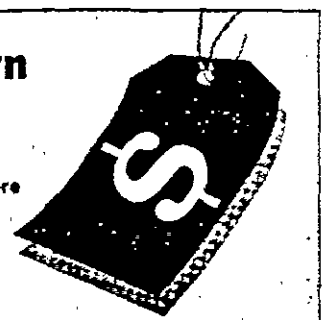
But Grubb doesn't quite see it that way.

"To say we're doing somebody a favor by allowing them to pay 200 percent interest on a transaction is nuts. I don't think we're doing low-income people a great service by giving them access to unconscionable interest rates.

The result for the customer is the same as it would have been if the customer had paid interest, he said.

The cost of renting to own

Comparisons of local retail prices of seven items with the total cost of identical or comparable items at Huntington rent-to-own stores. The chart also shows what the interest rate would be if the transactions were considered credit sales.



Item: Boom box with tape deck
Local retail price: $169.95
Store: Aircraft
Rental terms: $48 a month for 12 months
Total rent-to-own cost: $576
Interest rate if financed at same terms: 318.9%

Item: 19-inch color TV (used) with remote control
Local retail price: $249.97 (new)
Store: Rent A Center
Rental terms: $39.99 a month for 18 months
Total rent-to-own cost: $639.84
Interest rate if financed at same terms: 168.5%

Item: Microwave oven, 600-watts
Local retail price: $159.97
Store: Appalachian Rentals
Rental terms: $32 a month for 21 months
Total rent-to-own cost: $672
Interest rate if financed at same terms: 234.4%

Item: Video cassette recorder, 2-heads, remote control
Local retail price: $249.95
Store: Curtis Mathes Home Entertainment Center
Rental terms: $39.95 a month for 24 months
Total rent-to-own cost: $958.80
Interest rate if financed at same terms: 185.7%

Item: Video cassette recorder, 4-heads, remote control
Local retail price: $269.97
Store: Colortyme
Rental terms: $59.80 a month for 18 months
Total rent-to-own cost: $1,076.40
Interest rate if financed at same terms: 257.8%

Item: Electric range, self-cleaning
Local retail price: $499
Store: RTO Rents
Rental terms: $75.44 a month for 18 months
Total rent-to-own cost: $1,357.92
Interest rate if financed at same terms: 183.1%

Item: Washer and dryer set, stacked
Local retail price: $700
Store: National Appliance & TV
Rental terms: $87.95 a month for 18 months
Total rent-to-own cost: $1,583.10
Interest rate if financed at same terms: 125.7%

GOOD MORNING!
MONDAY



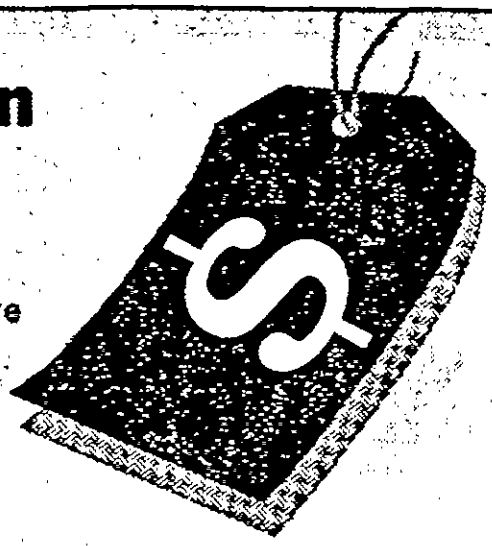
Neighborhood
The St. James blends the old with the new/B1



Overpowering
Bengals come home, and Saints march in/C1

The Herald-Dispatch
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A GANNETT NEWSPAPER HUNTINGTON, W.VA. NOVEMBER 5, 1990 35 Cents

The cost of renting to own



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A PUBLICATION OF CONSUMERS UNION • NO ADVERTISING

Consumer Reports

Once over

How to pay $1300 for a $600 TV set

For people short on funds, it sounds like a great way to buy a television set: no money down, free delivery, and free repairs (often at your home) during the period you're making your payments. If you find yourself strapped for funds, you just give the TV set back and no one will ask you for additional payments.

It's called "rent-to-own," a payment method that allows you to rent a product by the week or month and to gain ownership once you've made a specified number of payments. According to the Association of Progressive Rental Organizations, a trade group, about 5000 rent-to-own businesses in the country take in an estimated $1.5-billion a year. While TV sets are the biggest part of the business, companies also rent stereos, large appliances, video cassette recorders, and furniture.

But the convenience of rent-to-own can come at a stiff price. Maryland Attorney General Steve Sachs warns that consumers may not realize that the effective interest rate they'll have to shell out for the convenience of the monthly payments can be gigantic. In Baltimore, for example, one appliance store was selling a particular TV set for $608 in cash, or $698 in total payments if financed. Another store was offering two rent-to-own plans for the same brand of TV. Under those plans, a person would pay a total of $1301 in monthly installments or $1552 in weekly installments to own the TV set after a year and a half. We estimate the implicit interest rate on those transactions to be from 115 to 152 percent a year.

Unsophisticated consumers may not realize the high cost involved because rent-to-own transactions aren't covered by the disclosure requirements of the Federal Truth in Lending Act. In some states, usury laws don't apply either, because a rental transaction is technically considered different from financing a purchase. In some states, a rent-to-own dealer can legally deliver a used product instead of a new one, without disclosing that fact.

Industry spokesmen insist that the high price of renting-to-own is justified by conveniences like free delivery, free repairs, and a replacement if the item has to go into the shop. "The right to change your mind and give a TV set back has a value," says Ed Winn, general counsel of the industry trade group.



We doubt that the convenience of the rent-to-own arrangement is really worth more than the TV set itself. We think it's time to make rent-to-own dealers disclose more about the deal so buyers have a better idea of what they're getting and the high implicit interest rate they're paying.

The Charlotte Observer

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Monday, August 2, 1987

Editorials

Rein In Rent-To-Owns

People in the rent-to-own business extend credit to those who, because they are poor, are considered bad credit risks. So perhaps it isn't unreasonable for the rent-to-own folks to set rental payments that include a higher rate of interest than that charged by conventional lenders and retailers who sell on credit. The higher the risk, the higher the rate. So it always has been.

But 362%?

That's the effective interest rate N.C. Attorney General Lacy Thornburg has calculated in the case of a Charlotte rent-to-own dealer who collects payments that will total $780 on a 19-inch color TV valued at $209.

That's the kind of exploitation of the poor and vulnerable that has prompted both houses of the N.C. General Assembly, despite powerful lobbying by the rent-to-own industry, to consider bills that would put a lid on rent-to-own charges.

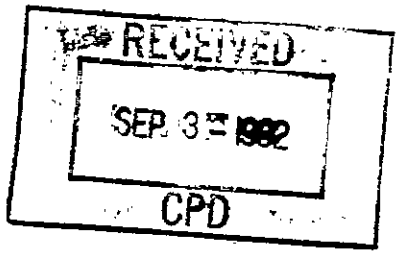
The lobbyists — including former Attorney General Rufus Edmisten and former House Speaker Phil Godwin — warn that the legislation will put the rent-to-own people out of business, and that the poor will have no way to acquire TV sets, stereos and other items. But we suspect that Attorney General Thornburg is correct when he describes the industry's pitch and practice as "a cruel hoax." He says few of the people paying the industry's exploitative rental rates will ever complete their payments and own the items they're renting. Surely most of the people who can afford to pay those rates month after month could qualify for conventional consumer credit at regulated, considerably lower rates.

Regulations recently approved by a Senate subcommittee still would allow interest rates on rent-to-own agreements to reach as high as 73%. Under a House-passed bill, rent-to-own businesses would be treated as other retailers, with their interest rate limited to 24%.

Consumer advocates say the Senate bill doesn't go far enough, and we agree. A compromise leaning toward the House version seems in order. Perhaps 24% isn't high enough to allow rent-to-own businesses to operate profitably and stay in business, but if they have to charge much more than that, maybe they shouldn't be in business.

Whatever the outcome, we hope the two houses can agree on legislation before the current session runs out. Otherwise the exploitation will continue for at least another year.

Gorby's
MUSIC, INC. • 214 SEVENTH AVE. • SOUTH CHARLESTON, W.VA. 25303 • DIAL (304) 744-9452



2 September 1992

Tim WInslow
West Virginia Attorney General's Office
812 Quarrier Street, 6th Floor
Charleston, WV 25301

Dear Tim:

Reference is made to RTO Rule 14 and its possible impact on the musical instrument rental-purchase practices that are used by firms such as Gorby's Music and others throughout the United States.

As you can tell from the attached copy of the front of our rental form, what we can a Retail Installment Contract with Rental Option and Security Agreement, we fully comply with the Federal Truth In Lending Disclosures.

Parents want to know that their children can play a musical instrument prior to making full payment. For that reason these types of rental agreements came into being perhaps in the late 1940's. In fact, on a national average, about 50% are returned within the first year. Our customers can return their instrument at any time as long as their payments are current and the instrument is in good condition. Without this option the school band and orchestra programs in West Virginia or any state would cease to exist.

Please call with any questions you may have.

Yours truly,

Jerry Gorby
President

RETAIL INSTALLMENT CONTRACT WITH RENTAL OPTION AND SECURITY AGREEMENT

Gorby's MUSIC, INC.
214 7th Ave., South Charleston, WV 25303
744-9452

DATE: _____
CONTRACT # _____
ACCOUNT # _____

APPLICANT'S NAME _____ SS# _____

COMPLETE HOME ADDRESS WITH ZIP _____ ☐ RENT ☐ OWN

LOCATION OF RESIDENCE IF YOU USED A POST OFFICE BOX ABOVE

HOME PHONE _____ STUDENT'S FULL NAME _____ SCHOOL _____

APPLICANT'S EMPLOYER _____ YRS _____ PHONE _____

CREDIT CARD REFERENCE WITH NUMBER _____ EXPIRATION DATE _____

DRIVERS LICENSE NUMBER _____ STATE _____

NAME, ADDRESS & PHONE OF NEAREST RELATIVE _____

CO-APPLICANT'S NAME _____ SS# _____

CO-APPLICANT'S COMPLETE HOME ADDRESS WITH ZIP _____ ☐ RENT ☐ OWN

CO-APPLICANT'S EMPLOYER _____ YRS _____ PHONE _____

CO-APPLICANT'S NEAREST RELATIVE WITH ADDRESS AND PHONE _____

CO AP'S HOME PHONE _____ CREDIT CARD REFERENCE _____ EXPIRATION DATE _____

SAMPLE

DESCRIPTION OF RENTAL PROPERTY

QUAN.	ITEM #	SERIAL #	AMOUNT

BRAND AND TYPE _____ FINISH _____

NEW ☐ USED ☐ SLIGHTLY USED ☐

PARTIES. In this Contract the words "I," "me" and "my" mean buyer and/or Guarantor. The words "you" and "your" mean the seller or any person or firm to whom this Agreement is assigned.

You agree to sell me the property described below and I promise to pay you the unpaid balance (Amount Financed) shown in the Federal Truth in Lending Disclosure Box below plus Finance Charges at the Annual Percentage Rate shown in the Federal Truth in Lending Disclosure Box (the "Obligation"). I will make payments as shown below.

I agree to give you a security interest under the Uniform Commercial Code of West Virginia in the property described below and any equipment added to it or substituted for existing equipment to secure the payment of my obligation on this Agreement. I also give you a security interest in the proceeds from any unauthorized sale of the merchandise, and the proceeds of any insurance you may have. You waive and release any and all liens or claims or rights of lien on my principal dwelling which may arise by operation of law.

You agree to pass title of this merchandise to me when this Agreement is completed.

OPTIONS:

#1 - RENTAL. If my payments are current I may terminate this Contract at any time by returning the merchandise in good condition to Gorby's. All monies received by Gorby's will be retained as rental fees for my use of the merchandise during the time the merchandise was in my possession. Music teachers and other third parties shall not be responsible for the return of the merchandise.

#2 MAINTENANCE AND REPAIR (see other side for details).
___ I select the M&R option and agree to pay the monthly fee listed below in addition to my rental payments as long as this Contract is in force. ___ I do not choose to have the M&R.

1) Music Stand	$ _____	5) Tax	_____
2) Care Kit	_____	6) Sub-Total	$ _____
~~3) M&R~~	_____	7) Total Amt. Paid with Rental Fee	$ _____
4) Music Book	_____		

SALES PERSON (NAME) _____ # _____ (NAME) _____ #

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled.	The total cost of my purchase on credit, including my down-payment of $ _____
%	$	$	$	$

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
		Monthly starting
Last Payment (if different)		

Filing fees $_____

Prepayment: If I pay off early, I will not have to pay a penalty.

I can see my contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and the security interest I have given to you.

LATE CHARGE: If a payment is more than 10 days late, I will be charged 5% of the payment. The late charge will be at least $1.00 but not more than $5.00.

ITEMIZATION OF AMOUNT FINANCED:

1.	Cash Price	$ _____
2.	Amount Paid to Others on my behalf—Sales Tax	$ _____
3.	Total Cash Price—1 & 2	$
4.	Down Payment ☐ Ck. ☐ Cash	$
5.	Amount Paid on My Account—Unpaid Cash Balance (3-4)	$ _____
6.	Maintenance & Repair (tax Inc.)	$
7.	AMOUNT FINANCED (5 & 6)	$

SUBJECT TO CREDIT APPROVAL

GORBY'S MUSIC, INC.

By: _____ Date _____
Credit Dept.

I agree that (1) this Contract includes the information on the Reverse Side of this page; and (2) I have read and the Customer first signing below received a copy of this Contract with all blanks filled in before I signed it.

_____ _____
APPLICANT'S SIGNATURE DATE

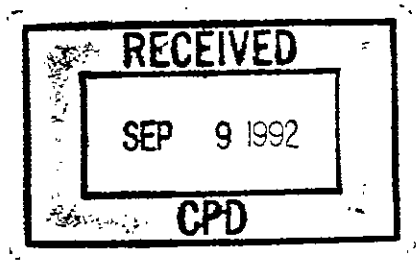
_____ _____
SPOUSE'S OR CO APPLICANT'S SIGNATURE DATE

_____
DATE COUPON BOOK MAILED

SEE OTHER SIDE FOR IMPORTANT INFORMATION

Gorby's
MUSIC, INC. • 214 SEVENTH AVE. • SOUTH CHARLESTON, W.VA. 25303 • DIAL (304) 744-9452

6 September 1992



Tim Winslow
West Virginia Attorney General's Office
812 Quarrier Street, 6th Floor
Charleston, WV 25301

Dear Tim:

The second type of Agreement we use in allowing students the opportunity to start a musical instrument career that might be affected by RTO Rule 14 is attached. This involves leasing violins and members of the violin family (violas and cellos) for school music students.

These instruments are available in different sizes. The lower grade students may require a very small instrument and then progress through three of four sizes as they physically grow.

We supply these instruments with the provision that parents can exchange sizes whenever needed. The program has been well accepted by parents and teachers and is common to those used throughout the country. Parents obviously don't want four different sized instruments stuffed in the corner of a closet. We do allow a percentage of the money to apply toward the purchase of a new instrument.

Our biggest problem has been with folks who move and don't tell us where they are going. Somehow the instrument goes with them. There are others who don't like to pay their fees on time, so we wind up with a credit & collections problem.

Sincerely,

Jerry Gorby
President

GORBY'S MUSIC HOUSE, INC.
214 Seventh Avenue, PO Box 8005, South Charleston, WV 25303
(304) 744-9452

Contract # _____

STRINGED INSTRUMENT LEASE AGREEMENT

LESSEE_____ DELIVERY DATE_____ ACCOUNT#_____

SALESMAN_____#_____ SALESMAN_____#_____

This LEASE AGREEMENT made this _____th day of _____, 19____, between the undersigned (hereafter called LESSEE) and GORBY'S MUSIC HOUSE, INC. (hereafter called LESSOR):

for INSTRUMENT_____ BRAND_____MODEL_____

SERIAL #_____ INVENTORY #_____VALUE $_____

TERMS OF THIS LEASE shall be $_____ per month including sales tax with monthly payments of the same amount due every 30 days from the date of delivery.

TERMINATION BY THE LESSEE: LESSEE, at his option, may terminate this Agreement by returning the property to Gorby's Music House, Inc, 214 7th Ave, South Charleston, WV, 25303, in the same condition as at the time of rental, fair wear and tear excepted, and by payment of all rental payments and other charges due through the date of return. RENT WILL ACCUMULATE UNTIL THE PROPERTY IS RECEIVED AT GORBY'S MUSIC HOUSE INC. Music teachers and other third parties shall not be responsible for return of this property.

TERMINATION BY THE OWNER: The Lessor can terminate this Agreement at its option and without notice to the Lessee should the Lessee fail to make every lease payment required on the due date, or should the Lessee breach any agreement, condition or representation of the Agreement and/or if the Lessor deems itself insecure as to the safety, condition or location of the property described herein. Upon termination, Lessee agrees to deliver the property to the Lessor in the same condition as when leased, fair wear and tear excepted, and Lessee shall remain liable for all payments and charges due at the time the property is returned and for the performance of all agreements and conditions of this Agreement.

LOCATION OF THE MERCHANDISE: Lessee warrants and agrees that he will keep the property in his possession as the Lessee's address listed herein and will not remove the property from this address without written agreement from the Lessor. It is understood that PERMISSION WILL NOT BE GIVEN TO REMOVE THE PROPERTY FROM THE STATE OF WEST VIRGINIA. If the merchandise is removed from West Virginia, the Lessor will be in default and is liable to the Lessor for the total value of the property as listed above plus all outstanding rent and charges.

RETURNED CHECKS: There will be a $15.00 service charge on all returned checks. Lessee agrees and understands that the phrase "lease payments to date" or similar language does not constitute an offer, nor does the cashing of any such check by the Lessor constitute an acceptance of an offer, or an accord and satisfaction.

LATE PAYMENTS: Any lease payment received more than 10 days after the due date is subject to a lease reinstatement charge of $1.00 or 5% of the lease payment, whichever is greater.

APPROVAL AND ACCEPTANCE: Acceptance of this Agreement is subject to credit verification at the Lessor's corporate headquarters located at 214 7th Ave, South Charleston, WV 25303.

TITLE: Title and unrestricted rights of repossession of the property shall remain with the Lessor. Lessee may apply 100% of payments made toward the purchase of a new MENC approved instrument provided the total credit does not exceed 30% of the retail price of the instrument to be purchased.

APPLICATION OF PAYMENT: Payments will be applied first to return check charges, late fees and any other charges due and then to sales tax and instrument lease fees. Payments are applied to past due payments first, then current payments.

WARRANTIES: Warranties shall be limited on all property to those express warranties, if any, which are provided by the manufacturer. Warranty work must be submitted to the Lessor at 214 7th Ave, South Charleston, WV 25303. Shipping costs to and from are the responsibility of the Lessee.

USE OF THE PROPERTY: Lessee represents and warrants that the property leased is for his personal, family or household use; not for professional use.

ORAL STATEMENTS & PERFORMANCE: There are no understandings or representations, express or implied, written or oral, not specified in this Agreement in the terms hereof, and this Agreement contains the entire obligations and is binding on both parties. If the Lessor waives any default by the Lessee or Lessor remedies any of Lessee's defaults, such action will not operate as a waiver of the default remedied or of any earlier or later defaults. Time is of the essence with this Agreement.

DEFAULT: If the Lessee should default in any of the obligations hereunder, or if the Lessor should deem itself insecure in respect to the contractural obligations hereunder, the entire value of the property, plus all outstanding lease fees and charges, at the option of the Lessor, and without notice to the Lessee, shall immediately become due and payable, and the Lessor may proceed to collect such amount, and/or may, without notice or prior demand, take possession of the property wherever found, and without process of law. Such termination shall not release the Lessee from the payment of any damages sustained by the Lessor as provided herein. The remedy of repossession shall be cumulative with any other remedies the Lessor may have against the Lessee as a matter of law. Lessee hereby directs any third party having custody or possession of the Property, including schools, to deliver the property to the Lessor on demand and agrees to hold the Lessor and the said third parties, school teachers and officials harmless for such delivery. In the event the property is repossessed by the Lessor, the Lessee shall, in addition to cost of collection and instrument damage, pay all amounts due under the Agreement from the date hereof until recovery of the property by the Lessor. LESSEE HAS NO RIGHT TO SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER OR DISPOSE OF SAID PROPERTY OR TO MOVE SAID PROPERTY FROM THE ADDRESS OF THE LESSEE AS LISTED IN THE CREDIT APPLICATION BELOW. TO DO SO IS A BREACH OF THIS AGREEMENT AND THE LESSEE SHALL BE LIABLE UNDER APPLICABLE STATE LAW. If the property is removed from the state where leased, the Lessee is liable to the Lessor for the total value of the property as listed on the front of this document plus all outstanding lease fees and charges.

LEGAL REMEDIES AND COLLECTION COSTS: Lessee agrees to pay all costs and expenses incurred in collection including, but not limited to, $20.00 per hour for employee time, expenses, service and filing fees, attorney's fees, court costs, late charges at the rate of 18% on all rental payments due on the date of the return and any other reasonable expenses incurred. In any event, minimum charge for the pick-up of a payment of instrument outside the store shall be at $20.00 plus twenty-five cents ($0.25) per mile, per attempt, and $20.00 per hour for the employee time spent prosecuting in small claims court to collect money owed under this Agreement.

THERE ARE NO REFUNDS FOR EARLY RETURNS.

CREDIT APPLICATION

Applicant's Name _____ So. Security # _____ Phone _____

Spouse's Name _____ So. Security # _____ Phone _____

Student's Name _____ School _____ Music Teacher _____

Rent____ Own ____ Home Address _____

Landlord or Mortgage Co. _____ Previous Address (if less than 1 Year) _____

_____ Previous Gorby's Account # _____ Checked by _____

Driver's License # _____ State _____

Employer _____ Position _____ Wage_____ Phone_____ Yrs____

Spouse's Employer _____ Position _____ Wage _____ Phone _____ Yrs ____

Your Nearest Relative _____ Relationship_____ Phone _____

Address _____

Spouse's Nearest Relative _____ Relationship _____ Phone _____

Name of Bank _____ Branch _____

Auto Year, Model _____ Financed by _____ Balance Owing _____

Have you filed for bankruptcy during the last 7 years? _____ Are there any suits or judgments against you? _____ Credit Reference _____ Account # _____

Visa # _____ Exp. Date _____ Discover # _____ Exp. Date _____

Mastercard # _____ Exp. Date _____ Am. Exp. # _____ Exp. Date _____

By completing this credit application, you certify under penalty of perjury that the statements made above are true to the best of your knowledge. Any false statements made are grounds for immediate repossession of the equipment described above. You authorize us to verify your credit standing as deemed necessary.

BY SIGNING BELOW, THE LESSEE AGREES TO ALL OF THE TERMS LISTED ON THE FRONT AND BACK OF THIS AGREEMENT AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY.

Date: _____ LESSEE: _____

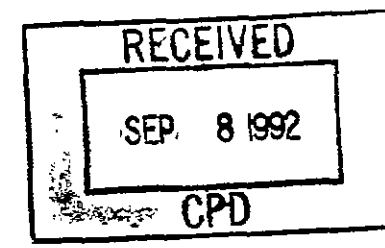
CREDIT APPROVAL : _____ CO-SIGNER: _____

AT&T

Bruce K. Cox
State Director
Government Affairs

Suite 800
900 Pennsylvania Avenue
Charleston, WV 25302
304 347-2061
FAX 304 347-2083

September 8, 1992



The Honorable Mario J. Palumbo
Attorney General
State of West Virginia
State Capitol
Charleston, West Virginia 25305

Dear Attorney General Palumbo:

In response to the Notice of Public Hearing on a Proposed Rule (Notice) entitled "Interpretive Rule Pertaining to Treatment of Rent-to-Own Transactions as Consumer Leases or Consumer Credit Sales" (RTO Rule 14) and the Notice entitled "Legislative Rule on Consumer Lease Disclosures in Rent-to-Own Transactions" (RTO Rule 15) the American Telephone and Telegraph company (AT&T) respectfully submits comments on the proposed Rules.

AT&T currently offers leases of consumer telecommunications equipment that range from rentals with an initial term of three months without a purchase option to longer term leases where the consumer, after completing a minimum period of rentals has the option, but not the obligation, to purchase the leased equipment for substantial consideration. AT&T also has firm plans to offer a daily rental program for one of its products. In conducting its consumer leasing business, AT&T fully informs its customers of the terms and conditions of their lease agreements as required by state and federal regulations in a manner that is consistent with consumer's needs for meaningful information and the operation of a high volume, nationwide, highly mechanized business processes.

AT&T fully supports the proposition that consumers should be fully informed of the material terms and conditions affecting lease agreements into which they enter -- thus facilitating informed consumer decisions. Although the proposed Rules are a step in the right direction, as written, they result in potentially overlapping regulation of many consumer leases as "rental-purchase agreements," "consumer leases," and "credit sales." Lessors like AT&T could find the uncertainty involved with the proposed Rules impossible to administer. Therefore, AT&T offers the

following comments and proposed changes to the proposed Rules.

First, the proposed Rules should define a "rental-purchase agreement" in a way that distinguishes it from, not commingles it with, consumer leases and credit sales. Only with a distinguishing definition, will lessors be able to determine with certainty the nature of the lease agreement they offer and, thus, the specific disclosures they are required to make and the other regulations affecting their lease offers with which they must comply. AT&T recommends that the following definition of a "rental-purchase agreement", which is consistent with the legislation in all but a very small minority of the states that have adopted regulations affecting rental-purchase agreements and the proposed federal legislation on this subject (U.S. House Bill 4497), be substituted for the definition in the proposed Rules:

> 2.3. "Rental-purchase agreement" means an agreement for the use of personal property by a consumer primarily for personal, family, or household purposes, for an initial period of 4 months or less, that is automatically renewable with each payment, and that permits, but does not obligate, the consumer to become the owner of the personal property. The term does not include a "consumer lease" or a "consumer credit sale" as defined in W. Va. Code 46A-1-102.

Second, the appropriate classification of a lease agreement as a "rental-purchase agreement," a "consumer lease," or a "credit sale" should be determined, at the time the agreement is entered into, by the provisions the lease agreement itself. A classification of an agreement based on the "intent" of the consumers which will not become known until some time in the future when they choose to avail themselves of an option contained in the agreement or a reclassification of an agreement based on a consumer's exercising of an option, would be virtually impossible for lessors to administer. Responsible lessors comply with the laws and regulations affecting their leasing businesses and need to know with certainty which apply to any specific offer. Without this certainty, appropriate advertising copy and disclosure statements cannot be created. AT&T, therefore, urges the Attorney General not to adopt the proposed Interpretive Rule 14 which would involve classifications of lease agreements, not on the explicit terms of the lease agreement themselves, but on other expressions of consumer intent or on a consumers' subsequent actions to avail themselves of options contained in the agreement.

Third, the final Rules should be consistent with comparable federal regulations dealing with similar matters. Firms doing business nationally often find unduly burdensome state regulations that are inconsistent with both federal regulations and regulations in most other states. Often the costs associated with such doing business under such inconsistent state regulations are sufficient to cause national firms to exit the market in the inconsistent states -- thus depriving consumers there the opportunity to avail themselves of potentially beneficial goods and services. The West Virginia Legislature in enacting the West Virginia Consumer Credit and Protection Act clearly stated its intention that the West Virginia courts "be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters." (W. Va. Code 46A-6-102.) Moreover, the legislature instructed the Attorney General, to promulgate rules and regulations conforming "as nearly as practicable with the rules, regulations, and decisions of the federal trade commission and federal courts...." (W. Va. Code 46A-6-103.)

Construing lease agreements to be consumer credit sales, as proposed in the Interpretive Rule, would be inconsistent with the Federal Regulation Z Truth-in-Lending. Regulation Z explicitly excludes from the definition of a credit sales leases that are "terminable without penalty at any time by the consumer." (12 CFR 226.2 (a) (16).) The definition of a credit sale in the West Virginia Consumer Credit and Protection Act is consistent with Regulation Z. (W. Va. Code 46A-1-102 (13) & (39).) However, the definition of a rental-purchase agreement in the proposed Rules would include leases that are terminable at any time without penalty and then further includes rental purchase agreements for goods under $1,000.00 as credit sales.

In addition, construing rental-purchase agreements as consumer leases is inconsistent with Federal Regulation M Consumer Leases. Regulation M includes within its definition of consumer leases agreements "for a period of time exceeding four months." (12 CFR 213.2 (a) (6).) The West Virginia Consumer Credit and Protection Act adopts a comparable definition of a consumer lease. (W. Va. Code 461-1-102 (14).)

It is unnecessary for the proposed Rules to deviate from this intentional consistency with federal regulation on similar matters. Adopting AT&T's recommended definition of a rental-purchase agreement would distinguish such agreements from either consumer leases and consumer credit sales and provide for disclosures consistent with the specific nature of rental-purchase agreements.

AT&T's recommendations, if adopted, would provide West Virginia consumers entering into rental-purchase agreements with meaningful disclosures, with the ability to compare the cost of obtaining the use -- and, at their option, ownership -- of personal property through a leasing program with the cost of obtaining its use by purchasing the property outright.

For the reasons stated above, AT&T respectfully requests the Attorney General to adopt its recommendations for revising the definition of a "rental-purchase agreement" in the proposed Legislative Rule and not adopting the proposed Interpretive Rule. AT&T would be pleased to provide additional information to the Attorney General or to respond to any questions the Attorney General may have regarding its views.

Very truly yours,

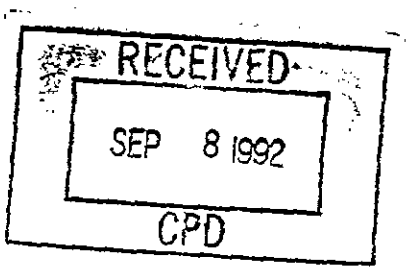
Bruce K. Cox

Bruce K. Cox
State Director

Copy to: Gerard G. Nelson

West Virginia Bankers Association, Inc.
Suite 1212 • Commerce Square • Charleston, WV 25301-1780 • (304) 343-8838

Thomas A. Winner
Corporate Secretary—Treasurer



September 8, 1992

West Virginia Attorney
General's Office
812 Quarrier Street
6th Floor
Charleston, WV 25301
Attn: RTO Rule 15

RE: Proposed Rent to Own Regulations

Dear Sir or Madam:

The West Virginia Bankers Association appreciates this opportunity to comment on the above-referenced proposed regulations. The Association's members include approximately 160 state chartered and federally chartered banks located in West Virginia, as well as their parent bank holding companies. For reasons set forth in this letter, the proposed regulations are of interest to our members.

Under federal and state law, banks and bank holding companies are permitted to enter into certain consumer leasing arrangements. Federal and state laws and regulations applicable to banks and bank holding companies strictly regulate the types of leases these institutions may enter into as well as the disclosure of the financial aspects of the lease terms to consumers. It is our understanding that it is not the intention of your office to impose additional regulation upon the leasing activities permissible to banks and bank holding companies. We are concerned that the proposed regulations, as drafted, could apply to leasing activities of banks and bank holding companies, adding an unnecessary additional layer of regulation to such activities. In addition, if applicable, the proposed disclosure obligations appear inconsistent with applicable federal disclosure obligations and could raise confusion, if not federal preemption issues.

In this comment letter, we will supply some general background information relating to the consumer leasing activities permissible to banks and bank holding companies to indicate the nature of such leases and the level of regulation to which they are subject. Speaking generally, the leasing activities permitted to banks and bank holding companies are very different from typical rent to own

lease transactions. First, banks and bank holding companies may not acquire the property to be leased until a valid lease has been executed. In other words, they are not permitted to acquire an inventory of property to be leased and then such leasing customers.

Second, leases by banks and bank holding companies must be "net" leases. In other words, the lessee, not the bank or bank holding company, has the responsibilities of an owner with regard to servicing, maintenance, repair and insurance, by way of example. Certain other terms are dictated by law, for example, the lease must have an initial term of not less than ninety (90) days or more than ten (10) years.

Significantly, a bank or bank holding company must recoup its full investment in the property over the term of the initial lease, plus the cost of financing the property from: (i) rentals, (ii) estimated tax benefits and (iii) the "estimated residual value" of the property at the end of the initial term of the lease. However, generally speaking, a bank or bank holding company cannot rely on "estimated residual value" to yield the required recoupment in an amount in excess of 25% of the original cost of the property unless guaranteed by the manufacturer, the lessee, or an unaffiliated guarantor. In other words, when the initial lease is executed, the contractual terms must permit the bank or bank holding company to recoup its investment, looking to liquidate the property at the end of the term to cover no more than 25% of original cost. The original lease arrangement, through rental and guaranty provisions, along with tax benefits to the lessor, must enable the lessor bank or bank holding company to recoup 75% of its costs plus costs of financing.

For your reference, the following citations apply to the leasing activities of the entity indicated:

1. National banks: 12 U.S.C. §§24(7), (10) and 12 C.F.R. §23.

2. State banks: W.Va. Code §31A-4-38 and 106 CSR 16.

3. Bank holding companies: 12 C.F.R. §225.25(b)(5).

Such leases are in the nature of financing leases. Bank regulators further confirm this by stating that leasing activities

are subject to the lending limits which restrict the amount of credit which may be extended to any one borrower. Banks and bank holding companies are not permitted to engage in daily or short term leasing (which would not result in the required recoupment). The leases may contain a purchase option at the fair market value at the end of the lease term.

Federal law also regulates disclosure of the financial terms of leases by banks and bank holding companies. Depending upon the circumstances, the Federal Truth in Lending Act, 15 USC §1601, et seq., or the Consumer Leasing Act of 1976, 15 USC §1667 et seq., will apply to the consumer leasing activities of banks and bank holding companies for leases with a term of greater than four (4) months. Neither state nor federal consumer protection laws apply to personal property leases where the contract amount exceeds $25,000.00. The disclosure requirements are very specifically dictated and cover, in a different format and manner, virtually all of the disclosure items in the proposed regulations, plus additional items. The federal format must be followed.

Because the focus of the activities addressed by the proposed regulations is not on leasing activities permissible to banks and bank holding companies and because of the scope of the regulation of those activities which presently exists at both the state and federal level, we would like to propose the following amendment, adding a new section 5, to the proposed rent-to-own regulations:

§142-14-5. Exemptions.

This interpretive rule does not apply to the leasing activities of national banks, state chartered banks, bank holding companies or their subsidiaries. "Rental purchase agreement" does not include a contract subject to the Federal Truth in Lending Act, 15 USC §1601 et seq.; the Consumer Leasing Act of 1976, 15 USC §1667 et seq.; or a lease in which the amount payable exceeds $25,000.00

We submit that the above amendment does not detract from the purpose of the proposed regulations. We further suggest that it will avoid creation of inconsistent regulatory applications and possible federal law pre-emption issues. We are not commenting on the appropriateness of the scope of the proposed interpretive regulations under the authority of the West Virginia Consumer

Credit and Protection Act, W.Va. Code §46A-1-101 et seq. If we can supply additional information useful in your deliberations, please do not hesitate to contact me.

Respectfully submitted,

Thomas A. Winner

Thomas A. Winner
West Virginia Bankers Association
Government Relations Officer

79952

WEST VIRGINIA RENTAL DEALERS' ASSOCIATION
2516 5th Avenue
Huntington, WV 25703
(304) 526-4040

Roger Sharp, President
Keith Brock, Vice President

HAND DELIVERY
9-16-92 LKB

Dear Attorney General Palumbo:

Thank you for the opportunity to meet with you and your staff on Monday. As I am sure you realized during our meeting, there are a whole lot more sides to this issue than you may have understood before.

I submit this letter, along with the attached list of questions, for your review and response. It is our formal request that you withdraw your proposed rules, and meet with representatives of the industry and David McMahon with Legal Services, to see if some compromise may be reached on this critical and complex issue.

We believe the legislature is the appropriate and constitutional forum for resolving this matter. To this end, the West Virginia rental dealers have advocated comprehensive consumer protection legislation to regulate rent-to-own since 1989. During these four years, we have been willing to meet with any interested parties or individuals to discuss our industry, the "hot" issues, and possible solutions to these issues. As recently as this past spring, we bent over backward to meet the demands of Mr. McMahon, Senator Humphreys and Delegate Grubb. We were willing to agree to all of the following (in addition to giving in on a host of other key concerns):

- application of liberal portions of the West Virginia Consumer Credit and Protection Code to the transaction (25 separate sections)
- coverage under the state Fair Debt Collection Practices Act
- strong late-payment grace periods, rights of

reinstatement, substantive limitations on collateral fees or charges, and so forth

- vesting of substantial regulatory responsibility in the Attorney General's office
- full and complete disclosure of all terms and conditions of our agreements, including the cash price of the rented property, the total of rental payments necessary to acquire ownership of the property, and the difference between these two amounts, to be clearly and conspicuously labelled "cost of lease services."

Unfortunately, this was not enough for Mr. McMahon. In addition to the concessions detailed above, and on top of other issues we compromised with him on, he was not satisfied. He insisted we agree to limitations designed to destroy our businesses. This we would not do. So instead of compromising and having in place a great consumer protection law in West Virginia, Mr. McMahon played "winner take all" and killed good legislation as a result.

In any event, the following are our specific objections to your proposed rules.

First, as I stated at the September 9th hearing, the proposed rules are an effort to hammer a square peg into a round hole. As a practical matter, what your proposed rules are really saying is: "Henceforth, rental purchase agreements at times shall be consumer leases and at other times shall be consumer credit sales." In a letter to you dated September 8, 1992, AT&T's State Director of Government Affairs, Bruce Cox, urged that rental purchase

agreements be defined in a manner that distinguishes those agreements from consumer leases and consumer credit sales rather than co-mingles them with those types of transactions. We agree a rental purchase agreement is neither a consumer lease nor a consumer credit sale. Otherwise, the proposed rules would be unnecessary. The consumer credit laws of this state simply were not drafted to regulate non-debt transactions such as terminable rental agreements.

The approach we encourage has the added advantage of being consistent with the court decisions, rules and regulations under the federal Truth-in-Lending and Consumer Leasing Acts. For at least 10 years, the scope of coverage of TILA and CLA has been settled law-terminable rental agreements are not consumer "credit sales" or "consumer leases." The West Virginia legislature specifically directed courts in this state to follow decisions under the federal statutes, and also directed the attorney general's office to promulgate rules and regulations consistent with those issued by the FTC and the FRB. The proposed rules are completely inconsistent with the federal regulations and court decisions and, as such, are at odds with the specific direction and stated legislative intent of the West Virginia legislature.

Second, by anyone's definition, the proposed rules are radical departures from current West Virginia law. The members of the Rental Dealer's Association want to know why your office would undertake this action when consumer complaints concerning RTO did not even make your office's "Top 10" list of consumer complaints.

We also ask whether the proposed interpretive rule is within

the attorney general's statutory power. The West Virginia Code defines interpretive rules in Section 29A-1-2(d). An interpretive rule is intended "to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by it and which is not intended by the agency to be determinative of any issue affecting private rights, privileges or interests." Additionally, interpretive rules may not be relied upon to impose civil sanctions. Yet, the interpretive rule your office has proposed transforms certain rental purchase agreements into consumer credit sales and assigns a penalty for violating the rule. This is not interpretation; this is legislation. We think enactment of the proposed interpretive rule is beyond the office's rule-making authority.

Third, we oppose the rules because they threaten the existence of our businesses and livelihoods. We have worked hard for many years to build these businesses, and we resent your office's proposals to destroy them without first obtaining comment from us or the public.

Yes, a hearing was held, and, yes, you agreed to meet with me. But these occurred after the rules were proposed. Why were we not given the courtesy of a consultation before the publishing of proposals to put us out of business? We are tax-paying, law-abiding citizens. We have done nothing dishonest or criminal. We deserved notice and an opportunity to be heard before your office undertook to change the law so that our businesses could not operate profitably under it.

Fourth, the proposed rules are directly contrary to the

overwhelming majority legal view of this transaction as a true lease and not a credit sale. 31 states have passed rental-purchase legislation. The Federal Reserve Board has recognized the transaction to be a lease and not a sale. Also, the Uniform Drafters in drafting the new Article 2A amendment to the Uniform Commercial Code have agreed with this conclusion and specifically modified the definition of "security interest" under 201-37 to exclude terminable leases. The vast majority of states and courts in this country have recognized RTO as a true lease, independent from consumer credit sales and consumer leases.

RTO is a rental business that requires regulation separate from the regulation of credit sales. The issue should be whether charges are reasonable for rentals, not installment sales. A consumer's intent is irrelevant, unreliable, liable to change quickly and often, and not provable with any reasonable certainty in court. The fact that 70% of rental purchase agreements are terminated by consumers within the first 100 days should tell you all you need to know about whether this transaction is a lease or a sale.

Assistant Attorney General Winslow stated that he wants to create an "equal playing field." He wants to place the same limits on us as are placed on Sears. He asked how that could put us out of business. Let me ask you this: How long would Sears stay in business if 70% of its installment loan customers stopped paying within the next 100 days?

We cannot stay in business under an 18% interest ceiling. We are not equipped to compete with Sears. We run an entirely

different business with entirely different customers. Even if we attempted to adapt, we would have to radically change our business operations with little hope of survival against the credit giants.

Finally, requiring the disclosure of an APR or imputed interest rate in a rent-to-own transaction is confusing and misleading to our customers, in addition to representing a manufactured (and therefore false) piece of information. APR is a calculation implying debt where no debt exists, it as disclosed will create false impressions and implications for the rent-to-own consumer, who knows and understands he is not in debt. The term "APR" is a totally inaccurate description of the difference between a cash price and a total of lease payments. It does not provide a reasonable basis by which a consumer can compare a rental purchase agreement with a consumer credit sale. The latter is often not even available to many of our customers. Requiring an interest rate disclosure in rental purchase agreements is nothing more than an attempt to deceptively portray RTO as charging grossly inflated prices.

The difference between a cash price and a total of lease payments is the "cost of lease services" and should be so described. It includes and accurately describes the right to terminate without penalty, product maintenance, and a host of other benefits.

In closing, let me say in all earnestness that the members of the Rental Dealers Association welcome regulation that provides consumers with meaningful disclosures that are also fair to the RTO industry. The rules your office has proposed would do neither.

What the rules will do is foster litigation that will increase costs that will be passed on to West Virginia consumers. If the rules are eventually upheld, you will succeed not in lowering costs, but in cutting off availability. Talk to our customers. This is not what they want.

The papers, fueled by isolated incidents reported by legal aid attorneys, have been printing stories about low income people paying $1,000.00 for a $300.00 television or VCR. Why don't they write about the families on welfare that spend $15.00 a week washing clothes at a laundromat because they have been through a bankruptcy and cannot get a washing machine on credit, a washing machine that we rent for $8.00 to $10.00 a week?

Or what about the families without a stove or refrigerator? Why don't the media suggest that these families do without these luxuries for a few months until they have saved enough to buy them from a second hand store? Also, they need to be informed of what to do when the appliances break down. Save for repairs?

Electronic equipment is fragile, high-maintenance merchandise. Our charges reflect our costs of doing business.

We respectfully request that you withdraw the proposed rules and commence negotiations for a proposed bill that can be offered to the West Virginia Legislature as being supported by the Attorney General's Office, Legal Aid, and the RTO industry.

Sincerely,

Roger Sharp

Roger Sharp, President
West Virginia Rental
Dealers Association

Good afternoon;

My name is Roger Sharp.

I am a native West Virginian living in Huntington.

I have been a rental dealer since 1980 and am currently President of the West Virginia Rental Dealers' Association

With my partners, I employ 37 people. They rely on our rental company for their livelihood. They will be greatly affected by the position the Attorney General is proposing.

Previously, I have had 7 years management experience with finance companies. This unique combination of experience highly qualifies me to speak on the topic before us today.

→ I am against the rules as they are proposed

Everyone here, no matter which side of the issue, has spoken of disclosures governing RTO transactions. Our Association initiated the request for consumer disclosures in West Virginia in 1988.

We all acknowledge that there have been several industries throughout history which have been regulated with disclosures.

Disclosures are meant to educate people about the transaction they are considering. In this way, consumers are able to make intelligent decisions of their own.

Disclosures are **NOT** and **NEVER** were meant to recharacterize the industry they were intended to regulate.

Disclosures are **NOT** and **NEVER** were meant to eliminate the industry they were intended to regulate.

Mr. Attorney General;

One of the main issues you must address is:

If the disclosures contained in the rules you propose prove to recharacterize the RTO industry, will you then knowingly proceed to eliminate the RTO industry with the adoption of these rules?

Atty Gen response

An examination of the Federal Truth in Lending Act and the West Virginia Consumer Credit Code reveals that these rules do recharacterize and eliminate RTO transactions.

For instance, and I quote from, the Federal Truth in Lending Act at 15 U.S.C. § 1667, Consumer Leases under Notes of Decisions which reads,"Agreement which provided for rental of television set at a weekly fee, which obligated the lessee to pay only the first week's rental, which was terminable by each party under certain circumstances, and which provided that, if the lessee rented the television for

a period of 78 consecutive weeks, the television would belong to him was **neither a credit sale nor a consumer lease** for the purposes of this section, Lemay v. Stroman's, Inc., D.C. Ark, 1981, 510 F. Supp. 540."

The West Virginia Consumer Credit Code, with sections on credit sale and consumer lease patterned directly from the Federal Truth in Lending Act, was the basis for a summary motion ruling in the Circuit Court of Cabell county that RTO transactions are **not credit sales**.

The proposed rules are evidence in and of themselves that RTO transactions are **not credit sales nor credit leases** within the meaning of the West Virginia Consumer Credit Code.

That must mean that there are three separate and distinct transactions: (1) credit sales, (2) consumer leases, and (3) RTO transactions--Correct?

Atty Gen response

If there are not three separate and distinct transactions here, then what is the purpose of the proposed rules?

Atty Gen response

The proposed rules recognize - going in - three separate transactions, but only allow two of these transactions to survive the rulings.

So, the ruling recharacterizes RTO transactions into either credit sales or consumer leases. This conclusion is not made by either the Federal Truth in Lending Act or the West Virginia Consumer Credit Code.

Once assimilated as either a credit sale or a consumer lease, further recharacterization is still needed, because RTO transactions are not capable of making required APR and interest disclosures. So, in an attempt to comply with these required disclosures, a fictitious **'IMPUTED'** interest figure is invented. **Never before in the history of consumer protection has an erroneous term been required as a disclosure.**

Why would the Attorney General's office want to require such confusing and erroneous terms in consumer protection disclosures?

Why do these rules request an erroneous, misleading figure of **'IMPUTED'** interest as a required disclosure?

What is the invention of **'IMPUTED'** interest for, if not for the recharacterization of RTO?

The original RTO transaction and the "rule-changed" RTO transaction bear no resemblance to one another.

Now that it is known how completely these proposed rules will metamorphosize RTO transactions, I must again ask, "Will these rules be allowed to eliminate this legitimate industry?"

Atty Gen response

So, Mr. Attorney General, I challenge you to regulate RTO transactions for what they are.

I am surprised and disappointed that the Attorney General's office did not first meet with representatives of our industry before proposing these rules. I especially don't understand this when our industry has made numerous attempts to arrange such a meeting.

So now we are facing potential rules that have no input from our industry, and that will eliminate our industry.

I am sure these rules have the full support and input of a small group of current and former legal aide members. Legal Aide has but one stated agenda for RTO, i.e., "RTO has no right to exist."

It has been this group that has prevented RTO disclosures for the last 4 years.

In 1989, the RTO bill passed the Senate 34-0 and the House Judiciary 22-1. A threatened filibuster by Mr. Grubb prevented a full House vote, thus killing the bill and depriving the people of West Virginia RTO disclosures.

In 1990, the House passed the same RTO bill as the 1989 version 66-33. The Senate Judiciary sent it to the full Senate with recommendations that it pass. After first reading, a member of the Rules Committee had the bill pulled off the calendar, even though 22-25 Senators were poised to vote for this bill. Again, the people of West Virginia were deprived of RTO disclosures.

Last year the proposed RTO bill was not a regulatory bill, it was an RTO elimination bill. The elements that made that bill an elimination bill are contained word for word in the proposed rules before us today. The House members recognized this and voted it down.

I can only hope that in your wisdom you can see through the smoke screen that the eliminate-RTO advocates have amassed before you.

/ Gen response

The decision today is not just to provide disclosures on RTO to consumers.
The decision is, are we going to eliminate an industry?

Atty Gen response

The decision is, are we going to eliminate a $5 million industry tax base for this State?

Atty Gen response

The decision is, are we going to eliminate 400 jobs in West Virginia?

Atty Gen response

The decision is, are we going to take the consumers'right of choice away?

Atty Gen response

The decision is, are we going to ignore the requests of these 573 RTO consumers not to eliminate their "options to own"?

The answer to all these questions will be seen clearly in the final form that these proposed rules take if adopted.

RTO dealers are not preventing disclosures, we want them. However, we will fight any disquised so-called disclosures that ultimately eliminate RTO by their adoption.

Let me paint a picture of what will result if these rules stand as written:

RTO dealers would have to supply free loaners, free repair service, no credit checks, and at the same time, pay property tax on each unit, and do all this at the same price as retail credit sellers. These retailers do not provide these services, nor pay these taxes. And, they have a mandatory requirement for customers to make payments for the full term of the contract. RTO dealers can't require their customers to keep paying for a full term, because RTO dealers have a non-obligation contract.

It makes no business sense to remain in that type of situation.

RTO dealers will be forced by these rules to take one of three business options:

(1) Drop "options to own" and become rent to rent dealers.

(2) Become retail credit sellers with "No Obligation" option dropped.

(3) Go Out of Business.

ALL THREE OPTIONS ELIMINATE RTO.

Atty Gen response

Why is the interpretive rule being proposed in direct opposition to:

The Federal Truth in Lending Act

The Federal Leasing Act of 1976

The Federal Reserve Board

The Federal Trade Commission

The West Virginia Consumer Credit Code

31 other State laws regulating RTO

West Virginia Business Privilege tax regulations?

All these laws, regulations, or agencies currently recognize RTO transactions

as true leases, not credit sales.

Atty Gen response — What then, makes West Virginia RTO transactions different from those recognized as true leases?

Atty Gen response — Why is it that of all the leases allowed in West Virginia, **ONLY** RTO leases are required to make disclosures of APR and interest?

I am proud to represent the RTO dealers of this state. Members of the West Virginia Rental Dealers' Association are honest, hard working people. Their businesses are neighborhood stores. Their customers are friends, neighbors, and relatives. People that these businesses know and respect

RTO dealers have no problem with providing them with meaningful disclosures.

So how can the Attorney General provide these consumer disclosures without eliminating RTO?

RTO dealers believe proposed legislation on RTO by "The Council of State Governments" is the answer.

Atty Gen response — The West Virginia Rental Dealers' Association requests that the Attorney General's office study "The Council of State Governments'" proposal and explain why it can not be the answer to the dilemma these rules pose.

Thanks for your time and attention.

I would be happy to answer any questions.

Oral questions for the Attorney General contained in Roger Sharp's comments during Public Hearing on RTO.

1. If disclosures contained in the rules you propose prove to recharacterize the RTO industry, will you then knowingly proceed to eliminate the RTO industry with the adoption of these rules?
2. ... three separate and distinct transactions:(1) credit sales (2) consumer leases and (3) RTO transactions--- Correct?
3. If there are not three separate and distinct transactions here, then what is the purpose of the proposed rules?
4. Why would the Attorney General's office want to require such confusing and erroneous terms in consumer protection disclosures?
5. Why do these rules request an erroneous, mislesding figure of **"IMPUTED"** interest as a required disclosure?
6. What is the invention of **"IMPUTED"** interest for, if not for the recharacterization of RTO?
7. again..."Will this rule be allowed to eliminate this legitimate industry?
8. ... are we going to eliminate an industry?
9. ... are we going to eliminate a $5 million industry tax base for this State?
10. ...are we going to eliminate 400 jobs in West Virginia?
11. ... are we going to take the consumers' right of choice away?
12. ... are we going to ignore the requests of these 573 RTO consumers not to eliminate their "Options to Own"?
13. Why is the interpretive rule being proposed in direct opposition to:
    The Federal Truth in Lending Act
    The Federal Leasing Act of 1976
    The Federal Reserve Board
    The Federal Trade Commission
    The West Virginia Consumer Credit Code
    31 other State laws regulating RTO across this nation
    West Virginia Business Privilege tax regulations?
14. What then, makes West Virginia RTO transactions different from those recognized as true leases?

15. Why is it that of all the leases allowed in West Virginia, only RTO leases are required to make disclosures of APR and interest?

16. The West Virginia Rental Dealers' Association requests that the Attorney General's office study "The Council of State Governments'" proposal and explain why it can not be the answer to the dilemma these rules pose.

Written questions submitted for Attorney General's response on RTO Public Hearing of 9-9-92.

1. Is it difficult to file complaints against companies with the Attorney General's office?
2. Does the Attorney General's office try to facilitate the filing of complaints so that all West Virginia consumers have access to this process?
3. How many consumer complaints of any kind have been filed with the Attorney General's office in the last 10 years?
4. How many of those consumer complaints were filed against RTO stores?
5. What were the nature of the RTO complaints?
6. Were any of those complaints based on rental rates being too high? If so how many?
7. Were any of those complaints charging that interest or APR was too high or not disclosed? If so how many?
8. What about collection practice complaints how many of those have there been in the last 10 years?
9. How many of these collection complaints were against ... Banks? Finance companies? Retail stores? Collection agencies? Lawyers? Doctor-Hospitals? Auto dealers? RTO dealers?
10. Has the Attorney General's office ever conducted a formal investigation of any RTO dealer? If so when?
11. What was the result of any such investigation?
12. Has any lawsuit for any violations whatsoever by an RTO dealer ever been prosecuted by the Attorney General's office as a result of any complaint filed or investigation conducted? If so when, why and what was the outcome of the case?
13. If all businesses in West Virginia had the same complaint, investigation and lawsuit track record as the RTO industry does with the Attorney General's office would the Attorney General's workload increase or decrease?

14. Considering that there have been over 10 million RTO transaction in West Virginia over the last 10 years, how would you characterize the level of consumer satisfaction with RTO in relationship to complaints your office has received?
15. Information from the Attorney General's office reveals a very low number of complaints against RTO dealers. So what is the catalyst that has warranted the Attorney General's office to issue these rules?
16. Since the RTO complaint level is low, what other varibles were used to justify the expense of taxpayers money to propose and enforce these unnecessary rules?
17. Does the State plan to compensate all legitimate businesses that this rule will shut down?

RTO Contract Disclosures

	Model	AL*	AR*	CO*	CT	DE	FL*	GA**	IA*	IL*	IN*	KA	KY*	LA	MA***	MD*	ME	MI**	MN*	MO*	NE*	NV	NY**	OH**	OK*	RI*	SC*	SD	TN*	TX*	VA**	WA
1	Total cost of rental transaction	1	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)
2	Statement that the total cost does not include other charges	2	○			)		)			○			)	○	)		)	○		○		○	)					○	)	○	)
3	Amount/ number of lowest of payments	3	○	)	○	)	○	)	○	)	○	)		)	○		○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)
4	*An equity statement that ownership and total of payments needed*	4	○	)	○	)		)			○	)	○	)			○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)
5	Explanation of risk or loss during term of agreement	5	○	)	○	)	○	)	○	)	○	)	○	)		)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)
6	Statutory limit on consumer's risk of loss (fair market value, lease purchase option price or other limit)	6	○			)		)			○		○	)		)	○		○	)	○	)	○				○	)	○		○	)
7	Description of the leased property	7	○			)	○	)	○	)	○		○	)	○	)	○	)	○		○	)	○	)		)	○		○	)	○	)
8	Whether property is new or used	8	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)	○	)
9	Description of any damages to property	9	○									)					○						○						○		○	)
10	Cash price of property (or fair market value)	10	○			)	○	)	○	)	○	)		)	○	)	○	)	○	)	○	)	○	)					○	)	○	)
11	Total initial payment due before delivery or consummation	11	○				○	)	○	)	○			)	○	)	○	)	○	)	○	)	○	)		)			○	)	○	)
12	Disclosure of any early buy-out options or formulas	12	○			)	○	)	○	)	○			)	○	)	○	)	○	)	○	)	○	)		)	○	)	○	)	○	)
13	Early buy-out option required by statute	13	○			)	○	)	○	)	○			)		)	○	)	○		○	)	○	)		)	○	)			○	)
14	Early buy-out formula set by statute	14					○	)			○							)	○		○		○		○			○				
15	Explanation of maintenance and service responsibilities during agreement	15	○			)	○	)	○	)				)	○	)	○	)	○	)			○	)		)		)		)	○	)
16	Disclosure of any manufacturer's warranty coverage after ownership	16	○				○	)	○	)				)	○	)	○	)	○	)			)		○	)		)		)	○	)
17	Requirement to transfer any unexpired manufacturer's warranty after ownership	17	○				○	)	○	)				)	○	)			○	)			○	)	○	)		)		)	○	)
18	Remedies of the parties and cure of the transaction	18	○					)	○	)				)	○	)		)	○		○		○	)		)		)		)	○	)
19	Statement that consumer may terminate at any time without penalty	19	○				○							)		)		)	○				○	)				)		)	○	)
20	Explanation or notice of reinstatement rights of consumer	20	○		○	)	○	)	○	)		)	○	)		)		)	○	)		)		)	○	)	○	)		)	○	)
21	Disclosure of amounts of other charges	21		)	○	)	○		○	)	○				○	)	○	)	○	)		)	○	)	○	)	○	)			○	)
22	Explanation of purpose of other charges	22		)	○	)			○	)	○				○					)			○		○	)	○					
23	Limit on other charges — must be "reasonably related" to loss	23								)															○							
24	Statement concerning new agreement once terminated	24					○		○											)		)		)	○		○					
25	Cost of lease service difference between lease purchase price and cash price	25					○			)									○													
26	Statement that the transaction is regulated under state law	26				)			○									)						○								
27	Statement of any fees or taxes payable by lessee	27													○											○						
28	Statement of amount of any lessee liability at end of lease term compare with termination penalty on long-term lease	28													○											○						
29	Description of any insurance required of lessee	29									○				○											○						
30	Description of any security interest retained by lessor	30	○												○											○						
31	Limit that consumer is not required to buy insurance from lessor	31					○														○			)	)							
32	Any waiver/ collection charge must be disclosed and separately agreed to	32					○																	)								
33	Description of any insurance paid for by lessor	33	○																													
34	Statement that consumer not required to purchase damage waiver	34																	○													
35	Statement re: default notice	35																	○													
36	Statement re: consumer warranties	36																	○													
37	Statement re: rights if rental agreement sold as negotiable instrument	37					○																									
38	Statement re: liability damage waiver	38					○																									

* Rental purchase agreement
** Lease-purchase agreement
*** Consumer lease
† Lessor required to provide maintenance

Specifications on Fees & Payments

Item	Alaska	ALS*	AR*	CO*	CT	DE	FL*	GA**	IA*	IL*	IN*	KA	KY*	LA	MA***	MD*	ME	MT*	MN*	MO*	NE*	NV	NY**	OH**	OK*	RI*	SC*	SD	TN*	TX*	VA**	WA
1 Late charges/reinstatement fees/delinquency charges permitted	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Statutory amount per series of payments				$5/monthly $3/weekly	Lesser of 5% or $5	Greater of 10% or $3	$5 max	$5 max	$6/monthly $3/weekly	$5/max	$5/monthly $2/weekly					$5 max	Greater of 5% or $2	Lesser of 5% or $5	Greater of 5% or $3	$5 max	$5/monthly $3/weekly		Greater of $3 or 10% weekly or greater of $5 or 10% monthly		$5 own $3/weekly		$4/monthly $2/weekly			$2	$5		
Grace period for late fees, etc. Monthly				5 days	8 days	2 bus days			5 bus days	3 days	5 days						5 days	1 month	3 bus days		5 bus days		7 days	5 days			5 bus days			days		
Weekly				5 days	3 days	2 bus days			3 bus days	3 days	3 days						2 days	1 week	2 bus days		3 bus days		3 days	2 days			3 bus days			days		
2 Separate reinstatement fee permitted	Yes		Yes	Yes	Yes	Yes	Yes		Yes		Yes	Yes		Yes				No	Yes	Yes		Yes		Yes	Yes	Yes		Yes			Yes	Yes
Statutory fee limits				$5 max		$5 max	$5 max		$5 max		$5 max								$5 max	$5 max				$5 max								
3 In-home collection fees permitted		Yes	Yes	Yes**	Yes**	Yes	Yes	Yes	Yes**	Yes	Yes			Yes		No	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes**	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Monthly				$10 (3 times per 6 mo.)	$5 (3 times per 6 mo.)				$7 per trip (limit 6 per 6 months)		$10					Yes	$5 $5		$7 ($3 times per 3 mo.)						$10 (3 times per 6 mo.)		$7 per trip limit 3 per 6 months)					
Weekly				$10 (3 times per 6 mo.)	$5 (3 times per 6 mo.)				$7 per trip (limit 6 per 6 months)		$10								$7 ($3 times per 3 mo.)								$7 per trip limit 6 per 6 months)					$10
4 Processing fees permitted	Yes		Yes	Yes $10	Yes $10 per agreement	Yes	Yes $10	Yes	Yes** $10 per agreement	Yes	Yes $10	Yes	Yes	Yes			Yes $15 per customer	Yes	Yes	Yes	Yes $10 ($25 over 5 items)		Yes	Yes			Yes $5	Yes	Yes	Yes	Yes	Yes
5 Delivery charges permitted	Yes	Yes	Yes	Yes $5 (3 items or less $15 over 5 items)		Yes	Yes	Yes	Yes $10 ($25 over 5 items	Yes	Yes	Yes	Yes	Yes	Yes		Yes $20 for 3 items or less	Yes	Yes $15-5 items or less $30 for over 5	Yes	Yes $10 ($25 over 5 items)	Yes	Yes	Yes $10 per agreement		Yes $15-5 items or less $45 for over 5	Yes	Yes	Yes	Yes	Yes	Yes
6 Redelivery fee after repossession permitted	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes			Yes	Yes	Yes		Yes	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes
7 Fees or penalties for return of the merchandise or termination of the agreement permitted	No	Yes	Yes	No	No	No	No	No	No	Yes	Yes			No	Yes		No	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No
8 Security deposit permitted	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes			Yes	No	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	
9 Final "balloon payment" permitted	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes		No	No	No	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes		
10 Requiring insurance to be purchased from RTO dealer	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No		No	No	No	No		No	No	No	No	No	No	No	No	No	No	
11 Limits on rent-to-own pricing					RTO price cannot be greater than 2 times cash price				RTO price cannot be greater than 2 times cash price								RTO price cannot be greater than 2 times cash price	RTO price cannot be greater than 2.2 times cash price				RTO price cannot be greater than 2 times cash price	RTO price cannot be greater than 2 times cash price							
12 Optional damage waiver fee permitted by statute	Yes			Yes per pl 10% of $2 weekly 10% or $5 monthly	Yes 7.5% of payment												Yes greater of 5% or $2 for weekly 5% or $5 monthly		Yes required by statute 10% of payment				Yes			Yes 5% of payment						
Statutory fee limits:																																
13 Optional leased property insurance permitted by statute	Yes			No	Yes 5% of payment																					Yes						
Statutory fee limits:																																

Advertising Disclosures

Model	AL*	AR*	CO*	CT	DE	FL*	GA**	IA*	IL*	IN*	KA	KY*	LA	MA***	MD*	ME	MI**	MN*	MO*	NE*	NV	NY**	OH**	OK*	PI*	SC*	SD	TN*	TX*	VA**	WA
Triggering Terms†	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate AND No down payment	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Rental rate due at start of lease or specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	No advertising in statute	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR No down payment	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Rental rate due at start of lease	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Amount of initial payment	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR Statement that no initial payment due	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item	Reference to or statement of a rental rate AND Reference to RTO of a specific item	Reference to or statement of a rental rate OR Reference to RTO of a specific item
Disclosures (In the order set by statute, if any)																														
A1	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as an RTO agreement	Amount of initial payment due	ID transaction as an RTO agreement	ID transaction as an RTO agreement		ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as a lease	ID transaction as an RTO purchase	ID transaction as an RTO agreement	Amount of initial payment due	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as an RTO purchase	ID transaction as an RTO agreement	ID transaction as an RTO agreement	Amount of initial payment due	ID transaction as an rental purchase	ID transaction as a lease	ID transaction as an RTO agreement	ID transaction as an RTO agreement	ID transaction as a rental purchase agreement	ID transaction as an RTO agreement	ID transaction as an RTO agreement	
B1		Total amount and number of payments necessary to acquire ownership		Total amount and number of payments necessary to acquire ownership			Amount of initial payment due	Total amount and number of payments necessary to acquire ownership	Total amount and number of payments necessary to acquire ownership		Total amount and number of payments necessary to acquire ownership	Total amount and number of payments necessary to acquire ownership		Total initial payment due	Total amount and number of payments necessary to acquire ownership	Total of payments necessary to acquire ownership		Total of payments necessary to acquire ownership	Total of payments necessary to acquire ownership	Total amount and number of payments necessary to acquire ownership		Total and number of payments necessary to acquire ownership listed "total cost"		Total amount and number of payments necessary to acquire ownership	Total initial payment due	Total of payments necessary to acquire ownership		Total of payments necessary to acquire ownership	Total of payments necessary to acquire ownership		
C-	No equity statement		Ownership Option(s)		No equity statement	No equity statement	Cost of lease services	No equity statement	No equity statement		No equity statement	No equity statement	Security deposit if applicable	No equity statement	No equity statement	No equity statement	Cost of lease services	No equity statement	No equity statement	No equity statement	No equity statement	Availability of early buyout ownership options	Total number of payments necessary to buy ownership	No equity statement	Equity position*	No equity statement	No equity statement	No equity statement	No equity statement	No equity statement	
D1	Yellow Pages exception						Notice of amount necessary to acquire ownership				Yellow Pages exception		Number, amounts and timing of payments Possession and charge @ lease end	Yellow Pages exception			Cost of all payments necessary to acquire ownership			Yellow Pages exception									Yellow Pages exception		
Triggering Terms† – AND (If a statement contains one of these terms, then it must also state the other terms listed to the right.)													Amount of lease payments and right necessary to acquire ownership of a particular item										Multiple items and rate adjustments								
Disclosure.													Total of payments necessary to acquire ownership										New or used								
F1													Early Buyout formula Rental purchase agreement										ID transaction as rental purchase agreement								
G1													No equity statement										No equity statement								

Reinstatement Rights

	[illegible]	AL	AR	CO	CT	DE	FL	GA	LA	IL	IN	KS	KY	LA	MA	MD	ME	MO	NM	NC	ND	NE	NY	OH	OK	PA	SC	SD	TN	TX	VA	WA
❶ *Weekly Payments*		2 days if property returned then 21 or 45 more depends on rental payments made	[illegible]	2 business days, then 30 more days if returned	[illegible]	Upon return of property 30 to 180 days depends on payments made	Upon return of property 90 days depends on payments made	60 days	[illegible]	60 days	[illegible] days then 30 more days if property returned	80 days	[illegible] days then 21 or 45 more depends on rental payments made	2 days then 30 more days if property returned	[illegible] days then 15 or 45 more depends on rental payments made	No statutory reinstatement	[illegible] days then 15 or 45 more then 21 or 45 more depends on rental payments made	Upon return of property 45 to 180 days depends on payments made	[illegible] days	7 days then 60 to 180 depends on payments	[illegible] days	3 business days if property returned then 30, 60, or 180 days, depends on rental payments	[illegible] days then 15 or 45 more depends on rental payments	7 days if property returned then 30 60 or 180 days depends on rental payments made	[illegible] days	2 days then 30 more days if property returned	[illegible] days	60 days	[illegible] days then 15 or 45 more depends on rental payments	2 days if property returned then 30 60 or 180 days, depends on rental payments made	[illegible] days then 30 more days if property returned	2 days then 21 or 45 more depends on rental payments made	[illegible] days then 21 or 45 more depends on rental payments made
❷ *Monthly Payments*		5 days if property returned then 21 or 45 more depends on rental payments made	[illegible] days then 30 more days if returned	5 business days, then 30 more days if returned	[illegible] days then 30 more days if returned	Upon return of property 30 to 180 days depends on payments made	Upon return of property 90 days depends on payments made	60 days	90 days	90 days	[illegible] days then 30 more days if property returned	80 days	[illegible] days then 21 or 45 more depends on rental payments made	5 days then 30 more days if property returned	[illegible] days then 21 or 45 more depends on rental payments made	No statutory reinstatement	5 days then 15 or 45 more depends on rental payments made	Upon return of property 45 to 180 days, depends on payments made	90 days	7 days, then 60 to 180 depends on rental payments made	90 days	5 days if property returned then 30, 60, or 180 more, depends on rental payments made	[illegible] days then 15 or 45 more depends on rental payments	15 days if property returned then 30 60 or 180 days depends on rental payments made	10 days	5 days then 30 more days if property returned	90 days	60 days	[illegible] days then 21 or 45 more depends on rental payments	2 days, if property returned then 30 60 or 180 days, depends on rental payments made	15 days then 30 more days if property returned	5 days then 21 or 45 more depends on rental payments made	[illegible] days then 21 or 45 more depends on rental payments made
❸ Statutory "cure period" after notice before sale (in days)																																
Monthly																		3 business days before notice can be sent then 5 business days 3 business days															
Weekly																				7 days 7 days								5 days 5 days			

In-Store Price Tag Disclosures

	[illegible]	NEW YORK	OHIO	[illegible]	TEXAS	[illegible]	[illegible]	UTAH
❶	Cash price	Cash price	Cash price	Number and amount of payments required for owners	Cash price	Cash price	Number and payments needed for ownership	Cash price
❷	Amount of a periodic payment	Amount of a periodic payment	Amount of a periodic payment	Total rent-to-own price	Amount of a periodic payment	Amount of a periodic payment	Total amount of payments for ownership	Amount of a periodic payment
❸	Number of payments for ownership	Number of payments for ownership	Number of payments for ownership	New/Used	Total cost	Total cost		Total cost
❹	[illegible]	Total cost	Total cost					

Notice to consumers

FLORIDA

- Do not sign this rental-purchase agreement before you read it or if it contains any blank spaces.
- You are entitled to an exact copy of the rental-purchase agreement you sign. Keep it to protect your legal rights.

MICHIGAN

- *NOTICE* This agreement is regulated by state law and may be enforced by the attorney general or by private legal action.

IOWA

- Do not sign this before you read the entire agreement including any writing on the reverse side, even if otherwise advised.
- Do not sign this if it contains any black spaces
- You are entitled to an exact copy of any agreement you sign.
- You have the right to exercise any early buy-out option as provided in this agreement Exercise of this option may result in a reduction of your total cost to acquire ownership under this agreement
- If you elect to make weekly rather than monthly payments and exercise your purchase option you may pay more for the leased property

OHIO

- *Notice* This lease-purchase agreement is regulated by state law and may be enforced by the attorney general or by private legal action.

NEBRASKA

- Do not sign this before you read the entire agreement, including any writing on the reverse side, even if otherwise advised
- Do not sign this if it contains any blank spaces.
- You are entitled to an exact copy of any agreement you sign.

COLORADO

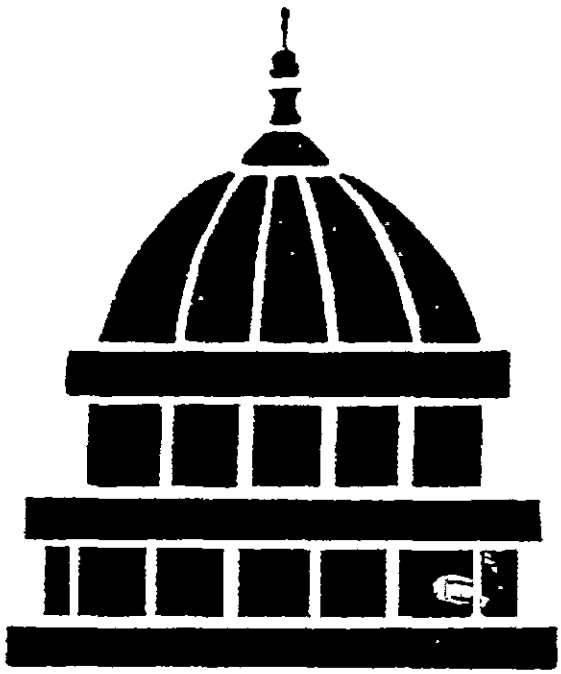
- Do not sign this before you read the entire agreement including any writing on the reverse side, even if otherwise advised
- Do not sign this if it contains any blank spaces
- You are entitled to an exact copy of any agreement you sign
- You have the right to exercise early buy-out option as provided in this agreement. Exercise of this option may result in a reduction of your total cost to acquire ownership under this agreement.
- If you elect to make weekly rather than monthly payments and exercise your purchase option, you may pay more for the leased property.

MAINE

- Do not sign this agreement before you read it
- You are entitled to a copy of this agreement

DELEWARE

- Do not sign this lease-purchase agreement before you read it or if it contains any blank space.
- You are entitled to a completely filled in copy of this agreement
- Under the Law you have the right to exercise an early purchase option which will result in a lower cost to acquire ownership



SUGGESTED STATE LEGISLATION

1991 Volume 50

The Council of State Governments

Developed by the
Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky

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Lease-Purchase Agreement Act

This act, based on 1988 Virginia legislation, involves lease-purchase, popularly known as "rent-to-own" transactions. As defined in this act, a "lease-purchase agreement" means an agreement for the use of property — primarily for personal, family or household purposes — for an initial period of four months or less that is automatically renewable with each payment after the initial period (but does not require or obligate the consumer to continue leasing beyond that period) and that permits the consumer to become the owner of the property.

Among its provisions, the legislation requires the lessor to disclose to the consumer information on the number, amount and timing of payments necessary to acquire ownership of the property; a statement declaring that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership; the cash price of the property; and various other terms of the agreement.

States have taken different approaches in this area. For example, Pennsylvania's goods and services installment sales act includes a maximum 18 percent APR for rent-to-own contracts (Act 57, 1989; HB 1299). In this case, rent-to-own transactions are included under the state's credit sales provisions. The interest rate on rent-to-own transactions is an imputed interest rate: it is intended to be a rate no higher than the rate on retail transactions on an installment basis.

Iowa, Michigan, Minnesota, Nebraska, New York, Ohio and South Carolina require that between 45 and 55 percent of each payment in a rent-to-own transaction be applied toward the purchase price. Nearly half the states require disclosure of charges in rent-to-own agreements.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the [state] Lease-Purchase Agreement Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Advertisement" means a commercial message in any medium that aids, promotes or assists, directly or indirectly, a lease-purchase agreement.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

(3) "Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family or household purposes.

(4) "Consummation" means the time a consumer becomes contractu-

ally obligated on a lease-purchase agreement.

(5) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

(6) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family or household purposes, for an initial period of [four] months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

Section 3. [*Inapplicability of Other Laws; Exempted Transactions.*]

(a) Lease-purchase agreements which comply with this act are not governed by the laws relating to:

(1) A home solicitation sale as defined in [insert citation for appropriate state statute];

(2) A consumer transaction as discussed in [insert citation for appropriate state statute]; or

(3) A security interest as defined in [insert citation for appropriate state statute].

(b) This act does not apply to the following:

(1) Lease-purchase agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(2) A lease of a safe deposit box;

(3) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or

(4) A lease of an automobile.

Section 4. [*General Requirements of Disclosure.*]

(a) The lessor shall disclose to the consumer the information required by this act. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.

(b) The disclosures shall be made at or before consummation of the lease-purchase agreement.

(c) The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under Section 5(a) shall be made on the face of the contract above the line for the consumer's signature.

(d) If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this act.

Section 5. [*Disclosures.*]

(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) The total number, total amount and timing of all payments necessary to acquire ownership of the property;

(2) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;

(3) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged or destroyed;

(4) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this act;

(5) A brief description of any damages to the leased property;

(6) A statement of the cash price of the property. Where the agreement involves a lease of [five or more] items as a set, in one agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

(7) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(8) A statement that the total of payments does not include other charges, such as late payment, default, pickup and reinstatement fees, which fees shall be separately disclosed in the contract;

(9) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;

(10) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(11) The date of the transaction and the identities of the lessor and consumer;

(12) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and

(13) Notice of the right to reinstate an agreement as herein provided.

(b) With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section.

Section 6. [*Prohibited Practices.*] A lease-purchase agreement may not contain:

(1) A confession of judgment;

(2) A negotiable instrument;

(3) A security interest or any other claim of a property interest in any

goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;

(4) A wage assignment;

(5) A waiver by the consumer of claims or defenses; or

(6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

Section 7. [*Reinstatement.*]

(a) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of

(1) All past due rental charges,

(2) If the property has been picked up, the reasonable costs of pick-up and redelivery, and

(3) Any applicable late fee, within [five] days of the renewal date if the consumer pays monthly, or within [two] days of the renewal date if the consumer pays more frequently than monthly.

(b) In the case of a consumer who has paid less than [two-thirds] of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than [21] days after the date of the return of the property.

(c) In the case of a consumer who has paid [two-thirds or more] of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than [45] days after the date of the return of the property.

(d) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Section 8. [*Receipts and Accounts.*] A lessor shall provide the consumer a written receipt for each payment made by cash or money order.

Section 9. [*Renegotiations and Extensions.*]

(a) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

(1) The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average pay-

ment allocable to a payment period is not changed by more than [25] percent;

(2) A deferral or extension of [one or more] periodic payments, or portions of a periodic payment;

(3) A reduction in charges in the lease or agreement; and

(4) A lease or agreement involved in a court proceeding.

(b) No disclosures are required for any extension of a lease-purchase agreement.

Section 10. [*Advertising.*]

(a) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

(1) That the transaction advertised is a lease-purchase agreement;

(2) The total of payments necessary to acquire ownership; and

(3) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(b) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(c) The provisions of subsection (a) of this section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.

Section 11. [*Enforcement; Penalties.*] Any violation of this act shall constitute a prohibited practice under the provisions of [insert citation for appropriate state statute] and shall be subject to any and all of the enforcement provisions of [insert citation for appropriate state statute].

Section 12. [*Effective Date.*] [Insert effective date.]

Excerpt from American Rental Association's "Cost of Doing Business Survey"

SECTION I. FINANCIAL DATA FOR ALL RESPONDENTS

Key financial ratios for 1991 and three prior years are shown below:

FINANCIAL RATIOS	1991	1990	1989	1988
CURRENT RATIO (Current assets ÷ current liabilities)	1.44	1.29	1.37	1.36
ACID TEST RATIO (Cash, marketable securities and accounts receivable ÷ current liabilities)	.85	.74	.86	.79
TOTAL DEBT TO NET WORTH (Total liabilities ÷ net worth)	1.40	1.78	1.45	1.43
RETURN ON INVESTMENT (Net income before taxes ÷ net worth)	6.8%	14.9%	19.8	19.3%
RETURN ON TOTAL ASSETS (Net income before taxes ÷ total assets)	2.8%	5.4%	8.1%	7.9%
RETURN ON REVENUES (Net income before taxes ÷ revenues)	2.2%	4.2%	6.1%	5.8%
AVERAGE COLLECTION PERIOD (Accounts receivable ÷ average daily revenues)	41 days	45 days	43 days	42 days
PROFITS ON RENTAL INVESTMENT (Net income before taxes ÷ net rental equipment)	5.7%	11.5%	16.7%	17.7%
TOTAL REVENUES TO RENTAL INVESTMENT (Total revenues ÷ net rental equipment)	2.58 times	2.76 times	2.74 times	3.05 times
RENTAL REVENUES TO RENTAL INVESTMENT (Rental income ÷ net rental equipment)	1.64 times	1.72 times	1.84 times	1.86 times
RENTAL REVENUES TO EQUIPMENT COST (Rental income ÷ cost of rental equipment)	.69 times	.81 times	.84 times	.86 times

The table below shows the ratio of major expenses and net operating profit to gross operating profit for all respondents:

PERCENT OF GROSS OPERATING PROFIT:				
Salaries & Wages	34.9%	33.0%	32.5%	32.6%
Employee Benefits	5.8	5.4	5.2	5.2
Total	40.6%	38.4%	37.7%	37.7%
Depreciation (All)	16.6%	16.0%	15.1%	15.3%
Occupancy Cost	7.6	7.0	6.9	7.0
Equipment Maintenance & Repair	6.8	4.9	7.4	7.0
Interest	5.1	5.8	4.3	4.0
Advertising & Promotion	2.7	2.5	2.5	2.5
Insurance	4.0	3.5	3.6	4.1
Shop Supplies & Expense	3.0	4.3	3.8	3.6
OPERATING PROFIT	1.8%	4.7%	7.4%	6.9%

Table I-1 reports income and expense percentages on an aggregated basis for all firms responding in 1987 through 1991. Table I-2 contains more detail on expenses, and Table I-3 presents balance sheet percentages for the five years.

Sample 1

Mario J. Palumbo
Attorney General
812 Quarrier Street
Charleston, WV 25301

Dear Mr. Attorney General,

Please be advised that I am an RTO (Rent-to-own) customer and a resident of the state of WEST VIRGINIA. I am deeply concerned over the two proposed rules which you have offered.

Your proposal to change RTO transactions to credit sales will ultimately cost me the "option to own" by placing unwarranted burdens upon the RTO store that I do business with.

I would strongly urge you to support consumer protection based upon SUGGESTED STATE LEGISLATION proposed by The Council of State Governments concerning RTO regulation. Their proposal allows me to retain my "option to own" and provides me meaningful disclosures. These disclosures will allow me to make an intelligent decision.

I agree with the Federal Trade Commission, the Federal Reserve Board and the Truth in Lending Act which states RTO transactions are not credit sales. Therefore any attempt to force meaningless disclosures of APR and interest is inappropriate and of no useful purpose.

Please do not procede with the adoption of these proposed rules as they currently appear. I support the West Virginia Rental Dealers' position on this matter. Their position allows me to retain my FREEDOM of CHOICE and my "option to own".

DATE 9/1/92 SIGNATURE David W. Yates

ADDRESS Rt 3 Box 38 Meadow Bridge Access Parkersburg WV

Sample 2

Mario J. Palumbo
Attorney General
State of West Virginia
812 Quarrier Street
Charleston, WV 25301

Dear Mr. Attorney General,

Please be advised that I am an RTO (rent-to-own) customer and a resident of the state of West Virginia. I am deeply concerned over the two proposed rules which you have recently offered regulating this transaction.

Your proposal to change RTO transactions to credit sales will ultimately cost me the "option to own" by placing unwarranted burdens upon the RTO store with whom I do business.

I would strongly urge you instead to support consumer protection based upon SUGGESTED STATE LEGISLATION of the Council of State Governments concerning RTO regulation. Their proposal allows me to retain my "option to own" and provides me meaningful disclosures. These disclosures will enable me to make an informed decision regarding RTO products.

I agree with the Federal Trade Commission, the Federal Reserve Board and the Truth in Lending Act which distinguishes between RTO transactions and credit sale transactions. **I KNOW THE DIFFERENCE BETWEEN RTO AND BUYING ON CREDIT.** Therefore any attempt to force meaningless disclosures of APR (annual per centage rate of interest) is inappropriate and of no useful purpose.

Changing RTO transactions to credit sale transactions limits my consumer options and my freedom of choice about how I can acquire goods I need and want. Remember, **this is AMERICA, not Cuba or the U.S.S.R.** Your job as an American public official is to provide me with informed options, not dictate how I will spend my hard earned money!

Please do not waste taxpayer money by proceeding with the adoption of these proposed rules as they currently appear. I support the Council of State Governments *Suggested State Legislation* on this matter. Their position allows me to retain my "freedom of choice" and my "option to own".

Date 9/5/92 Signature [signature]
Address P.O. Box 502
Kanawha, W.V.
25438

WEST VIRGINIA RENTAL DEALERS' ASSOCIATION

2516 5th Avenue
Huntington, WV 25703
(304) 526-4040

Roger Sharp, President
Keith Brock, Vice President

Transcript from

"The Morning Exchange" Radio Talk Show

Speakers are color coded.

Radio personell: Danny Jones
Don Cook

[redacted] West Virginia Legal Services Attorney: David McMahon
[redacted] West Virginia Rental Dealers President: Roger Sharp

Callers:

Don Cook: Good morning. Welcome to the Morning Exchange. An exchange of information and ideas where you, the listener, provide the input for our conversation. The number to call is 345-5858. Now, here's your host, Danny Jones.

Danny Jones: Good morning everybody. This is Danny Jones. 345-5858. Little scratchy at the throat this morning. I hope you'll stay with me. We're gonna debate or have, what I consider to be, what I listened to when I was on House Judiciary Committee, the rent-to-own issue, which is...we have a number of rent-to-own dealers around the state, but all are under different names. There's Alrenco, Rent-To-Own, and ColorTyme, and the issue is going to be defined as the twenty percent of the business that they have that people go in there and pay by the week to own and how much that they have to pay. Don Cook is providing guidance from the booth and he'll join us momentarily. David McMann is a consumer attorney who mainly represents poor people. He's going to be here to speak against this rent-to-own industry, or at least the rent-to-own part of this industry. And Roger Sharp is the President of the rental dealers. Roger, what's it called?

[redacted] The West Virginia Rental Dealers Association.

Danny Jones: Okay. You're going to speak kind of in favor of it now. Roger, you know, really on the face of it, it's kind of, it's almost offensive to some people, this article in the Gazette of December 24, 1991, that a retail priced television at $299.00 -- a person walks into one of your stores, makes the payments by the week, and winds up paying $1,057.00 for that TV. I mean, that interest rate, if you want to borrow the money to buy the TV, that's kind of strong, isn't it?

[redacted] Well, if you were looking at it from the standpoint of it being interest rate, I would certainly agree with you on that point. However, interest also implies that the customer has to keep that product to pay out that $1,000.00. In a rent-to-own transaction, that is not the case. The case is that the consumer does have the option to renew the agreement for 18 months, and if so they will pay that $1,057.00, and their option to own would kick in, and they would obtain ownership of the merchandise. However, it is the consumer's sole option to either accept or reject that -- I advocate letting the consumer know exactly how much they will pay if they decide that they want to take that ownership option. It's not forced on them. It's not something that we can go out if they decide after two weeks that they want to return the merchandise, I can't sue them for the remaining balance, because there is no remaining balance. And if there's no balance, there's no interest.

Danny Jones: David McMann, what's wrong with that?

[redacted] The rent-to-own system, I guess you would call it, is basically a scheme, it's a marketing scheme to avoid consumer protections the consumers have in other sales transactions. If you get -- buy under a credit card, or if you buy, if you go to a store and use their pay-over-time scheme like you would typically for a car, but we're talking mostly about appliances here -- two sets of laws kick in to protect the consumer. First is disclosure. You understand how much the finance charge is. And that finance charge is stated in so many different ways, but the federal laws -- Federal Truth-In-Lending came down and said everyone has to state their finance charges in the same way. It's called the annual percentage rate (APR). So, if you go and you want to buy straight from the store, if you want to buy under a credit card, the finance charge is

limited to about 18% APR in this state. On the other hand, if you're going to go down to Rent-to-Own, they use word games to dodge the consumer laws, and the finance charge that you'll have to pay is anywhere between 75% and 300% annual percentage rate. So, one thing that they do is they dodge, well, they do two things. A, they dodge the disclosures that would require them to say, hey, our annual percentage rate is 150%, and they dodge the consumer laws that would limit them, and cap them, so you can't go higher than 18%. Like everybody else is capped, and everybody else makes money.

Danny Jones: How much of your business -- I've kicked around a few -- I was briefly trying to describe what we were going to do today Christmas Eve, before I booked either of you guys. How much of your business, Roger, is rent-to-own. I realize that people can just walk in and rent stuff. Now, David, you don't have any problem with that?

[redacted] I don't have any problem with a place that rents.

Danny Jones: Now, Roger, how much of your business is rent-to-own?

[redacted] The national average is somewhere between twenty and twenty-five percent of the people that come in and rent an item, elect to take the option to own.

Danny Jones: Okay.

[redacted] Can I disagree with that figure?

Danny Jones: Sure. You said, repeat that again.

[redacted] The national figures and statistics are between twenty and twenty-five percent.

Danny Jones: David.

[redacted] Okay. Someone has done some work on this up in Minnesota, in a lawsuit there, and they found that of the items that these people rent, forty percent of the items that they rent end up being purchased by the first person that rents them. Another forty percent ends up being purchased by the second person that rents them. When he talks about the twenty percent figure, that probably, I don't know, but that probably does not include people that refinance along the way, those kinds of things.

Danny Jones: We'll get back to that. We have a call. Good morning, you're on the air.

Caller: Yes, sir. I had a problem with credit in the past, and at the time that was the only place that I could get something was the rent-to-own. And that enabled me to have some things that I wouldn't have been able to have without it. I agree that if you are interpreting it as an interest rate, it's extremely high. But, you have to look at the situation. This is the only place, I mean, you're talking about going out with a credit card and buying a TV. Sure, anyone is smart enough to know that if you go to a store and buy it, you're going to get it much cheaper, or if you have access to good credit, but that's normally not the people that come in and do the rent-to-own.

Danny Jones: Well, I'm sure that the standard person that the rent-to-own industry might give you, but don't you think it's a little strong to pay two and three hundred percent interest on, let's say, a microwave oven or a 19-inch color television, or a video cassette recorder?

Caller: Sure, I do, but I could not have had access to those materials before, because of

the problems that I had with credit. Now, I've since re-established my credit, and as a matter of fact paying those folks helped to re-establish my credit, because I used them as a direct credit reference, and it enabled me to build my credit to a later date, and now I can since buy cars and a house and different things, and my credit's built back. And, you know, I'd be foolish to go get it from them now, but, if I wanted something for a weekend or something of that nature, that's where I'd go.

Danny Jones: Roger.

[redacted] Well, I certainly agree with what the gentlemen has said to that point. We fill in the itch for certain individuals, and at one time this gentlemen evidently couldn't go out and obtain merchandise through your normal avenues of credit situations. Again, Mr. McMann made a statement here. He referred to the Federal Truth-In-Lending as trying to regulate us. I've got a statement here directly from the Federal Truth-In-Lending, anybody in West Virginia can go to a library and read.

[redacted] I agree that the federal truth-in-lending does not now apply to you.

[redacted] But, that's not what you said just a little while ago.

Caller: Can I make one other point?

Danny Jones: You go ahead.

Caller: I understand that there's, that that's an awful lot of money to pay. I mean, I've paid over $1,000 to a 25-inch color TV, but I wouldn't have had it without that. That to me is the main thing. I mean, you can regulate these agencies and cut it back, and then they're going to have to be much more stringent, and therefore these folks aren't going to be able to have access to those things. So, instead of actually helping those folks, I think you're going to wind up hurting them in the long run.

[redacted] Well, did anything go wrong with this, what'd you buy, a TV?

Caller: Yes, sir. 25-inch color TV

Danny Jones: Anything go wrong with it while you had it?

Caller: Yes, sir. One time it did and they repaired it with no problem whatsoever. They came, delivered it to my house, they left me a loaner while it was being prepared, and then brought it back to me.

Danny Jones: David.

[redacted] Well, sir, if you paid -- how much did -- do you know what the original sale price was for that?

Caller: I could have bought that TV for half that price any place else.

[redacted] All right, maybe three hundred dollars?

Caller: No, for a 25-inch color TV, it would have been around $500.00.

Danny Jones: A good one's close to five, I believe.

Caller: Now ou can get them a little cheaper, but this was several years ago.

[redacted] All right, so, I agree with maybe there are people out there like you that need help, but the other person that they really took advantage of. If you say you paid a thousand dollars for it, wouldn't you have preferred to be in your situation to only have to pay $750.00?

Caller: Yes, sir, I surely would have.

[redacted] And that's what I'm talking about. It takes somebody like you who's in a position they can't get credit anywhere else, and because they can't, and because there is no regulation, no cap on their rates, they took money from you that was just exorbitant.

Caller: But, you have to look at their end of it, too. I didn't feel like I was the normal person that had -- now, I ran into a situation and had bad credit. Now, I wasn't the type of person that was going to run out on a debt, but yet I wasn't able to get credit until I built it back up. You know, when you're dealing in this aspect, sometimes you're going to find that not everyone is going to live up to their obligations, and they have to be allowed enough overhead to provide this service.

Danny Jones: Okay, we appreciate your call. And we have another call. Good morning, you're on the air with Morning Exchange.

Caller: Yeah, I want to quit just worrying about this. I've been listening to this. People don't have to, a lot of this stuff don't really have to rent, you know. Another thing, a lot of people leave the state and places. We knew some people that moved out and didn't say a word, and they took their TV. Now, I don't deal in this stuff. I don't rent it. I don't deal in it. But, they do have their points. Now, why don't they go around on some of these little shacks that people are renting for five and six times what they did just a few years back, just a few years, and some of these people don't even have money, and they were trying to rent these places. Now, I'm not talking about myself. They're trying to rent these places just off of welfare or anything they can get. They don't do nothing about it. Well maybe they have some time, but they are not doing nothing now.

Danny Jones: Okay. All right, we appreciate your call. We're going to take a break, folks, and we'll be back.

Danny Jones: Okay, and we're back with Morning Exchange, at 345-5858. David McMann's with us. David makes his living, or what little living he makes representing poor folks. And Roger Sharp, who's President of the rental -- say it one more time.

[redacted] West Virginia Rental Dealers Association.

Danny Jones: Okay. And we have a call. Good morning, you're on the air with Morning Exchange.

Caller: Does the West Virginia Dealers Association have anything else to do besides try to enhance legislation to go to their favor? What's the other purpose of you all's organization?

[redacted] Of the West Virginia Rental Dealers Association or?

Caller: Right.

[redacted] Some of the other things that we do is we network throughout the state. We try to educate our members to bring them up to a level of service so that, and we do lobby for what I consider a consumer bill, because this is unregulated currently. And one of the biggest things is education, not only for those of us that are in the rent-to-own industry, but it's also for our customers to understand exactly what we do out there.

Caller: ...ould you guys want legislature for controls, or would you guys rather be unregulated?

[redacted] We were the ones that proposed regulation, sir, back in 1989 and again in 1990. We put forward a proposal in the legislature to regulate our industry. In 1989, the Senate passed that bill, was referred to the House where it later died. In 1990, the House voted to approve it, and later it died in the Senate.

Caller: If I come up there and rent something today, will I get a new TV, or would I get one that had already been rented before?

[redacted] Well, it would depend on what was available at the time. Number one, our plan proposes to make sure that if you were to go into rental dealership that they tell you. That's one of the disclosures is that they tell you if it's a new unit or a used unit.

Caller: Well, you can usually tell by looking at it, as far as that goes.

[redacted] Well, most of the times you can.

Caller: You can't?

[redacted] You can. I'm agreeing with you.

Caller: One last thing I'd like to know, what percentage of your customers are black, and don't you feel that you're not doing a single thing in this community but taking advantage of those poor people that are either in a position they have bad credit to where they have trouble, or the fact that they just don't know any better, they just think they're getting the better deal, because it's only such and such dollars a week?

Danny Jones: Okay, we appreciate your call.

Caller: Thank you, David.

Danny Jones: Thank you. Okay.

[redacted] Well, I certainly, I couldn't tell you how many, what percentage is black or not. I don't, when it comes to lists, I'm color blind. Anybody that wants...

Danny Jo[redacted] Is it half, Roger, is it half?

[redacted] No, it wouldn't even be close to half. First of all, we don't have that kind of perce[redacted]tage in the whole state of West Virginia. I don't know what the...

Danny Jones: Well, we have about 13% here in Charleston, in the State of West Virginia, we're about 4% black.

[redacted] I assume that our numbers are probably fairly well proportionate to what the state population is. It's definitely not 50%. That's way over exaggerated.

Danny Jones: Okay, Tom Cook has a question from the booth.

Don Cook: Good morning, gentlemen. Thanks for being on our program. Number one, how many people do this every year? How many people rent something from a rent-to-own facility?

[redacted] Every year?

Don Cook: Every year.

[redacted] I happen to know off the top of my head, in my particular company we have done approximately a quarter of a million transactions in almost nine years.

Don Cook: In nine years, a quarter of a million.

[redacted] In West Virginia only.

Don Cook: Yeah, in West Virginia only. So, give or take a few that's 30,000 a year, huh? Transactions around the state. How many complaints have been filed against these agencies?

[redacted] I'm glad you asked that. In the nine years that I've been in business, I've had four consumer complaints through the Attorney General's office.

Don Cook: That's just you, Roger?

[redacted] That's just me.

Danny Jones: That's just your company, okay.

[redacted] I'm just speaking of my particular company. I've had four out of a quarter of a million transactions which every one of those, as far as I know, did not have anything to do with rent to own, so-to-speak. It did deal and was directed towards the service of a TV set, either after we had completed the contract or service that we do on the side outside of our rent-to-own business.

Danny Jones: David.

[redacted] Well, there aren't as many complaints about rent-to-own as you would expect, because they did such a good job of selling people on the fact that they shouldn't have to be regulated to have their interest rates down. There are abuses across the state.

Danny Jones: Documented abuses?

[redacted] Documented abuses. A lady came down from Clarksboro, got two payments left, and it broke down and they were supposed to repair it, and they wouldn't, they wouldn't, they wouldn't, they wouldn't, they wouldn't, until a lawyer called them and they did. Martinsburg, West Virginia. People rented something, their house burned down, and the rent-to-own people put them in jail, one lady for up to six days.

[redacted] Yes, I'd like to comment on that.

[redacted] Another fellow, they put him in jail for several hours by using an abusive kind of collection tactics on people.

Danny Jones: Okay, go ahead, Roger.

[redacted] Well, that particular company that we're talking about, number one is not a member of our association. Number two...

Danny Jones: But, they're still a part of your industry, Roger.

[redacted] They're part of the industry, and they came into West Virginia from across the state line. Their home office in over in Maryland. We did not know that they even existed whenever this took place. The Association's opinion on what happened up there, number one, is that there wasn't any really reason for that rental dealer even to take it to criminal court. In my case, I know the law that David was talking about. I've been in West Virginia in the rent-to-own business 11 years, and 11 years I've used that particular law maybe 12 times.

[redacted]: How many times have you run into a consumer saying I can use this law if you don't.

[redacted] We don't do that.

[redacted]: Lots of people do.

Danny Jones: Okay, we have a call. Good morning, you're on the air with Morning Exchange.

Caller: Yes, good morning.

Danny Jones: Morning.

Caller: I have a couple of questions here. Okay, on this rent-to-own, you notice that, you see them advertise every now and then you can own this TV or something for so many dollars a week, and how many weeks does that usually run?

[redacted] Well, normally a contract will run about 78 weeks or 18 months.

[redacted] 18 months. Okay. They pay this so much... Now, when they've paid this, doesn't that, if you figure out, if you sit down and you use math, and you figure it out, they pay twice the price for that TV

[redacted] I'm not disagreeing with that. What I'm saying is that rental dealers should disclose that to a customer so that the customer will know up front.

CALLER I agree with you there, too. But, now, how many times has a person rented one of these things? Like, I don't know, I'm just curious. How many times does a person rent one of these things and gotten half way through their contract, which, in essence, the rent-to-own company has recouped their costs on this thing, and then they've run into a difficulty, and then the rent-to-own place goes back and picks the item up, and then turns around and resells it on a rent-to-own. And, how many times does that happen?

[redacted] Well, I couldn't tell you how many times it has happened, but it is a good point that you bring up here, because the deal that the rent-to-own dealers propose to send through covers that situation, and the fact that -- let's say that somebody is half way through their contract, and they run into a problem. You know, we're willing, we want

the law to say that they have a right to reinstate that as if nothing had ever happened, so that they don't lose that past rent that they've paid on the contract. We propose that.

Danny Jones: David.

[redacted] Well, under normal service transactions, though, if you went long enough, you not only have to let them reinstate, but, if they couldn't reinstate, you would have to pay them back some of the money they had paid, if you were covered by the consumer credit sales protections under the Consumer Protection Act of the UCC. And that's what, you know, you say you want to regulate yourself by letting people reinstate, but you don't want to regulate yourself by giving consumers the same protections they would have under a typical sales agreement.

[redacted] At the same time, your typical sales agreement says that the bank or finance company will sue that customer because they returned the merchandise. Not only will they sue the customer, they'll give them bad credit, they'll let all the other banks and all the other finance companies know that they've got bad credit, so the consumer can't go to them to get their money or whatever. If they come to us and say, hey, I've run into a little bit of a problem, I need to return the merchandise, and we get this reinstatement enacted into law, then they can come back and take up where they left off, then they're still a good customer with us, whether they returned it before time or not.

[redacted] You don't need to sue them, because you've already gotten the money up front, because you charge such a high finance charge.

[redacted] No, that's incorrect, because those are expenses that we have. If you would do what you would propose, you want us to take a $9.95 per week TV set and charge $3.95 for it. There's no rental dealer in this country that can stay economically sound at $3.95 a week on any TV set.

[redacted] I don't want you to charge less, I want you to charge for a shorter period of time.

Caller: Let me ask you this, why is that you say that you couldn't stay sound, when retailers can, and they sell it for a retail price. And you're buying the same TV. Let's say you buy a Zenith 25-inch full model stereo TV, okay, and you've got it in your rent-to-own store. You're paying the same for that, because you're buying them on volume, too, because your stores, you buy them, or whatever...

[redacted] You're only looking at the cost of the TV set. There's other expenses besides that.

Caller: The cost of the TV is going to be about the same. Well, now you can't have that many more expenses than a retailer has. They deliver. They do everything you do. They just don't have someone who goes out and picks them up, but...

[redacted] They don't refurbish the sets whenever it comes back in. They don't have to restock them. They don't guaranty the warranties.

Caller: Oh, if they're repossessed, they may have to recondition them a little.

Danny Jones: Well, Walker, we have to move on. We have to go to a commercial break. We're going to let Roger comment on that when we come back.

Caller: Okay.

Danny Jones: Don't make a move. Okay, we're back on the Morning Exchange with Roger Sharp and David McMann discussing the rent-to-own industry. We have a call. Good morning, you're on the air.

Caller: Good morning.

Danny Jones: Morning.

Caller: Very interesting program.

Danny Jones: Thank you.

Caller: It seems to me that what we're talking about here is the enterprising citizenry of this country coming up with methods of operating a brand new business, creating employment, serving the public, giving the people something that they are unable to obtain otherwise. What we're talking about, it seems to me, is the very thing that has been written up in such magazines as *Readers Digest* and so on, about the legal attack on industry in this nation, and how it has retarded the growth of industry in this nation. If we apply the same theories that the law tries to apply to this industry, why not attack the automobile industry and attack general industry for raising their prices, because really they could sell them for less. It's the same principal.

Danny Jones: Yeah, but the other back side of that argument might be that it also might be considered extortion.

Caller: Oh, no. No.

[redacted] He talks about *Reader's Digest* criticizing it, though. I mean, if AARP has warned about the pitfalls of it, neither the Counsel of the Better Business Bureaus our *Consumers' Union Reports*, they all agree that it is an industry.. there are pitfalls to people who get into these situations...

[redacted] Wait a minute. I'll let you right back in a second. I hear this group is being called an industry. I've studied the industrial revolution and rent-to-own is not mentioned once. This is a sales scheme--a marketing scheme.

Caller: Industry creates jobs and creates product to sell and that is what these companies do. They are limiting--they're putting their livelihood and everything else on the business to feed their families and go into enterprise. That is what is happening in this nation today. This isn't just one thing, we talk about environmentalists, we talk about all these different kinds of things that are attacking the systemization that built the greatest nation in the history of man. If we have the consumer advocates, if we have the lawyers that are operating today to restrict industry, we would not have been able to build this nation; we wouldn't be able to keep this nation if this continues.

Danny Jones: Okay, we appreciate your calling and making some good points. We have another caller. Good morning, you are on the air.

Caller: If I have in one question, what percentage of TV sets or whatever do they end up losing? I know that they have some default and I know they are going to have some that plain disappear.

Danny Jones: People steal them, Roger?

[redacted] Unfortunately that is part of the expense of doing business. It approximately 1-3% of the people who would come in to rent would steal a TV set or take it out and never return it or something like that. We could get out a TV set for $9.95 and with $299 set that they are talking here, it never show up again. And all I've got is $9.95 for my troubles. That does happen. We have mentioned things like *Reader's Digest* and AARP and these other things, this information has been known for several years. There is 32 states currently that know all that information. Thirty-one of them have agreed to the type of bill that we proposed in the legislature and they passed them with knowledge. West Virginia doesn't have a law; its unregulated. Our Association says that it would like to see it regulated. Kentucky, our neighbor, has it regulated. Ohio, our neighbor, has it regulated. Maryland, our neighbor, has it regulated. Virginia, our neighbor, has it regulated.

Danny Jones: David wants to regulate you, too, Roger.

[redacted] No, he doesn't want to regulate me; he doesn't want to be regulated; he wants to recharacterize; he wants to change his dog to be a cat. I want to call a rose, a rose.

Danny Jones: Ha, Ha, Ha.

Caller: That was my only question.

Danny Jones: Good Morning, you are on the air.

Caller: I just have one question. You keep talking about your expenses for taking care of the sets and stuff and keeping them working and all that. Well, every major store in Charleston, if you buy a dryer or whatever, they have these policies where for, oh, $100, you are covered the same for two more years, you know, as far as repair and all that. How can you have to charge twice the amount for the set, for the same coverage? That is my only question.

Danny Jones: Thank you.

[redacted] That is a fair question. It is only one of the things that I mentioned that adds our expenses over a retailer. A retailer does not consume that expense, as you just mentioned, he charges you for that expense. Number two, a lot of the rental dealers out there, and probably the biggest expense that we have, is one of financing. I know rental dealers who have to pay 18% to buy the TV sets themselves.

Danny Jones: Come on Roger.

[redacted] I am not kidding.

Danny Jones: [redacted] Eighteen percent?

[redacted] Yes, sir.

[redacted] Now if you have to pay 18% to get it, then OK let him double his money and charge us 36% percent interest, not 75%-300%. And I agree that the retailer does charge for that policy to cover the warranty, but they give them out as much as a rental center would.

Danny Jones: You'd think with the economy the way it is right now, the manufacturers would likely be giving those TV sets to you just to get rid of them. But you are saying that they are charging 18%, that is what made me hesitate here.

[redacted] No, the manufacturer is not charging the 18%, the financing company the rental companies deal with to get their credit line, charge as much as that.

Danny Jones: OK, we have another call. Good morning, you are on the air.

Caller: Good morning, Danny. Now you probably don't recognize this voice because like you, I have the creeping crud also.

Danny Jones: Is this Mark?

Caller: Yea. Listen this has been an interesting show, but the couple points I want to make, one of your panelists just made that is, this industry is doing something that the retail industry does not do. They provide not only the product, but they also provide the financing. That, if you go down and buy a TV set from your local stores down here, you put that on your charge card, he gets his money, he is not financing it for you. The other thing is while I do think it is a little unethical what they are doing as far as providing it, I think you had better turn around and look at the consumer also. And I know when I was growing up, they had stores like this, but they were rare and I remember out in Oklahoma that, instead of going down there, and I realized it was an exorbitant amount of money to pay and I just wasn't going to do it, we went through the used furniture stores and stuff like that, and we bought used TVs. We didn't need to have new TVs because we couldn't afford them. I was going to school. And that is the option that a lot of these people who bought these new CD players, its one of two things--either when you can afford it or you can look back and they don't have good credit history is because they destroyed it in one manner or another and you are turning around and trying to blame this guy when he is, again this is not a service, this is a product, so therefore, there is blame on both sides of this thing. The consumer needs to be protected, but then again, the consumer ought to be smart enough to figure it out, and I don't think it would take a rocket scientist to figure out that this is not really a good deal, but, nonetheless, these points made, I am still listening and I will see you later.

Danny Jones: Thank you Mark. Are we going to take another call? OK we are going to take a break and we will be right back. Good morning you are on the air.

Caller: Hi, I have heard you twice mention the fact that you have higher service expenses than other local retailers. I have been out to the Grand Central or one of these other places and buy a TV and then turn right around and buy the extended service policy for, say, an extra $60 for two more years, how does the rent-to-own company have a higher expense repair liability than the normal retailer and how can you justify your higher rental fees based on that alone?

[redacted] We, #1 at a retail store when you buy that TV set, when you buy that warranty, OK?, when you take it home and you're satisfied with it or you are not satisfied with it and they have to either repair it or not repair it, that's a one time shot. Once the retailer sells you that product, as far as he is concerned, he is over and done with it. Normally the ones that sell you the warranty don't fix them in shop, they have some other entity that does that for them. They've got their money up front and its over and done with. I can't just sell units; I don't just sell product.

Caller: Well, local retailers don't just sell product either, they have their own repair shops. Cidera's, on the west side, a local retail dealer, you go in there today and you buy a brand new Zenith, if you buy a two year service policy, who do you think is going to service that TV? Its not going to be anybody but Cidera's. Same thing with

Sears, same thing with Kaufman, same thing with Circuit City, all these guys have their own in-house service departments now or a company they contract with alone and they're not going to pass that buck on to anybody else. If your TV breaks down, you're not going to call anybody but Sears. So you can't say that you're having an extra expense, cause these guys are having the exact same expense as you.

[redacted]: But they are getting their money all up front.

Caller: You are getting your money as time goes by.

Danny Jones: OK, we appreciate your calling. You've made some good points.

Caller: Thank you.

Danny Jones: Don Cook.

Don Cook: This is voluntary right? No one has to come in and rent your stuff?

[redacted]No we don't twist their arm and pull them off the street and beat them over the head to bring them in. And, not only that, at any time that they want, they don't have to pay for 18 months. They don't have to do that. They can pay it out early if they want. They get a discount on that. If they want to return it, they can return it. But its the customer who has the right to choose and its the customers' right of choice to either accept or return it.

Don Cook: Why provide a volunteer to something protection.

[redacted]Well, everyone is a volunteer. You go in to buy with a credit card, you are a volunteer. You don't have to use the credit card, but its your interest to regulate it.

Don Cook: On the other side of the coin, they don't have to go in rent-to-own. They can go to a used furniture store, they can go to Hill's and get a $59 black and white set. They have chosen to take something that some would consider a luxury item, a 25" color TV, and walk in and basically make a decision on it. Why should we protect someone who makes a conscious decision like that?

Danny Jones: David, let me follow up on Don's question because I have known you for a period of years, you make your living representing poor people, I know you don't make a good living and I admire you because of that. But isn't rent-to-own right to choose?

[redacted]Well it is except that they market to the lower 40% of people and they don't do the kinds of disclosures. They have on the federal level, they got themselves exempted from truth-in-lending. They do it with the same kinds of disclosures that people with more income can afford credit cards to do. They market to the lower 40.

Danny Jones: Lets try to squeeze in a couple of calls. Good morning, you're on the air.

Caller: Good morning Dan. Sam, remember, how are you?

Danny Jones: All right. Fine.

Caller: There are a couple of comments I would like to make mostly for the people out there listening and you too and Don. Do you remember P.T. Barnum?

Danny Jones: Yep.

Caller: He said that there was one born every minute.

Danny Jones: A sucker.

Caller: That's right. And that was the essence of his circus running around the country.

Danny Jones: Do we need to protect the suckers from the rent-to-own industry, Sam?

Caller: No, we need to bring up the level of intelligence.

[redacted] Amen.

Danny Jones: How would you do that, Sam?

Caller: Well, that's a big question. The second comment I would like to make was my personal believe, and I've been saying this for 30 years, that the economy of the United State is based upon the ignorance of the people. Think about that one.

Danny Jones: OK, Sam.

Caller: If you knew what this stuff cost to produce, and then the people who are reaping the profits in the middle and then the end man trying to make a living with it, you know such as yourself and the rest of industry, the middle man is eating it up.

Danny Jones: We have about 35 seconds before we go to the *Wall Street Journal Report*. This is a pretty interesting topic. I dealt with it when I was in the legislature and I thought our listeners might want to share it. We'll be back. We have about 2-1/2 minutes. We are discussing the rent-to-own industry. Roger, if you could write the future here, you are going to have to deal with this. The session starts next week. I'm sure that this is not going to be the most pressing issue, but it is going to be an issue. What would you want?

[redacted] Well, I would like to see, number one, regulation for our industry. The Federal Truth-In-Lending Act and the West Virginia Consumer Code currently exempt us. We have not asked for exemption, we have asked for regulation. At the same time, we do not want to be recharacterized, changed from a dog to a cat, as Mr. McMann has already suggested today.

Danny Jones: OK, Mr. McMann, let's talk about dogs and cats.

[redacted] Ha, Ha. There is a court battle whether or not they are currently regulated. Though I must confess that most Supreme Courts across the country are deciding in most cases they will not regulate it now. I think that they need to have a cap on the finance charge, I like to call it interest rates, so that consumers can compare interest with rent-to-own to interest rates from downtown sales stores. The cap on interest rates need to be disclosed right on front, right on the price tag on the TV, what the total of payments is, what the APR is. They need to be subject to the sales protections of the West Virginia Consumer Protection Act like other retailers are.

Danny Jones: OK, we have a call. Good morning, you are on the air. We have about a minute.

Caller: OK, I'm listening to you. That consumer advocate, he is not helping these

people who have no other means to own these items.

Danny Jones: Yes, he's protecting them.

Caller: Oh, I am sure. I don't want anyone protecting me and I don't think most people realize that he's making his living off his protection. The point being, a big portion of the recession and a big problem in this whole country, here you are getting on a man, all he's doing is providing a means for people who are unable to access any other system in this nation.

Danny Jones: OK, we appreciate your call. During the second hour we are going to have open phones. We have a lot to discuss, including the rent-to-own industry. I want to express my appreciation on such short notice to Roger Sharp and David McMann for joining us this evening. David McMann, I know you don't make a great living, so no one is going to accuse you of being in it for the money. Thank you guys.

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Editor
Charleston Daily Mail
1001 Virginia Street East
Charleston,WV 25301

I have just read (with no surprise) David McMahon's response to an RTO (rent-to-own) editorial printed 8-18-92 in the Daily Mail.

He continues to confuse and mislead the consumers of this state with with false assumptions and statements. And he claims to be an advocate for the consumer!

Well, let's set the record straight. Here is a list of Mr. McMahon's claims:

CLAIM #1 — RTO is charging exorbitant rates of interest.

FACT #1 — The West Virginia Consumer Credit Act, the Federal Leasing Act of 1976, and the Federal Truth in Lending Act all recognize that in true leases (which include RTO transactions) there is no componet of debt. Therefore not only is there no need to disclose APR or interest, there is no item such as APR or interest that exists in true leases like RTO transactions.

CLAIM #2 — "RTO dealers inflate sales prices."

FACT #2 — See attached chart comparing Fingerhut mail order sales prices with a typical RTO dealer's rates.RTO acknowledges that our sale prices are not the lowest available in the marketplace. This is because we are in the rental business not the retail business.RTO dealers have to pay twice the business priviledge tax rate as due retailers because our business is rental.

CLAIM #3 — "RTO customers can't shop for lower prices."

FACT #3 — If this were true then if RTO is taken away these customers will have no other options to consider since they "can't" shop other alternatives to RTO. However, the claim is totally false as RTO customers can and do shop other alternatives for lower prices. Those other alternatives include retail shops, flea markets,second hand shops, and layaways to mention a few.

CLAIM #4 — "Consumers who use RTO want the same APR diclosure and cap on RTO rates."

FACT #4 — Consumers who use RTO generally are pleased with their dealings. The disclosures made to them are meaningful and easy to understand. The evidence of this is the high

rate of repeat business and very low number of complaint filed with the Attorney General's office over the last ten years.

CLAIM #5 RTO transactions are (or should be) credit sales.

FACT #5 In 1990 Mr. McMahon was counsel for plaintiff claiming that RTO transactions were credit sales, that they failed to make required APR and interest disclosures, and that if required disclosures were made rates would exceed legal limitations and are usurious. Judge John L. Cummings dismissed these claims because RTO transactions are true leases not credit sales. His reasons were based on FACT #1 listed above. Mr. McMahon almost two years later is still trying to mislead the WV consumer on this matter.

CLAIM #6 "RTO bill in 1992 Legislature would not have banned RTO."

FACT #6 The 1992 RTO bill proposed to change RTO transactions from true leases to credit sales. If this change is made it bans or abolishes RTO. In order to remain a true leas RTO dealers would be forced to drop "options to own" now available to the consumer in RTO transactions.

CLAIM #7 "... advocate for low-income people generally, and rent-to-own consumer protections in particular."

FACT #7 The definition of advocate is one who speaks for or pleads for the benefits of another. How can Mr. McMahon claim this when his position, if ultimately realized, does not benefit the consumer? Quite the contrary, it will cost the consumer their "option to own" and an alternative way to obtain consumer goods. Listen to what one caller to the radio talk show, "The Morning Exchange" had to say. "That consumer advocate (David McMahon), he is not helping these people who have no other means to own these items. ...here you are getting on a man (RTO representative), all he's doing is providing ameans for people who are unable to access any other system." Another caller said concerning RTO, "It seems to me that what we're talking about here is...creating employment, serving the public, giving the people something they are unable to obtain otherwise."

Who then is the real consumer advocate? I believe it is the concerned RTO dealer who has fought since 1988 to regulate the RTO industry.

RTO dealers support regulations which include:

1.) description of property including whether unit is new or used.
2.) total cost of ownership
3.) amount of initial and periodic payments
4.) cash price
5.) itemized other charges
6.) section prohibiting unfair practices
7.) absolute right of consumer to terminate at will without future liability
8.) right to reinstate a lapsed lease claiming previous rent paid
9.) limit to various charges
10.) provision for appropriate penalties for violation

Sincerely,

Roger Sharp

Roger Sharp
President
West Virginia Rental Dealers

20" VCR/TV, with Tape
Quasar Model # VV1220

	FINGERHUT	RTO DEALER
Cash Price	$769.99	$755.46
APR	24.90%	0
Finance Charges	$166.80	0
Number of Payments	18	18
Monthly Payments	$53.69	$69.95
* Delivery/Shipping	$29.63	0
* Free Repairs	No	Yes
* Convenient Service	No	Yes
* Loaner TV	No	Yes
* No Obligation	No	Yes
* No Debt	No	Yes
** Early Payout Discount	No	Yes
*Property Taxes	No	Yes
Total of Payments	$1,012.62	$1,259.10

* RTO cost of doing business that retailers don't customarily absorb.

* With Fingerhut, the customer has no early payout savings; the customer must pay all finance charges as if he took the entire 18 months to finance. A typical RTO dealer subtracts 1/2 of all rental payments from the cash price as an early payout option.

Charleston, WV
Daily Mail 8-28-92

Give poor consumers APR protections also

As a lawyer advocate for low-income people generally, and rent-to-own consumer protections in particular, I write in reply to the Aug. 18 *Daily Mail* editorial, "The poor: Why they rent to own."

I take issue with several points.

The major consumer rent-to-own bill in the 1992 Legislature, which did not pass, would not have banned rent-to-own. The final version would have limited the dealers' finance charge rate ("interest," really) to, in effect, a 100 percent annual percentage rate.

This is nearly six times the 18 percent APR cap that middle- and upper-class West Virginians have on the finance charge rate for credit cards.

The editorial stated that the woman in the *Wall Street Journal* article paid 19 monthly payments of $59.94, a total of $1,138.16, for a television that retails for $499 in the suburbs.

That is 120 percent APR, not the 24.9 percent rate the editorial quoted. The 24.9 percent may have been calculated from an inflated sale price quoted by the rent-to-own dealer. Rent-to-own dealers inflate the quoted sales price since the low weekly payment is the selling point and since rent-to-own consumers can't shop for the lower prices normal retailers advertise.

Most disturbing was a comment that could indicate prejudice against low-income people. Laws require credit card finance charges to be disclosed in the now universally understood Annual Percentage Rate of interest. Middle- and upper-income consumers know what they are getting into and can shop around. In addition, the law places an 18 percent APR cap on the interest rate they can be charged.

Consumers who use rent-to-own want the same APR disclosure and a cap on rent-to-own rates.

The rationale for rent-to-own disclosure is not that poor people need to be protected from themselves. It is that poor people need the same protection from unscrupulous businesses and oligopolistic financiers that middle- and upper-income people need.

Nevertheless, I agree with the basic premise of the editorial. Poor people need protection from the government.

Every election year, it is suggested by someone who doesn't know the data or study the issue that something needs to be done about welfare fraud.

The data show that most welfare fraud is committed by doctors in the Medicaid program. The studies show that most welfare recipients who could get off welfare, but do not, stay on welfare because there are no jobs or because their children are better off; they would have no health care and could not afford day care if they took the jobs available to them.

Nevertheless, candidates find it easier to come up with a welfare crackdown program than to exercise leadership by tracking down the facts and raising the understanding of the public. The resulting laws and regulations, like the one condemned by the editorial, encourage poor people to spend and not save, and spin bureaucratic wheels rather than help people in need.

Saving may be unrealistic for welfare recipients in West Virginia, since the check is 50 percent of what a family needed to live on 10 years ago.

Poor people do need protection from the government — more than middle- and upper-income people do. And laws are needed to protect low-income consumers from rent-to-own dealers -- just as the law protects middle- and upper-income consumers with credit cards.

David B. McMahon
Charleston

...18... of JAN..... 19.91
ADELL CHANDLER, Clerk

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. Civil Action No. 90-C-1393

R.T.O.I, Inc.

Defendant

ORDER DISMISSING CONSUMER LEASE CAUSE OF ACTION

The 14th day of December came the Plaintiff through counsel and the Defendant through counsel in part for hearing on the Plaintiff's motion to dismiss that portion of the complaint of the Plaintiff alleging claim under the Consumer Lease Disclosure Provision of the W.Va. Consumer Credit Protection Act.

Upon consideration of which, there being no objection by or on behalf of the Defendant, the Court finds that it is of the opinion there is good ground for the relief sought. It is therefore ORDERED that the allegations of the complaint of the Plaintiff alleging a cause of action under the Consumer Lease Disclosure Provision of the W.Va. Consumer Credit Protection Act are dismissed.

Judge

January 16, 1991
Date

ENTERED. Circuit Court Div. 1 Order Book
No. 100 Page 209 this 18th day of
Jan. 1991

90C-1343

Prepared by:

David B. McMahon
Counsel for Plaintiff
W.Va. Legal Services Plan
1033 Quarrier St.
Charleston, WV 25301

Ann Hicks
W.Va. Legal Services Plan
[illegible] Fourth Avenue
Huntington, WV 25701
Counsel for Plaintiff

Inspected by:

CHARLES W. PEOPLES
Attorney at Law
Mezzanine Suite 203
The Frederick Building
P. O. Box 2854
Huntington, WV 25726

J. SAMUEL CHEATE, JR., Attorney
108 North Alfred Street, Suite 100
Alexandria, VA 22314

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. CIVIL ACTION NO. 90-C-1393

RTO, INC.,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Introduction

The keystone provision of the Plaintiff's Complaint alleges that the rental agreements he signed with Defendant, RTO, Inc., are what they clearly say they are not. Instead of the short term renewable rental agreements containing no legal obligation for the Plaintiff to make any future payments that they are, the Plaintiff would have the Court construe these short term rental agreements as "consumer credit sales" as defined in W.Va. Code §46A-1-102(12).

As such the Plaintiff contends: (1) that the Defendant charges a rate of interest in excess of that allowed by Chapter 46A; (2) that the Defendant has loaned money to the Plaintiff at a greater rate of interest than that allowed by the usuary statute (W.Va. Code §47-6-5); and (3) that the Defendant failed to comply with the disclosure requirements of the Consumer Credit Practices Act for "consumer leases".

Mr. Gravely claims two other causes of action

(unconscionability and threat of criminal prosecution) that are not the subject of Defendant's summary judgment motion.

This Motion for Partial Summary Judgment centers on a pure issue of law: whether the Defendant's unambiguous standard form contract constitutes a "consumer credit sale" as that term is defined in the West Virginia Consumer Credit and Protection Act (CCPA).

This issue is a question of first impression for the West Virginia Courts.

II. Undisputed Facts

On November 18, 1988, Roger Gravely, Sr. entered into a "rental purchase agreement" (the "Agreement") with Defendant, RTO, Inc. for the use of a two piece living room set and end tables. This Agreement is part of the record in this proceeding. The standard terms in this Agreement are identical to the terms in the other two agreements entered into by the Plaintiff with the Defendant.

In his agreement with RTO, Inc., the Plaintiff rented the furniture for one week with an option to renew the agreement at the end of that week for another week, or a month, by paying either the weekly or monthly payment in advance to the Defendant. The agreement specified that the Plaintiff's rental terminated automatically if he did not renew it. In the event the Plaintiff chose to terminate the agreement by returning the property at the end of any pre-paid rental term, it is undisputed that the Plaintiff would have had no further obligation to the Defendant.[1]

The aspect of this lease that has made it the subject of this litigation, is that it contained two options to own the furniture: (1) by renewing the rental agreement for 36 successive one-week terms; or (2) by choosing to purchase the property for a cash price according to an early purchase option formula in the agreement.

Yet, even with these options to own this property the Plaintiff was only renting. The Plaintiff was under no obligation to exercise either option. At any time the Plaintiff could end his relationship with RTO, Inc. by simply returning the rental property. At that point he owed RTO, Inc. nothing. In fact, when he quit paying rent the only thing he owed RTO, Inc. was the return of its property.[2] On this clear, absolutely unambiguous fact rests the resolution of this case.

III. Legal Analysis

A. The Agreement is not covered by the CCPA Because Credit is Not Granted

---

[1]. "Termination of Default: You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period." Exhibit A to Plaintiff's Complaint.

[2]. "Return of Property on Termination: If this agreement is terminated for any reason. You agree to make arrangements with us immediate for possession of the property." Exhibit A to Plaintiff's Complaint.

Both parties will probably agree that the crucial issue in this case is the applicability of the CCPA's definition of "consumer credit sale" to the agreement. This issue is properly resolved by analyzing and applying the particular statutory definitions of the West Virginia CCPA.

The West Virginia CCPA defines a "consumer credit sale" as"

> ...a sale of goods or an interest in land in which:
>
> (i) credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
>
> (ii) The buyer is a person other than an organization;
>
> (iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
>
> (iv) Either the debt is payable in installments or a sales finance charge is made; and
>
> (v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.
>
> W.Va. Code §46A-1-102(12) (emphasis added).

The CCPA further assists our understanding of this definition by defining the term "credit".

> (16) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
>
> W.Va. Code §46A-1-102(16) (emphasis added).

The Defendant's position is quite simple. Because the statutory definition of "consumer credit sale" requires that credit be granted in a transaction for it to be covered and the same

statute requires a debt before credit exists, the Plaintiff's rental agreement is not a covered transaction.

Debt is not defined because it is a word whose meaning is clear and not subject to a debate. A "debt" is "a specified sum of money owing to one person from another, including not only the obligation of the debt or to pay, but the right of the creditor to receive and enforce payment." Black's Law Dictionary, 491 (4th Ed. 1968). The definition contained in Black's Law Dictionary is that universally accepted by courts.

As Black's observes a debt requires an obligation, or promise to pay; in short, a debt is an enforceable duty to perform a promise.

Because "credit" is defined by the West Virginia CCPA as requiring a debt, the Plaintiff cannot prevail on this cause of action if his rental agreement with RTO, Inc. does not create an enforceable debt in favor of RTO, Inc. The Plaintiff's rental agreement with RTO, Inc. simply does not create such an obligation. The Plaintiff can terminate the lease agreement at any time by simply failing to renew it. It is understood that he would have incurred no further obligation to the Defendant if he had terminated the lease by failing to renew it. The agreement unambiguously provided for no obligation to make further payments.[3]

---

[3]. "You understand that this agreement terminates automatically if you do not renew it". Exhibit A to Plaintiff's Complaint.

The definition of "credit" in its application to the definition of "consumer credit sale" in the CCPA could not be clearer. Credit is defined as "the privilege granted by a creditor to a debtor to defer payment of debt...." W.Va. Code §46A-1-102(16). As such, this Court must find that the Plaintiff had some form of obligation to the Defendant in the nature of a debt, or for repayment of a debt for his terminable rent-to-own contract to be a credit sale.

Although this Court is writing on a clean slate, in Hawkes TV v. Main Bureau of Consumer Credit Protection, 462 A.2d 1167 (Me. 1983), the Supreme Judicial Court of Maine dealt with exactly the same issue under exactly the same statutory language. Like the West Virginia CCPA, the Main Consumer Credit Code (passed the same year as the West Virginia Legislation, 1974) is based on the Uniform Consumer Credit Code. The Maine statute defines a "consumer credit sale" as:

> "a sale of goods, services or an interest in land in which:
>
> (i) credit is granted either pursuant to a credit card other than a lender credit card or by a seller who regularly engages as seller in credit transactions of the same kind;
>
> (ii) the buyer is a person other than an organization;
>
> (iii) the goods, services or interest in land are purchased primarily for a personal, family or household purpose;
>
> (iv) either the debt is payable in installments or a finance charge is made; and
>
> (v) with respect to a sale of goods or services not including manufactured housing, the amount financed does

not exceed $25,000.

9A M.R.S.A. Section 1-301(11) (emphasis supplied). Credit is defined in the Maine statute as follows: "Credit" means the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment." 9A M.R.S.A. Section 1-301(19) (emphasis supplied).

The Hawkes TV Court, like this Court, had to decide whether the rental program under which Hawkes' customers rented television sets pursuant to renewable rental agreements was covered by the above statutory definition of consumer credit sale. The decision of the Maine Court deserves quotation in extenso because it directly addresses the issues raised by Plaintiff's Complaint regarding this type of consumer protection legislation.

> Subsection 11 requires that a "consumer credit sale" be one in which the seller grants credit for "the debt", and the definition of "credit" in subsection 15 confirms the inference from subsection 11 that a debtor-creditor relationship between consumer and seller must be created by the sale. Hawkes extends no credit to its rental customers. Without doing violence to the statutory language, we cannot hold that the Hawkes rental lessees are debtors of Hawkes in the sense of the Code or that Hawkes has extended them credit.
>
> It is apparent that a Hawkes rent-to-own customer pays dearly for the privilege of renting his television set. In that respect his condition resembles the plight of a victim of usury. Nevertheless, the Code definition of "consumer credit sale" cannot possible bear the meaning the Superintendent has assigned to it to bring the Hawkes rent-to-own agreement within the reach of the Code. It is true that the Code must be liberally construed and applied to promote its underlying purposes and policies, (9-A M.R.S.A. Section 1-102(1)). Yet, if the Hawkes agreements cannot come within the scope of the definitional language by an rational interpretation, the fact that the Code must be given a liberal construction does not avail. If the definitional provisions of the Code even left some doubt about the applicability of the

> Code, the Superintendent's interpretation would be entitled to due deference. Here Section 1-301 leaves no room for doubt. This was not a credit sale under the Code. The mandate for liberal construction does not give the Superintendent or the Courts authority to enlarge the coverage of the statute.
>
> Hawkes TV, supra, 462 A.2d, at 1171 (1983).

This decision, construes exactly the same statutory language as that in the West Virginia CCPA in light of exactly the same form of transaction. The Defendant would submit that the logic of the decision is undeniable.

For a "consumer credit sale" to exist, as defined by the statute, a debt must be created. A debt is not created, and therefore no credit is granted, under an agreement in which the customer can terminate the lease at any time by simply choosing to stop paying and return the property. Under such an agreement, Plaintiff's claim that a "consumer credit sale" has been consummated, is simply an untenable position.

B. The Agreement is Not a Sale of Goods Because Plaintiff Made No Agreement to Pay

Based on the unambiguous language of the rental agreement in this case, the Plaintiff also fails to make his case that the CCPA applies to that agreement because the agreement is not a "sale of goods" as defined by the statute.

For the CCPA to apply, the transaction involved must also be a "consumer credit sale". That a sale of goods must occur is explicit in the definition of "consumer credit sale" discussed above. W.Va. Code §46A-1-102(12).

The definition of "sale of goods" in the CCPA is

instructive.

> (37) "Sale of goods" includes an agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement. W.Va. Code §46A-1-102(37) (emphasis supplied).

Although on a cursory reading, this definition may seem targeted so as to include terminable rent-to-own leases within the scope of the definition of sales of goods, the "agrees to pay" language clearly places freely terminable leases outside the scope of the definition.

The Plaintiff did not "agree to pay" a sum "substantially equivalent" to the aggregate value of the furniture. As the Agreement states in plain and clear language:

> This Agreement is for 1 week. You are not obligated in any way to renew this agreement after the first rental period....You understand this agreement terminates automatically if you do not renew it.

Under the "Termination and Default" clause, the Agreement states:

> You are not obligated in any way to renew this agreement or to buy the property.

The terms of the contract are simple and straightforward. The Plaintiff was under no obligation to make any future payments under the agreement. He had no obligation to buy. He had an option to buy, but he was not obligation to exercise that option. In the

words of the statute he did not "agree to pay" "for use" of the property an amount equal to the value of the rental property.[4]

By its terms, the statutory definition of "sale of goods" can only cover lease agreements under which the customer agrees to pay an amount equal to or exceeding the fair market value of the property. This definition covers financial leasing transactions, consumer leasing transactions, and installment sales disguised as non-terminable leases where the lease payments the lessee is obligated to make are greater than or equal to the value of the property leased. As noted above, the Plaintiff here had no obligation to pay any future lease payments if he chose to discontinue use of the rental furniture. The statute requires an obligation to pay rent; the Plaintiff had none.

The definition simply does not cover terminable lease agreements like that signed by the Plaintiff. Under the undisputed facts on the record before this Court, the Plaintiff had no such obligations and the Defendant is entitled to summary judgment.

III. The Usuary Claim Fails Because the Agreement Does Not Make a Loan or Forbearance of Money

It is axiomatic that the interest limitation contained in the usuary statute does not apply in the absence of a "loan or a forbearance of money". W.Va. Code §47A-1-1 et seq. As is discussed above, the clear and plain language of the agreement

---

[4]. The Court can surely take notice that the amount of the weekly rental was not equal to the value of the property he obtained the use of.

neither creates nor gives the impression to the Plaintiff that he has received a loan or forbearance of money. Under the Agreement, the Plaintiff has paid in advance for the use of property for each rental term for which he has renewed the lease.

On the undisputed facts in this case, the Plaintiff has failed to show that a loan or forbearance of money was made.

IV. The Agreement is Not a Consumer Lease Because The Term is for Less Than Four Months

This issue is also one of first impression in this Court, but a straightforward reading of the definition is sufficient to resolve this claim. A "consumer lease":

> means a lease of goods:
>
> (i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;
>
> (ii) In which the amount payable under the lease does not exceed twenty-five thousand dollars; and
>
> (iii) Which is for a term exceeding four months.
>
> W.Va. Code §46A-1-102(13a) (emphasis supplied).

The Defendant's freely-terminable rent-to-own agreement is clear and unambiguous. It is for a weekly term. The Agreement is not for a term exceeding four months. Therefore, the Plaintiff's cause of action must fail.

While this issue is one of first impression in West Virginia, the Federal Courts have ruled on similar statutory language defining the term "consumer lease" under the Truth in

Lending Act, Sec. 1667. Under that section, the term "consumer lease" means a contract in form of a lease "for a period of time exceeding four months". 15 U.S.C. Sec. 1667. An identical definition of "consumer lease" is found in Regulation Z, 12 C.F.R. Sec. 226.-2(mm). Both the Federal Courts and the staff of the Federal Reserve Board have held that a week to week rental agreement with initial rental period of one week is not covered by Sec. 1667 and Regulation Z. See, e.g., Stewart v. REMCO, Inc., 487 F. Supp. 361 (D.Neb., 1980); Smith v. ABC Rental Systems, 491 F. Supp. 127 (E.D.La., 1978), affirmed 618 F. 2d 397 (5th Cir., 1980).

V. SUMMARY

When the entire list of CCPA statutory definitions is read together, the reader has the unmistakable impression that the legislature intended to apply the CCPA only to transactions where the customer was obligated, required, or had agreed to fulfill a consumer obligation and therefore the seller or supplier should be bound to certain obligations, i.e. where a debt or its unmistakable equivalent is involved.

For example, "consumer" is defined as:

> ...a natural personal who incurs a debt pursuant to a consumer credit sale or a consumer loan.
>
> W.Va. Code §46A-1-102(11).

The definition of "payable in installment payments" is also illuminating. This term:

> ...means that payment is required or permitted by agreement to be made [in a series of payments] with respect to a debt.
>
> W.Va. Code §46A-1-102(28).

Reading the entire CCPA definitional section together reveals the repeated use of the terms "debt", "credit", "loan", and other terms of obligation.

The Plaintiff engages in wishful thinking when he contends that the CCPA can apply to an agreement under which there is no current obligation of the consumer to make a payment or incur an obligation. This is perhaps why, sixteen years after the enactment of the CCPA, this question is one of first impression for this Court.

Defendant respectfully submits that the issues raised by its Motion for Partial Summary Judgment are questions of law and for the reasons stated herein it is entitled to partial summary judgment accordingly as a matter of law.

RESPECTFULLY SUBMITTED,

RTO, INC., a Delaware corporation,
By Counsel



CHARLES W. PEOPLES, JR.
Attorney at Law
Mezzanine Suite 203, the Frederick Bldg.
P. O. Box 2854
Huntington, West Virginia 25728

J. SAMUEL CHOATE, JR., Esquire
1212 Prince Street
Alexandria, Virginia 22314

Counsel for Defendant

Ex "A"

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. CIVIL ACTION NO. 90-C-1393

RTO, INC.,

Defendant.

MEMORANDUM AND ORDER

This matter is before the Court upon defendant's Rule 12(b)(6) Motion to Dismiss plaintiffs CCPA Interest Limitation Cause of Action and Usury Cause of Action and the plaintiffs Motion to Voluntarily Dismiss his CCPA Consumer Lease Disclosure Cause of Action pursuant to Rule 41(a) of the Rules of Civil Procedure. For the reasons set forth below, both motions are granted.

FACTS

On November 8, 1988, the plaintiff entered into a "rental purchase agreement" (the "Agreement") with defendant RTO, Inc. for the use of a two-piece living room set and end tables. This agreement is part of the record in this proceeding. The standard terms in this agreement are identical to the terms in two other agreements entered into by the plaintiff with the defendant.

Pursuant to his agreement with the defendant, the plaintiff rented furniture for one week with an option to renew the agreement at the end of that week for another week, or a month, by paying either the weekly or monthly payment in advance to the

Ex "A"

defendant. The agreement specified that the plaintiffs rental of the furniture terminated automatically if he did not renew it. In returning the property at the end of an pre-paid rental term, the agreement provided that the plaintiff would have no further obligation to the defendant.[1] Each Agreement also contained two options to own the furniture: (1) by renewing the rental agreement for 36 successive one week terms; or (2) by choosing to purchase the property for a cash price according to an early purchase option formula in the agreement.

The plaintiff completed the first ownership option with regard to a television set that he rented from the defendant but with regard to the furniture he rented he did not complete either of the ownership options and the property was recovered by the plaintiff.

---

[1] "Termination of default: you are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to or by not renewing this agreement before the end of any paid rental agreement." Plaintiff's rental agreement with defendant attached as Exhibit A to plaintiff's complaint.

Ex A

The plaintiff brings his complaint against the defendant alleging that the defendant's rental agreement is subject to the interest rate limitation contained in the West Virginia Consumer Credit Practice Act (CCPA) alleging that the agreements that he entered into with the defendant are "consumer credit sales" as that term is defined in W.Va. Code §46A-1-102(12). As such, the plaintiff contends: (1) that the defendant charges a rate of interest in excess of that allowed by Chapter 46A; and that the defendant has loaned money to him at a greater rate of interest than that allowed by W.Va. Code §47-6-5. The defendant seeks dismissal of the CCPA Interest Limitation Cause of Action and the agreement with the plaintiff, although renewable, does not obligate the plaintiff to make any payments beyond the initial rental payment and that this ability on behalf of the plaintiff to terminate without any further obligation makes both the CCPA and the Usury Statute inapplicable to this transaction.

LEGAL ANALYSIS

In order for the plaintiff to prevail in his claim that any portion of the lease payments made to the defendant are "interest" or a "sales finance charge" the transaction must first be a "consumer credit sale" as that term is defined in W.Va. Code §46A-1-102(12). This issue is properly resolved by analyzing that particular statutory definition.

The CCPA defines a "consumer credit sale" as:

Ex "A"

...a sale of goods or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;

(iv) Either the debt is payable in installments or a sales finance charge is made; and

(v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars. W.Va. Code §46A-1-102(12). (Emphasis supplied)

The CCPA goes on to refine this definition further by defining the term credit:

> (16) "credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer payment. W.Va. Code §46A-1-102(16).

Because the statutory definition of a "consumer credit sale" acquires an extension of "credit" and credit as defined requires a "debt", the plaintiff's cause of action based on the CCPA must fail.

The clear and unambiguous language of the Agreement simply does not create a continuing obligation in the plaintiff to pay money. He could terminate his lease agreement at any time by simply deciding not to renew it. It is undisputed that he had no further obligation to the defendant when he terminated by failing to renew. The agreement unambiguously provided for no obligation to make further payments:

"You understand that this agreement terminates

Ex "A"

automatically if you do not renew it".

Furthermore, even in the absence of a statutory definition, credit, in the ordinary sense of the word, is not granted in a terminable lease agreement because of the absence of any debt or its legal equivalent. "Credit is correlative of a debt." Black's Law Dictionary, 440 (4th Ed. 1968).[2]

Finally, this Court is persuaded by the logic and judicial restraint of the Supreme Judicial Court of Maine in the case of Hawkes TV v. Maine Bureau of Consumer Credit Protection, 462 A2d 1167 (Me. 1983). The decision of the Maine Court directly addresses the issues raised by plaintiff's complaint in a statute virtually identical to the CCPA.

> "Subsection 11 requires that a "consumer credit sale" be one in which the seller grants credit for "the debt", and the definition of "credit" in subsection 15 confirms the inference from subsection 11 that a debtor-creditor relationship between consumer and seller must be created by the sale. Hawkes extends no credit to its rental customer. Without doing violence to the statutory lessees are debtors of Hawkes in the sense of the code of that Hawkes has extended them credit." Hawkes TV, supra, 462 A2d, at 1171 (1983).

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[2] Plaintiff's reliance on the Wisconsin case of Palacios v. ABC TV & Stereo Rental of Milwaukee, Inc. 365 N.W.2d 882 (Wis. Ct. App. 1985) is misplaced. The issue of whether credit was extended was apparently never raised by that lessor. Of more significance is the peculiar wording of the Wisconsin definition of "sale of goods" that considers a lease a sale without regard to any obligation by the lessee if the lessee actually pays the value of the leased goods in rent. It was on this narrow, and apparently factually unique issue, that Palacios was decided.

This conclusion is reinforced by the definition of "sale of goods" contained in W.Va. Code §46A-1-102(37). That section defines a lease that will be treated as a "sale of goods" as one in which "the lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved....." The "agrees to pay" language clearly places freely terminable leases outside the scope of this definition debt's requirement. This makes perfect sense and is in complete harmony with the definition of a consumer credit sale contained in W.Va. Code §46A-1-102(12).

When the entire list of CPA definitions is read together, it is abundantly clear that the legislature intended to apply the CCPA only to transactions where a customer was obligated, required, or had agreed to fulfill a consumer obligation. In other words, the legislature in enacting the CCPA was regulating debt. Therefore, in the absence of any debt between this plaintiff and this defendant that statutory scheme can have no application to their commercial transaction.

With regard to the plaintiffs usury claim, it is axiomatic that the interest limitation contained in the usury statute does not apply in the absence of a "loan or a forbearance of money" W.Va. Code §46-6-5, W.Va. Code §46-6-5a and W.Va. Code §47A-1-1 et seq. As discussed above, the clear and plain language of the Agreement neither creates nor gives the impression to the

Ex "A"

plaintiff that he has received a loan or forbearance of money. This plaintiff was simply never in debt to this defendant, and without a debt there can be no interest component in the transaction.

On the undisputed facts in this case the plaintiff has failed to show that a loan or forbearance of money was made or that he was at any time indebted to the defendant in any amount. Accordingly, the Court concludes that the Agreements here are not covered by the CCPA or any of West Virginia's usury statutes.

Accordingly, IT IS ORDERED that:

(1) Plaintiff's CCPA INTEREST LIMITATION CAUSE OF ACTION and USURY CAUSE OF ACTION are DISMISSED; and

(2) Plaintiff's Motion to Dismiss his CCPA CONSUMER LEASE DISCLOSURE CAUSE OF ACTION is GRANTED.

ORDER:

ENTER: _____
JOHN L. CUMMINGS, JUDGE
Sixth Judicial Circuit

PREPARED BY:

CHARLES W. PEOPLES, JR.
Attorney at Law
Mezzanine Suite 203
The Frederick Bldg.
P. O. Box 2854
Huntington, WV 25728

J. SAMUEL CHOATE, JR., Attorney
108 North Alfred Street, Suite 100
Alexandria, VA 22314

Counsel for Defendant

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

Order Received
This the 29 day of JAN 19 91
ADELL CHANDLER, Clerk

ROGER GRAVELY, SR.,

Plaintiff,

v.

Civil Action No. 90-C-1393

R.T.O., Inc.

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL DISMISSAL

On the 16th day of January, 1991, came the plaintiff through counsel and came the defendant through counsel for hearing on the defendant's motion for entry of an order prepared by the defendant with regard to the Court's ruling on the defendant's Motion for Partial Dismissal (formerly styled as Motion for Partial Summary Judgement) and upon the plaintiff's response thereto and cross-motion for entry of an order prepared by the defendant.

Whereupon the plaintiff moved the Court to enter judgement on the dismissal pursuant to Rule 54(b).

Upon consideration of all of which, upon consideration of the pleadings filed and upon consideration of other matters properly before the Court the Court finds and is of the opinion that an order substantially in the form prepared by the plaintiff should be entered and that the plaintiffs motion pursuant to Rule 54(b) should be denied.

The plaintiff through Counsel and the defendant having come before the court on the 14th Day of December 1990 for hearing on

the Defendant's motion for partial dismissal (formerly styled Motion for Partial Summary Judgement) and upon consideration of the oral arguments made and upon consideration of the pleadings and Memoranda of Law filed by the Plaintiff and Defendant, the Court finds and is of the opinion that, construing the complaint in the light most favorable to the Plaintiff and taking the allegations of the complaint to be true, the CCPA Interest Limitation Cause of Action and Usury Cause of Action of the complaint of the Plaintiff fail to state a claim upon which relief may be granted.

It is therefore ORDERED that the above described causes of action of the complaint of the Plaintiff are hereby ordered dismissed.

To all of which the plaintiff objects and excepts.

ENTERED, Circuit Court Div. 1 Order Book No. 100 Page 435 this 30th day of Jan. 1991.

Judge

January 30, 1991
Date

90C-1343

Prepared By:

DAVID B. MCMAHON
Attorney at Law
W.Va. Legal Services Plan, Inc.
1033 Quarrier Street, Suite 700
Charleston, WV 25301

Ann G. Hicks
Attorney at Law
W.Va. Legal Services Plan
910 Fourth Avenue
Huntington, WV 25701

Inspected By:

CHARLES W. PEOPLES
Attorney at Law
Mezzanine Suite 203
The Frederick Building
P. O. Box 2845
Huntington, WV 25728

J. SAMUEL CHOATE, Jr., Attorney
108 North Alfred Street, Suite 100
Alexandria, VA 22314

CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. Civil Action No. 90C1393

RTO INC.,

/s/ JOHN L. CUMMINGS

Defendant.

C O M P L A I N T

INTRODUCTION

In the course of one year, plaintiff Mr. Gravely has paid more than one thousand one hundred and ninety dollars ($1,190.00) for furniture with a "cash price" of approximately six hundred eighty six dollars ($686.00), but according to the defendant still owes six hundred ninety five dollars ($695.00) under his contract. In an attempt to avoid consumer protection statutes, the defendant calls its consumer transactions "rent-to-own" agreements. In reality they are credit sales with sales finance charges of more than 160% and 234% per year. The plaintiff seeks declaratory and injunctive relief that he is entitled to the furniture plus damages, and statutory penalties for violations of consumer protection laws.

PRELIMINARY FACTS

1. Roger Gravely, Sr. is a natural person residing in Cabell County, West Virginia.

2. RTO, Inc. is a Delaware corporation that is registered to do business in West Virginia.

3. RTO, Inc. conducts business as RTO Rents.

4. All transactions in this case took place in Cabell County, West Virginia.

FURNITURE AGREEMENTS

5. On November 18, 1988, Mr. Gravely entered into a "rental purchase agreement" (hereinafter "Agreement") with defendant with regard to a two piece living room suite and end tables which were used goods in that they had been previously rented from the defendant or its predecessor. A copy of this Agreement is attached as Exhibit A and is incorporated by reference.

6. Under this Agreement, Mr. Gravely agreed to pay defendant twenty six dollars and ninety cents ($26.90) plus tax per week. After fifty two weeks of payments, Mr. Gravely would obtain ownership of the furniture, after having paid one thousand three hundred ninety eight dollars and eighty cents ($1,398.80) plus tax.

7. Under the terms of the Agreement, at the end of the first week of the contract Mr. Gravely was entitled pay off the Agreement early and purchase the furniture for approximately six hundred eighty six dollars ($686.00) plus tax.

8. No true cash price (a price for which a consumer could purchase the property outright) was given for the furniture at the point of sale by price tags, etc., or in any of the rental agreement documents provided to Mr. Gravely. Only a weekly or monthly payment price was shown at the point of sale and in the rental agreement documents.

9. Using six hundred eighty six dollars ($686.00) as the cash price for the furniture, the effective annual percentage rate of interest under the Agreement is more than 161%.

10. As of August 21, 1989, nine months later, Mr. Gravely had paid more than nine hundred twenty dollars ($920.00) plus tax under the Agreement. At that time, he could have paid off the Agreement early and purchased the furniture for less than two hundred and ten dollars ($210.00) plus tax.

11. On September 25, 1989, with two months to go on the one year contract, the Agreement with regard to the furniture was rewritten. A copy of this new Agrement is attached as Exhibit B and is incorporated by reference. Under the terms of the September 1989 Agreement, at the end of the first week of the contract, Mr. Gravely was entitled to purchase the furniture for approximately four hundred and seventy dollars ($470.00) plus tax.

12. Under the new Agreement, Mr. Gravely would not obtain ownership of the same furniture until he made an additional thirty six weekly payments of twenty six dollars and ninety cents ($26.90) plus tax for a total of nine hundred sixty eight dollars and forty cents ($968.40) plus tax.

13. The early pay-off purchase price in September 1989 was more than twice the purchase price a month earlier for the same furniture. The total of payments was four times the purchase price a month earlier. It was only four hundred thirty dollars ($430.00) less than the original purchase price of November 1988 even though Mr. Gravely

had paid more than ninety hundred eighty dollars ($980.00) in the interim.

14. Using four hundred seventy dollars ($470.00) as the cash price for the furniture, the effective annual percentage rate of interest under the Agreement is more than 234%.

15. As of November 16, 1989, two months later, Mr. Gravely had paid the defendant more than two hundred and seventy dollars ($270.00) plus tax on the second September Agreement.

16. From November 1988 to November 1989, Mr. Gravely paid the defendant in excess of one thousand one hundred and ninety dollars ($1,190.00) plus tax for the furniture which had an initial "cash price" of six hundred eight six dollars ($686.00) plus tax. By continuing to make weekly payments under the terms of the September 1989 Agreement, Mr. Gravely would not gain ownership of the property until April 1990. RTO, Inc. claimed he still owed approximately six hundred ninety five dollars ($695.00) plus tax.

17. By the time the November 1988 Agreement would have been completed, November 1989, the terms of the new September 1989 Agreement called for Mr. Gravely to make additional weekly payments in excess of the cash price in November 1988.

TELEVISION AGREEMENT

18. On December 12, 1988, Mr. Gravely entered into a separate Agreement pursuant to which he obtained possession of a two year old, previously rented television set.

19. Under the December 1988 television Agreement, Mr. Gravely agreed to pay the defendant thirteen dollars ($13.00) plus tax per week. After fifty two weeks of payments, Mr. Gravely would obtain ownership of the television set having paid six hundred and seventy six dollars ($676.00) plus tax.

20. No true cash price (a price for which a consumer could purchase the property outright) was given for the television at the point of sale by price tags, etc., or in any of the rental agreement documents provided to Mr. Gravely. Only a weekly or monthly payment price was shown at the point of sale and in the rental agreement documents.

21. Under the terms of the Agreement, at the end of the first week Mr. Gravely was entitled to purchase the television set for approximately three hundred thirty two dollars ($332.00) plus tax.

22. Using three hundred thirty two dollars ($332.00) as the "cash price" for the television set, the effective annual percentage rate of interest under the Agreement is more than 160%.

23. As of August 21, 1989, Mr. Gravely had paid the defendant approximately four hundred forty and fifteen dollars ($415.00) plus tax on the December 1988 television Agreement.

24. Mr. Gravely obtained ownership of the 1986 television set under the terms of the December 1988 Agreement.

FURTHER ALLEGATIONS

25. In April 1989, Mr. Gravely temporarily stopped making weekly payments on the furniture and television agreements in the belief that he had paid sufficient funds to obtain legal title to the property.

26. In April 1989, defendant began requesting return of the goods or additional payments.

27. In April 1989, defendant orally threatened to obtain a criminal warrant unless Mr. Gravely returned the property.

29. The defendant is currently using the same form or a form which incorporates substantially the same provisions.29. The November 1988, December 1988 and September 1989 agreements between the Mr. Gravely and the defendant were made on the same standard form.

CCPA INTEREST LIMITATION CAUSE OF ACTION

30. The transactions which are the subject of this action are "consumer credit sales" as defined in W. Va. Code section 46A-1-102(12) [a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA"] in that:

A. credit is granted by the defendant who regularly engages as a seller in these transactions;

i. "credit" as defined in W Va. Code section 46A-1-102(13) is granted in that Mr. Gravely was allowed to have possession and use of the goods while the defendant granted

him the privilege of deferring the payment of the full "debt" necessary to obtain ownership thereof;

ii. "debt" is the amount which the plaintiff agreed to pay to obtain ownership pursuant to the agreement between the plaintiff and the defendant;

B. the plaintiffs are natural persons;

C. the goods purchased are for a household use;

D. the debt is payable in installments or in the alternative a sales finance charge as defined by W. Va. Code section 46A-1-102(16) was made.

31. The calculated annual percentage rate of the transactions, which is at least 160%, exceeds the "sales finance charge" limitation of eighteen percent (on transactions of $1,500.00 or less) on consumer credit sales contained in W.Va. Code section 46A-3-101; see also W. Va. Code section 47A-1-1 et seq. (1987). The difference between the cash price of the goods and the total weekly payments of the contract is a "sales finance charge" as defined by W. Va. Code §46A-1-102(42) in that the difference is a sum payable directly by the buyer and imposed directly by the seller and is a time-price differential however denominated.

32. Mr. Gravely is not obligated to pay charges in excess of the those allowed in Chapter 46A and may recover (or have credited against outstanding debt) the excess charges pursuant to W.Va. Code section 46A-5-101(3).

33. In addition, Mr. Gravely is entitled to recover a civil penalty of not less than one hundred nor more than one thousand

dollars because the defendant contracted for and received a payment in excess of the charges allowed by 46A-3-101, all pursuant to W. Va. Code section 46A-5-101(4).

USURY CAUSE OF ACTION

34. The contract in question was made including forbearance or loan of money at a greater rate of interest than is allowed by W. Va. 47-6-5, W. Va. Code section 47-6-5a, W. Va. Code section 46A-3-101, W. Va. Code section 47A-1-1 et seq or other law.

35. Mr. Gravely is entitled to avoidance of all interest still claimed under the contract and an amount equal to four times all interest agreed to be paid pursuant to W. Va. Code section 47-6-6.

CCPA CRIMINAL THREAT CAUSE OF ACTION

36. The defendant's threat to accuse Mr. Gravely of a crime is a violation of W Va. Code section 46A-2-124(b) and (e)(1).

37. Mr. Gravely is entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for violation of 46A-2-124 pursuant to W. Va. Code section 46A-5-101(1).

UNCONSCIONABILITY CAUSES OF ACTION

38 The amount of money required by the contract before ownership of the property is obtained, in light of the "cash price" and the value of the goods, in light of the failure to disclose the effective annual percentage rate or other time price differential or sales finance charge, and in light of the failure to disclose the true cash price each, and taken together, make the transaction or the relevant terms or parts thereof unconscionable at the time made and therefore unenforceable pursuant to W. Va. Code section 46-2-302 and pursuant to commonlaw, also entitling Mr. Gravely to attorneys fees.

39. The transactions which are the subject of this action are a "consumer credit sale" as defined in W. Va. Code section 46A-1-102(12) and therefore are unconscionable pursuant to W. Va. Code section 41A-2-121 (1974) and unenforceable.

40. The Mr. Gravely is entitled to have his contract voided as to future payments and to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for violation of 46A-2-124 and pursuant to W. Va. Code section 46A-5-101(1)(1974).

CCPA CONSUMER LEASE DISCLOSURE CAUSE OF ACTION

41. The transactions which are the subject of this action are a "consumer lease" as defined in W. Va. Code section 46A-1-102(13)(1986) in that:

A. the defendant is regularly engaged in the business of leasing goods to natural persons primarily for household purposes

B. the amount payable does not exceed $25,000.00;

C. the term exceeds four months, in that thirty six or fifty two weekly payments must be made at the weekly rate before ownership can be obtained.

42. The transactions which are the subject of this action are in violation of W.Va. Code section 46A-2-111 in that they are a "consumer lease" and the lessor failed to give the lessee the following information:

A. the actual lawful insurance provision; and

B. the total amount payable under the lease in that the stated total does not include tax etc.

43. Mr. Gravely is entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for each violation of 46A-2-111 pursuant to W. Va. Code section 46A-5-101(1).

PRAYER

Wherefore, the plaintiffs pray that the Court:

A. Grant the plaintiff an injunction prohibiting the defendant from pursuing or threatening to pursue a criminal warrant or taking other actions to collect this debt during the pendency of this action;

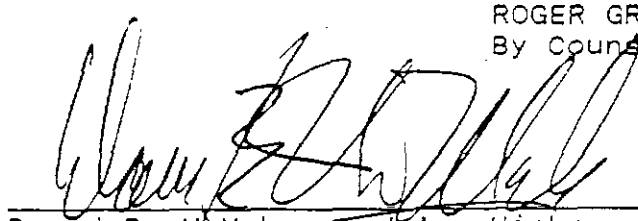
B. Declare the rights of the individual plaintiff;

C. Award judgment in favor of the plaintiff and against the defendant in amount of $20,000.00; and

D. Award the plaintiff costs and attorney's fees; and

E. Grant such other and further relief as the Court may seem just and proper.

ROGER GRAVELY, SR.,
By Counsel,



David B. McMahon and Ann Hicks
Counsel for Plaintiff
West Virginia Legal Services Plan, Inc.
By Counsel,
1033 Quarrier Street, Suite 700
Charleston, WV 25301

RENTAL PURCHASE AGREEMENT

11/10/98 THIS COLLATERAL HAS BEEN ASSIGNED TO C Agreement No. [illegible]

1. **RENTAL CO:** RTO RENTS
225 FOURTH AVE.
HUNTINGTON, WV 25701
(304) 523-3099

RENTAL CUSTOMER: DAVELY, ROGER
1003 10TH ST.
HUNTINGTON WV 25701
523-6093

RTO RENTS

In this agreement, "you" and "your" mean the person(s) signing the agreement as Rental Customer(s). "We," "us," and "our" mean

2. **DESCRIPTION OF RENTAL PROPERTY** (For furniture, see attached list ☐)

ITEM	SERIAL	MODEL #	FURNITURE
24362	24362	6 PC	REWRITE
24362	24362	END TABLES	

3 TOTAL PAYMENT DUE AT BEGINNING OF AGREEMENT			
One Rental Payment	(a)		(g)
Use Tax	(b)		e)
Subtotal	(c)		(f)
Additional, one-time fees			
Processing Fee/Including Use Tax			
Delivery/Pick-Up/Including Use Tax			
Installation Fee			
Total		28.51	28.51

4 **TERM OF THIS AGREEMENT:** This agreement is for [illegible] You are not obligated in any way to renew this agreement after the first [illegible]
rental period. You may renew this agreement if you have complied with its terms by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a grace period for late payment and you must make payment in advance to continue using the property. You understand this agreement terminates automatically if you do not renew it.

5. **TOTAL PAYMENT:** WEEKLY 28.51

6. **TOTAL WEEKLY PAYMENTS:** Weekly rental, Item 3(a), multiplied by 56 weeks to obtain ownership. (This amount does not include use tax or other charges, see item 7.) You are not obligated to pay this amount, but if you renew this agreement for 52 weeks, this is the total amount you will have paid and you will obtain ownership of the property. You will not own this property if you do not make all the payments and the total payment necessary to acquire ownership. You can obtain ownership other ways. See item 11 below. Since renting by the month is less expensive than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is an agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options. 1398.60

7 **TOTAL OF OTHER CHARGES PAYABLE TO RENTAL CO:** This agreement does not bear interest and there is no default or late charge. However, if you wish to rent the property for more than one week or one month, the payment for the next week or month is due on the same day of the following week or month, and likewise as to each additional week or month that you wish to rent the property. If you do not make your payment when due and we send an employee to your house to collect money due, or if you request that we collect a rental payment at your house, you agree to pay us a fee for making the trip to your house. The amount of this charge is 7.00 per trip.
If you elect to make your payment by check and your check is dishonored by the bank, we will charge you an additional 10.00

8. **FEES AND TAXES** (other than use tax): You do not have to pay any fees or any other taxes during this agreement.

9 **INSURANCE AND DAMAGE TO THE PROPERTY:** You do not have to carry insurance on the property. However, we do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to, or loss, or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the fair market value of the property if any of the above occur and/or if you fail to return it to us when the lease terminates.

10. **CONDITION OF PROPERTY:** (Check One) ☐ New ☐ Previously Rented

11 **OPTIONS TO PURCHASE:** If you have complied with the terms of this agreement, you can buy the property at anytime during the first 56 weeks. The purchase price for the property must be paid in cash or money order and will be computed as follows: Total of weekly payments (Item 6) or less total of rental payments you have already paid (not including tax or fees) multiplied by 50 % plus sales tax. Or, if you rent the property for 56 successive one-week terms, we will transfer ownership of the property to you. In either event we will also transfer any unexpired warranties as described in item 13.

12 **EQUITY:** You understand that we own the property until you buy it or get ownership as stated in this agreement. During the rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this agreement is terminated.

13 **WARRANTIES:** If you choose to exercise your purchase option as discussed in item 11, we will give you any manufacturer's warranty which may still be in effect. You can read these warranties at our store any time you choose.

14 **TERMINATION AND DEFAULT:** You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this agreement.
We may terminate this agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

15 **MAINTENANCE:** During the period of this agreement we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others.

16 **LOCATION OF PROPERTY:** You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this agreement immediately.

17 **RETURN OF PROPERTY ON TERMINATION:** If this agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

18 **ASSIGNMENT:** We may sell, transfer, or assign this agreement. However, you have no right to sell, transfer, assign, pawn, or sublease the property.

19 **REIMBURSEMENT OF COSTS:** If you do not keep this agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and if permitted by state law.

20 **DAMAGE TO PERSONS OR PROPERTY:** You understand that we will not be responsible for any loss of or damage to any person or property arising out of the use of this property.

21 **MISCELLANEOUS PROVISIONS.** YOU UNDERSTAND THAT NO CHANGES MAY BE MADE IN THIS AGREEMENT EXCEPT BY US IN WRITING. YOU UNDERSTAND THAT THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY UNLESS OTHERWISE STATED IN ITEM 10. YOU HAVE EXAMINED THE PROPERTY AND YOU AGREE THAT YOU HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. YOU UNDERSTAND THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT AND THAT WE DO NOT HAVE A "GRACE PERIOD" FOR LEASE PAYMENTS OR OTHER TERMS.

I HAVE READ THIS AGREEMENT, AND I UNDERSTAND IT.

DL NO [illegible] EXPIRATION DATE [illegible] RENTAL COMPANY [illegible]

RENTAL CUSTOMER [illegible] FIRST RENEWAL DATE [illegible]

RENTAL CUSTOMER [illegible] REPRESENTED BY [illegible]

[redacted] STORE COPY

EXHIBIT A

RENTAL PURCHASE AGR

1. RENTAL CO: RTO RENTS
335 FOURTH AVE.
HUNTINGTON, WV 25704
(304) 523-3399

RENTAL CUSTOMER:
1023 10TH ST.
HUNTINGTON WV 25704
522-1092

RTO RENTS

In this agreement, "you" and "your" mean the person(s) signing the agreement as Rental Customer(s). "We," "us," and "our" mean

2. DESCRIPTION OF RENTAL PROPERTY (For furniture, see attached list ☐) FURNITURE

3 TOTAL PAYMENT DUE AT BEGINNING OF AGREEMENT:

One Rental Payment	(a)		(d)	
Use Tax	(b)		(e)	
Subtotal	(c)		(f)	
Additional, one-time fees:				
Processing Fee/Including Use Tax				
Delivery/Pick-Up/Including Use Tax				
Installation Fee				
Total				

4 TERM OF THIS AGREEMENT: This agreement is for You are not obligated in any way to renew this agreement after the first rental period. You may renew this agreement, if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a grace period for late payment and you must make payment in advance to continue using the property. You understand this agreement terminates automatically if you do not renew it.

5 TOTAL PAYMENT:

6 TOTAL WEEKLY PAYMENTS: Weekly rental, Item 3(a), multiplied by weeks to obtain ownership. (This amount does not include use tax or other charges, see Item 7.) You are not obligated to pay this amount, but if you renew this agreement for weeks, this is the total amount you will have paid and you will obtain ownership of the property. You will not own this property if you do not make all the payments and the total payment necessary to acquire ownership. You can obtain ownership other ways. See Item 11 below. Since renting by the month is less expensive than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is an agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options.

7 TOTAL OF OTHER CHARGES PAYABLE TO RENTAL CO: This agreement does not bear interest and there is no default or late charge. However, if you wish to rent the property for more than one week or one month, the payment for the next week or month is due on the same day of the following week or month, and likewise as to each additional week or month that you wish to continue the property. If you do not make your payment when due and we send an employee to your house to collect money due, or if you request that we collect a rental payment at your house, you agree to pay us a fee for making the trip to your house. The amount of this charge is ?.?? per trip.
If you elect to make your payment by check and your check is dishonored by the bank, we will charge you an additional

8 FEES AND TAXES (other than use tax): You do not have to pay any fees or any other taxes during this agreement.

9 INSURANCE AND DAMAGE TO THE PROPERTY: You do not have to carry insurance on the property. However, we do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to, or loss, or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the fair market value of the property if any of the above occur and/or if you fail to return it to us when the lease terminates.

10 CONDITION OF PROPERTY: (Check One) ☐ New ☑ Previously Rented

11 OPTIONS TO PURCHASE:

12 EQUITY: You understand that we own the property until you buy it or get ownership as stated in this agreement. During the rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this agreement is terminated.

13 WARRANTIES: If you choose to exercise your purchase option as discussed in Item 11, we will give you any manufacturer's warranty which may still be in effect. You can read these warranties at our store any time you choose.

14 TERMINATION AND DEFAULT: You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this agreement.
We may terminate this agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

15 MAINTENANCE: During the period of this agreement we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others.

16 LOCATION OF PROPERTY: You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this agreement immediately.

17 RETURN OF PROPERTY ON TERMINATION: If this agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

18 ASSIGNMENT: We may sell, transfer, or assign this agreement. However, you have no right to sell, transfer, assign, pawn, or sublease the property.

19 REIMBURSEMENT OF COSTS: If you do not keep this agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and if permitted by state law.

20 DAMAGE TO PERSONS OR PROPERTY: You understand that we will not be responsible for any loss of or damage to any person or property arising out of the use of this property.

21 MISCELLANEOUS PROVISIONS: YOU UNDERSTAND THAT NO CHANGES MAY BE MADE IN THIS AGREEMENT EXCEPT BY US IN WRITING. YOU UNDERSTAND THAT THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY UNLESS OTHERWISE STATED IN ITEM 10. YOU HAVE EXAMINED THE PROPERTY AND YOU AGREE THAT YOU HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. YOU UNDERSTAND THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT AND THAT WE DO NOT HAVE A "GRACE PERIOD" FOR LEASE PAYMENTS OR OTHER TERMS.

I HAVE READ THIS AGREEMENT, AND I UNDERSTAND IT.

RTO RENTS

DL NO. _____ EXPIRATION DATE: _____ RENTAL COMPANY:
RENTAL CUSTOMER: Roger L Brawley Sr. FIRST RENEWAL DATE:
RENTAL CUSTOMER: _____ REPRESENTED BY: Mark Williams

STORE COPY

EXHIBIT B

IN THE CIRCUIT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. CIVIL ACTION NO. 90-C-1393

R.T.O., INC.,

Defendant.

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S PARTIAL MOTION TO DISMISS

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C. THERE IS NO REASON TO INFER THAT BY THE USE OF THE WORDS "CREDIT" AND "DEBT" THE LEGISLATURE INTENDED TO LIMIT "CONSUMER CREDIT SALES" TO AGREEMENTS WHERE CONSUMER IS REQUIRED TO PAY THE FULL AMOUNT OF THE CONTRACT AND TAKE OWNERSHIP. 10

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STATEMENT OF FACTS

On November 11, 1999, Roger Gravely entered into a "Rental Purchase Agreement" with the defendant for furniture, all of which had been previously rented. He agreed to pay the defendant $26.90[1] per week for 52 weeks when the defendant would transfer ownership of the property to Roger Gravely.

The agreement provided that after the first week of payments Roger Gravely could pay off the contract early and get ownership of the property for $686.00. The total of payments for the full term of the agreement was $1398.80.

The finance charge (comparing the pay off after the first week with total of payments) was $685.00, an annual percentage rate of 161%.

After ten months the agreement was rewritten for another 36 weeks. The pay off after the first week of the second contract was $470.00, the total of payments was $942.00, and the finance charge was $472.00, an annual percentage rate of %234.00.

By November, 1989, Roger Gravely had paid more than $1190.00 for his used furniture, and still owed $695.00. After 14 months he owed more than when he started.

In the meantime, Roger Gravely had entered into a rental purchase agreement for a two year old previously rented television set and completed the full term of the agreement. The initial pay off had been $332. He had paid the total of

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[1]All figures will exclude taxes.

payments, $663.00, of which $331 had been finance charge, an another annual percentage rate of over %160.

After having paid off the television set, and after having paid at least $1190.00 on the furniture, Roger Gravely decided he had paid enough and stopped paying.

He now sues for a declaration of his rights, for return of the finance charges he should not have had to pay, and for any additional statutory damages.

His complaint alleges, for the purposes of the defendant's motions, causes of action related to excess finance charges under W.Va. Code 46A-3-101 of the West Virginia Consumer Credit and Protection Act, under W.Va. Code 47-6-5, 5a and 6, the traditional state usury statutes, and under orders made pursuant to W.Va. Code 47A-1-1 et. seq, by the West Virginia Lending and Credit Rate Board.

ARGUMENT

I. INTRODUCTION

A. QUESTION PRESENTED

The Defendant's rent-to-own scheme includes finance charges that exceed the rates allowed under any West Virginia finance charge sstatute. The question in this case is therefor, whether the legislature intended to exclude the defendant's exploitive "rent-to-own" marketing scheme transactions from the limitations on finance charges which apply to all other consumer sales and consumer loans. The answer is that the legislature did not. Rent-to-own transactions are subject to limitations on their finance charges.

All other types of transactions by which the consumer pays extra money, a "finance charge",[2] in order to be able to purchase goods over time in small payments have statutory limits on those finance charges. These limitations apply not only to limits on traditional secured transactions and other purchase money finance charges. Finance charge limitations are also placed on loans

[2]"Finance charge" is the most generic term for the premium paid by consumers and others to purchase goods over time in small payments. The terms "time-price differential", "loan", "forbearance", "sales finance charge", and "interest" are also used to denote essentially the same phenomenon. "Interest", particularly when expressed in terms of "Annual Percentage Rate" or "APR", is probably the most common term used because that is the term by which the Federal Truth In Lending statute requires disclosure of finance charges to consumers for their comparison.

from all kinds of financial institutions which the consumer can use to purchase goods.

The defendant wants this court to construe West Virginia's statutes to exclude only its rent-to-own transactions.

B. RENT-TO-OWN SCHEMES ARE REGULATED BY THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT OR TWO OTHER STATUTES.

Despite Defendant's argument, its rent-to-own scheme is covered by any of three statutes. First, the West Virginia Lending and Credit Rate Board limited "credit sales . . . and other similar transactions" to %18 APR finance charges[3] by order pursuant to W.Va. Code 47A-1-1(d)(1981). Second, the traditional usury[4] statute, as modified by the above Board order, limits the rates that the defendant may charge. W.Va. Code 47-6-6 (1968) [in effect in some version since 1849]. Finally, and most significantly, the West Virginia Consumer Credit and Protection Act, Chapter 46A of the Code, limits "sales finance charges" on "sales of goods" which are "consumer credit sales" to %18 APR for transactions under $1,500.00.

This last statute is the statute which most specifically applies to the defendant's consumer rent-to-own scheme. It is therefore the one this court should look at first to determine if this consumer protection is applicable.

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[3]For transactions under $1500.00.?

[4]"Usury" can be a generic term applying to all finance charge regulation. For the purposes of this memorandum, "usury" will refer only to the tradition usuary statutes contained in Chapter 47, Article 6.

C. A DETERMINATION WHETHER THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT LIMITS THE FINANCE CHARGES THAT THE DEFENDANT'S RENT-TO-OWN SCHEME MAY CHARGE WILL ALSO DETERMINE WHETHER A CONSUMER WOULD RECEIVE THE OTHER CONSUMER PROTECTIONS OF THAT ACT.

The consumer protection at issue here under West Virginia's Consumer Credit and Protection Act is the limitation on finance charges. Despite the limited application arising out of the facts now before the court in this case, the question is very much broader. A consumer in "consumer credit sales" transaction is given the following protection by the West Virginia Consumer Credit and Protection Act:

> Right to receipt, statement of payments made, proof of final payment.
> Prohibition of threats of criminal acts to enforce.
> Notice of right to cure default.
> Limitation on balloon payments.
> Limitation on default charges.
> Prohibition on confession of judgement.
> Limitation on assignments of earnings.
> Personal property exemptions.
> The use of long-arm statute for enforcement.

and the list goes on and on. See W.Va. Code 46A-2-104, 105, 106, 107, 113-121, 130, 132-137; W.Va. Code 46A-3-1-1, and W.Va. Code 46a-6-107, 109.

So the defendant seeks exemption not only from West Virginia Consumer Credit and Protection Act finance charge limits, but from all of the other protections the legislature placed in the act for consumer credit rates as well.

II. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT AT W.VA. CODE 46A-3-101 (1981) PROHIBITS THE DEFENDNAAT'S RENT-TO-OWN SCHEME FROM CHARGING A FINANCE CHARGE AT AN EFFECTIVE INTEREST RATE OF OVER %18.

A. THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT FINANCE CHARGE LIMITATION IS LIMITED TO CONSUMER CREDIT SALES.

The sales finance charge limitation of the West Virginia Consumer Credit and Protection Act is contained in W. Va. Code 46A-3-101(1) (1981). "[A] seller may contract for and receive a sales finance charge not exceeding eighteen percent per year ... [emphasis added]."

There is no question that a sales finance charge[5] was made here. First, there was a "sale." Ownership of the television set was transferred to Roger Gravely at the end of the contract. Transfer of ownership of the furniture will occur when it is, or is declared, completed.

Second, there was a finance charge. The defendant's contract strains to make it appear that no finance charge was made. The terms "finance charge" and "interest" are never used. However, on the face of the contracts Roger Gravely had to pay more to buy the goods over time than if he had paid off the contract after the first week. In the case of the November 18,

[5]"Sales finance charge" is defined at W. Va. Code 46A-1-102(40)(1986). It uses encompassing language so a seller cannot disguise finance charges by inflating the costs of credit checks etc. It includes a "time-price differential, however denominated". It does use the less specific and therefore less controlling word "credit". That use of that term is discussed below.

1988, contract the finance charge was $685.90 cash, a %161 APR.[6] Another contract was %234 APR.

The finance charge limitation of W.Va. Code 46A-3-101(1981) is only applicable to "consumer credit sales" as defined by the West Virginia Consumer Credit and Protection Act. That definition essentially begins,"'[C]onsumer Credit Sale' is a sale of goods . . ." [Emphasis added.] W.Va. Code 46A-1-102(12)(a)(1986). The first and most important inquiry then is whether the Defendant's rent-to-own scheme is a "sales of goods".

B. THE DEFINITION OF "SALE OF GOODS" IN THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT DEMONSTRATES THAT THE LEGISLATURE INTENDED THE DEFENDANT'S RENT-TO-OWN SCHEME TO BE COVERED BY THE PROVISIONS OF THE ACT AS A "CONSUMER CREDIT SALE".

In defining "sale of goods," the West Virginia State Legislature seemed to take special care to define transactions like the Defendant's rent-to-own scheme into "sale of goods".

> "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the

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[6]This can be determined even though the defendant at no time discloses what it would charge to sell the goods outright (no doubt to avoid sticker shock). There is a contract provision in all three contracts entitled "Options to Purchase". It provides that after the first weekly payment Mr. Gravely could buy the goods for a pay off which, in the case of the November 18, 1988, contract would be $686.00 cash. The total of all payments made over time is $1398.80. So a charge of $712.80 is made to finance the purchase of the goods over the life of the agreement. In order to compare sales finance charges, disclosure statutes such as Truth in Lending most commonly require finance charges to be disclosed in terms of an annual percentage rate of interest, or "APR". Using the early buy out calculation as the cash sale price the November 18, 1988, agreement bore an APR of %161.00. The other contracts were %161 and %234 APR.

> aggregate value of the goods involved, and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement. [Emphasis added] W. Va. Code 46A-1-102(39).

This is exactly the arrangement that Roger Gravely entered into with defendant. Roger Gravely's contract with the defendant was an agreement. Since Roger Gravely got possession of the goods it was a bailment, if not a lease. The amount Roger Gravely agreed to pay for the goods was well in excess of their value. At the end of the agreement the defendant transfers ownership of the property to Roger Gravely.

The plain meaning of the language as a technical matter includes the defendant's rent-to-own scheme in the definition of consumer credit sale by leading off the definition of consumer credit sale with a term whose definition specifically inclusive of transactions like the defendant's rent-to-own scheme.

In addition to including transactions like the defendant's rent-to-own scheme in the appropriate definitions this specifically inclusive description demonstrates the legislature's intent to include transactions like the defendant's rent-to-own scheme under the protective umbrella of protections given to consumer credit sales under the West Virginia Consumer Credit and Protection Act.

In the face of this obvious legislative mandate, the defendant dances on the heads of the pins "debt" and "credit" in the language of the sub-paragraphs of the consumer credit sale

definition. The next sub-section of this memorandum is a discussion of these terms showing that their inclusion in the definition does not exclude transactions like the defendant's rent to own scheme from the operative defnition. The next section discusses cases from other jurisdictions having similar language to make the same point.

The Defendant's other attack on this position is to argue read new meaning into the words "agrees to pay" in the definition of sale of goods. Using the words in context, the defendant apparently argues that Roger Gravely did not "agree to pay as compensation for use [of the goods] a sum substantially equivalent to or in excess of the aggregate value of the goods involved[.]" Roger Gravely's three form agreement documents have been artfully crafted. But under any construction of the agreement the total weekly rental payments he paid and agreed to pay for use of the goods exceed their value.

The Defendant contends that the "agrees to pay" language excludes their rent-to-own agreement from being a sale of goods because the purchase may terminate the contract at any time without further liability. But the legislature did not make such a distinction.

To take the agreement to full term Roger Gravely agreed to pay the excess amount -- the language of the statute. To infer that "agreed to pay" means what the defendant says it means is to split a hair to defeat the obvious legislative purpose. The obvious legislative purpose is to include the defendant's rent-

to-own scheme like other lease and rental schemes within the protection that the West Virginia Consumer Credit and Protection Act offers to consumers in every other form of agreement regarding sales of goods. This result is consistent with the central theme of commercial law, that commercial law will examine the underlying realities of a transaction rather than the formalities.

C. THERE IS NO REASON TO INFER THAT BY THE USE OF THE WORDS "CREDIT" AND "DEBT" THE LEGISLATURE INTENDED TO LIMIT "CONSUMER CREDIT SALES" TO AGREEMENTS WHERE CONSUMER IS REQUIRED TO PAY THE FULL AMOUNT OF THE CONTRACT AND TAKE OWNERSHIP.

The defendant's position is that the defendant's rent-to-own scheme is not covered by the West Virginia Consumer Credit and Protection Act's finance charge limitations because the definition of "consumer credit sale" uses the terms "credit" and "debt." The defendant takes this position even though the "consumer credit sale" definition also includes the term "sale of goods", when the expansive statutory definition of "sale of goods" shows the legislature's intent to include bailment transactions such as the defendant's rent-to-own scheme as "consumer credit sales". The inclusion of these terms in the definition was no doubt to exclude lay-aways and such.

"Credit" is defined by the West Virginia Consumer Credit and Protection Act. "'Credit' means the privilege granted by a creditor to a debtor to defer payment of the debt or to incur debt and defer its payment." W.Va. Code 46A-1-102(16)(1986).

The meaning of the term "credit" therefore depends on the meaning of the word "debt." "Debt" is not defined.

The "Rental Purchase Agreement" signed by Roger Gravely did create debt. As soon as Roger Gravely signed on the dotted line and took the furniture and television home he owed a "debt" to the defendant. The defendant allowed the defendant to have the possession and use the goods without fully paying for them, but for only agreeing to eventually pay for them or return them. Either Roger Gravely had to return the goods, pay for them through the early pay off provisions of the "rental purchase agreements", or exercise the option in the agreements to continue making the weekly payments for the full number of weeks identified.

The defendant's argument emphasizes the statutory language that credit is a "privilege granted by a creditor to a debtor to defer payment of debt. . ." The defendants "Rental Purchase Agreement" forms signed by the plaintiff do just that. The agreements by their own terms defer payment of the value of the goods in Roger Gravely's possession by granting him the privilege of continuing to making smaller weekly payments. It is his option. The defendant cannot, under the terms of the agreements, cancel Roger Gravely's rights to do this. True it is the consumer's option. He does not have to. But it is a "privilege granted by a creditor" to him to do so.

As long as Roger Gravely kept making the payments, the creditor could not cancel the contract and the consumer was in

debt. And if Roger Gravely in fact wanted to obtain ownership of the goods, he had a debt to pay. The debt he owed was the value of the goods plus an exorbitant finance charge. And it is just that exorbitant finance charge that the West Virginia Consumer Credit and Protection Act was attempting to limit with regard to transactions that are by definition and in reality sales of goods.

Roger Gravely therefore incurred "debt" when he signed the "Rental Purchase Agreements". He therefore was given "credit". He therefore had entered into a "consumer credit sale". The finance charges were therefore in violation of the appropriate provision of the West Virginia Consumer Credit and Protection Act and he should be entitled to the relief that this statute affords.

D. THE DEFENDANT'S RENT-TO-OWN SCHEME MEETS THE OTHER DEFINITIONAL REQUIREMENTS OF "CONSUMER CREDIT SALE" AND IS THEREFORE SUBJECT TO THE FINANCE CHARGE LIMITATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

The full text of the West Virginia Consumer Credit Protection Act's definition of "consumer credit sale", W.Va. Code 46A-1-102(12), is set out in the footnote.[7] The fact that the

[7] (12)(a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:
(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
(ii) The buyer is a person other than an organization;
(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agriculture purpose;

Defendant's rent-to-own scheme is a sale of goods has been established above. The complaint alleges that the seller regularly engages in transactions of the same kind and the Defendant would probably not deny this. The complaint alleges that Roger Gravely is a person other than an organization and the Defendant would probably not deny this. Similarly, the goods were purchased primarily for household use. And, the amount financed did not exceed $25,000.

The Defendant's rent-to-own scheme therefore is a "consumer credit sale" and is subject to the finance charge limitations of W.Va. Code 46A-3-101.

E. AUTHORITY FROM OTHER JURISDICTIONS SUPPORTS THE PLAINTIFFS POSITION THAT THE DEFENDANT'S RENT-TO-OWN TRANSACTIONS ARE CONSUMER CREDIT SALES.

The Defendant relies heavily on Hawks Television, Inc. v. Main Bureau of Credit Protection, 462 A2d 1167 (Me. 1983). Defendant points out that that the relevant Maine consumer protection statute language is nearly identical to West Virginia's. Defendant agrues therefore that West Virginia should be persuaded by Maine. That the Maine court found that the Maine

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(iv) Either the debt is payable in installments or a sales finance charge is made; and
(v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.
(b) "Consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

consumer protection statutes, including interest rate limitations, did not apply.

The supreme courts of states other than Maine, however, agree with the Plaintiff's position, that rent-to-own schemes are consumer credit transactions. The Wisconsin consumer protection statute also has language that is also nearly identical to that of West Virginia's consumer protection statute. The Wisconsin Supreme Court held that rent-to-own transactions were indeed covered by the Wisconsin statute in Palacios v. ABC T.V. and Stephens Rental, 123 Wis. 2d 79, 365 N.W. 2d 882 (Ct. App. 1985).

Hawks stated that the terms "debt" and "credit" in Maine's statutory language "confirms the inference...that a debtor-creditor relationship between consumer and seller must be created by the sale [for it to fall within the control of the consumer protection statute]." Hawks at pg. 1171.

The Wisconsin statute also uses the terms "credit" and "debt." In fact the definitions of the term "credit" in Wisconsin's and West Virginia's statutes are identical. Both use the word "debt." Wisconsin's "consumer credit sale" definition contains language identical to West Virginia's "sale of goods" definition. That definition includes an agreement in the form of a bailment of goods in which the consumer pays, for the use of the goods, a sum equal to at least the value of the goods and at the end of the contract becomes the owner of the goods.

Despite the use of the words "credit" and "debt" the Wisconsin Supreme Court concluded, "that the right-to-own

transaction between Palacios and Colortyme[8] was a consumer credit sale within the meaning of Sec. 421.301(9)." Palacios at page 887. This ruling was based on the Court's conclusion that, like the West Virginia statute, the Wisconsin statute defining a consumer credit sale does not require the consumer to be contractually obligated to make future installment payments. "In the context of a bailment or lease of goods, a consumer credit sale takes place where the bailee or lessee either agrees or in fact pays, as compensation for use a sum substantially equal to, or greater than, the value of the goods." [Emphasis added] Palacios at pg. 887.

Palacios is also important because it rejects the defendant's "agrees to pay" argument made by the Defendant in Section B., pages 8-10 of the Defendant's Memorandum of Law. This has been discussed in general terms above and will be reviewed here only to show that another court agrees with the Plaintiff's position.

The language in West Virginia's "sale of goods" definition includes rent-to-own transactions as sales of goods and therefore as "consumer credit sales". The definition reads as follows:

> "Sale of goods" includes any agreement in the form of a bailment or lease of goods that the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for now other nominal consideration has the option to become, the owner of the goods upon

[8] Colortyme owned ABC T.V. and pursued the appeal

full compliance with his obligation under the agreement."

The Wisconsin statute is almost identical to the West Virginia statute except that it includes the words "pay or" before the words "agrees to pay."

Both the West Virginia and Wisconsin statutes state that for a transaction to be a consumer credit sale, "the debt is payable in installments [or a sales finance charge is imposed...]" [emphasis added]" W.S.A. 421.301(9); [W.Va. Code 46a-1-102(a) IV]. Also, the Wisconsin Court noted that rent-to-own transactions fall within the definition of "finance charge" in the Wisconsin Code. W.S.A. 421.3010 (20). That definition is almost exactly the same as West Virginia's definition of sales of finance charge. W.Va. Code 46a-1-102(40).

The Wisconsin court went on to hold that the rent-to-own transaction <u>was</u> a consumer credit sale either because there was a [sales] finance charge or because "obligations" does not connote a future contractual liability. "In any event, we have no difficulty placing the instant transaction in either category." <u>Palacios</u> at pg. 887.

III. THE RENT-TO-OWN SCHEME HERE IS ACTIONABLE PURSUANT TO THE "USURY" PROVISIONS OF THE WEST VIRGINIA CODE.

A. THE DEFENDANT'S RENT-TO-OWN SCHEME DOES FALL WITHIN THE PURVIEW OF WEST VIRGINIA'S USURY STATUTES

"Usury " under the West Virginia "usuary"[9] statutes is the direct or indirect contract or assurance for the loan or forbearance of money at a greater rate of interest than is permitted by law. W. Va. Code 47-6-6(1981). The rates of interest permitted by law for the purpose of the usury statute are contained in West Virginia Code 47-6-5 through 5c. The finance charges in the defendant's rent-to-own agreements in this case are exorbitantly in excess of any charges allowed therein. If the defendant's rent-to-own scheme is "usury" the plaintiff is entitled to statutory damages in the amount of four times the finance charge made.

The question is then whether the defendant's rent-to-own scheme fits within the statutory definition of usury. It does. There is no "definitional section". The definition is contained in the prohibition stated in the first sentence of this section six.

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[9]The term "usury" usually refers generally to violation of any finance charge limitation laws. Provisions of Article Six, Chapter 47, of the West Virginia Code are this state's longest standing finance charge limitations laws and they use the word "usuary" in their titles. Therefore, for the purpose of this case the plaintiff uses the term "usury" to refer only to these statutes and not to finance charge limitations found elsewhere in the Code.

There is no doubt that in the present cases there is a contract or assurance. The question is whether there is a loan or forbearance of money, direct or indirect, and whether interest is charged.

A forbearance exists here. Roger Gravely has possession of the goods that are still legally or equitably titled in the name of the defendant. Under the terms of the agreement the defendant will forbear taking back the goods or demanding Roger Gravely now pay the value of the goods if Roger Gravely will pay the value of the goods over time plus a lot more money for that privilege. So the defendant "forbears" collecting money now and instead charges extra money to Roger Gravely so he can pay over time.

The next question is whether that extra money charged is interest. Certainly in the common ordinary sense of the word it is. "Interest" as it relates to money (rather than an interest in land) is defined by Black's Law Dictionary. "Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money. Rosen v U. S., C.A.Pa., 288 F.2d 658, 660. Basic costs of borrowing money or buying on installment contract. . . ." It is clear that in effect Roger Gravely is being charged interest as defined by Black's Law Dictionary.

The present rent-to-own scheme document's language was artfully crafted to avoid the use of the term or the appearance of interest. The formal language of the documents does not exclude the transaction from the coverage of the usuary statues.

The reason is stated in Syllabus Point 3 of Crim v. Post, 41 W.Va. 397, 23 S.E. 613 (1895).

> But the statute contemplates that a search for usury shall not stop at the mere form of the bargains and contracts relative to such loan, but that all shifts and devices intended to cover a usurious loan or forbearance shall be pushed aside, and the transaction be dealt with as usury if it be such in fact.

Roger Gravely was charged a finance charge as a forbearance of money for the privilege of purchasing the furniture and television over time. The leading usury case of Carper v. Kanawha Banking & Trust Co., 207 S.E.2d 897 (W.Va. 1974) is written by Justice Haden, now United States District Court Judge. That case further expounded that one of the indicia courts use to test for the presence or absence of usury is the existence of terms whose meaning are not readily apparent. When the contract has terms, "whose meanings are not readily apparent to any but the commercially sophisticated, this too is an indicia of a shift or device condemned by the courts. [citations omitted]." Carper at p. 912. The languge of the Defendant's form agreements does not make the reality of the interest charged aparent to anyone.

The defendant's rent-to-own scheme is usuary for the purposes of West Virginia's usury statutes. The plaintiff has therefore stated a claim for the relief granted to him by those statutes.

B. THE TIME-PRICE DOCTRINE SHOULD NOT EXCLUDE THE PRESENT TRANSACTION FROM BEING SUBJECT TO THE LIMITATION OF WEST VIRGINIA'S USURY STATUTES.

The defendant may argue that the judicially created time-price doctrine excludes the present transaction from the coverage of usury laws. This should not be the case for two reasons.

The first reason is specific to the transaction in question. For the time price doctrine to apply and remove the transaction from the coverage of the usury statutes there must have been "a bona fide quotation of both a cash price and a credit price." Carper, Syllabus Point 2. Roger Gravely's complaint states that he was never given a true cash price at the point of sale or in the documents themselves. Complaint, paragraphs 8 and 20.

So Carper held, "Thus, if the sale of personal property is really made on a cash estimate [not a bona fide cash sale price], and time is given to pay the price, and an amount is assumed to be paid greater than the cash price with legal interest, the transaction may be, in fact usurious."

That is the situation here, so for this reason the time-price doctrine should not remove the defendant transaction with Roger Gravely from the coverage of the usuary statute.

The second reason that the time-price doctrine should not apply is this case is stated in the concurrence to Carper written by then State Supreme Court Justice Sprouse, who is now a justice of the United States Fourth Circuit Court of Appeals. The reason for the judicial creation of the time-price doctrine "fiction" was a public policy decision by the courts to allow interest in some situations to be charged in amounts higher than the very restrictive usury statutes. Justice Sprouse urged that the

legislature should establish some higher permissible limits and that the judicial time-price doctrine should be "repudiated" by the courts. The legislature has enacted higher limits. The courts should now repudiate the time-price doctrine.

IV. THE FINANCE CHARGE ON RENT-TO-OWN TRANSACTIONS IS LIMITED TO 18% ANNUAL PERCENTAGE RATE BY THE ACTIONS OF THE WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

The Legislature created the W.Va. Lending and Credit Rate Board in 1981 because the Legislature found that "[c]hanges in the permissible charges on loans, credit sales or transactions, forbearances or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes...at reasonable rates...while affording a competitive return to persons extending such credit [.]" W.Va. Code 47A-1-1 (1981).

Even if this court is not persuaded that rent-to-own transactions are "consumer credit sales" or "loans or forbearance of money" it cannot be denied that rent-to-own transactions are transactions which are "similar to" such transactions. The consumer ends up owning goods. The consumer pays at least the actual value of the goods. The consumer in fact pays extra money for the privilege of paying for the goods over time in smaller increments. If a rent-to-own transaction is not a "consumer credit sale" or a "loan or forbearance of money", it is disqualified from those definitions only by the

most technical of arguments. Rent-to-own transactions are without question a "similar" transaction.

Therefore, the West Virginia Lending and Credit Rate Board is empowered to prescribe a maximum finance charge for rent-to-own transactions. "The West Virginia Lending and Credit Rate Board is hereby authorized and directed to meet...and to prescribe by order a maximum rate of interest and finance charges...for any loans, credit sales or transactions, forbearances or similar transactions made pursuant to this section." W.Va. Code 47a-1- (d) (1981)

Not only is the Board authorized to do so, it has in fact set such rates. On October 16, 1984, the W.Va. Lending and Credit Rate Board issued the following order which has not been modified:

> As an alternative to any statutory rate, any person [definition of "persons" deleted] may charge a maximum rate of interest or a maximum finance charge not exceeding 18 percent per annum, calculated according to the actuarial method [annual percentage rates or APR], on all loans,credit sales or transactions, forbearance, or similar transactions, regardless of purpose. [emphasis added] See appendix 1 attached.

The finance charges charged to Roger Gravely by the Defendant were from at least 160% APR, $331.00, to 234% APR, $472.00. The Plaintiff has therefore stated a claim.

V. CONCLUSION

The plaintiff prays that the court rule that the defendant's rent-to-own agreements are controlled by, and that the complaint of the plaintiff states a claim for relief under, the following:

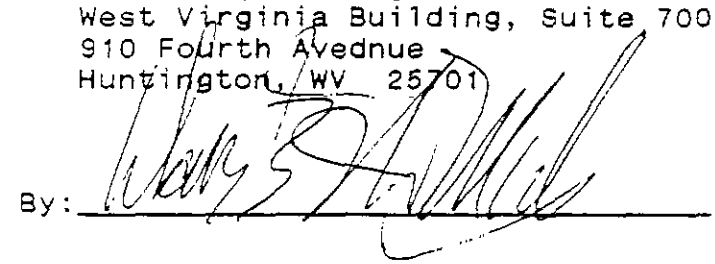
W.Va. Code 46A-3-101 of the West Virginia Consumer Credit and Protection Act; W.Va. Code 47-6-5, 5a and 6, the traditional state usury statutes: and orders made pursuant to W.Va. Code 47A-1-1 et. seq, by the West Virginia Lending and Credit Rate Board.

RESPECTFULLY SUBMITTED,

Counsel for Plaintiff

DAVID B. MCMAHON
West Virginia Legal Services Plan
1033 Quarrier St. E. #700
Charleston, WV 25301

ANN G. HICKS
West Virginia Legal Services Plan
West Virginia Building, Suite 700
910 Fourth Avednue
Huntington, WV 25701

By: 

STATE OF WEST VIRGINIA
DEPARTMENT OF BANKING
CHARLESTON 25305

ORDER

West Virginia Lending and Credit Rate Board

As an alternative to any statutory rate, any person [which defined in West Virginia Code §31A-1-2(1) means "any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county court, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this State or any other jurisdiction"] may charge a maximum rate of interest or a maximum finance charge not exceeding eighteen percent per annum, calculated according to the actuarial method, on all loans, credit sales or transactions, forbearance or similar transactions, regardless of purpose.

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

ORDER

As an alternative to the loan finance charge allowed by West Virginia Code §46A-3-106(3), with respect to a consumer loan made pursuant to a revolving loan account, if the billing cycle is monthly, a lender may contract for and receive a loan finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statements dates are on the same day each month or do not vary by more than four days therefrom.

As an alternative to the sales finance charge allowed by West Virginia Code §46A-3-103(3), with respect to a consumer credit sale made pursuant to a revolving charge account, if the billing cycle is monthly, a seller may contract for and receive a sales finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

ORDER

As an alternative to the loan finance charge allowed by West Virginia Code §46A-4-107(2), with respect to a supervised loan, including a revolving loan account, a supervised lender may contract for and receive a loan finance charge, calculated according to the actuarial method, which may not exceed the total of:

(1) Thirty-six percent per annum on that part of the unpaid balance of he principal which is five hundred dollars or less;

(2) Twenty-four percent per annum on that part of the unpaid balance of the principal which is more than five hundred dollars but does not exceed fifteen hundred dollars; and

(3) Eighteen percent per annum on that part of the unpaid balance of the principal which is more than fifteen hundred dollars but does not exceed two thousand dollars.

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

ORDER

As an alternative to the loan finance charge allowed by West Virginia Code §46A-3-104(1)(b) and West Virginia Code §31-7-11(a)(5), an industrial loan company may contract for and receive a loan finance charge, which shall include the aggregate of the charges permitted by subdivisions (4) and (5) of West Virginia Code §31-7-11(a), calculated according to the actuarial method, which may not exceed the total of:

(1) Twenty-seven percent per annum on that part of the unpaid balance of the principal which is two thousand dollars or less;

(2) Twenty-five percent per annum on that part of the unpaid balance of the principal which is more than two thousand dollars but does not exceed ten thousand dollars; and

(3) Eighteen percent per annum on that part of the unpaid balance of the principal which is more than ten thousand dollars.

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

S/Thomas J. Hansberry
Thomas J. Hansberry
Chairperson
West Virginia Lending and
Credit Rate Board
October 16, 1984

MARKETING COMPARISON

VCR

	RENT TO RENT	RENT-TO-OWN	CREDIT SALE	CASH SALE
Cash Price	NA	$430	$316.94	$316.94
Minimum Initial Payment	$100 deposit *Major credit card plus $5.00 per day	$20.54 includes tax plus one time $10.00 process fee	$31.70 10% down payment	$316.94
Payment Rate (Monthly)	$150.00 + 9.00 tax $159.00 mo	$39.95 + 2.40 tax $42.35 mo.	$20.22 + 1.21 tax $21.43 mo.	NA
Total Cost	$2,862.00	$762.30	$385.74	$316.94
% of Retail Cost Needed to Initiate Choice	33%	6.5%	10% plus credit approval	100%

* Fair market value amount reserved on credit limit until unit returned.

NOTE:

Rent to Rent companies - Video Towne, Video Warehouse, and Tronix.
Rent-to-Own companies - Appalachian Rentals and National Rentals.
Retail companies - Moss Highlawn TV, Sodaro's, and Sears

WEST VIRGINIA RENTAL DEALERS' ASSOCIATION

2516 5th Avenue
Huntington, WV 25703
(304) 526-4040

Roger Sharp, President
Keith Brock, Vice President
Ed Faulkner Jr., Treasurer

DESCRIPTION OF HB 2668 WEST VIRGINIA RENTAL-PURCHASE AGREEMENT ACT

Current West Virginia law contains no legally mandated financial disclosures or substantive protections for rent-to-own customers. Rent-to-own also does not come within the current coverage of either the Federal Truth-In-Lending or Consumer Leasing Acts. This bill will fill this void in the law by providing these protections to West Virginia rent-to-own customers.

This bill would require rental-purchase dealers to make the following disclosures to their customers:

(1) A description of the property, including whether the property is new or used;
(2) the total cost of the lease if the customer chooses to rent-to-own;
(3) the amount of the initial and periodic rental payments;
(4) that the customer is not building equity in the property by leasing;
(5) that other charges, besides rent, may be charged and that the customer should look at his lease for those;
(6) a statement concerning risk of loss;
(7) the cash price of the property.

In addition to these required disclosures this bill would give rental-purchase customers substantive protection:

(1) It contains a section prohibiting various unfair practices;
(2) it provides an absolute right for the customer to terminate at any point without future liability;
(3) it provides for the reinstatement of a lapsed lease;
(4) it limits various charges that may be imposed in rental-purchase transaction; and
(5) it provides appropriate penalties for violation.

THE WV RENTAL DEALERS SUPPORT THIS LEGISLATION.

types and amounts of coverage required of the lessee must be disclosed if the lessee provides the insurance coverage (§ 226.15(b)(6)(ii)). The disclosure is to be completed by identifying the types and amounts of insurance coverage following the colon at the end of the first sentence. If the lessor is to provide the coverage the top check box should be filled in and the total premium cost indicated in the blank space provided. Otherwise the bottom check box should be filled in.

Item 10. This item discloses reasonable standards for wear and use established by the lessor. The lessor is permitted but not required to set such standards (§ 226.15(b)(8)). Therefore, the disclosure may be omitted by lessors who do not set standards for wear and use.

Item 11. This item provides for disclosure of the maintenance and servicing responsibilities of the parties (§ 226.15(b)(8)). These responsibilities may be allocated either to the lessor or to the lessee, or may be divided between them.

Item 12. This item discloses all express warranties on the leased property made by the manufacturer or lessor and available to the lessee (§ 226.15(b)(7)). A brief identification of the warranty must be supplied. A reference to the standard manufacturer's warranty, for example, would suffice.

Item 13. This item discloses the conditions under which the lessee may terminate the lease prior to the end of the lease term. It also discloses the amount or method of determining the amount of the charge which the lessee must pay for early termination (§ 226.15(b)(12)). This item should disclose the conditions under which the lessor may terminate the lease prior to the end of the term, such as default. This item should also be used to disclose the amount or method of determining the amount of any default charges (§ 226.15(b)(10)). The charges or method of determining the charges for early termination by the lessor other than for lessee's default should be separately specified in this item. The blank space in 13(c) is provided to indicate whether the appraisal should be, for example, "retail" or "wholesale."

Item 14. This disclosure of the security taken must include, in the space provided, a brief identification of the types of security interests and an identification of the property covered by each (§ 226.15(b)(9)).

Item 15. This disclosure indicates the amount or method of determining the amount of any charges for late payment (§ 226.15(b)(10)).

Item 16. This item provides alternative disclosures covering the several options a lessor may offer to a lessee to purchase the leased property. A lessor should use the disclosures applicable to the lease plan used. For example, if no option to purchase is offered, only the last sentence of the item should be used. If the lessor offers an option to purchase, the times at which it may be exercised must be supplied. The price must be disclosed for an option exercised at the end of the term and the price or method of computing the price for an option exercised during the lease term must be supplied (§ 226.15(b)(11)).

§ 226.1503 Furniture lease disclosure statement

Date _____

These disclosures are provided pursuant to the Federal Consumer Leasing Act.

1. LESSOR(S) _____ _____

   LESSEE(S) _____ _____

2. Description of leased property [is attached].

Item	Color	Stock #	Mfg.	Qty.			

3. Total Payment Due at Inception: $_____
   - ☐ Refundable Security Deposit ☐ Delivery Charge
   - ☐ Advance Monthly Payment of _____
   - ☐ _____

4. Term of this lease: _____
   The first monthly payment of $_____ is due on _____; _____ subsequent payments of

For new regulations, see page 507 et seq.

YOUR RENT-TO-OWN CENTER

APPALACHIAN RENTALS

Sep 14 1992 (MONTH / DAY / YEAR)

RENTAL - PURCHASE AGREEMENT

RENTAL AGREEMENT NO: 101083

1. LESSOR: Appalachian Rentals

2516 5TH AVENUE (STREET ADDRESS)

HUNTINGTON (CITY) WV (STATE) 25703 (ZIP)

(304) 526-4046 (TELEPHONE #) LOC: 07-M

LESSEE(S): CONSUMER (LAST) JOE (FIRST) (MI)

(LAST) (FIRST) (MI)

STATE ST (STREET ADDRESS) (APT #)

CHARLESTON (CITY) WV (STATE) 25312 (ZIP)

(TELEPHONE #) 09/14/92 (DELIVERY DATE)

As used in this Agreement "you" and "your" mean the person signing this Agreement as renter or Lessee. "We", "us" and "our" refer to the Rental Company or Lessor. "Agreement" means this Rental-Purchase Agreement.

OWNERSHIP OPTIONS DISCLOSURES

The following disclosures are being made in order to assist you in understanding the provisions of your Rental-Purchase Agreement:

2. DESCRIPTION OF RENTED PROPERTY:

PACKAGE	PRODUCT	BRAND	MODEL #	Stock #	Serial #
	LIVING ROOM FURN 3 PIECE LIVING R 3 PIECE LIVING ROOM	WASHINGTON FURNI	5000	H140423	H140423

[XX] New [ ] Previously Rented This property has the following damage(s): None

3. PAYMENT:

	FIRST PAYMENT	AFTER THE FIRST PAYMENT ( ) WEEKLY	AFTER THE FIRST PAYMENT (XX) MONTHLY
One Rental Payment	$ 80.00	$ 19.95	$ 80.00
Sales Tax (If Applicable)	$ 4.80	$ 1.20	$ 4.80
Renters Insurance	$ 4.80	$ 1.20	$ 4.80
Pro-Rated Daily Fee	$ .00		
Processing Fee	$ .00		
Delivery/Installation/Pick-Up Fee	$ .00		
Total Fee	$ 89.60	$ 22.35	$ 89.60

ADDITIONAL FEES

Reinstatement Fee (If Agreement Expires)	$ 5.00
Delivery Fee (Per Item Delivered)	$ .00
Late Fee (According to State Law)	10.00 %
Of Amount Past Due	
In-Home Collection (Per Visit To Your Home)	$ 10.00

X _____ (Sign Here If You Want This Service)

Cash Price $ 1,152.00

4. **TOTAL OF WEEKLY PAYMENTS:** Weekly rental, multiplied by 104 weeks to obtain ownership. If you renew this Agreement for 103 weeks after the initial First week, you will have paid $ 2,074.80 and you will obtain ownership of the property. You may obtain ownership other ways. See Item 7 below. Since renting by the month is cheaper than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is a Rental Agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options.

5. **TERM OF THIS LEASE:** This Rental Agreement is for [ ] ONE WEEK [XX] ONE MONTH and expires 10/12/92. If you decide to renew this Rental Agreement, your first renewal payment is due on 10/12/92. You are not obligated in any way to renew this Agreement after the initial rental period. You may renew this Agreement if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a "Grace Period" for late payments, and you must make payment in advance to continue using the property. You understand this Rental Agreement terminates automatically if you do not renew it.

6. **REIMBURSEMENT OF COSTS:** If you do not keep this Agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and permitted by state law.

7. **EARLY PURCHASE OPTION:** At any time after paying the initial rental payment, you may exercise an early purchase option by paying cash. This cash payment may be determined by subtracting 50 % of all rental payments previously paid from the cash price stated in this Agreement.

8. **REINSTATEMENT:** If you fail to make a timely renewal payment, you have the right to reinstate this Agreement by paying all past due rental payments, any applicable late charges, reinstatement fees, and re-delivery fees provided:

1. You have voluntarily returned the property to us, if requested, and
2. No more than the equivalent of three (3) rental terms or thirty (30) days, whichever is greater, have passed since you have paid a timely renewal payment.

9. **FEES AND TAXES:** You do not have to pay any fees or other taxes during this Rental Agreement other than those listed above, if any.

10. **INSURANCE AND DAMAGE TO THE PROPERTY:** We do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to or loss or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the full value of the property if you fail to return it to us when this Rental Agreement terminates.

11. **[illegible]ERS INSURANCE:** Any insurance coverages written may be provided in existing policies, or independently [illegible] and paid for by the Lessee, and from persons chosen by the Lessee. Undersigned hereby

6. **REIMBURSEMENT OF COSTS:** If you do not keep this Agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and permitted by state law.

7. **EARLY PURCHASE OPTION:** At any time after paying the initial rental payment, you may exercise an early purchase option by paying cash. This cash payment may be determined by subtracting 50 % of all rental payments previously paid from the cash price stated in this Agreement.

8. **REINSTATEMENT:** If you fail to make a timely renewal payment, you have the right to reinstate this Agreement by paying all past due rental payments, any applicable late charges, reinstatement fees, and re-delivery fees provided:

1. You have voluntarily returned the property to us, if requested, and
2. No more than the equivalent of three (3) rental terms or thirty (30) days, whichever is greater, have passed since you have paid a timely renewal payment.

9. **FEES AND TAXES:** You do not have to pay any fees or other taxes during this Rental Agreement other than those listed above, if any.

10. **INSURANCE AND DAMAGE TO THE PROPERTY:** We do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to or loss or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the full value of the property if you fail to return it to us when this Rental Agreement terminates.

11. **RENTERS INSURANCE:** Any insurance coverages written may be provided in existing policies, or independently obtained and paid for by the Lessee, and from persons chosen by the Lessee. Undersigned hereby voluntarily selects the following coverage(s):

Property Insurance at a rate of 6.0 XXXX % of monthly/weekly payment with $ 1.00 minimum premium.

The premium rate for Property Insurance will be applied against the monthly/weekly payment.

Lessee, being informed as to the above, hereby applies for insurance set forth above to Voyager Guaranty Insurance Company, Jacksonville, Florida, for any Property Insurance which insurance is subject to terms and conditions set forth in a Master Policy retained by the Lessor, describing the insurance and which Master Policy has been read by or to the undersigned Lessee. Undersigned Lessee acknowledges receipt of copy of this application and certifies that it is both complete and accurate, and freely and voluntarily furnished. Lessee desires to purchase the above insurance.

Monthly/Weekly Payment $ XXXX 4.80 XX ☐ Accept ☐ Decline Effective Date 09/14/92

12. **INSURANCE:** You are not required to purchase insurance for the property from us or any agent designated by us.

13. **MAINTENANCE:** During the period of this Rental Agreement, we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others. We shall not be required to repair or maintain the property if you default on any of the terms of this Agreement or after you obtain ownership. We are not responsible for the repair of any fabric due to the normal wear and tear anticipated during normal usage of upholstered products.

14. **WARRANTIES:** If you choose to exercise your Early Purchase Option as discussed in Item 7, we will give you the details of our limited warranty and any manufacturer's warranty which may still be in effect. You may read these warranties at our store any time you choose.

15. **TERMINATION AND DEFAULT:** You are not obligated in any way to renew this Agreement or to buy the property. You may terminate this Agreement by providing for the immediate return of the property to us or by not renewing this Agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this Agreement. We may terminate this Agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

16. **EQUITY:** You understand that we own the property until you buy it or get ownership as stated in this Agreement. During the Rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this Agreement is terminated.

17. **LOCATION OF PROPERTY:** You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this Agreement immediately.

18. **RETURN OF PROPERTY ON TERMINATION:** If this Agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

19. **ASSIGNMENT:** We may sell, transfer, or assign this Rental Agreement. However, you have no right to sell, transfer, assign, pawn or sub-lease this property.

20. **DAMAGE TO PERSONS OR PROPERTY:** You understand that we will not be responsible for any loss or damage to any person or property arising out of the use of the property.

21. **MISCELLANEOUS PROVISIONS:** You understand that no changes may be made in this Agreement except by us in writing. You understand that this property may be new or previously rented, as indicated in Item 2. You have examined the property, and you agree that you have received the property in satisfactory condition. You understand that time is of the essence in this Agreement and that we do NOT have a "Grace Period" for rental payments or other terms.

NOTICE: THIS RENTAL-PURCHASE AGREEMENT IS REGULATED BY STATE LAW AND MAY BE ENFORCED BY THE ATTORNEY GENERAL OR BY PRIVATE LEGAL ACTION.

I HAVE READ THIS AGREEMENT, I UNDERSTAND IT AND I HAVE RECEIVED A COPY OF IT.

Driver's License Number 000000000 Expiration Date 00/00/00 Lessee _____ Date _____

Lessee _____ Lessee _____

Lessor Appalachian Rentals Represented By _____

ORIGINAL COPY

RT: 01

West Virginia Legal Services Plan, Inc.

Suite 700
1033 Quarrier Street
Charleston, W. Va. 25301



Phone (304) 342-6814
(Toll Free) 1/800/642-8279

James P. Martin
Program Director

Technical Comment on
Proposed Legislative Rule
on Consumer **Lease Disclosures** in
Rent to Own Transactions
142 C.S.R.-15-1 et seq
David B. McMahon, Attorney at Law
September 9, 1992

A. "Cash Price"

Section 3.1.6 requires disclosure of an imputed interest rate. Part of the computation of such an interest rate is the "cash price." There is no definition of cash price in this rule. This is a serious flaw in imputed interest rate calculation.

Disclosure of the interest rate is one of the two most important disclosures. This is the only disclosure which will allow consumers to compare the finance charge in Rent to Own transactions with the finance charge in the other consumer transactions which are available to them.

A definition of cash price needs added which will tie it to a fair market retail value. To avoid requiring dealers to sell goods outright if they do not want to, the item could be labeled "fair market value/cash price." Because most Rent to Own consumers cannot go elsewhere, they do not shop around and compare cash price or quality of goods. Because these consumers could not go elsewhere even if the cash price was lower the Rent to Own dealers have no incentive to have a low cash price. Similarly, because these consumers cannot shop and are not familiar with the quality of other goods for the same price, they do not recognize when goods are overpriced. They typically value the goods based on the stated cash price. Because the stated cash price is taken by the unsophisticated consumer as the indicator of the true value of the goods, Rent to Own dealers inflate the cash value so the consumer thinks that he is getting a much more valuable item than he really is.

So, not only does the Rent to Own dealer have no incentive to put a low cash price on his merchandise, he has an incentive to put a high cash price on his merchandise. Imputed interest rate disclosure without a fair market cash price definition will be an additional incentive to have high cash prices. The higher the cash price, the lower the calculated imputed interest rate.

The most practical fair market "cash price" would allow a presumption for a cash price found in any other unconnected retail outlet in the market area, or perhaps a percentage markup over the actual wholesale, to be a fair market cash price. References to manufacturer's price quotes, etc. are not useful because those are easily manipulated, particularly in dealings by the larger Rent to Own dealers with the manufacturers. The manufacturers are only too happy to print out any price lists for their Rent to Own dealer customers.

B. Credits.

Section 3.2.2 requires disclosure of credits when consumers trade in or re-sign. This is particularly needed for those who re-sign. Typically a consumer gets three payments behind. The Rent to Own dealers tell the consumer he will do the consumer a favor and let him re-sign for about the same or maybe a little higher or even lower periodic payment. What the consumer does not realize is even though he was only <u>three</u> payments behind, there the new contract has <u>six</u> additional payments tacked on to the end of the contract.

The flaw in the proposed disclosure is that it does not state whether the credit will be in terms of cash price or total of payments. For the reasons made in the previous subsection, total of payments should be the method of disclosure used. Cash price is too easily manipulated. Dealers can easily make a "cash price" credit disclosure meaningless in order to undervalue the payments made on the returned item. All the dealer has to do is to raise the cash price of the new goods for which the consumer is trading.

C. Wear and Tear

Section 3.2.10 does not take into account that Section 3.2.1 does not require the dealer to be responsible for maintenance due to wear and tear. There is similarly no regulation about who is responsible for damage in excess of wear and tear. One of the come-ons that Rent to Own dealers use is that the dealer is responsible for maintenance due to wear and tear. Dealers should be required to be responsible for maintenance due to normal wear and tear. Dealer responsibility for wear and tear should not be part of the definition of what is or is not a Rent to Own transaction to avoid creating a loophole. To be consistent with 3.2.1 however, 3.2.10 needs rewritten. Drop the first word and add on: "If the lessee is liable for damage beyond wear and tear, whether"

West Virginia Legal Services Plan, Inc.

Suite 700
1033 Quarrier Street
Charleston, W. Va. 25301



Phone (304) 342-6814
(Toll Free) 1/800/642-8279

James P. Martin
Program Director

Technical Comments on
Proposed Interpretative Rule Pertaining to Treatment
of Rent to Own Transactions as Consumer Leases
Consumer Credit Sales
142 C.S.R.-14-1 et seq
David B. McMahon, Attorney at Law
September 9, 1992

Despite my strong support for clarifying that Rent to Own agreements are "consumer credit sales," the rule proposed has a difficulty followed by a huge loophole. The difficulty is that it cannot be determined until after four months whether the transaction was a consumer credit sale or a bona fide rental. If the transaction becomes a rental purchase agreement/consumer credit sale then the dealer had previously to have limited the payments to the proper annual percentage rate. However no dealer is going to do that. Every four months when the customer comes in to make his payment the dealer is going to hand the customer the waiver form and say, "I know you really are going to buy this, but this is something the State makes us do." The consumer will sign the waiver and go on paying the outrageous finance charges.

It is recommended that any contract which on its face provides for an ownership option, or which is induced by advertising or other inducement on the basis that ownership could occur, is a rent to own transaction and is, in fact, a consumer credit sale. The ownership option representation eliminates the problems with U-Haul and party rentals.

In addition to this problem, the use of the four month limit in Section 3.1 also creates a loophole. All rental purchase agreements in West Virginia will now read that they are for four months. The consumer will be told by the dealer, though it will not be written down anywhere, that after four months the consumer can come back in and sign another lease.

B. "$1,000"

While the reference to West Virginia Code 46A-2-119 is understood, the $1,000 limit is much too low. All rent to own transactions regardless of whether West Virginia Code provides for deficiencies are really consumer credit sales.

C. Reference to 46A-2-119(2)

Section 4.1 refers to this section of the Code. If the reference was to make sure the figure in the regulation stayed the same as the code in the event that the code section was amended, then the reference to the code makes sense. Otherwise it is not clear what effect the reference to the code section will have on the operation of the rule.

D. "Cash Price"

For reasons stated in comments on proposed 142 C.S.R. 15-1 et seq, a "cash price" definition needs included.

EXHIBIT LIST FOR
COMMENT OF DAVID B. MCMAHON
RULEMAKING ON RENT TO OWN TRANSACTIONS
September 9, 1992

1. Council of Better Business Bureaus' Report
2. Renting to Own in the United States by David Ramp
3. Order by Thomas J. Hansberry,
   West Virginia Lending and Credit Rate Board
4. Comparison of Rates Using Three Computation Methods for
   Selected "Finance Charges" and Equivalent "Total of Payments"
5. AARP Senior Consumer Alert
6. Jerry Gorby letter to Bonnie Brown, 2/18/92
7. Complaint - jail threats, etc.; RTO, Rents, Parkersburg
8. Complaint - harrassment at work, etc.;
   New Rents/Colortyme, Charleston
9. Complaint - arrest for fraud, etc.; Rentworks, Martinsburg
10. Complaint - placed in jail, etc.; Rentworks, Martinsburg
11. Complaint - 250% APR, etc.; RTO, INC., Huntington
12. Contract - Wedding Ring
13. Herald-Dispatch 11/8/90 Newspaper Article with
    comparative cost survey
14. Gazette Mail 1/12/92 Newspaper Article with
    comparative cost survey
15. Gazette Mail comparison cost survey, 1992
16. Gazette Mail comparison cost survey, 1991
17. Technical Comments, David B. McMahon
18. RENTEX/Rental Dealer Expo '91 -
    Introduction to Account Management
19. APRO Statistical Survey Results
20. Jail threat letter - Parkersburg

EXHIBIT LIST

1. Council of Better Business Bureaus' Report
2. Renting to Own in the United States by David Ramp
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4. Comparison of Rates Using Three Computation Methods for Selected "Finance Charges" and Equivalent "Total of Payments"
5. AARP Senior Consumer Alert
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7. Complaint
8. Complaint
9. Complaint
10. Complaint
11. Complaint
12. Contract
13. Herald-Dispatch 11/8/90 Newspaper Article
14. Gazette Mail 1/12/92 Newspaper Article

EXHIBIT 1

COUNCIL OF BETTER BUSINESS BUREAUS
Standards & Practices Division

REPORT

RECEIVED AUG 13 1990

RENT-TO-OWN

May 1990

Advertisements for TV sets claiming "No credit check; only $14.99/week; you can have delivery today!" can be very appealing, especially for consumers who have difficulty getting credit. Appliances such as washers, dryers, televisions, stereos, and furniture are among the merchandise available to rent, with an option to purchase, via the growing "rent-to-own" industry.

There are several reasons for consumers to rent merchandise. For instance, consumers whose employers temporarily relocate them may need to rent furniture and appliances quickly. Some consumers may simply wish to try a particular product which is new to them before actually purchasing it. Also, consumers who cannot afford to pay cash or who do not have established credit may also rent merchandise under arrangements that permit them to acquire ownership at the end of the rental period. According to an industry trade association, the industry markets to the bottom 40% financially of the American population.

In the case of displaced employees, rental transactions are usually short-lived. Similarly, consumers who rent to "try out" a product will usually keep the merchandise a short time, after which they will decide whether to purchase it or a comparable product outright. When consumers "rent-to-own" as a means of purchasing products, a transaction we call "RTO," there are several pitfalls that need to be evaluated carefully.

Several problem areas with RTO transactions are discussed in this report. They include: the much higher cost of purchasing merchandise in this way, performance and repair difficulties, especially with regard to used goods, and the loss of any ownership build-up if the goods are repossessed. Steps taken by some legislators and industry members to correct these problems are also discussed.

The Council of Better Business Bureaus (CBBB) recommends that the rent-to-own industry assist consumers in making informed decisions in several ways, primarily through disclosure of all important facts concerning the RTO transaction. CBBB also suggests to industry members that they allow consumers rights to reinstatement after repossession of goods, even when not mandated by state law.

What is Rent-to-Own?

This type of transaction combines features of an installment sale and a lease. The RTO contract usually has either a weekly or a monthly rental period and provides that the contract is renewable at the end of each week or month. Companies take care of delivery of appliances and generally provide free service when the appliances malfunction. The consumer can return the property at the end of any rental term without penalty or further obligation to the rental company.

The consumer will own the goods after the specified number of payments, though sometimes one more final payment is required before ownership. Some companies charge deposits before delivery of the merchandise while others do not. Unlike an installment sales agreement, there is no ownership of the merchandise until the final payment is made, unless specific legislation provides otherwise.

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Many consumers may enter into an agreement with the expectation of buying the merchandise, rather than as a short term rental where the agreement is cancelled and the goods returned. In fact, according to the RTO industry itself, less than 30% of customers end up owning the merchandise they had been renting.

Major differences between rent-to-own and other ways of purchasing goods without full cash payment:

Using a ***credit card*** entitles the customer to immediate ownership of the merchandise at the time of purchase. Non-payment of the credit card bill can subject the customer to legal action, but the merchandise itself may not be repossessed. Interest rates for credit card transactions are subject to state regulation.

In an ***installment sale***, the customer receives possession and ownership once the installment contract is signed, though the seller may retain a security interest in the goods. The seller may repossess in the case of non-payment, but the goods can be redeemed once payments are resumed, sometimes with the consumer having to pay all past due amounts. Interest rates for installment sales are also regulated.

In the case of most ***RTO*** transactions, the customer takes possession at the time the contract is signed, but there is no ownership until the total of required rental payments is made. The goods can be repossessed, without a right to reinstatement in many states. "Implicit interest" rates are not regulated, with the exception of one state.

Total cost of merchandise

One of the most important aspects of the RTO transaction that makes it different from other ways of purchasing products is that consumers usually end up paying much more for the merchandise than if they bought the merchandise outright with cash, by credit card or through an installment sale. Although the advertised weekly or monthly amount may sound low and affordable, when that amount is multiplied by the number of weeks or months before the merchandise is owned, the total cost is far higher than for any other type of transaction due to what may be called "implicit interest."

"Implicit Interest"

We say "implicit interest" because the amounts paid over the course of the rental in excess of the cost of an outright cash purchase are not really interest payments. The cash price is not borrowed and the consumer is not paying for the use of the RTO dealer's money. These amounts are simply the cost of the RTO arrangement, which reflects, among other things, maintenance and repair costs, collection costs, interest payments on the company's capital investments, and profit. We compare these costs to true interest costs incurred in a purchase so that a fair association can be made between the costs of acquiring ownership through the different approaches. Indeed, the failure to disclose these additional costs in a manner comparable to the disclosures made in true credit arrangements masks the frequently higher costs of a purchase through the RTO transaction.

In many states 18% is the maximum annual percentage rate (APR) that can be charged for credit card purchases and 24% APR is the maximum for installment sales at retail stores. However, what amounts to an effective "APR" of 100% up to 350% may be charged by RTO companies, which are not generally subject by law to any interest rate limits. For example, if a television set which has a cash purchase price of $400 is rented over an 18 month period for $55.55 a month, the total amount paid to own the TV will be $1000. This difference of $600 amounts to an "implicit interest" rate of 145%. By contrast, if the same $400 TV was bought under an installment sales contract at 24% interest, also over 18 months, the total cost would be $480. Essentially, two TV sets could be purchased for the price of acquiring one TV in a rent-to-own transaction.

RTO Costs

An industry trade association cautions that the relative costs of ownership through a rent-to-own, credit, or cash transaction may differ by the type of product and regional market conditions. According to the source, "low-end" electronic products may, for example, be much more costly vis-a-vis retail pricing than might be the case with furniture or "high-end" electronics. In addition, retail pricing may also vary sharply. These variations in cost demonstrate the critical need for consumers to evaluate the total cost of acquiring ownership and to determine for themselves whether any higher costs are justified by the convenience offered.

Attached to this report as Appendix A is a chart, "Is the Convenience Worth the Cost?," from which the example of the $400 TV is taken. This chart demonstrates the higher cost of merchandise obtained through RTO contracts due to the "implicit interest."

Whether or not RTO companies offer goods for sale over time like retail stores and should thus be limited in the fees they charge for this service is a subject of great debate. The RTO industry maintains that it is different from the retailing industry as its customers are given an option to buy, allowing them to return the goods with no further obligation, but are not obligated to buy, as is the case in an installment sales contract. An industry trade association states that the difference between an item's cash selling price and the total RTO price is the cost of acquiring ownership via a rent-to-own transaction, or the "cost of leased services."

Although the industry is still unregulated in many states, in the last several years over twenty states have passed laws regarding RTO companies. These states have enacted laws that deal with the high cost of rental-purchase contracts by requiring certain financial information to be disclosed. Specifically, contracts must include the number of payments, amounts, due dates, or periods of scheduled payments, and the total cost of such payments under the agreement. These laws are intended to make the total cost of the transaction more readily available to the would-be purchaser before beginning the weekly or monthly payments.

Only one state, Pennsylvania, actually subjects rent-to-own contracts to an 18% APR interest rate limitation. It has accomplished this result by making RTO agreements credit sales. Pennsylvania's stringent law was contested by the industry but remains the only one with an interest rate the same as for retail merchants selling goods over time. Other states do not limit rent-to-own companies in "interest" fees they can charge through their state retail installment sales acts or through specific rent-to-own laws.

Included in some state laws is a section concerning advertising and the need to disclose certain financial information in ads, as well as in contracts. For example, if an advertisement states a required amount of payment or indicates a right to acquire ownership, then the ad must disclose that what is being advertised is indeed a rental-purchase agreement, the number of payments and total cost needed for eventual ownership, and the way in which a consumer can acquire ownership.

At the end of this report is Appendix B, a table of state-by-state regulations regarding RTO transactions. In states without rent-to-own statutes, the courts have divided on the question of whether rent-to-own companies are subject to interest and other legal limitations applicable to credit sales.

Used merchandise

Much of the merchandise consumers rent is used. As noted earlier, most transactions end up with the consumer not owning the goods. Returned merchandise is rented again to the next consumer. According to a study by the North Carolina Attorney General's Office, 51% of the goods in examined contracts were used. The Attorney General of that state also pointed out that the RTO contracts did not generally spell out a

difference in the cash price between used and new goods. Thus, consumers may have been paying as much for used goods as for new, and the difference in value between new and used merchandise further raised the cost of RTO transactions.

The subject of used goods is one that frequently arose in a review of complaints received by Better Business Bureaus. Some customers claimed that they were told they would be receiving a new appliance but received a used one instead. They signed contracts accepting the used merchandise with the understanding that new merchandise would be delivered in the near future; however, new items were not received.

One company's contract reviewed by the Council of Better Business Bureaus promised a new TV with a full manufacturer's warranty in exchange for the used one at the end of the leasing period, when all scheduled payments plus one additional payment had been made. Several customers complained that they had not received the new televisions after having made all payments.

The 20 or so states that have regulated RTO companies require that contracts clearly disclose if the merchandise is new or was previously rented. Without such disclosure, consumers might have mistakenly assumed the merchandise they would be receiving was new when it was not, and would consequently last longer and perform better.

The Better Business Bureau Code of Advertising, which is the Bureau system's voluntary industry guidelines, states that "a product previously used by a consumer should be clearly and conspicuously described as such." Many state consumer protection laws also require such a disclosure. Consumers should find out if the RTO merchandise is new or used. An industry trade association advises CBBB that RTO contracts universally state if merchandise is used, whether or not required to do so by state law. When used merchandise is indicated in contracts, consumers should not anticipate getting new appliances a few weeks down the road, as may be verbally represented.

Repairs and Warranties

Because most of the merchandise in RTO transactions has been rented before, it stands to reason that repairs would be needed more frequently as the merchandise gets older. According to contracts reviewed by CBBB, rent-to-own companies state that they will provide normal service to keep the merchandise in good working order. They also state that they are not responsible for any unauthorized repairs or damages to their merchandise.

Delays encountered when trying to get appliances repaired was the problem seen most frequently in the complaints reviewed by the Council of Better Business Bureaus. Consumers expressed frustration at paying for appliances that were not functioning properly and for having to use loaner items which they thought were of lesser quality than what was contracted for. Although RTO companies point to their servicing of merchandise as a major difference between rent-to-own transactions and regular retail sales transactions, complaints indicated that repairs are not always made in a timely manner.

Other complaints reported to CBBB concern an apparent lack of reconditioning of returned items that are later re-rented, including instances of chewed wiring or food on the merchandise. Consumers should, of course, always inspect merchandise to ensure that at least visually it is in acceptable condition.

If an RTO company breaches its contract by not performing repairs, some attorneys believe that consumers may have certain protections under the federal Magnuson-Moss Warranty Act or their state Uniform Commercial Code. An attorney familiar with warranty protection issues may be able to advise on the

likelihood of receiving redress for payments made while the RTO merchandise was out of service and repairs were not performed.

If a consumer pays the weekly or monthly amount for the required period under the contract, say 78 weeks or 18 months, and then owns the property, any manufacturer warranty still valid will be transferred to the consumer. However, because of the long rental period before ownership, there will probably be little if any time left under the warranty. Sometimes consumers do not understand that after ownership and expiration of the manufacturer's warranty the company does not have the same responsibility to make repairs as it did prior to ownership.

Repossession and Reinstatement

Most RTO contracts state that payments must be made on or before the due date and do not allow a grace period. When consumers are late with their payments, the contracts allow for repossession of the merchandise. When the industry was very new, and before state protections existed, repossession tactics were the subject of much concern. For example, according to the National Consumer Law Center's Consumer Credit and Sales Legal Practice Series, some RTO companies' contracts expressly provided that the companies could enter consumers' homes to repossess the appliances once payments were in arrears. In many cases, written notice was not given to the customer and the customer lost all money paid thus far toward ownership once repossession was made.

In order to avoid the repossession scenarios of several years ago, several state laws now afford certain consumer protections regarding how repossession can be carried out and how the contract can be resumed without losing any build-up of ownership. Typical regulations, for instance, prohibit contract clauses which say that the business can enter a consumer's home without the consumer's consent or breach the peace while repossessing merchandise. An industry trade association says that collection abuses are probably no greater in the RTO industry today than in the collections industry generally.

According to the states that have RTO regulations, consumers who are late with payments and have had the merchandise repossessed can generally pay all past due rental charges (within a certain time frame), reasonable costs of pickup and delivery, and a reinstatement fee (which often cannot exceed $5). They can then pick up where they left off in terms of how many more payments they must make before ownership. Upon reinstatement, the company must provide the consumer with the original item or with merchandise of similar quality and condition. In states where there is no specific regulation of RTO transactions, those who fail to make payments and have their merchandise repossessed may be unable to gain reinstatement. Such consumers may have no way of getting the merchandise back even if they had the money to make back payments and pay the other fees.

Early Purchase Option

Many RTO companies have a contractual provision allowing consumers to buy the merchandise before the end of the contract. There are several variations in the way early purchase options are treated, depending on state law, if any. Where there is no state law, such a contractual provision would not be required by the company. Most of the states that do regulate RTO transactions require that the contract disclose that the consumer has the option to purchase the rental property during the term of the rental-purchase agreement. The price, formula, or method by which the purchase price is to be determined must also be disclosed, though the method itself is not prescribed by law.

At the present time, only five states, Iowa, Ohio, Michigan, New York, and South Carolina, actually require that a certain percentage of the weekly or monthly payment be applied to ownership of the item. As an example, in New York a consumer can purchase the merchandise at any time after the initial payment by paying the cash price noted on the contract minus 50% of all rental payments already made. That is, if a consumer already paid $100 toward a television which has a stated cash price of $400, the consumer has to pay $350 more to exercise the early purchase option. In Michigan, a consumer can exercise the early option to buy by applying 45% of what was already paid toward the total rental-purchase price, and then paying the remaining balance due for the outright purchase price. Also according to Michigan's law, if at any time an amount equal to 45% of the total rental payments made equals the cash purchase price disclosed in the contract, then the consumer acquires ownership.

No Federal Protections

Federal laws regarding credit disclosures in contracts, and in advertising as well, are generally believed not to apply to rent-to-own companies. The federal Truth in Lending Act, for example, only applies to credit sales. The Federal Reserve Board has determined that rent-to-own contracts are not credit sales under the Truth in Lending Act because agreements are terminable at any time, without penalty to the consumer. The federal Consumer Leasing Act requires disclosure of certain information when specific "triggering terms" (like the amount of any payment) are used in advertising leases which are for a period of four months or more. The Federal Trade Commission advises that the Act does not apply to rent-to-own agreements as such agreements are from week-to-week or month-to-month and can be cancelled at any time.

Some contracts reviewed by CBBB state, however, that "although the Consumer Leasing Act does not apply to this rental agreement, we have disclosed below the information connected with this agreement." The disclosed information includes relevant financial data, such as the number, amounts, due dates, or periods of scheduled payments, and the total cost of such payments under the agreement and also information as to the purchase option.

CBBB Recommendations to Rent-to-Own Companies

The Council believes that certain actions, as indicated below, taken on the part of the RTO industry would assist consumers in any potential or realized transactions with RTO companies.

* When weekly or monthly rates are quoted in advertisements, full disclosure of all costs, such as the total cost for ownership, should be made. Advertising claims that there is no credit check should not be made, unless accurate.

* Rental-purchase contracts should include full disclosure of all pertinent facts relating to the transaction, including if the merchandise is new or used, financial information, such as the total cost of ownership and all charges involved, and information concerning an early purchase option. All contracts should be written in plain, easily understood language.

* Even when not required to do so by law, companies should adopt the practice of allowing customers who have failed to make timely contract payments and whose merchandise has been repossessed the option of reinstating the agreement with the payment of past due amounts and appropriate delivery and reinstatement fees.

* Repairs should be promptly made, as provided by the contract, and if an acceptable loaner is not provided, billing should be suspended until repairs are completed.

* Merchandise should be reconditioned (and cleaned) in between rentals to reduce the need for repairs while being rented.

* Claims that customers will improve their credit ratings should not be made unless payment information is routinely provided to credit reporting agencies.

Factors Consumers Should Consider About Rent-to-Own

* If you are going to be renting only for a short period of time, compare the costs between a regular rental and a rental-purchase plan.

* Compare RTO contracts of different companies as costs, including the total charges for ownership, and other conditions, like whether or not the item is new, can vary.

* The total cost of ownership through RTO should be compared to the cost of merchandise sold outright, on credit through installment sales, or by use of credit cards. Even if you cannot qualify for a regular credit card, you may be able to receive a collateralized or secured credit card. With a secured card, you must deposit in a bank a certain amount of money, for instance, $500, which serves as your credit limit. That money would be used by the bank to pay any credit card bills that you fail to pay. Merchants have no way of knowing if your card is a secured one and after a reasonable length of time, your collateral would be returned to you.

* You should ask yourself if you could find a lower interest rate somewhere else. Although RTO contracts do not contain a percentage figure for "implicit interest," by looking at the total cost entailed for ownership, as well as the chart provided in this report, you can approximate this figure. You should additionally ask yourself if you could buy the merchandise through a layaway plan or with personal savings. Also consider that used merchandise, costing only about as much as a few rent-to-own payments, could be found through classified ads, yard sales, or appliance repair shops.

* Make sure any contract you are considering contains all important financial information: the cash selling price of the merchandise, at the beginning of the contractual period or later; the amount and timing of rental payments; the amount of any other charges, such as deposits, delivery or reinstatement charges, late fees, and fees to be paid at the end of the contract before ownership; and the total cost of the agreement.

* Learn what will happen if your payments are late and the merchandise is repossessed. Some, but not all, states say that you can continue the contract where you left off under certain circumstances. Also, most contracts reviewed by the Council of Better Business Bureaus stated that there are no grace periods, meaning that the payments must be made before or on a certain date every week or month.

* Make sure the contract describes the merchandise accurately and notes whether it is new or used. Do not accept used merchandise with the promise of receiving new as soon as possible, unless you are willing to rent or buy the used item.

* Find out who is responsible for any necessary repairs and if you will get a loaner or the company will stop billing while the appliance is being repaired.

* Make sure the contract describes the conditions under which you can end the rental-purchase agreement. Most contracts allow for termination after the initial period of one week or one month; however, one contract we reviewed obligated the consumer to pay for three months, even if the property was returned to the company. Also learn if there is an early purchase option and how to take advantage of it.

* Don't assume that the rent-to-own company will automatically be reporting your good payment record to your local credit reporting agency, thus establishing a better credit record. Some consumers complained to local Better Business Bureaus that a company said it reported information to the credit bureau when it did not. One major credit reporting agency advised CBBB that it did not have any rent-to-own companies reporting information to it.

* Before signing any agreement, make certain that you understand all the provisions. Although some states now provide that contracts be written in "plain English," the contracts contain much information and can be confusing. Do not be afraid to ask questions to satisfy yourself on all terms and conditions.

* Always check with your local Better Business Bureau regarding the reliability of any rent-to-own company before signing a contract. The Bureau or your local consumer protection agency can also advise you of any regulations pertaining to the rent-to-own industry in your state.

Advantages and Disadvantages of Rent-to-Own Contracts

Advantages

* Consumers with poor credit or no credit can buy appliances and other household goods they might not otherwise be able to afford.

* RTO payments generally can be made weekly, every other week, or monthly, and periodic payments may be more affordable to many consumers than other arrangements.

* Consumers can end their contracts at any time and return the merchandise without penalty.

* Appliances are delivered and service is provided free when appliances are broken.

Disadvantages

* In most cases, it will cost consumers much more to acquire ownership from rent-to-own companies than from other sellers. Few RTO customers actually end up owning the merchandise they have been renting-to-own.

* Consumers may not be aware of the actual price of merchandise, how much they will have to pay for ownership, and how much the "implicit interest" adds up to.

* RTO merchandise is often not new and may have been used by several other customers previously.

* Generally depending on state law, consumers who miss payments and have merchandise repossessed may not be able to get the merchandise back and have their contracts reinstated.

Standards and Practices Division
Council of Better Business Bureaus, Inc.
May 1990

Is the Convenience Worth the Cost?

How to Compute Rent-to-Own Implicit Interest

TOTAL OF PAYMENTS OVER 18 MONTHS

CASH PRICE OF PRODUCT	$400 ($22.22 a month)	$600 ($33.33 a month)	$800 ($44.44 a month)	$1000 ($55.55 a month)	$1200 ($66.66 a month)	$1400 ($77.77 a month)	$1600 ($88.88 a month)	$1800 ($100.00 a month)	$2000 ($111.11 a month)	$2200 ($122.22 a month)	$2400 ($133.33 a month)	$2600 ($144.44 a month)
$200	103%	185%	258%									
$300	38%	103%	158%	210%	258%							
$400	0	56%	103%	145%	185%	222%	258%					
$500		24%	66%	103%	137%	169%	200%	229%				
$600		0	39%	72%	103%	132%	159%	185%	210%			
$700			17%	48%	77%	103%	127%	151%	174%	196%	217%	
$800			0	29%	56%	80%	103%	124%	145%	165%	185%	204%
$900				13%	38%	61%	83%	103%	122%	140%	158%	176%
$1000				0	24%	45%	66%	85%	103%	120%	137%	153%
$1100					11%	32%	51%	69%	86%	103%	119%	134%
$1200					0	20%	38%	56%	72%	88%	103%	118%

How To Use This Chart

By using this chart, you can estimate the implicit interest which you will be charged if you make enough rental payments to own the product. Along the left side of the chart is the "cash price," or the amount which you would pay to buy the product with one payment. Along the top of the chart are the total amounts which you would be paying to buy the product under a rent-to-own plan. In parentheses under each total amount is the cost of each monthly payment. All three of these amounts should appear on the rent-to-own contract.

To figure out the implicit interest, you should first find the cash price of the product you are buying. Then follow across the chart to the column that corresponds to the total amount you must pay to own the product. For example, if the cash price is $400 and the total amount which you must pay to own is $1000, the implicit interest would be 145%.

If your cash price or total payment amount falls between the numbers on the chart, you can use the chart to estimate the implicit interest. For example, if the cash price is between $400 and $500 and the total payment amount is $1000, your implicit interest will be between 103% and 145%. If the cash price is between $400 and $500, and the total amount to be paid is between $1000 and $1200, then the implicit interest would be between 103% and 184%.

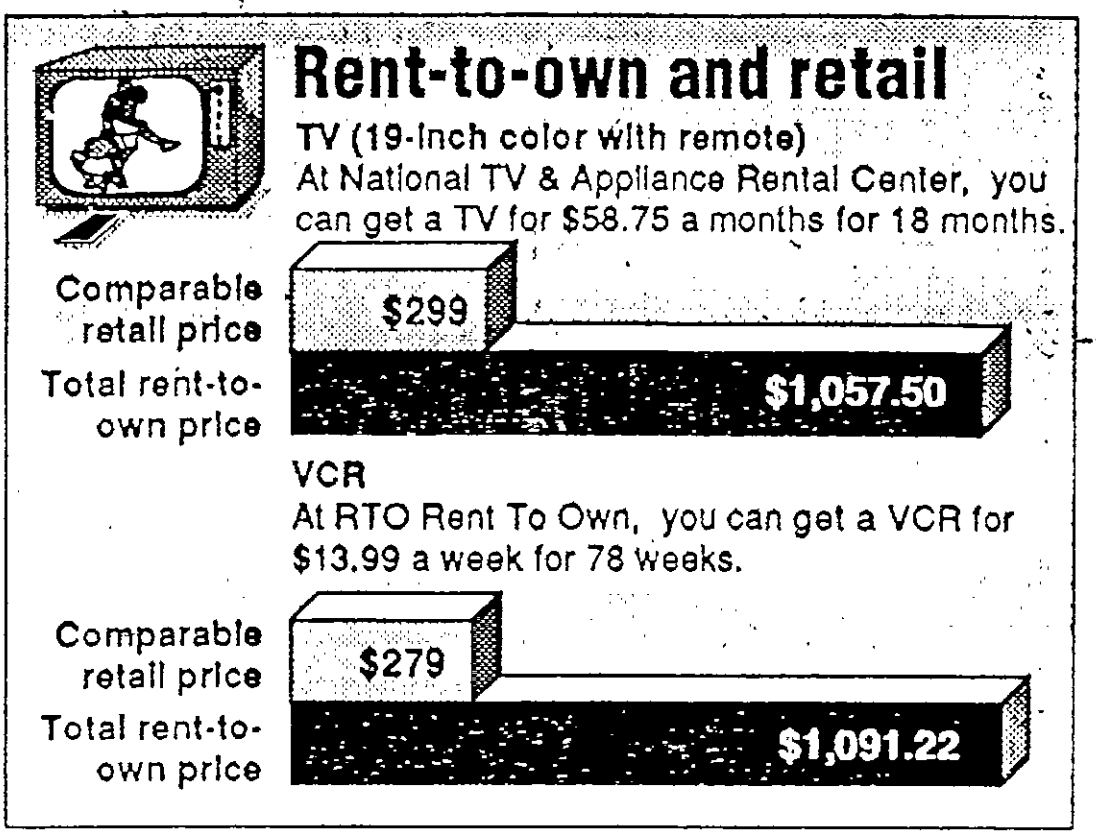
This chart is based upon your paying the total amount needed to own the product in 18 months. If your agreement permits you a longer time to pay that amount, your implicit interest would be less than shown on the chart. If your agreement gives you less time to pay that amount, your implicit interest would be higher than shown on the chart. ■

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State Regulation of Rent-To-Own Transactions

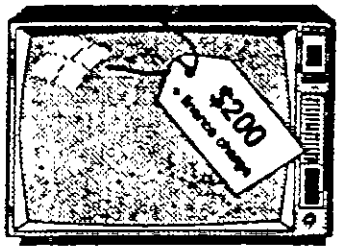
State	No Regulation	Rent-to-own Transactions Exempt From Retail Sales Regulations	Rent-to-own Transactions Subject to Retail Sales Laws	Requires That a Certain Percentage of Payment Be Applied to Equity	Requires Disclosure of Charges
Alabama					X
Alaska	X				
Arizona	X				
Arkansas					X
California	X				
Colorado	X				
Connecticut	X				
Delaware	X				
Florida					X *
Georgia					X
Hawaii	X				
Idaho	X				
Illinois					X *
Indiana					X
Iowa				X *(50% to equity)	X
Kansas	X				
Kentucky	X				
Louisiana	X				
Maine		X			
Maryland					X *
Massachusetts					X
Michigan				X (45% to equity)	X
Minnesota			X * (no rate cap)		
Mississippi	X				
Missouri					X
Montana	X				
Nebraska					X *
Nevada	X				
New Hampshire	X				
New Jersey	X				
New Mexico	X				
New York				X (50% to equity)	X
North Carolina		X			
North Dakota	X				
Ohio				X (50% to equity)	
Oklahoma					X *
Oregon	X				
Pennsylvania			X (18% rate cap)		
Rhode Island	X				
South Carolina				X *(55% to equity)	X
South Dakota	X				
Tennessee					X
Texas					X
Utah	X				
Vermont	X				
Virginia					X
Washington	X				
West Virginia	X				
Wisconsin		X			
Wyoming	X				
Totals:	**26**	**3**	**2**	**5**	**18**

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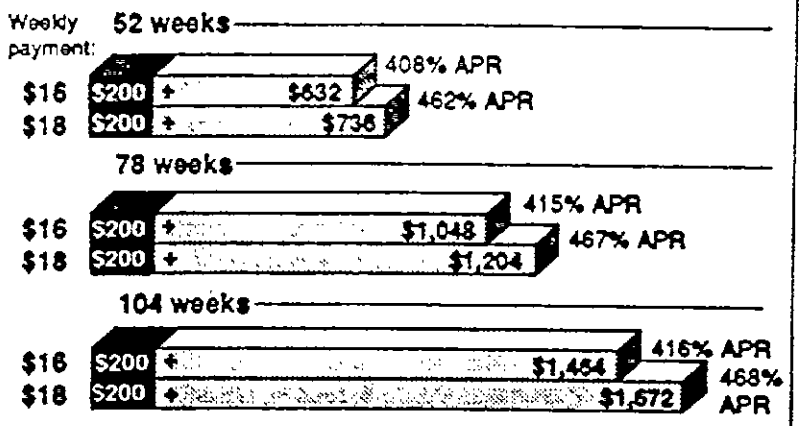
Gazette graphic by BRENDA PINNELL

Renting to own: how much does it cost?



Purchasing an item from a rent-to-own company can be very costly because of dramatically inflated finance charge rates. For example, a television with a retail value of $200 will cost $1,248 to $1,404 at $16 or $18 per week over 78 weeks.

Amount financed Finance charge



Source: W.Va. attorney general's office, division of consumer protection

Gazette graphic by BRENDA PINNELL

The Charlotte Observer

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Monday, August 3, 1987

Editorials

Rein In Rent-To-Owns

People in the rent-to-own business extend credit to those who, because they are poor, are considered bad credit risks. So perhaps it isn't unreasonable for the rent-to-own folks to set rental payments that include a higher rate of interest than that charged by conventional lenders and retailers who sell on credit. The higher the risk, the higher the rate. So it always has been.

But 362%?

That's the effective interest rate N.C. Attorney General Lacy Thornburg has calculated in the case of a Charlotte rent-to-own dealer who collects payments that will total $780 on a 19-inch color TV valued at $209.

That's the kind of exploitation of the poor and vulnerable that has prompted both houses of the N.C. General Assembly, despite powerful lobbying by the rent-to-own industry, to consider bills that would put a lid on rent-to-own charges.

The lobbyists — including former Attorney General Rufus Edmisten and former House Speaker Phil Godwin — warn that the legislation will put the rent-to-own people out of business, and that the poor will have no way to acquire TV sets, stereos and other items. But we suspect that Attorney General Thornburg is correct when he describes the industry's pitch and practice as "a cruel hoax." He says few of the people paying the industry's exploitative rental rates will ever complete their payments and own the items they're renting. Surely most of the people who can afford to pay those rates month after month could qualify for conventional consumer credit at regulated, considerably lower rates.

Regulations recently approved by a Senate subcommittee still would allow interest rates on rent-to-own agreements to reach as high as 73%. Under a House-passed bill, rent-to-own businesses would be treated as other retailers, with their interest rate limited to 24%.

Consumer advocates say the Senate bill doesn't go far enough, and we agree. A compromise leaning toward the House version seems in order. Perhaps 24% isn't high enough to allow rent-to-own businesses to operate profitably and stay in business, but if they have to charge much more than that, maybe they shouldn't be in business.

Whatever the outcome, we hope the two houses can agree on legislation before the current session runs out. Otherwise the exploitation will continue for at least another year.

Renting to Own in the United States

by David L. Ramp

I. Introduction

For more than a year, Mid-Minnesota Legal Assistance (MMLA), in association with two private law firms and the Minnesota Attorney General's office, has been representing clients in litigation against and in legislation concerning the rent-to-own (RTO) industry.[1] In the course of these efforts, MMLA has collected a considerable amount of information about the RTO industry. Throughout that process, it has become increasingly apparent that RTO transactions are genuine sales transactions, not merely short-term leases as is repeatedly represented by the industry.

RTO dealers, using a form that purports to be a short-term lease, rent televisions, appliances, furniture, cars, and jewelry to consumers. The contracts are renewable and provide that ownership passes to the consumer after a specified number of renewals, typically 18 monthly or 78 weekly payments. The industry contends that laws pertaining to credit sales transactions are inapplicable because RTO agreements are terminable by the customer. It also maintains that the federal leasing laws are not applicable because the term of the lease is less than four months.

The comprehensive state and federal legislative agenda of the RTO industry is more crucial to the industry than the outcome of any litigation. The RTO industry has worked to pass state and federal legislation that would sanction many of the practices of RTO dealers that consumer advocates believe are unfair to low-income consumers.

II. Description of RTO Transactions and the RTO Industry

RTO is a relatively new use in the United States of an old marketing concept. The concept of RTO is borrowed from English law, where it is called "hire-purchase."[2] The hire-purchase concept exists in many countries that were, at one time, part of the British Empire.[3] Hire-purchases have been extensively regulated in most countries. The RTO industry, on the other hand, has viewed itself as unregulated and, as such, not governed by laws pertaining to credit sales transactions. This business has been extremely profitable in America.[4]

The RTO industry has experienced extraordinary growth in the last 20 years.[5] From virtually ground zero 20 years ago, RTO has grown to a $2.5 billion industry with over 6,000 RTO stores nationwide.[6] Rent-A-Center, one of the largest RTO companies in the United States, was sold to a multinational corporation in 1987 for $594 million.[7] Rent-A-Center, together with its parent corporation, claims to be the largest buyer of consumer electronics in the world.[8]

Renting to own is a relatively little-investigated sales technique. RTO transactions are designed to permit customers to purchase consumer goods such as televisions, appliances, furniture, jewelry, and cars by applying the rent payment toward eventual ownership of the goods. A typical RTO transaction offers the consumer the opportunity to rent-to-own a 20-inch portable color television for $92 per month for 18 months, or $23 per week for 78 weeks. If the consumer renews the RTO agreement, over 18 months the payments will total $1,656. If the consumer chooses to make payments weekly, the total cost is even higher: $1,794. The retail value of the television may be one-fourth (or less) of the total RTO cost.

RTO dealers direct their marketing toward low-income customers.[9] Dealers offer the following terms to prospective customers: no credit check,[10] quick repair services,[11] and no obligation to keep renting. This last provision is the very essence of the RTO industry.

In every RTO contract, there is a clause that permits the customer to terminate the transaction. A typical termination clause reads as follows:

> Termination: This lease terminates at the end of each weekly or monthly term. There is no penalty if you do not choose to renew the lease. If the lease is not renewed, you must return the property and pay all rental payments and other charges due through the date of return.
>
> Our Right to Take Possession: If this lease terminates and you do not return the property, we have the right to take possession of the property. If you do not allow us to do so, you agree to pay our costs, including reasonable attorney's fees, incurred in taking possession of the property.[12]

The termination clause is the legal bedrock upon which the RTO industry has based its right to charge customers prices of four or even five times the fair market retail value of the goods.[13] The termination clause is the basis for the industry's frequent assertion that there is no sale until the end of the contract because the customer may terminate the RTO agreement at any time.[14] The terminability of the agreement, in the eyes of the industry, makes consumer credit protection statutes, such as the Equal Credit Opportunity Act, inapplicable to RTO.[15]

The termination clause is even used by the RTO industry to limit tax liability. It has been suggested by RTO dealers' attorneys that dealers can use the termination clause both ways, contending on the one hand that RTO transactions are sales if that limits tax liability, and arguing on the other hand that the transactions are leases if the opposite position is more beneficial for tax purposes.[16]

For more than ten years, representatives of the industry have contended in federal and state courts, before state legislatures, and before the United States Congress that RTO is just another rental business.[17] For example, a lobbyist for the industry described RTO to a Senate Committee as follows:

> The overwhelming majority of leases used by industry members have terms of from one week to one month and are renewable for additional terms at the consumer's option. This form of lease, because of its short term, provides consumers with full discretion as to how long to retain a rented home appliance, and, because it provides for low

periodic payments, makes home appliances available to consumers who do not desire, or are unable, to purchase an appliance outright.

> In addition to having short terms, leases utilized by the home appliance rental industry provide consumers with the option of obtaining ownership of a rented appliance at no or minimal cost if the lease is renewed continuously for a minimum number of months, generally, 12 to 18 months. Despite the existence of this option, the great majority of consumers rent a particular appliance for a total period of just 3 to 4 months; only approximately 22 percent of consumer/renters obtain ownership of home appliances through exercise of the option.
>
> It is important to note that most consumers lease appliances for the short term, and that appliance leasing is viewed as an *alternative to owning appliances rather than an alternative means of purchasing* home appliances. However, consumers appear to value the ownership option because of the additional flexibility it gives them.[18]

More recently, the same industry representative has asserted that 80 percent of RTO customers rent for only three to six months.[19] Another spokesperson has reported that only 20 percent of RTO customers ultimately become owners of the goods.[20] These statistics form the foundation of the RTO industry's argument that it is merely in the business of renting, and that ownership is a secondary concern of most customers.[21]

Many of the statistics used and other representations made by the industry are either grossly misleading or simply untrue. Contrary to its representatives' assertions, the RTO industry is, in fact, in the business of selling—and only occasionally renting—goods to consumers. The following sections discuss the fallacy of the industry's use of statistics and the economic reality of RTO transactions.

III. RTO Transactions as Sales

A. The RTO "Keep Rate" Formula

As indicated above, representatives of the industry have repeatedly cited a 20-percent "keep rate" as evidence that the majority of RTO customers are merely renting possession of household goods for a short time. However, the keep rate formula used by the industry is grossly misleading.

The phrase "keep rate" is used by the RTO industry to indicate the percentage of customers who renew contracts a sufficient number of times to acquire ownership of the goods. For new goods, dealers generally set the number of renewals required for ownership at 18 months or 78 weeks.[22] For used (previously rented) goods, RTO dealers generally reduce the number of required renewals.

The 20-percent keep rate repeatedly cited by the industry is the result of a formula that measures the number of contracts that are paid off in any particular month against the number of deliveries made 18 months prior to the particular month being measured. This formula can be represented by the following equation:

$$\frac{\text{Pay outs this month}}{\text{Deliveries (18 months ago)}} = \text{Keep rate}^{23}$$

> **The rent-to-own industry has experienced extraordinary growth in the last 20 years.**

B. Misleading Formula

It is important to understand that this formula only compares the customers who pay out for new products, as opposed to everyone who accepted delivery 18 months ago, including those renting used products for shorter terms, those paying off early, and those whose contracts are terminated involuntarily. The formula completely ignores a significant number of RTO transactions.[24]

The RTO industry rents and re-rents its goods, if necessary, until a customer renews the contract to term and acquires ownership. Sooner or later, everything in a dealer's inventory is sold. Ed Winn, general counsel for the Association of Progressive Rental Organizations (APRO),[25] acknowledges that

> [i]t is automatic that eventually all product that is not stolen will go to term. That is, rental dealers ultimately turn their rental inventories.[26]

According to Winn, the number of RTO units that are stolen is quite small.

> The consistent statistical history of the business has shown that losses from skips and stolen average about 2 percent of revenues. That compares, incidentally, with national bank credit card losses over four times higher in some cases.[27]

RTO dealers do not keep particular products in their inventory for extended periods of time. The industry reports that most products remain in a store's inventory for about 22 to 30 months.[28] In other words, within about two years, most products offered by RTO dealers have been sold (a customer has renewed the contract a sufficient number of times to acquire ownership). "The average RTO company replaces half its inventory every year just covering paid-outs."[29]

RTO dealers make money by finding products that have a high "keep rate." It is very expensive to pick up and store previously rented merchandise repeatedly.[30] A dealer makes money by finding particular products with sufficient appeal to customers to encourage frequent renewal to the end of the term. Air conditioners, for example, evidently have proven to be a poor RTO product, since most people are apparently only interested in using air conditioners during hot weather. One dealer with RTO stores in St. Joseph, Missouri, and Cedar Rapids, Iowa, describes the RTO market for air conditioners as

> very specialized. Most of them are short-term rentals. Our most popular one would be a 7000 BTU unit at $45 a month. They come back. I've got an eight-month rent-to-own program, just to get enough money during the hot season so customers will be reluctant to turn them back in. That's an area, frankly, that I wish I wasn't in. I've got about 200 air conditioners in different sizes, so we're in it.[31]

Other products have good "staying power." RTO customers want to own these goods and will frequently renew the contracts to full term. Vacuum cleaners are one such product. A dealer reports that only a few customers return vacuum cleaners.

> We've found that over 90 percent of the contracts out in floor care do go through full term. Our effective rate [of returns] is less than two-tenths of one percent. So, as far as Eureka [vacuum cleaners] we do great because we don't have return problems. As far as vacuums, we've found that ... you have very few people who are backing out of their contracts.[32]

The RTO concept is now being used to sell cars. The keep rate is very high.

> One of the latest rent-to-own products, believe it or not, is something most people would consider a necessity these days—the automobile....
>
> Rental rates are typically $50 per week and the equivalent of a rental order is taken on the customer, who pays 20 percent or less down. Keep rates are reportedly around 90 percent.[33]

The irony of RTO is that, while dealers want to find products with high keep rates, the industry recognizes that keep rates that are too high create serious legal risks. If the majority of customers renew for the full term, RTO transactions are credit sales agreements, not rentals.

> It is clear that a rental company with a 100-percent keep rate—all merchandise being rented to term—is not in the rental business at all and, rather, is selling products on an installment basis.[34]

Lawyers for the RTO industry get very nervous when dealers report 100-percent keep rates in various periodicals concerning the industry.[35]

The RTO industry is currently offering jewelry through the same marketing approach. The very high potential keep rate for jewelry is causing significant concern among legal representatives of the industry. These attorneys recognize that even the most persuasive attorney would have a hard time convincing a court that the customer was only renting, not buying, an engagement ring.[36]

The keep rate can easily be manipulated by the RTO industry. One of the unique aspects of the business is the flexibility that the RTO concept gives particular dealers or store managers to adjust the keep rate. RTO companies deal primarily with low-income customers who can be expected to experience financial problems sometime during an 18-month rental agreement. The willingness or unwillingness of a particular RTO dealer to work with customers experiencing financial problems will greatly affect the keep rate.

> It is interesting to note that philosophies differ markedly when contemplating keep-rates. There are dealers who would love, but for the credit laws, to have a 100 percent keep-rate. They will go to great lengths to avoid picking up the product, and this attitude makes itself felt throughout the system. They are more careful on the front end and turn down more customers than other dealers and are not as tight on the collection end, being more willing to work with a customer rather than have to pick the unit up.

Contrary to its representatives' assertions, the rent-to-own industry is, in fact, in the business of selling—and only occasionally renting—goods to consumers.

> At the other end are dealers who are in no great hurry to have units pay out and, in fact, like to keep product on the books as long as possible. They would be happy with a 100% keep-rate. They turn down few customers and have tight collection policies. They expect to get the product back or want to keep it as long as it is "rentable."[37]

The ability of an RTO dealer arbitrarily to repossess the goods of some customers who are in default, while leaving others who are similarly situated alone, is one of the discriminatory aspects of this industry.

The RTO industry's misrepresentation of its overall keep rate is particularly troubling in light of proposed federal legislation that bases a dealer's obligation to make important disclosures on the actual keep rate. The industry's bill provides that, if a dealer determines that less than 15 percent of its RTO transactions result in acquisitions by the customer, the dealer is not required to disclose the cash price of the merchandise or whether the property is new or used.[38]

The 20-percent keep rate cited by the industry is not supported by RTO dealers' own records, and is not a reliable indicator of RTO customers' intentions to buy or merely to rent. Examination of financial data for nine Minnesota Rent-A-Center stores demonstrates that these transactions are, in fact, sales.[39]

C. Characteristics of the Minnesota Rent-A-Center Operation

Financial records of nine Rent-A-Center stores in Minnesota were obtained through discovery in *Starks v. Rent-A-Center*.[40] From this information, several important observations can be made about the way in which RTO businesses operate.

1. Disposition of Inventory

The movement of inventory held by an RTO dealer is an important indication of how the business operates. During FY 1989, more than 6,800 units (televisions, stereos, VCRs, appliances, and furniture) were, at one time or another, in inventory in the nine Minnesota Rent-A-Center stores operating during the year. Units left inventory in one of several ways. Most commonly, units left inventory when a customer paid the contract in full, thereby acquiring ownership. Other units left inventory when customers exercised an early payment option and acquired ownership early. Some units were junked. Some units were sold outright. A few were used for promotional purposes. Finally, a few units that were stolen or damaged were written off either under a damage waiver program or as stolen

This method of handling inventory appears to be universally accepted by the RTO industry.[41] The following table shows the disposition of all goods that were in inventory in the Minnesota Rent-A-Center stores at any given time during the year.

Table I:

Disposition of Goods That Were or Had Been In Inventory During FY 1989

44%	Purchased by customers who paid off their contracts in full
12%	Purchased by customers who exercised their early payoff option
10%	Sold outright
9%	Written off as a customer skip
3%	Junked
2%	Used in promotions
1%	Damage waiver writeoffs
19%	Remained in inventory at end of FY 1989

At the end of FY 1989, the nine Minnesota Rent-A-Center stores had about 1,200 units remaining in inventory. These units represented only 19 percent of all units that were in inventory at one time during the year. Sixty-six percent of all units that had been in inventory at any time during the year had been sold by Rent-A-Center to customers through either regular payoff, early prepayment of contracts, or outright sale.

2. Number of Times Units Are "Rented" on Average Before Sale

Another indication of whether customers intend merely to rent or instead to purchase goods is the number of times each unit is "rented" before it is sold. For the approximately 6,800 units that were in inventory at one time or another during FY 1989, an average unit was rented 2.6 times. The average number of times rented for items purchased by early buyout or payout was only 1.8. For those approximately 3,000 units purchased when customers exercised the regular payoff, the average number of times rented was only 1.5.

It is important to note that this 2.6 figure does not mean that 2.6 different people rented the same item at different times. A significant number of people will sign a new "rental agreement" when confronted with the alternative of completely losing the goods. One of the plaintiffs in *Starks v. Rent-A-Center* signed three different agreements for the same property. Using industry methods, this property was rented three times. In the rent-to-own car business, "some dealers, apparently following the policy on other RTO products, are willing to recompute the remaining balance on repos and re-rent the same vehicle to customers who want to resume payments."[42] The new agreement will generally be for a shorter time period than the original agreement, because the item is no longer new.

At this time, the author is unable to determine the pervasiveness of this substituted agreement practice. Preliminary data indicate that it is a significant factor in increasing the total number of times rented for some companies. The industry claims that units are rented an average of three to four times.[43] This is not only inconsistent with the data that the author has seen, but also is inconsistent with reports of 90-percent keep rates.[44] A 90-percent keep rate means that nearly all goods are rented only one time.

> **The 20-percent keep rate cited by the industry is not supported by rent-to-own dealers' own records, and is not a reliable indicator of rent-to-own customers' intentions to buy or merely to rent.**

Closer examination of the more than 3,000 units that were purchased from Minnesota Rent-A-Center through regular payoff during FY 1989 provides significant information about the intentions of RTO customers. Of all of the units that were paid off during FY 1989, 62 percent were "rented" to only one customer. Only 15 percent of all units that were paid off in FY 1989 had been rented four or more times.

Furthermore, as Table II demonstrates, the majority of customers who paid off RTO contracts during FY 1989 were the only customers who had rented those particular units, with the exception of portable televisions.

Table II:

Rental History of Units Paid Off During FY 1989

	Percent rented 1 time only	Percent rented 2 or 3 times	Percent rented 4 or more times
Portable TV's	47%	22%	31%
Stereos	54%	29%	17%
VCRs	60%	16%	24%
Appliances	62%	27%	11%
Accessories (lamps etc.)	64%	32%	3%
Furniture	67%	22%	11%
Console TV's	67%	21%	12%
Big screen TV's	74%	14%	12%

3. Income from Sales vs. Rentals

Perhaps the most important indicator of the true nature of the RTO business is the source of its revenue. A review of financial records of the nine Minnesota Rent-A-Center stores for two years shows that over 70 percent of all revenue was derived from RTO transactions in which the unit was ultimately purchased through a regular payout or early payoff of the contract. In 1988, 73 percent of all revenues were derived from units that were paid off during the year, and, in 1989, 77 percent of all revenues were derived from units that were paid off during that year.[45]

These revenue statistics are not surprising, since the great bulk of RTO transactions result in the transfer of ownership. The industry admits that everything that is not stolen is eventually sold.[46] The RTO industry is not operated as a rental business, and is therefore a retail sales business.[47] The industry's contention that it is in the business of short-term rentals belies the true nature of the business.

IV. Lenders' Treatment of the RTO Industry

Another significant indication of the true nature of the RTO industry is how lenders value the business. The principal lenders for the RTO industry are Transamerica Commercial Finance, McDonnell Douglas Finance Corporation, Chrysler Credit Corporation, ITT Financial Services, and Whirlpool Acceptance Corporation.[48] Transamerica finances the bulk of the RTO industry.

Lenders' methods of valuing an RTO dealer have changed during the last ten years. In the early 1980s, lenders generally limited loans to a fraction of inventory cost. In 1983, Rent-A-Center became a publicly held corporation, and REMCO, another, larger company, was sold. This set off a buying spree within the industry. Stores were purchased based on multiples of projected income. Buyers could not obtain additional loans under the old, conservative lending formula, so a new formula, called a "revolver," was created in the mid-1980s. The revolver gave the RTO dealer a line of credit based upon a formula that multiplied monthly revenue times a factor, generally between five and eight.

In the last few years, lenders have begun to make loans based on projected income or future revenue streams. Using this method, the lender adds up the total amount of revenue that would be generated if each agreement resulted in the customer owning the goods. Lenders are setting the credit limit for dealers at 50 to 55 percent of projected income. Interest rates are as low as 2 percent over prime.

Lending based on projected income treats rent-to-own agreements similarly to accounts receivable. Lenders obviously realize that the vast majority of customers want to complete the purchase. Because dealers have been permitted to assume significant debt, their profit margins have dropped to two to three percent. In order to pay their loans, dealers must keep RTO rates high. Lenders' policies have, in effect, institutionalized extraordinary prices.

V. RTO Dealers and the Internal Revenue Service

For tax purposes, the RTO industry has taken the position that RTO transactions are leases, not sales.[49] (To date, the IRS has not taken a definitive position on the lease vs. sale issue.) The most significant tax issue for the industry is depreciation. In lieu of the longer depreciation terms that the 1986 Tax Reform Act requires,[50] the industry's trade association has recommended that dealers use a method called income forecasting, even though it has not been approved by the IRS.[51] Under income forecasting, the dealer uses the total of payments from the agreement to calculate the amount of depreciation. The use of this method is tacit recognition that the sales of almost all goods are completed in 24 months or less.

VI. The RTO Industry's Legislative Initiative

Since the early 1980s, the RTO industry has been actively working to pass legislation favorable to the industry. After an initial unsuccessful effort to pass federal legislation in 1983,[52] the industry redirected its legislative efforts to the state level, with remarkable success. As of August 1990, 23 states had enacted RTO legislation at the request of the industry.[53] The

Since the early 1980s, the rent-to-own industry has been actively working to pass legislation favorable to the industry. As of August 1990, 23 states had enacted rent-to-own legislation.

model for these statutes is an earlier federal bill, which provides for some disclosures to consumers, but, more significantly, treated RTO transactions as different from other retail installment sales.

The RTO industry has, for some time, been fully aware of the long history of abusive practices in hire-purchase transactions and the efforts in other countries to prohibit such practices. In November 1984, prior to APRO's state legislative initiative, Winn and Wondra wrote that "[t]he history of hire purchase agreements before regulations appeared in the 1930s shows the same kinds of abuses criticized by U.S. consumer advocates against rental-purchase dealers."[54] The article then quotes the following passage from Professor Goode's treatise, *Hire-Purchase Law and Practice*:

> The expansion of hire-purchase trading brought in its wake abuses which were beyond the purview of general contract law. Many people were induced to enter into written agreements which they did not understand and suffered considerable hardship in consequence. The more unscrupulous hire-purchase dealers deliberately encouraged their customers to incur hire-purchase commitments beyond their means with the object of allowing them to fall into arrears towards the end of the period of hire after most of the installments had been paid, so that the dealers could then exercise their power of repossession (commonly termed "the snatch-back") and thus secure for themselves a considerable profit from the goods which they supplied without ultimately parting with the goods themselves.
>
> It was also by no means unknown for intimidation and violence to be offered to hirers who, having made substantial payments, showed a natural reluctance to part with the goods....
>
> In addition, it frequently proved difficult for the hirer to ascertain exactly how much he was paying in the way of finance charges for the credit extended to him, since the owner of the goods was under no obligation to inform the hirer how much the price of the goods would have been if paid for immediately in cash and could therefore charge an excessive rate of interest without the hirer being aware of the fact. Also, a source of complaint was the device of the "linked-on" agreement. A hirer who had completed most of his payments would be persuaded to enter into a fresh agreement covering the goods comprised in the original agreement together with certain further goods. Upon default the owner could then repossess the whole of the goods, including those in the original agreement for which payment had nearly been completed.[55]

To the author's knowledge, the RTO industry has not shared this information with the various state legislatures that have recently passed rent-to-own legislation. The industry's statutes for the most part do not address the abuses systemic to

the hire-purchase/rent to-own business.

Four features of the new RTO statutes are particularly significant to the industry and to consumers:

- price limits;
- the early payout option;
- the liability/damage waiver; and
- reinstatement rights and fees.

A. Price Limits

One of the principal complaints about the RTO industry is the exorbitant prices that it charges low-income consumers. Recognizing this criticism, the industry has, in several states, agreed to an ostensible price limit using a formula of two times cash price.

"Price limits" have been enacted in Michigan, New York, Iowa, and Ohio.[56] The limits recommended by the RTO industry, suggested during the most recent legislative initiative in Minnesota, were resoundingly rejected by that legislature.[57]

The "price limits" offered by the RTO industry as a consumer protection are illusory. The formula used at the industry's request results in charges that are just as exorbitant as those charged in states without a price limit. Those states that have enacted price limits use a percentage formula with language similar to the following:

> [PRICE LIMITS.] No lessor shall offer a rental-purchase agreement in which 50 percent of all lease payments necessary to acquire ownership of the property exceed the cash price of the property. When 50 percent of the total dollar amount of lease payments made by a lessee equals the cash price of the property, the lessee shall acquire ownership of the property and the rental-purchase agreement terminates.[58]

The "two times cash price" formula results in an effective annual percentage rate in excess of 103 percent.[59] Compounding this extraordinary rate is the nebulous definition of "cash price" used in these statutes. Cash price is defined as whatever price the dealer sets.

> [CASH PRICE.] "Cash price" means the price at which the lessor in the ordinary course of business would offer to sell the personal property to the lessee for cash on the date of the rental-purchase agreement.[60]

Ed Winn candidly admits that this price limit formula will continue to permit the RTO industry to make extraordinary charges.

> There is no reason that rental [RTO] dealers must compete with power retail discounters in their market when determining cash price. There is no reason that a rental dealer cannot have the highest prices in town.[61]

The only real limit on RTO pricing is the doctrine of unconscionability, proof of which presents a number of problems for consumers and consumer advocates.[62] Price comparisons for many products are very difficult. Moreover, the cost of unconscionability lawsuits, notwithstanding the merits, exceeds the economic loss experienced by the average consumer.

> **The "price limits" offered by the rent-to-own industry as a consumer protection are illusory.**

B. The Early Buyout Formulas

Another significant feature of legislation promoted by the RTO industry is the early buyout or payout formula,[63] which permits a customer to prepay an RTO contract at any time after the first month. The amount that the customer saves by prepaying depends on the particular formula used.

Fourteen states[64] require RTO dealers to disclose the early buyout formula that they are using. Some states mandate the use of a particular formula; others merely require the dealer to disclose the formula being used.

In those states with a mandated early buyout formula, the amount of the buyout is expressed in the form of a percentage limit, similar to that used in the price limit. In some states, the statutory buyout formula permits RTO dealers to calculate the buyout as a percentage of all of the rental payments made. This percentage is commonly 50 percent, although Michigan has a 45-percent limit, which results in the consumer paying even more. One example of a 50-percent buyout statute is as follows:

> [EARLY PURCHASE OPTION.] A rental-purchase agreement must provide that at any time after the initial payment, the lessee may acquire ownership of the property by tendering an amount equal to the amount by which the cash price of the property exceeds 50 percent of all lease payments made by the lessee.[65]

Other states set the buyout formula as the *difference* between the total RTO price and the total of payments already made, multiplied by a percentage, generally 55 percent. Nebraska, South Carolina, and Minnesota use this method. This statutory provision is worded similarly to the following:

> [EARLY PURCHASE OPTION.] At any time after the first periodic payment is made, the lessee may acquire ownership of the property by tendering 55 percent of the difference between the total of scheduled payments and the total amount paid on the account.

There are significant differences between the two early buyout formulas. The first formula, at least in the eyes of the industry, permits the dealer to set the maximum RTO price as two times the cash price. Because the second formula does not have any direct relationship to the cash price, industry representatives maintain that it does not authorize or set cash price limits.

The early buyout formula is also important, because it establishes the limits of the consumer's liability if the goods are stolen or destroyed while in the consumer's possession.[66] All RTO agreements require the consumer to pay for the goods if they are lost or stolen. Prior to the statutes' enactment, most RTO agreements required the consumer to pay the fair market value at the time of loss, *i.e.*, used value.[67] The early buyout formula in RTO statutes requires the consumer whose goods are stolen to pay much more than fair market value. Using the early

buyout formula, the consumer is liable for 55 percent of the remaining payments at the time of the loss.[68] The early buyout loss provision is a good example of how the industry has misrepresented these statutes as consumer protections.

It is interesting to note that RTO dealers are being advised by legal counsel that they may choose not to remind consumers about the early buyout clause. In the last months of any RTO contract, there will come a time when it is cheaper to exercise the early buyout than to continue making payments to the end of the scheduled terms. Attorneys for the industry suggest that dealers have no obligation to remind consumers of the early buyout and can continue to accept regular rental payments, even though it is disadvantageous to the consumer. Some dealers, realizing that the buyout clause costs them money, have prohibited late contract buyouts.[69]

C. Liability Damage Waivers

The RTO industry's state legislative initiatives seek statutory authority to sell a liability damage waiver as part of the RTO contract. Contracts routinely provide that consumers must pay the full value (or early payoff amount) of the rental property if it is damaged, destroyed, or lost for any reason. Dealers offer liability damage waivers for an additional charge, permitting consumers to be released from liability to the dealer.

Although RTO companies claim that liability damage waivers are not insurance, it is difficult to see how consumers could avoid coming away from RTO transactions without thinking that they had just purchased insurance coverage. A brochure from Rent-A-Center describes its liability waiver program as follows:

> THE NEW MERCHANDISE PROTECTION PLAN.* Peace of mind for pennies a day. Have you ever thought about your rented merchandise being destroyed or stolen? It CAN happen and you are responsible! NOW, there's a NEW Rent-A-Center Merchandise Protection Plan just for you. The Merchandise Protection Plan will take care of your financial obligation to Rent-A-Center if your merchandise is damaged, destroyed or lost through: fire, flood, lightning, smoke, windstorm, theft.
>
> For a small weekly fee, you can enjoy peace of mind knowing your rental merchandise is protected. Only an additional 5 percent of your weekly rental payment will provide you with a Merchandise Protection Plan for all your rental property ... TVs, VCRs, Stereos, Furniture, Appliances. If you're renting from Rent-A-Center, ask about joining our Merchandise Protection Plan ... Peace of mind for just pennies a day.

At the bottom of the page, in much smaller type, is the following footnote, signaled by an asterisk: "This plan is *not* insurance."

The industry argues that liability damage waivers are not insurance because the dealer does not promise to pay the customer anything if the property is lost or stolen. There is no indemnity; all that the customer gets is a release from liability. The irony is that the industry admits that it hardly ever sues anyone, because its customers are generally judgment-proof.[70]

Liability damage waivers used by the RTO industry are in some ways similar to collision damage waivers used by the automobile rental industry. Like collision damage waivers, liability damage waivers purport to be a contractual waiver of the lessor's right to collect from the lessee if the rental unit is damaged. Also like collision damage waivers, liability damage waivers are very expensive for consumers and produce a significant amount of revenue. The Minnesota Rent-A-Center stores paid claims equal to only five percent of the revenues collected from purchase of damage waivers.

The sale of liability damage waivers is extraordinarily profitable. Approximately 70 percent of all customers purchase liability damage waivers.[71] Fees from these waivers average over three percent of gross revenues. The industry has candidly admitted that some dealers cut their rental rates and then push liability damage waivers to increase their profits.[72]

RTO dealers repeatedly assert that damage waivers are not insurance. They do agree that there are forms of insurance being offered by the industry, such as vendor's single interest insurance, a policy that only insures the dealer's interest. Even experts for the industry admit, however, that it is difficult to distinguish a vendor's single interest insurance policy from a liability damage waiver.[73]

Minnesota's recently enacted RTO law permits a dealer to charge damage waiver fees in an amount up to ten percent of the rental payment,[74] twice the unregulated current market rate of five percent. Minnesota's Commissioner of Commerce has been charged with assessing the appropriateness of liability damage waiver rates.[75]

Courts have generally not been receptive to arguments that collision damage waivers are insurance. In *Hertz Corp. v. Corcoran*,[76] the court rejected the claim that a collision damage waiver was insurance, primarily on the theory that Hertz customers must have had an insurable interest in the vehicle, which they did not, in order to have the waiver constitute insurance. Instead, the court held that the waiver was not an indemnity agreement.[77]

However, unlike an automobile renter, an RTO customer has a very distinct interest in the property. The principal purpose of RTO companies is to sell merchandise through the RTO marketing scheme.[78] Therefore, a good argument can be made that liability damage waivers are, in fact, insurance.

A separate question is whether liability damage waivers are unconscionable. Several courts have held that collision damage waivers are unconscionable.[79] These opinions may provide an additional basis for attacking liability damage waivers. Some damage waivers being sold disclaim liability for virtually every possible loss contingency. Such damage waivers are completely worthless.[80]

D. Reinstatement Rights and Fees

A significant problem in RTO transactions for low-income consumers is the high probability that at some time during the term of the contract the consumer will be unable to make a timely payment. When an RTO consumer fails to make a payment in a timely manner, default occurs immediately. Most contracts provide for no grace period.[81]

Many of the state laws advocated by the RTO industry give the consumer time after default to reinstate the agreement. With significant limitation, reinstatement permits a consumer to cure the default. The period during which a consumer may reinstate

the contract varies from only 2 days in Oklahoma to 180 days (in some circumstances) in New York, Tennessee, Nebraska, and Minnesota.[82] The reinstatement period in these states is staggered, the more the customer has paid, the longer the time period for reinstatement.

The concept of "reinstatement" implicitly acknowledges that RTO customers believe that they are acquiring equity in the particular goods they are renting to own, and will pay significant amounts in order to keep from losing the perceived equity.[83] The consumers' perception of equity is encouraged by RTO companies, even though their agreements purport to prohibit the consumer from acquiring any equity in the goods.[84]

The reinstatement rights granted in the various state statutes are severely limited. Consumers forfeit the right to reinstate if they fail to surrender the property to the RTO dealer promptly. Prompt surrender requires consumers to surrender the goods voluntarily in a very short time (between two and seven days).[85] Even if consumers voluntarily surrender the property in a timely fashion, they are not guaranteed to recover the same piece of property that they had been "renting." Reinstatement statutes do not require the dealer to hold property once it is surrendered. A dealer can provide substitute "similar" goods.[86]

RTO dealers may assess a variety of fees on customers who reinstate, including reinstatement fees varying from two to five dollars, in-home collection fees, and redelivery fees. These fees provide additional revenue to RTO dealers and add significant costs to an already expensive transaction.[87]

Some states authorize a fee for the termination of the agreement. These states include Texas, Alabama, Arkansas, Illinois, Virginia, Oklahoma, Missouri, and Rhode Island.[88] A termination fee is logically inconsistent with the purported terminable-at-will clauses frequently cited by the industry. Interestingly, true rental dealers who have offered rental-purchase agreements on occasions indicate that they do not charge a fee for termination or a penalty for return of the goods.[89]

VII. RTO Legislative Efforts in Minnesota

The RTO industry targeted Minnesota in early 1989 for its legislative initiative. The industry approached legislators who have a reputation for sponsoring consumer protection bills; several of them did agree to sponsor the industry's bill over what has been a two-session journey.

The bill proposed by the industry provided a number of consumer protections for RTO customers. Legislators were told by the RTO industry that RTO transactions were unregulated under existing Minnesota law and that the bill would benefit both consumers and the industry by setting minimal standards of practice.

The principal consumer protection contained in the industry's bill was a list of items that would have to be disclosed in RTO agreements. These disclosures included (1) description of the property, (2) whether the property is new or used, (3) the total amount of lease payments, (4) the initial payment (including any delivery charges or security deposit), (5) an explanation of the risk of loss during the term of the agreement, and (6) the total cost of obtaining ownership if the agreement was completed.[90]

> A significant problem in rent-to-own transactions for low-income consumers is the high probability that at some time during the term of the contract the consumer will be unable to make a timely payment.

The bill contained other provisions that permitted various practices of the RTO industry and insulated it from most lawsuits by consumers. The initial version of the bill would have repealed a Minnesota statute that defines RTO transactions as credit sales for all purposes,[91] and would have provided that RTO transactions could never be considered or treated as credit sales, security interests, or sales of goods.[92] The industry's proposed bill also gave consumers 60 days to reinstate an agreement, conditioned on the immediate surrender of the property.[93]

After review, consumer advocates determined that the bill did not provide adequate consumer protections. Protracted negotiations between the 1989 and 1990 sessions with RTO industry representatives did not produce significant changes. Although the industry was willing to change some provisions of the bill, such as the extension of the reinstatement period to 180 days in some cases and the addition of some disclosures related to advertising, other changes, more meaningful to consumers, were not agreeable to the industry. The bill's authors did agree to add a list of prohibited practices. This list includes provisions that prohibit RTO dealers from using violence or threats of violence.[94] Unfortunately, the prohibited practices section has no "teeth." Unlike the other provisions of the 1990 Minnesota RTO statute, there is no statutory remedy for violation of the prohibited practices section.[95]

Consumer advocates' attempts to restrict the sale of liability damage waivers by RTO dealers were unsuccessful. Although the final version of the bill requires the Minnesota Department of Commerce to conduct a study to determine whether the rates charged by RTO dealers for liability damage waivers are appropriate, the 1990 statute explicitly authorized the dealer to charge up to 10 percent of the lease payment for the liability damage waiver.

Most significant for consumers and consumer advocates was the lack of agreement on a provision to limit the extraordinary cost of RTO transactions. After this issue was hotly contested in the 1990 session, the industry offered its 50-percent formula in a revised version of the bill. For reasons discussed above,[96] the 50-percent formula was not acceptable to consumer advocates. It was removed during floor debate, over objection by industry representatives. RTO rates will be the subject of an administrative hearing under the final 1990 version of the bill.[97]

The RTO industry's marketing of jewelry figured prominently in the Minnesota legislature's debates. During one senate session, a legislator telephoned an RTO dealer from the

floor and announced to all present that the dealer was "renting" wedding rings,[98] dramatizing the absurdity of RTO dealers' claims.

Efforts by consumer advocates to obtain certain protections for Minnesota consumers that exist in other countries that have "hire-purchase" laws were unsuccessful. For example, English law permits a customer to petition a court for additional time to make a payment while still retaining the goods after default.[99] Such protections were totally unacceptable to the RTO industry, and ultimately did not become law.

VIII. Conclusion

The RTO industry has greatly benefited from a decade of deregulation. Representing themselves as "innovative entrepreneurs," RTO dealers have repeatedly been able to convince state legislatures to pass laws that are beneficial to the industry.

The RTO industry has borrowed the hire-purchase concept without taking many of the important consumer protections that have evolved to go with it. A hire-purchase customer in other countries has the benefit of consumer protections that are unheard of in the United States. The people who have been adversely affected by RTO laws are predominately low-income and, frequently, minority consumers. Under the laws that now exist in many states, RTO customers pay several times more for the same goods than middle-class consumers who purchase on credit. Unlike credit buyers or most lessees, RTO customers frequently lose the benefit of all consumer protection statutes.

In countries where the common-law hire-purchase concept exists, it is recognized that these transactions are fundamentally no different from installment sales. Twenty years ago, Professor Goode observed that

> [i]n all the major jurisdictions hire-purchase agreements and conditional sales agreements are for the most part assimilated by the installment sales legislation, effect thus being given to the reality of the transaction instead of to the formal distinction to which English common law attaches so much significance.[100]

RTO transactions are credit sales and should be treated as credit sales.

David L. Ramp is a staff attorney with Mid-Minnesota Legal Assistance (MMLA), 2507 Fremont Ave. North, Minneapolis, MN 55411 (612) 377-2566. The author gratefully acknowledges the assistance of attorneys from the law firms of Mansfield & Tanick, and Lommen, Nelson, Cole & Stageberg, both of Minneapolis, Minnesota. Without their assistance, this article would not have been possible. Other people have contributed significantly to the author's understanding of rent-to-own, including former employees of the industry and its customers. Numerous members of MMLA have provided invaluable help.

Endnotes

1. In March 1989, MMLA clients, in conjunction with the Minnesota Attorney General's office, opposed legislation introduced in the Minnesota legislature by the rent-to-own industry. The industry bill did not pass, primarily because the legislative schedule did not give the industry enough time to get the bill through both houses. Concurrently, MMLA clients determined to file suit against several RTO companies.

   Minnesota law provides that RTO transactions are treated as credit sales if the agreement gives the customer the right to become the owner of the goods at the end of the rental term. MINN. STAT. §§ 325G.15 and .16 (1981). The industry has uniformly ignored the 1981 law except for its inclusion in RTO agreements of an option-to-purchase clause, designed to avoid the statute. This clause requires the customer to make an additional payment at the end of the rental term in order to obtain ownership. In response to the 1981 law, some dealers shortened the rental term by two months and designated an amount equal to two months' rent payments as the option-to-purchase price. Dealers permit customers to pay the option price in installments of the same amount as their earlier payments. The substances of the transaction and its net result are the same for both the customer and the dealer as prior to the 1981 law. Until the MMLA lawsuits were filed, the RTO industry's avoidance of the law was never challenged.

   The most significant of the lawsuits, to date, is Starks v. Rent-A-Center, No. 3-89-0786 (D. Minn. filed June 1989) (Clearinghouse No. 45,215). Because of the scope of this case, MMLA has cocounseled it with two private law firms. The addition of these firms resulted in a six-attorney team.

2. Consumer Credit Act of 1974 (England). The RTO industry has acknowledged its use of the English hire-purchase concept. *See* Winn & Wondra, *The Law of Hire Purchase: An Overview*, PROGRESSIVE RENTALS, Nov. 1984, at 52. *See also* FORBES, May 18, 1987, at 73; PROGRESSIVE RENTALS, Aug.-Sept. 1989, at 12. The Association of Progressive Rental Organizations (APRO) has several publications that contain information about the RTO industry. These include *Progressive Rentals*, a bimonthly magazine, and a newsletter, *Rent-to-Own Network News*.

   A hire-purchase agreement at common law is a bailment of goods by the owner and an agreement by which the hirer has the option to return or purchase the goods at some time. R.M. GOODE, HIRE PURCHASE LAW AND PRACTICE (2d ed. 1970). Professor Goode, now at Oxford University, states that a Mr. H. Mouse, an English piano manufacturer, who wanted to increase his business by making it easier for customers to purchase pianos on credit, claimed to have invented the hire-purchase concept in 1846.

   > Thereafter, this new method of obtaining goods on credit rapidly gained favour with the advent of the sewing machine produced by the Singer Manufacturing Company.

   R.M. GOODE, HIRE PURCHASE LAW AND PRACTICE 1 (1962). The House of Lords held that hire-purchase agreements were not conditional sales in Helby v. Matthews (1895) A.C. 471.

   Professor Goode, in his 1965 treatise, *Hire Purchase Laws and Practice: A Comparative Survey of Commonwealth and American Law* (1965), reviews hire-purchase laws in many countries. Other works on hire-purchase include: W.D. PARK, HIRE PURCHASE AND OTHER CREDIT TRANSACTIONS (1969); D. WILD, THE LAW OF HIRE-PURCHASE (1965); A.G. GUEST, THE LAW OF HIRE-PURCHASE (1966); and R. HARRIS, M. TAYLOR & A. SELDON, HIRE PURCHASE IN A FREE SOCIETY (1961).

   Singer Sewing Machine "leases" were found to be sales contracts in Singer Sewing Mach. Co. v. Holcomb, 40 Iowa 33 (1874); Singer Mfg. Co. v. Smith, 40 S.C. 639 (1894).

3. New Zealand, Hire Purchase & Credit Sales Stabilization Reg. of

1957, South Africa, Hire Purchase Act No. 36 of 1942 (repealed Credit Agreement Act. No. 75 of 1980, which makes hire-purchase a credit transaction). Additional countries that have adopted the hire-purchase concept are discussed in R.M. Goode, Hire Purchase and Conditional Sales 1-38 (1966).

4. Profits for Rent-a-Center, the United States subsidiary of Thorn EMI PLC, a multinational firm that operates RTO businesses in many countries, grew in excess of 30 percent during the last year, while other subsidiaries of Thorn in other countries experienced declines in profits and number of customers. Phillips & Drew, Mar 27, 1990 (results of Lexis, Nexis research in financial wire services). Many dealers have become millionaires. Seminar by D. Whitsell, RTO Accounting II, APRO Convention (July 22-26, 1990)
5. Forbes, May 18, 1987, at 73. At least one RTO dealer predicts that RTO will replace retail credit. When asked what he sees happening to RTO during the next 10 years, this dealer said. "Most credit stores will be gone, and RTO stores will replace them." Progressive Rentals, Apr.-May 1990, at 28.
6. Progressive Rentals, Dec. 1989-Jan 1990, at 36.
7. Fortune, Nov 23, 1987, at 8.
8. Progressive Rentals, Feb.-Mar. 1988, at 34.
9. Dealers report that low-income consumers make up the core of their business. Progressive Rentals, June-July 1989, at 25.
10. Although the industry claims to do no credit check, in fact RTO dealers ask for a significant amount of personal information that relates to the creditworthiness of the customer, including name, address, social security number, driver's license number, employment information, and landlord and personal references. RTO dealers frequently verify this information and demand signatures of everyone living with the customer before the merchandise is delivered. Winn, *Rental Applications Revisited*, Progressive Rentals, Feb.-Mar. 1988, at 24-25.

    Recently, the industry has begun using the services of Tele-Track. Tele-Track provides information to rental dealers about prospective customers for a fee. Even though this is obviously a credit check, many dealers continue to advertise "no credit check." E. Winn & S. Choate, The Law, Working for You and Against You, APRO Convention (July 1990).
11. Repair services have been a significant problem for RTO customers. The industry claims that the added services significantly increase the value of rent-to-own goods. Winn, *States Enacting Rent-to-Own Laws Still on the Increase During 1990*, Progressive Rentals, June-July 1990, at 48-49. Dealers routinely advertise "free delivery" and "free repair" services. (See Yellow Pages ads in any major metropolitan area.) If delivery and repair services are advertised as "free," the industry should not be entitled to add the "value" of free services to the cost of its goods. One RTO company, Rent-A-Center, recently signed an Assurance that it would discontinue the practice of using the word "free" in its advertising unless it is offering an unqualified gift. *In re* Rent-A-Center, Inc., No. C7-90-8819 (D. Minn. Aug. 2, 1990). Nearly all RTO products in a dealer's inventory are covered by a manufacturer's warranty. Dealers do not pay for repairs covered by warranty.

    Repair services offered by dealers are similar to extended service agreements. While they are expensive, the value of a service agreement does not account for the difference between the retail price of particular goods and the total rent-to-own price, often as much as $1,000 or more.
12. Progressive Rentals, Aug.-Sept. 1989, at 36, recommending this language. The ability of a customer to terminate a lease is a key factor in the new definition of security interest in the Uniform Commercial Code. U.C.C. Proposed Amend. § 1-201(37). A discussion of this new definition and the new Article 2A on leasing are beyond the scope of this article. *See generally* Boss, *The History of Article 2A: A Lesson for Practitioners and Scholars Alike*, 39 Ala. L. Rev. 575 (1988). It is apparent that the drafters of Article 2A were primarily concerned with commercial leasing and were unaware of consumers renting to own. The essence of the proposed amendment to section 1-201(37) is an economic analysis that focuses on the value of the rights a lessor has in the goods at the end of the transaction, the reversion interest. For reasons discussed in this article, this analysis is not descriptive of the true nature of RTO transactions.
13. *See In re* Puckett, 60 Bankr. 223, 231 (Bankr. M.D. Tenn. 1986), Palacios v. ABC TV & Stereo Rental, 365 N.W.2d 882 (Wis. Ct. App. 1985), Hawkes Tele., Inc. v. Maine Bureau of Credit Protection, 462 A.2d 1167 (Me. 1983). The industry repeatedly argues that it should be permitted to charge very high prices, since RTO customers can terminate agreements at any time. The ability of RTO customers to try out the goods and later return them is functionally no different than a credit sale in which the buyer exercises a "satisfaction or your money back" guarantee. Unlike the customer buying a product with a moneyback guarantee, however, the RTO customer receives no refund. In any event, for reasons discussed later, the termination clause is not exercised by customers.
14. *In re* Glenn, 102 Bankr. 153, 156 (Bankr. E.D. Ark. 1989); *In re* Unger, 95 Bankr. 761, 764 (Bankr. D. Or. 1989); *In re* Rose, 94 Bankr. 103, 105 (Bankr. S.D. Ohio 1988); Crumley v. Berry, 766 S.W.2d 7 (Ark. 1989)
15. Progressive Rentals, Feb.-Mar. 1988, at 22.
16. Regarding taxation the industry argues:

    > There are local and state authorities that extract from us [RTO dealers] various prices [sic] according to diverse and sometimes conflicting laws. One would expect that compliance with rent-to-own laws would yield some consistency of treatment in this area. Too often, it does not.
    >
    > One reason we have trouble in this area is that some rental [RTO] dealers do not want to be treated like rental dealers in some matters such as inventory tax. In this area, some of our dealers want to be taxed like appliance stores. They report a set on rent as one which is not owned by the company for inventory taxation purposes. They report that set as an account receivable. Such is the schizophrenic life of a rental dealer.
    >
    > That point of view can be legitimately argued to taxing authorities because the rental dealer has no control over the return of that property to his idle inventory. In fact, the customer has the right to treat the contract as one that is identical to a retail contract for purposes of inventory taxation.
    >
    > A dealer would argue that he should only pay inventory tax on property that he owns. Until a customer fails to renew a rental contract or returns the property voluntarily, the rental dealer has absolutely no right to any benefits of ownership except an income stream. In such a case, the transaction is absolutely identical to a retail installment sale.
    >
    > On the other hand, there are taxing authorities that do not tax idle inventory but, instead, tax the intangible right to receive money. Here, many dealers behave like all their customers are unlikely to renew their contracts each week or month. The income stream, they say, is not assured.

    Progressive Rentals, Apr.-May 1989, at 13.
17. *See* cases cited in notes 13 and 14, *supra*, and note 21, *infra*.
18. *Hearings on S. 1152 Before the Senate Subcomm. on Consumer Affairs of the Comm. on Banking, Hous. and Urban Affairs*, 98th Cong., 1st Sess. (1983) (testimony of J. Samuel Choate) (footnote omitted) (emphasis in original).
19. St. Paul Pioneer Press Dispatch, Nov. 21, 1989, at 1B.
20. Progressive Rentals, Dec. 1988-Jan. 1989, at 34. *See also* Cooluris & Winn, *Consumer Leasing Developments*, 39 Business Lawyer

1163, 1164 (May 1984).

21. *In re* Aguilar, 191 Bankr 481 n 3 (Bankr. W D Tex 1989), *Unger*, 95 Bankr 761, 764, *Puckett*, 60 Bankr 223, 231, Walker, *The Two Mothers of RTO Jewelry*, PROGRESSIVE RENTALS, Dec 1989-Jan 1990, at 40.
22. PROGRESSIVE RENTALS, Dec. 1989-Jan. 1990, at 13. The industry uses the term "payout" to indicate that ownership of the goods has been transferred to the customer.
23. PROGRESSIVE RENTALS, Dec. 1988-Jan. 1989, at 34. In another article, Mr. Winn describes this keep rate formula as follows:

> For at least the past 10 years, the industry keep rate for TVs, appliances, stereos, and furniture has been between 20 percent and 25 percent measuring the number of new products rented to term by one customer as a percentage of total balance on rent (BOR). The percentage varies depending upon a product company's rental philosophy and somewhat along product lines.

Winn, *Jewelry's Alluring, But Poses Potential Problems*, PROGRESSIVE RENTALS, Oct.-Nov 1989, at 28.

24. A more accurate picture of the keep rate, i.e., what percentage of new and used products RTO customers actually come to own, would be demonstrated by a formula comparing the number of payouts to the number of units on rent for any given period of time.

$$\frac{\text{Monthly Payout}}{\text{Units on Rent}} = \text{Keep Rate}$$

The industry is aware of this formula, but has criticized it because the formula "doesn't really tell the dealer who is acquiring ownership, or when, or what products are sticking and which ones are coming back." Winn, *Profits from Pay-Outs*, PROGRESSIVE RENTALS, Dec. 1988-Jan 1989, at 34 Mr. Winn's observation is correct The suggested formula does not give this information. What it does do, however, is provide a reasonably accurate picture of the extent to which an RTO dealer is selling inventory or merely renting the goods.

25. APRO, the RTO industry's trade association, actively lobbies for the industry.
26. Winn, *supra* note 24.
27. Winn, *Cops and Robbers*, PROGRESSIVE RENTALS, Oct.-Nov. 1989, at 44.
28. Winn, *supra* note 24.
29. Seminar by B. Holladay, Gain Without Pain—Effective Field Supervision, APRO Convention (July 22-26, 1990).
30. Sutton, *RTO Needs New Pricing Method*, PROGRESSIVE RENTALS, Dec. 1989-Jan. 1990, at 13.
31. *Appliances Today*, PROGRESSIVE RENTALS, Aug.-Sept. 1988, at 10 This quote is significant because it explicitly recognizes that RTO dealers want the customers to believe that they are building equity in the RTO products that they are renting. The RTO industry has repeatedly argued to courts that customers do not build equity *See* cases cited in notes 13, 14, and 21, *supra*.
32. *White Goods Remain Staple of RTO Business*, PROGRESSIVE RENTALS, Aug.-Sept. 1989, at 20.
33. PROGRESSIVE RENTALS, June-July 1990, at 66.
34. Winn, *supra* note 23, at 46.
35. Winn, *Let's Face the Music and ... Grow*, PROGRESSIVE RENTALS, June-July 1988, at 18.
36. PROGRESSIVE RENTALS, Dec. 1989-Jan. 1990, at 40.
37. Winn, *supra* note 24, at 35. Other countries that permit hire-purchase sales methods limit the ability of the lessor (dealer) to manipulate the keep rate by strictly regulating collection practices. For example, a lessor must give the lessee a default notice seven days before the lessor can do anything to seize the goods. Consumer Credit Act of 1974, 87-89, United Kingdom. *See also* Hire-Purchase Act No. 36 of 1942, Section 12, South Africa (ten-day prior notice before repossession). Other countries requiring notice before repossession include Australia, Trinidad, Tobago, and Barbados. R.M. Goode, *supra* note 3, at 117

In contrast, no state in the United States gives this kind of default notice protection to RTO customers. A few states require RTO dealers to give customers written notice of their right to cure once every 12 months (Iowa, Minnesota) or once during the term of the agreement (South Carolina). The notice requirements do not affect a customer's right to return the property voluntarily or the dealer's right to seek repossession.

38. H R 2537, § 115, 100th Cong., 1st Sess. (1987).
39. Minnesota Rent-A-Center operations appear to be typical of the practices of the industry as described in articles about RTO in *Progressive Rentals*.
40. Under the terms of a protective order issued in *Starks v. Rent-A-Center*, statistical information compiled from confidential documents may be published, although source documents may not.
41. Sutton, *supra* note 30, at 13, Winn, *supra* note 24. Units remain in inventory until the customer acquires ownership.
42. PROGRESSIVE RENTALS, June-July 1990, at 66.
43. Speech of Ed Winn to the Subcomm. on Personal Property Fin., Consumer Fin. Serv. Comm., ABA Convention (Aug. 4, 1990).
44. *See supra* notes 31-34.
45. This is markedly different from a true rental business, in which rental proceeds constitute the vast majority of the income and sales only amount to a small percentage. Panel discussion, The Rental/Purchase Agreement, American Rental Ass'n Annual Convention (Feb 14-18, 1988).
46. An article in the American Rental Association magazine, *Rental Age*, describes a recent conference of true rental dealers that discussed rental-purchase agreements. The participants at the conference agreed that rent-to-own was a "very, very different animal than the rent-to-rent business." RENTAL AGE, Apr. 1988, at 40. Rental dealers at the conference discouraged use of rent-to-own agreements for a variety of reasons.

People in the industry candidly admit that RTO is a sale. According to John Sellers, national sales manager, Case-Casard:

> Many people have a big misconception about the rent-to-own market. They confuse it with rent-to-rent. And there's a different customer. The (RTO) customer is more of a design and fashion-conscious person. These people are buying something, on a different payment plan, that they really want.

PROGRESSIVE RENTALS, Apr.-May 1990, at 16.

47. The bankruptcy court has held that an RTO transaction may be a credit sale under the Truth-in-Lending Act. *In re* Hanley, 105 Bankr. 458, 463 (Bankr. C.D. Ill. 1989). The *Hanley* case may be very important. The bankruptcy trustee has challenged an RTO agreement as violating the Truth-in-Lending Act. The RTO dealer has appealed the denial of the dealer's motion for summary judgment. The appeal is pending.
48. Information for this section is taken from a seminar by Wayne Chambers, Managing Debt and Talking to a Banker, APRO Convention (July 22-26, 1990).
49. Information for this section is taken from seminars by Rita Wallace, RTO Accounting: Financial Statement Presentation and Computer Usage, and Dan Whitsell, RTO Accounting II, APRO Convention (July 22-26, 1990).
50. 26 U.S.C. § 167 (1986).
51. The IRS has denied the use of income forecasting for tangible property. Carland Inc. v. Commissioner, 90 TC 36 (1989). The income forecasting method works as follows: Assume the cost of the goods is $300. Under the terms of the agreement, the monthly rental is $50 and the total income that the dealer will receive if the buyer completes the agreement is $900. The formula is then:

$$\frac{\text{Cost of Goods ($300)}}{\text{Total Stream of Payments ($900)}} \times \text{Monthly Rental Income ($50)} = \$16.67$$

The key factor in this equation is the total stream of payments. Some dealers calculate this merely by taking the total stream of payments off the agreement. Other dealers have a more sophisticated approach. RTO dealers have historically set prices by multiplying cost times a factor of 3 or more and dividing by 18. Using a more sophisticated method to calculate prices, some dealers merely add a fraction to the whole number. Instead of multiplying by 3, they now multiply by 3.52. Using a computer, each type of product is assigned a different multiple, *i.e.*, RCA televisions—3.47, Sharp VCRs—3.78, etc. For example, the total stream of payments for the RCA television would be $300 x 3.47. Dealers like this method because it results in approximately the same deduction as the straight line depreciation method they previously used. The income forecasting method does not attribute any value to the services aspect of the transaction. The total stream of payments, without any deduction for the value of services, is used to calculate the depreciation of goods alone.

Another significant tax issue for RTO dealers who have elected Subchapter S corporate status is active versus passive losses. The IRS has stated that the rental business is passive, unless significant services are provided to the customers. As previously indicated, the value of RTO services is dubious. Repair costs are only two percent of gross revenues.

52. S. 1152, 98th Cong., 1st Sess. (1983). According to the industry newsletter, efforts for national RTO legislation have been renewed. *RTO Network News*, Feb. 1990.
53. Alabama (ALA CODE §§ 8-15-1 to 8-15-6); Arkansas (ARK STAT ANN §§ 4-92-101 to -107); (Colorado) COLO REV STAT §§ 5-10-201 to 5-10-1001, Florida (FLA STAT ANN §§ 559-9231 to 559-9241); Georgia (GA. CODE ANN §§ 10-1-680 to 10-1-689), Illinois (ILL ANN STAT ch. 121, para. 1801-1805 (Smith-Hurd 1989)); Indiana (IND CODE §§ 24-7-1-1 to 24-7-9-7); Iowa (IOWA CODE §§ 537-3601 to 537-3624); (Kentucky) KY REV STAT §§ 367.976-367.992, Maryland (MD COMM LAW CODE ANN §§ 12-1101 to 12-1112); Massachusetts (MASS GEN LAWS ANN ch. 93, § 90), Michigan (MICH COMP LAWS ANN ch. 445, §§ 951-970), Minnesota (MINN STAT. ANN §§ 325F.84-325F.98); Missouri (MO REV STAT §§ 407.660-407.665); Nebraska (NEB REV STAT §§ 69-2101 to 69-2115); New York (N.Y. PERS PROP LAW §§ 500-507), Ohio (OHIO REV CODE ANN §§ 1351.01-1351.09); Oklahoma (OKLA STAT ANN T59 §§ 1951-1957); Rhode Island (R.I. GEN LAWS §§ 6-44.1 to 6-44.10); South Carolina (S.C. CODE §§ 37.2.701 to 37.7.14); Tennessee (TENN CODE §§ 47.18.601 to 47.18.614); Texas (TEX. BUS. & COMM. CODE §§ 35.71-35.74); and Virginia (VA. CODE §§ 59.1.207.15 to 59.1.207.25). The industry has targeted Kansas, South Dakota, West Virginia, and Pennsylvania for legislative efforts this year. *RTO Network News*, Aug. 1990, at 4.

   RTO's legislative initiative has been expensive. APRO has spent $500,000 a year on the legislative effort. State dealer associations have also spent significant sums. PROGRESSIVE RENTALS, Oct.-Nov. 1988, at 30.
54. Winn & Wondra, *supra* note 2, at 55.
55. R.M. GOODE, HIRE PURCHASE LAW AND PRACTICE 8-9 (2d ed. 1970).
56. MICH. COMP LAWS § 445.951 (1985); N.Y. PERS PROP LAW § 500 (1989); OHIO REV. CODE ANN. § 1351.01 (1988); IOWA CODE § 537.3601 (1989).
57. The vote was 60 to 3 to remove the 50-percent price limit from this bill in the Minnesota Senate Committee of the Whole Proceedings (Mar. 14, 1990) (S.F. 1499).
58. The industry's "two times price" formula was a source of significant confusion for many Minnesota legislators. The quote is accurate. The industry interprets this formula as permitting the dealer to set the cash price as follows: If cash price is set at $200, the formula doubles the cash price for the total rent-to-own price, $400. If the contract requires 18 monthly payments, the customer will pay $22.22 per month. Half of the monthly payment ($11.11) is credited toward the $200 cash price each month.

   The 50-percent formula has an interesting history. A hire-purchase bill was introduced in England in 1912. The bill contained several consumer protection measures, including a requirement that title transfer automatically to the consumer when one-half of the hire-purchase price was paid. The bill *did not* become law. R.M. GOODE, HIRE-PURCHASE LAW AND PRACTICE 8 (2d ed. 1970). Unlike the 1912 bill, the RTO industry's 50-percent formula is not designed to protect consumers.
59. The annual percentage rate is calculated by arbitrarily selecting any number as the cash price, using that amount as the amount financed, and doubling the cash price for the total RTO price (total of payments) over an 18-month term. The 50-percent-of-payments formula frequently used by RTO dealers is significantly less favorable than the 90-percent formula used by other rental dealers. Panel discussion, The Rental/Purchase Agreement, American Rental Association's Annual Convention (Feb. 14-18, 1988). The RTO industry argued that its high markup is needed to cover the expense of keeping its inventory repaired. Repair costs were insignificant for the Minnesota Rent-A-Center stores.

   RTO dealers argue that low-income customers do not have access to credit and that, although their charges are high, RTO is the only method available to obtain consumer goods. FORBES, May 18, 1987, at 73. This argument ignores the significant increase in the use of credit cards by families with incomes under $10,000. The percentage of families with incomes under $10,000 holding any credit card went from 17 percent in 1970 to 41 percent in 1986. Canner, *Changes in Consumers Holding and Use of Credit Cards, 1970-1986*, J. OF RETAIL BANKING, Spring 1988, at 14.

   The RTO industry has argued that RTO dealers' fees should not be considered finance charges because this would imply that the transaction involves interest. Dealers claim that their charges are not true interest since the charge does not represent pure profit, but has to cover the cost of various services. As Professor Goode points out, this argument is specious:

> It is difficult to know how this particular "canard" has come to be so widely accepted. It is perfectly true that from a legal viewpoint the finance charge does not represent interest on a loan creating an existing indebtedness, but it is not on this account that the finance houses seek to distinguish the finance charge from interest. Their case is that economically there is a basic distinction arising out of the peculiar nature of their expenses and the services they offer. But this view seems without foundation. The interest charged by a bank also is not pure profit. A bank, like a finance house, offers a variety of services which go beyond the mere lending of money and has overheads, wages and advertising expenses to meet and also interest to pay on borrowings from depositors. Indeed in its ordinary usage the word "interest" denotes not the profit received by the lender but the total cost of the loan to the borrower, which will almost invariably reflect the three elements, risk, expenses, and pure profit. The difference between a finance house and a bank in this respect is one of degree only and not of kind.

   R.M. GOODE, HIRE-PURCHASE LAW AND PRACTICE 57-58 (2d ed. 1970). (Hire-purchase contracts are generally made by finance houses in England.)

   The industry also argues that comparing the retail price to rent-to-own price when calculating the annual percentage rate ignores the value of added services, including no credit check, free delivery and repair, and no obligation to keep renting, provided by RTO dealers. As previously pointed out, these additional services are of dubious value. *See* notes 11 and 12, *supra*, and text beginning at note 40, *supra*.
60. *See, e.g.*, Virginia's Lease-Purchase Agreement Act, §§ 59.1-

207 18. The Virginia statute was recently recommended as a model to states without rent-to-own laws by the National Conference of State Legislators. The Virginia statute is woefully inadequate as to consumer protection. In contrast, price limits for Minnesota RTO dealers will be considered in administrative rulemaking proceedings. MINN STAT § 325F.89, subdiv. 2 (effective Aug. 1, 1990).

61. Winn, PROGRESSIVE RENTALS, June-July 1989, at 42.

62. PROGRESSIVE RENTALS, Oct.-Nov. 1989, at 46.

63. *Id.* A very early buyout greatly reduces the RTO dealer's income.

64. GA CODE § 10-1-680; MICH COMP LAWS § 445.951 (1985), N.Y. PERS PROP LAW § 500 (1987); TENN CODE § 47-18-601, IND CODE § 24-7-1-1 (1989), IOWA CODE § 537.3601; VA CODE § 59.1-207.15 (1988); OHIO REV CODE ANN § 1351.01 (1988), MD COMM LAW CODE ANN § 12-1101 (1989); S.C. CODE § 37.1-701, FLA STAT ANN § 559.9233, NEB REV STAT § 69-2104(1)(j); COLO REV STAT § 5-1-401(h), KY REV STAT § 376.977(1)(j), R.I. GEN LAWS § 6-44-3(e).

65. This provision was also the source of significant confusion in the Minnesota legislature. This early purchase option formula works in the same manner as the cash price limit described above.

66. MINN STAT § 325F.93 (effective Aug. 1, 1990).

67. PROGRESSIVE RENTALS, Feb.-Mar. 1988, at 16.

68. *Id.*

69. Winn, *Four More States Add Rent-to-Own Statutes*, PROGRESSIVE RENTALS, June-July 1989, at 42; Winn, *supra* note 24, at 36.

70. Seminar by E. Winn & S. Choate, The Law, Working for You and Against You, APRO Convention (July 22-26, 1990).

71. The industry reports that damage waiver fees or leased property insurance have penetrated 90 percent of the market. Winn, *Risk-of-Loss Issues...*, PROGRESSIVE RENTALS, Feb.-Mar. 1990, at 46. Mr. Winn has observed that a dealer in North Carolina charges a dollar a week for leased property protection, four times the rates set for credit property insurance in that state. Seminar by E. Winn & S. Choate, *supra* note 70.

72. Seminar by E. Winn & S. Choate, *supra* note 70.

73. *Id.*

74. MINN STAT § 325F.93, subdiv. 2 (effective Aug. 1, 1990).

75. Minn. S.F. 1499, § 15. Minnesota law also *requires* dealers to offer consumers liability damage waivers. Consumer advocates realized that this was a bad provision, but were unable to prevent its enactment. Unlike most liability damage waiver clauses that limit losses to certain events, the Minnesota law requires the waiver to cover any loss, destruction, or damage of rented property. Colorado's RTO law permits a ten-percent charge, but does not require coverage of any loss. COLO. REV. STAT. §§ 5-10-201 to 5-10-1001.

76. Hertz Corp. v. Corcoran, 137 Misc. 2d 403, 520 N.Y.S.2d 700 (Sup. Ct., N.Y. County, 1988).

77. *Id.* at 137 Misc. 2d 407, 520 N.Y.S.2d 703.

78. The "principal purpose" test was applied by the court in Truta v. Avis Rent-A-Car System, 193 Cal. App. 3d 802, 238 Cal. Rptr. 806 (1987), in finding that collision damage waivers are not insurance because the principal purpose of the rental car contract is the rental of a car. *Id.* at 193 Cal. App. 3d at 814, 238 Cal. Rptr. at 813. As discussed above, in RTO contracts, the principal purpose is the sale, not the rental, of property.

79. Davis v. M.L.G. Corp., 712 P.2d 985 (Colo. 1986); Automobile Leasing & Rental, Inc. v. Thomas, 100 Nev. 261, 679 P.2d 1269 (1984).

80. Seminar by E. Winn & S. Choate, *supra* note 70.

81. The RTO agreement used by Colortyme, another national RTO company, contains the following paragraph:

> *1. Renewal Option:* I may renew this agreement if I have complied with its terms, by sending or delivering a weekly, semi-monthly, or monthly rental payment to The Company before the end of my paid rental period. I understand The Company does not have a "grace period" for late payment of rental renewals and that rent must be paid in advance of my continued use of the property.

82. *See* statutes cited note 53, *supra*.

83. According to Rent-A-Center's tax returns, reinstatement fees (a five-dollar charge paid by customers to reinstate a contract when payments is late or the goods have already been picked up and the customer wants them back) accounted for approximately four percent of gross revenues for the years 1987 and 1988. Minnesota's Rent-A-Center customers paid the five-dollar reinstatement fee over 36,400 times in 1988, and over 37,000 times in 1987. The repeated payment of a "late fee" to reinstate an RTO contract is further evidence that the overwhelming majority of RTO customers are seeking to buy, not rent, merchandise. The industry tries hard not to call "reinstatement fees" late fees. It does not succeed. Even the industry's leaders call the payment a late fee.

84. Dealers market reinstatement as follows:

> You can sell reinstatement by telling your customer "Oh Mrs. Jones, this is great. Just for paying, (I charge $3 a week, $5 a month one time) ... for just $3 we will reinstate your agreement." "What the hell does that mean?" "Well, that means you don't have to start all over again."

Seminar by Alan Dubzinski, So You're a New RTO Store Owner, APRO Convention (July 22-26, 1990).

85. The time for prompt surrender varies. It is two days in Oklahoma, Virginia, Maryland, Alabama, and Tennessee; three days in Arkansas and Nebraska, and seven days in New York, Illinois, Texas, and Minnesota. *See* statutes cited note 53, *supra*.

86. MINN STAT § 325F.88, subdiv. 3 (effective Aug. 1, 1990).

87. One dealer reports, "I collect approximately 12-13 percent a month on other fees, which included insurance 'waiver damages,' which I personally sell for $1 a week, $4 a month. We do almost 6 percent a month of our total rent collected [in waiver fees]." Seminar by Alan Dubzinski, So You're a New RTO Store Owner, APRO Convention (July 22-26, 1990).

88. *See* statutes cited note 53, *supra*.

89. Panel discussion, The Rental/Purchase Agreement, American Rental Association's Annual Convention (Feb. 14-18, 1988).

90. Minnesota H.F. 1234, § 3 (Mar. 6, 1989). The statutory language in the industry's proposed bill pertaining to disclosures closely paralleled the lease language used by Rent-A-Center. The language is not used by other RTO companies. Indeed, one of the largest national competitors of Rent-A-Center, Colortyme, does not belong to APRO.

In countries with hire-purchase sales, laws mandating disclosures have not provided sufficient consumer protection.

> Experience shows, however, that a substantial segment of the population will not be assisted by disclosure requirements, however extensive, and for their benefit, regulation of maximum permissible finance charges is important.

R.M. GOODE, HIRE PURCHASE AND CONDITIONAL SALES 260 (1966).

91. MINN STAT §§ 325G.15 and 325G.16. This statute provides, in part, that

> "Sale of goods" includes ... a contract in the form of a terminable bailment or lease of goods if: (a) the bailee or lessee has the option to renew the contract by making the payments specified in the contract; (b) the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration upon full compliance by the bailee or lessee with the bailee's or lessee's obligations under the contract including any obligation incurred by reason of the exercise of an option by the bailee or lessee to renew the contract; and (c) the payments contracted for by the bailee or lessee, including those payments pursuant to

STATE OF WEST VIRGINIA
DEPARTMENT OF BANKING
CHARLESTON 25305

ORDER

West Virginia Lending and Credit Rate Board

As an alternative to any statutory rate, any person [which defined in West Virginia Code §31A-1-2(1) means "any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county court, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this State or any other jurisdiction"] may charge a maximum rate of interest or a maximum finance charge not exceeding eighteen percent per annum, calculated according to the actuarial method, on all loans, credit sales or transactions, forbearance or similar transactions, regardless of purpose. 18%

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

ORDER

As an alternative to the loan finance charge allowed by West Virginia Code §46A-3-106(3), with respect to a consumer loan made pursuant to a revolving loan account, if the billing cycle is monthly, a lender may contract for and receive a loan finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statements dates are on the same day each month or do not vary by more than four days therefrom. 18%

As an alternative to the sales finance charge allowed by West Virginia Code §46A-3-103(3), with respect to a consumer credit sale made pursuant to a revolving charge account, if the billing cycle is monthly, a seller may contract for and receive a sales finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom. 18%

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

EXHIBIT 3

Industrial Loan Company increased by staff

ORDER

As an alternative to the loan finance charge allowed by West Virginia Code §46A-4-107(2), with respect to a supervised loan, including a revolving loan account, a supervised lender may contract for and receive a loan finance charge, calculated according to the actuarial method, which may not exceed the total of:

(1) Thirty-six percent per annum on that part of the unpaid balance of he principal which is five hundred dollars or less; 34

(2) Twenty-four percent per annum on that part of the unpaid balance of the principal which is more than five hundred dollars but does not exceed fifteen hundred dollars; and 24

(3) Eighteen percent per annum on that part of the unpaid balance of the principal which is more than fifteen hundred dollars but does not exceed two thousand dollars. 18

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

ORDER

Industrial Loan Company

As an alternative to the loan finance charge allowed by West Virginia Code §46A-3-104(1)(b) and West Virginia Code §31-7-11(a)(5), an industrial loan company may contract for and receive a loan finance charge, which shall include the aggregate of the charges permitted by subdivisions (4) and (5) of West Virginia Code §31-7-11(a), calculated according to the actuarial method, which may not exceed the total of:

(1) Twenty-seven percent per annum on that part of the unpaid balance of the principal which is two thousand dollars or less; 27

(2) Twenty-five percent per annum on that part of the unpaid balance of the principal which is more than two thousand dollars but does not exceed ten thousand dollars; and 25

(3) Eighteen percent per annum on that part of the unpaid balance of the principal which is more than ten thousand dollars. 18

This Order is effective December 1, 1984 and, pursuant to West Virginia Code §47A-1-1(g), shall remain in full force and effect until the next time the Board meets and prescribes different maximum rates of interest and/or maximum finance charges.

S/Thomas J. Hansberry
Thomas J. Hansberry
Chairperson
West Virginia Lending and
Credit Rate Board
October 16, 1984

EXHIBIT 4

COMPARISON OF RATES
USING THREE ALTERNATIVE RENT-TO-OWN RATE CAP COMPUTATION METHODS
FOR SELECTED "FINANCE CHARGES" AND EQUIVALENT "TOTAL OF PAYMENTS."
(Read across)

Finance charge made by dealer[1] on sale of $300 item	Total of Payments on sale of $300 item	"Annual Percentage Rate" (18 mo.[2])	S.B. 165 "Total of Payments" rate cap	Dealers' "Percent[4] to Equity" rate cap
$45	$345	18%[3]	115%	90%[5]
$50	$350	21%	117%	85%
$100	$400	39%	133%	75%
$150	$450	56%	150%	65%
$200	$500	72%	167%	60%
$250	$550	88%	183%	55%
$300	$600	104%	200%	50%

Notes:

1. Does not include mark up from wholesale to the retail cash price.

2. The annual percentage rate is the only item that will vary depending on the length of the contract. This column of figures assumes an 18 month contract since that is the length of most rto contraacts. For shorter contracts the Annual Percentage rate goes up appreciably. The bottom line is the rate (50% to equity) that the dealers insist on. For six month contracts the APR would be nearly %300. (See additional chart).

3. This is the current West Virginia cap on credit cards and all loans (except for some special small loan companies who get 32%).

4. [of periodic payment]

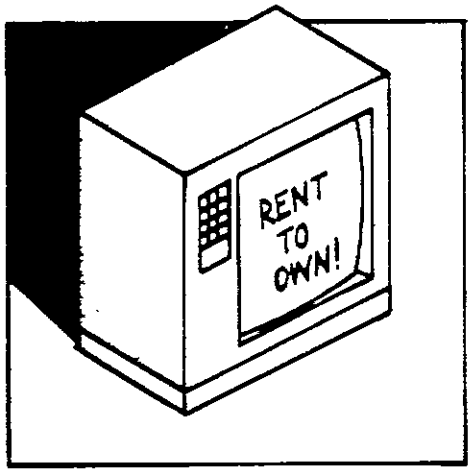
5. These are approximations. See additional chart.

Prepared by David B. McMahon
West Virginia Legal Services Plan

SENIOR CONSUMER
FALL 1990
ALERT
A Special Bulletin for Complaint-Handlers

RENTING TO OWN:
Convenience or Just Plain Con?

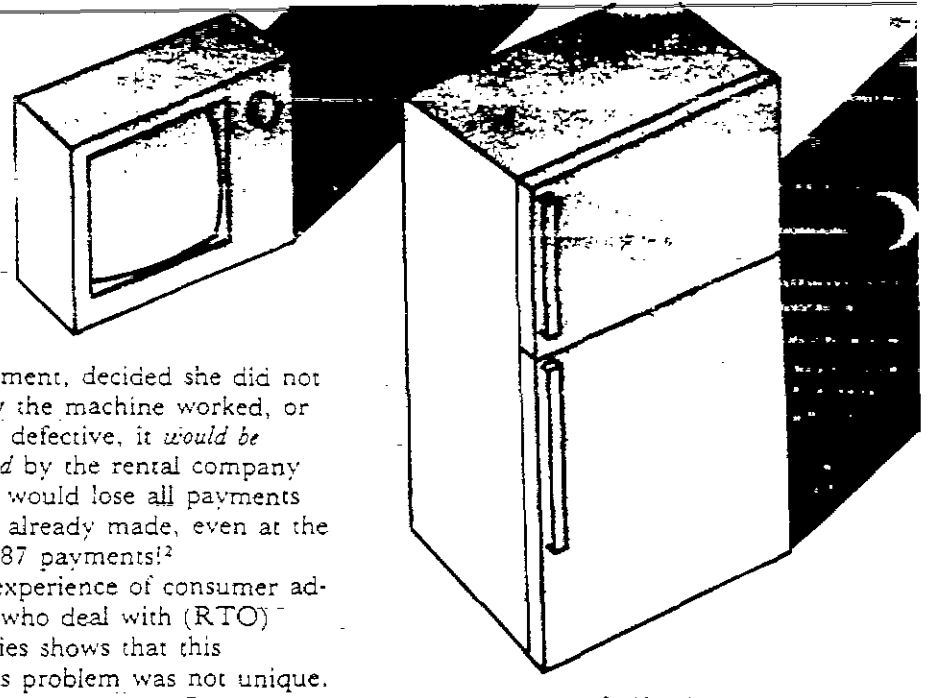
Advertisements for rent-to-own (RTO) appliances (especially televisions) are conspicuous in local newspapers and during daytime television programs across the country. RTO and rental companies vary widely—from huge national franchises to a host of local establishments that rent a few appliances—primarily to retail customers who need temporary replacements for appliances being repaired. This Alert focuses on the RTO companies that market their merchandise as an alternative to buying—which proves in the long run to be a very poor alternative.



The language of these advertisements is strikingly similar: "No credit hassle!" "No long-term commitment!" "No down payment!" and "Free service in your home!" are the usual promises. What these ads don't tell potential customers is the enormous sum they may have to pay during the total contract period, often just for the opportunity to own previously-rented equipment. They also often fail to reveal the aggressive collection and repossession practices employed by many rental companies.

(Continued on the next page)

EXHIBIT 5



Older persons are prime targets of these (RTO) come-ons. The claims of "no credit hassles" and "no credit checks" are a blatant appeal to "people who *think* they can't get an appliance" on credit, or a layaway plan from a standard retail or department store.[1]

A typical example is the story of a Jersey City, New Jersey, woman whose income consisted solely of Social Security benefits and who signed an agreement to purchase a portable washing machine from a local firm, Rental World. She was drawn by the claims of low weekly payments of $11.55, and the promise that she could *return the washer at any time* with "no penalty." After 87 weekly payments, the washer would be hers!

What the agreement and the company's representative failed to mention was how the washer's retail value (perhaps a few hundred dollars) compared to the total payments required to own it—$1,004.85! If the renter missed any payment, decided she did not like how the machine worked, or found it defective, it *would be repossessed* by the rental company and she would lose all payments she had already made, even at the 86th of 87 payments![2]

The experience of consumer advocates who deal with (RTO) companies shows that this woman's problem was not unique. A telephone survey of Boston-area companies[3] showed rental rates for a 19-inch color television ranging from about $44.00-$60 per month—with a total cost of $792-$1,080 over an 18-month lease—for a television that could be purchased from a local retail store for only $200-$400! Even worse, dealers might deliver a supposedly "new" set, and the renter could pay this exorbitant total for a set previously rented by several other people.

Some RTO companies have also engaged in abusive collection and repossession practices that may frighten many older persons. For instance, a North Carolina woman (who had fallen behind after making $750 in rental payments on a $450 television set) was threatened by the rental company with arrest. Another woman was arrested for failing to return an RTO freezer in a dispute over the property. A third woman found that employees of a rental company had entered her home in her absence (through a door supposedly left ajar) to repossess a rented washing machine.[4] In Pennsylvania, a company most recently known as Rent America allegedly engaged in flagrantly deceptive behavior by using uniformed city police to threaten renters who were behind with their payments, and by breaking into homes to repossess rented items.[5]

The incentive for this type of behavior by RTO companies lies in the enormous profit they have made in recent years.[6] A prime

[1] David Clark Scott, quoting Robert Hobbs, attorney at the National Consumer Law Center, "Renting items you plan to buy: sometimes its borrowing trouble," *The Christian Science Monitor*, July 17, 1984, p. 21.

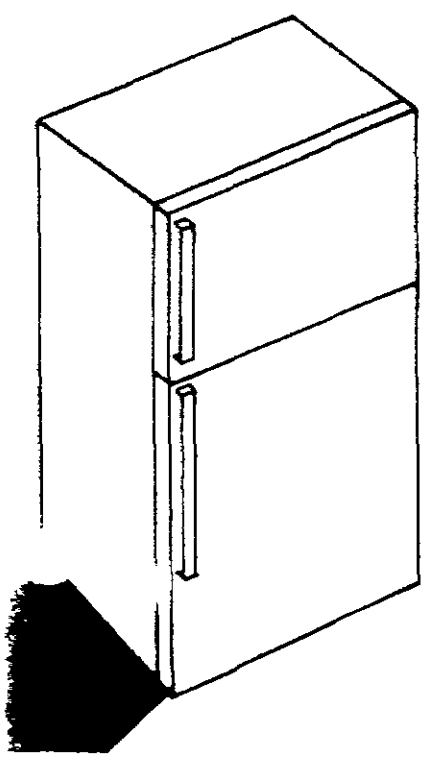
[2] *See* Michael Hinds, "Rent-to-own ripoffs," *Providence Journal-Bulletin*, Sept. 1, 1988, p. E-1. The rental company involved in this case agreed to refund four payments already made by an older renter who had realized the lease's ultimate cost, and to terminate the lease, but only after she threatened legal action.

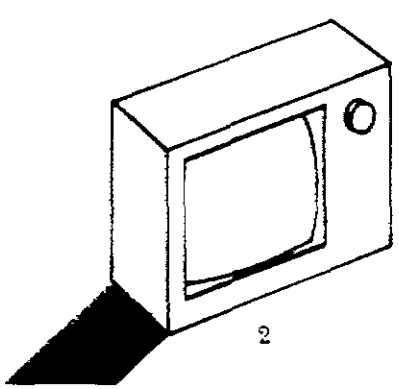
[3] Survey conducted by National Consumer Law Center (1989).

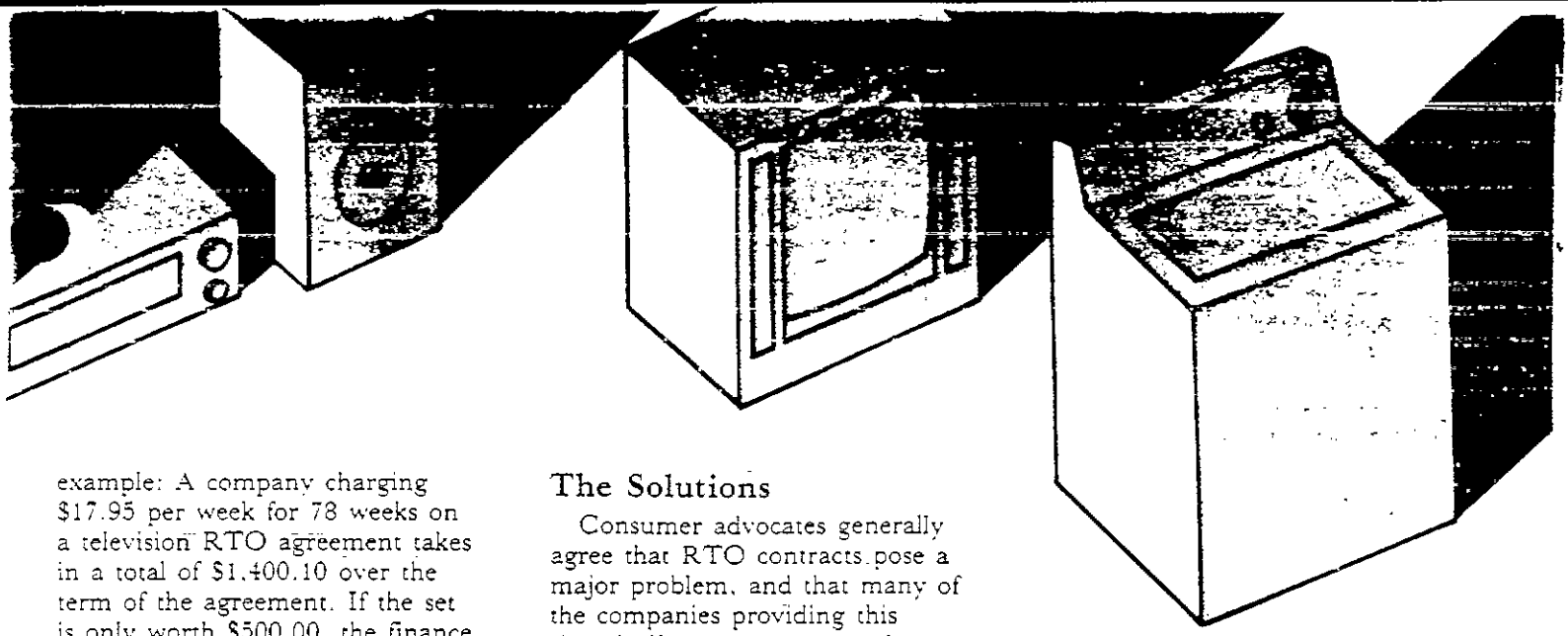
[4] Toni Joseph, "$448 TV costs rent-to-own patron $750 and threats", Raleigh, N.C., *News and Observer*, Aug. 10, 1987.

[5] Christopher Quinn, "Police get pay to repossess rented items," Harrisburg, PA *Patriot News*, Sept. 15, 1985, p. 1.

[6] An advertisement designed to interest RTO dealers in adding jewelry to their offerings lists as a potential benefit a yield up to 600 percent on their investment.







example: A company charging $17.95 per week for 78 weeks on a television RTO agreement takes in a total of $1,400.10 over the term of the agreement. If the set is only worth $500.00, the finance charge is $900.10, and the effective interest rate is an amazing 180 percent![7] If the TV had already been used, and was consequently worth only $350, the Annual Percentage Rate (APR) on the same contract would be 275 percent.

In 1982, there were 2,000 rental-purchase outlets nationwide. By 1984, the number had grown to 4,000, generating $1.5 billion in income on television rentals and sales alone (this component comprised perhaps half of the companies' total business).[8] Not surprisingly, the margin of profit for these companies runs well above that of standard retail companies. Earnings ran below 4 percent of sales in a recent year for retailers such as Allied Stores, Woolworth, K-Mart, Federated Department Stores, and J.C. Penney. By comparison, the earnings reported by one national rental franchise, Rent-a-Center, ran as high as 7.46 percent of sales for that time period.[9]

The Solutions

Consumer advocates generally agree that RTO contracts pose a major problem, and that many of the companies providing this "service" may attempt to circumvent the federal Truth in Lending Act and state credit laws that regulate interest rates and require disclosure of credit terms. These advocates see the RTO agreements largely as disguised credit sales, and make the strong argument that such transactions should also be subject to the limitations placed on other forms of sales. The RTO companies counter that the RTO agreements are *not* credit sales, and that their customers are not paying interest fees—they are merely being charged for "convenience and service."[10] The battle between consumer advocates and rental companies has been raging since the early 1980s on both the state[11] and federal[12] levels.

Legislation

The story of RTO legislation passed in North Carolina illustrates the tenacity with which rental companies cling to their profitable business. In 1983, North Carolina State Representative Jeanne Fenner sponsored legislation to regulate rent-to-own transactions by defining them as sales. Eventually, legislation was passed which now includes two types of lease contracts as sales contracts, thereby increasing consumer protection. However, in two subsequent state elections, Rep. Fenner was defeated by candidates who received large contributions from people representing RTO businesses in North Carolina and states as far away as Texas. A spokesman for these businesses warned that, "If she runs...again, we'll be there again."[13]

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[7]The Annual Percentage Rate (APR) calculations treat the first payment as a downpayment and assume 52.14 weeks per year.

[8]Stephanie Kraft, "The High Priced Models: Are Rent-to-Own Appliance Businesses Practicing Usury?," The *New Orleans Advocate*, Feb. 13, 1985.

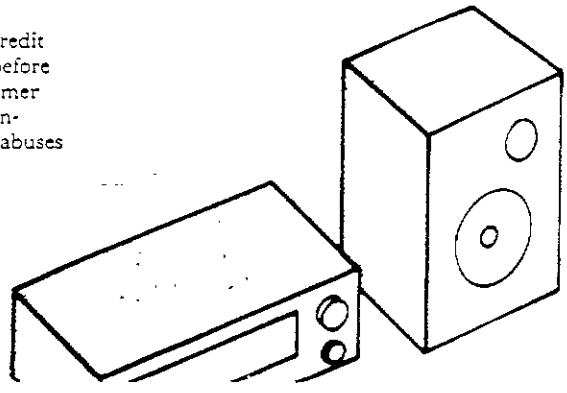
[9]Source: Moody's Industrial Manual (1985). This trend continued through 1987 for Rent-a-Center, at which time the company underwent a merger.

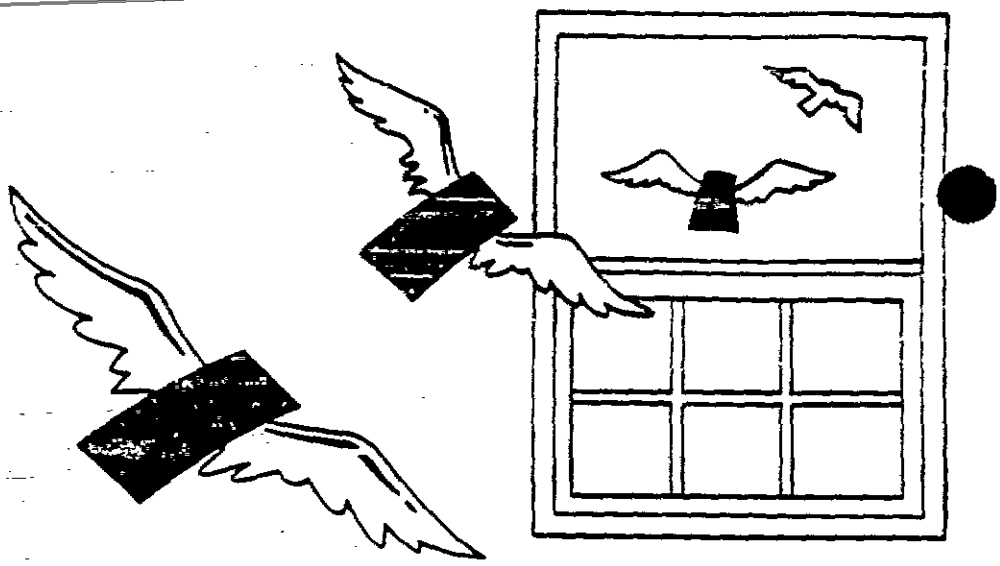
[10]See Hines, *supra* [8], referring to a statement by Edward Winn III, General Counsel of the Association of Progressive Appliance Rental Organizations

[11]The problem actually began more than 100 years ago. See *Cantrell v. Singer Mnf'g. Co.*, 4 Ohio Cir. Dec. 680, 7 Ohio C.C. 460 (1892), in which the Singer Sewing Machine Company was successfully sued

[12]See Hearings on the Consumer Credit Protection Act (proposed S 1152), before the Senate Subcommittee on Consumer Affairs (July 19, 1983), at which consumer advocates recited a litany of abuses still practiced by many rent-to-own companies

[13]Jim Morrill, "Challenge Proves Costly," *The Charlotte Observer* (NC), Apr 5, 1987, p. 1.





RTO transactions reflect a major gap in federal credit disclosure laws. During the 1970s, federal courts divided on whether RTO fell within federal Truth in Lending Act disclosure requirements. Then, in the early 1980s, the Federal Reserve Board (FRB), which administers Truth in Lending, decided that its disclosure requirements were inappropriate for RTO transactions and proposed an RTO disclosure scheme to Congress. The FRB's proposed disclosure was supported by the RTO industry and opposed by many consumer organizations.

The consumer organizations argued that the same Truth in Lending disclosures that are made in other retail credit sales should be made in RTO transactions. Disclosures such as cash price, finance charge, and annual percentage rate are significant in RTO transactions and should be required. More fundamentally, consumer organizations argue that any Congressional characterization of RTO transactions will greatly influence the states' decisions on whether to regulate RTO like other retail transactions or to legitimize their unique and often suspect practices. Privately, RTO industry officials admit that disclosures like those proposed by the FRB do not influence consumers.

Despite the political pressure from the RTO industry to prevent regulation of RTO transactions, many states have imposed at least some restrictions on them.[14] At least ten states[15] have passed legislation that requires specific disclosures to the customer, but generally does not limit the amount of finance charges that can be added onto the transactions. Several other states[16] amended their retail installment sales acts to expressly include RTO transactions. However, in at least one of these states[17] the statutory ceilings on retail installment sale contracts were removed, and five states[18] passed RTO laws establishing very high rate ceilings.

States that have recently dealt with RTO problems have tried to address some of the more troublesome practices of RTO companies. In Iowa, a 1989 amendment to the Consumer Credit Code requires that a lessee acquire ownership of the leased property as soon as the lease payments made are double a cash price for the property disclosed at the outset of the transaction. It also includes RTO agreements under the definition of "debt" for purposes of the state Debt Collection Practices Act, thus providing the customer with the possibility of damages for some of the practices described earlier.[19] A bill passed in Nebraska specifically applies to week-to-week leases (leases "for an initial period of four months or less" are covered), prohibits penalties for early termination of leases, and provides standards for advertisements.[20] Another 1989 statute passed in Oklahoma limits the amounts chargeable for bad check returns, initial fees, security deposits, and daily late charges. It also requires a state license for each office operated by a rental company.[21]

Private Litigation Remedies

Advocates for older persons should become familiar with the possible remedies under statutes and regulations specifically dealing with RTO agreements. In addition, they should explore remedies under other statutes and regulations, keeping in mind that RTO statutes in individual states may have an impact on analysis under other state statutes.[22]

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[14]The National Consumer Law Center, Boston, MA, has tracked the progress of this legislation, and can be consulted about more recent developments. See also *New York Times*, June 4, 1988 "Rent-and-Own Plans."

[15]Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Maryland, Tennessee, Texas, and Virginia.

[16]Maine, Minnesota, North Carolina, and Pennsylvania. In Wisconsin a court has held that the definition of "credit sale" on the books already encompasses rent-to-own transactions. In 1990 Minnesota enacted an RTO statute.

[17]Wisconsin.

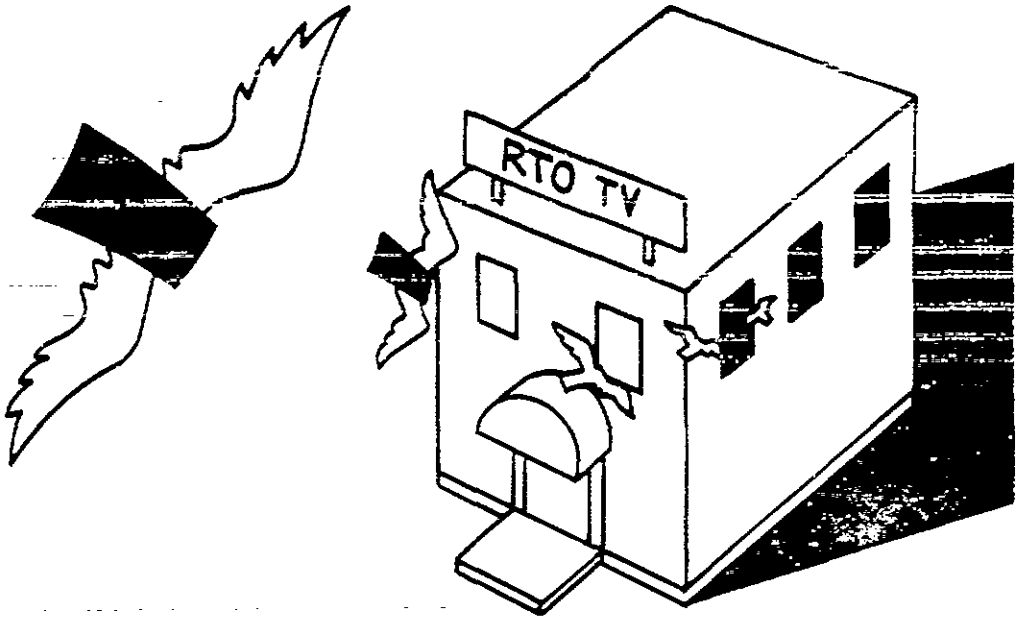
[18]Iowa, Michigan, New York, Ohio, and South Carolina. Minnesota has added an administrative rate setting process.

[19]*See* Iowa S.B. 486, effective July 1, 1989 (as reported in Consumer Credit Guide, Report 549).

[20]*See* Nebraska Consumer Rental-Purchase Agreement Law, effective July 1, 1989 (as reported in Consumer Credit Guide Report 549).

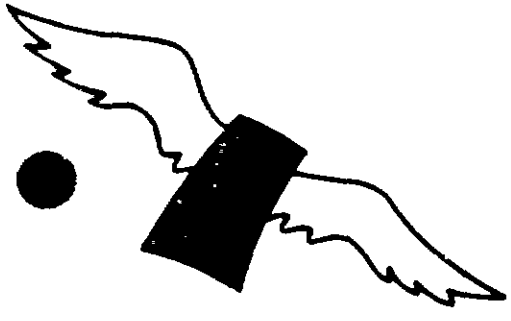
[21]*See* Oklahoma H.B. 1091, 1989 (as reported in Consumer Credit Guide Report 549).

[22]Particularly Article 9 of the Uniform Commercial Code (UCC) or state Retail Installment Sales Acts (RISAs).



- **UDAP statutes and regulations.** State unfair and deceptive acts and practices (UDAP) statutes may be one of the more effective tools for advocates. For instance, a UDAP claim may be successful where the company claims "no down payment!" but charges initial fees, delivery charges, installation fees and security fees, or engages in other forms of "low-balling." Misrepresenting the savings of an RTO arrangement, or the terms of the agreement may be a UDAP violation, as may representing a used rental appliance as new and failing to disclose the total of payments. Other aspects of an RTO arrangement gone sour may also be vulnerable to UDAP claims: failure to repair or replace defective merchandise, improper collection or repossession practices, or trying to collect the full lease price upon default or other termination penalties not permitted under the contract.[23] The special value of UDAP is that in most cases the statute will apply to RTO transactions themselves, without a need for consumers to argue that the transactions are disguised sales, as is true for some other possible claims suggested here.
- **RTO statutes.** In the states which have enacted specific RTO statutes, compliance with those requirements should be checked, particularly if there are sanctions for violations.

[23]See National Consumer Law Center, Unfair and Deceptive Acts and Practices §5.7.4.2 (2nd ed. 1988 and Supp.).



- **State usury or retail installment sales acts.** There is a split in authority, but some courts have found RTO transactions to be in reality credit sales. As such, they may be subject to state usury or Retail Installment Sales Act (RISA) laws, and the RTO contract might be out of compliance with them.[24]
- **UCC Article 9.** Article 9 of the Uniform Commercial Code (UCC) applies to leases intended for security, and absent irrebuttable statutory presumptions,[25] sound arguments can be made that the default and repossession provisions of Article 9 should apply to RTO transactions.[26] Since RTO companies rarely comply with Article 9, statutory damages of the finance charge plus 10 percent of the cash price of the goods should arguably be available under UCC 9-507, if the lease is one intended for security.
- **Warranty Laws.** As with several other of the potential private remedies suggested here, the consumer may try to argue these are disguised sales arrangements subject to Article 2 of the UCC or the Magnuson-Moss Warranty Act[27] if the consumer has received defective goods under the RTO arrangement.[28] Even when they view RTO sales arrangements as genuine leases, as opposed to disguised sales, some courts have applied Article 2 warranty principles by analogy to leases.[29] Four states[30] have adopted the new UCC Article 2A on leases, drafted by the National Conference of Commissioners on Uniform State Laws, which has its own warranty provisions.

[24]See Id., §5.7.4.4; National Consumer Law Center, *Truth and Consumer Credit Regulation* §5.5.2.2 (1987 and Supp.). Remember, however, that some recent RTO legislation will directly resolve whatever questions may have previously existed about whether the RISA or other special usury statutes apply, or whether an RTO agreement is directly subject to a charge limitation.

[25]See, e.g. Ohio Rev. Code §1351-01(F), providing that RTO agreements shall never be intended as security.

[26]See, e.g. *In re Puckett*, 60 B.R. 223 (Bankr. M.D. Tenn. 1986); *Broad v. Curtis Mathes Sales Co.*, Clearinghouse No. 36,376 (Me. Super. Ct. 1984); National Consumer Law Center, *Unfair and Deceptive Acts and Practices* §5.7.4.5 (2nd ed. 1988 and Supp.).

[27]15 USC §2301 et seq.

[28]See National Consumer Law Center, Unfair and Deceptive Acts and Practices §5.7.4.8 (2nd ed. 1988 and Supp.).

[29]See National Consumer Law Center, *Sales of Goods and Services* §8.4 (3rd ed. 1989 and Supp.).

[30]California, Minnesota, Oklahoma and South Dakota.

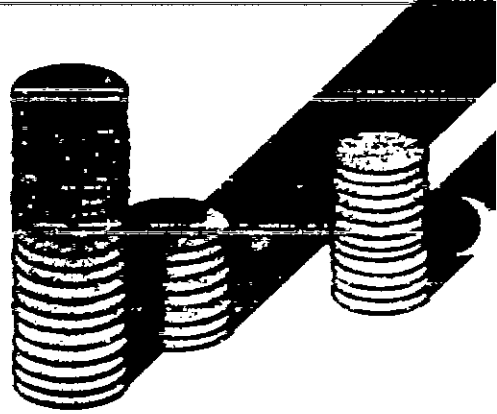
- **Truth in Lending.**[31] Truth in Lending (TIL) includes certain leases within its definition[32] unless they are terminable without penalty at any time by the consumer.[33] (Prior to the time this provision was added to Regulation Z, courts were split over whether RTO transactions fell within the scope of Truth in Lending.[34]) Most RTO transactions are drafted to avoid the imposition of explicit contractual termination penalties. However, there is an implicit penalty in early termination of any RTO transaction, since the customer would lose the benefit of all payments made toward the purchase option.

Nonetheless, one court recently held that the pattern of an RTO lessor's business should be examined to determine if customers actually used these agreements to purchase the property though continued lease renewal payments or if they generally terminated the leases and returned the property after short terms. In the former circumstance, these transactions could be viewed as disguised credit sales, subject to TIL.[35]

- **Debt Collection Laws.** Various statutory or common law theories relating to unfair or harassing debt collection practices may be brought to bear, depending upon the circumstances. If a third party or an RTO employee pretending to work for someone else (e.g. posing as a police officer) engages in improper collection activity, the federal Fair Debt Collection Practices Act may apply. Some state debt collection statutes may apply directly to the RTO company itself, and in egregious cases, tort claims such as intentional infliction of emotional harm may be appropriate.[36]

Of course, not all consumers wish to resort to litigation to resolve disputes. As with many other consumer problems, the advocate for an older person may find assistance from the state Attorney General's Consumer Protection Office invaluable.





Education and "Self-Help" Remedies

As with many other consumer problems facing older persons, the key to deciding whether to enter into an RTO agreement is: "**Information is power!**" There are situations in which renting an appliance may be the most practical choice—for instance, when the consumer wants a temporary replacement for an appliance being repaired, wants to try out a new appliance before buying one, or has some other short-term need. But, before signing a lease as an alternative to buying an item, one should be very careful to look at all of the other options available. For instance:

- Can the consumer delay the purchase until he/she saves enough money to pay cash?
- Is there a retail store which offers a layaway agreement for the item?
- Has the consumer actually tried to obtain credit to buy the item from a retail store? Because of the federal Equal Credit Opportunity Act and increased sensitivity by many businesses to the needs of older persons, it may be easier than one thinks to buy an item on credit, with a long-term warranty and an in-store service plan to cover the cost of any needed repairs.
- Could the consumer obtain a short-term consumer loan obtained from a bank or

[31] 15 USC §1601, Reg. Z §226. NOTE: The Consumer Leasing Act, sometimes called the Truth in Leasing Act, generally does not apply to RTO transactions, because it covers only leases with a minimum term of 4 months, which most RTOs do not have. 15 USC 1667; Reg. M, §213

[32] A credit sale includes a lease if the lessee agrees to pay a sum at least substantially equivalent to the value of the property and the lessee has the option to become the owner of the property upon compliance with the agreement for "no other or nominal consideration." 15 USC §1602(g); Reg. Z §226.2(a)(16).

[33] Reg. Z, §226.2(a)(16), as amended 1981.

[34] See National Consumer Law Center, *Truth in Lending* §2.4.2.2 (2d. ed. 1989 and Supp.)

[35] *In re Hanley*, 105 B.R. 458 (Bankr. C.D. Ill. 1989).

[36] *See generally* National Consumer Law Center, *Unfair and Deceptive Acts and Practices* §5.7.4.7 (2nd ed. 1988 and Supp.); National Consumer Law Center, *Fair Debt Collection* Ch. 6 (1987 and Supp.)

purchase more cheaply? (See box)

— Would a cheaper, used item from a yard sale, the classified ads, or a second-hand or repair shop serve the household need?

If any of these options is available, the RTO agreement becomes less attractive. It is likely to be the most expensive option, and has proven disappointing to many customers. RTO industry advocates have repeatedly noted that only 25 percent of renters ultimately become owners of the merchandise.[37] In many cases, these renters may have paid several times the value of the item and still have nothing to show for their expense.

CONCLUSION

There are times when signing a rent-to-own contract may make sense. But, before signing, older consumers should think of this statement by the collection manager of one store in New Jersey:

"...Most people know there is a gimmick in there somewhere, but they don't quite understand it. People focus on the low weekly rate...I personally don't allow anybody I know to come into my store..."[38]

[37] *See* Michael Hinds, "Rent-and-Own Plans," *New York Times* "Consumer's World," June 4, 1988

[38] *Ibid*

Consumer Tips on Renting Products

If a consumer finds the idea of RTO appealing, urge him/her to call the company to see what kind of terms it's offering, then compare those terms to other options.[39] At a minimum, urge him/her to look at the consumer's responsibilities and liabilities in these areas:

- **Total of Payments** (as compared to the price one would pay by cash or store credit). Remember that the *real* total price for an RTO contract is determined by multiplying the amount of each rental payment times the number of payments required to become owner of the item at the end of the lease.

If a consumer is considering RTO as a way to purchase something, he/she can vividly demonstrate the exorbitant cost by simply taking time to do comparison shopping by phone.

The following sample comparison table for a new[40] 19-inch color TV both suggests the kind of information the shopper should seek, and gives an idea of the relative cost of three different ways to acquire the same TV.

- **Does the company guarantee that the item being rented is new?** If not, the customer should assume that he or she may be buying a used appliance and decide whether the payments total is fair in that case.
- **Can the customer buy the item outright at a reduced price at some point during the contract, or does he/she have to make the full total of payments to become the owner?**
- **Even though the company may provide repairs at no charge, does it also provide a substitute at no extra charge or stop payments during the repair period?**
- **Does the company require a large "balloon payment" for a renter to become an owner at the end of the lease?** If so, can the customer afford this payment? Can it be paid in installments? If he/she cannot afford it, and so does not become the owner, what would he/she end up paying for the privilege of merely renting the item up to that point?
- **If the renter misses one or more payments, can he/she reinstate the RTO contract without losing the investment up to that point? Are there large penalties charged?** Unlike most installment sales contracts, RTO contracts don't generally allow any grace period for payments, and it's easy to miss a payment that must be made every week, especially if illness or another emergency arises.
- **Does the company require the renter to purchase insurance on the rented item, even though the customer may already have home coverage?** A charge of $1.00 per week for insurance on a television set worth only $250 is exorbitant over an 18- or 24-month period (the equivalent of paying $20,000 a year to insure a home worth $100,000!).
- Is there a large penalty payment required if the lease is terminated before the end of its term?

As with other consumer transactions, it's wise to check with the local Better Business Bureau or Consumer advocacy office to see if there are pending complaints against the RTO company.

[39] See *supra* on education and self-help remedies. An excellent self-help guide in this area is "Rent-to-Own Facts," a pamphlet published in 1987 by the Michigan Consumers Council, 414 Holister Bldg., 106 W. Allegan St., Lansing, MI 48933 (517) 373-0947, (517) 373-0701 (TDD). Single copies free.

[40] Assuming the RTO company will assure the customer he or she will get a new, rather than used TV.

Sample Comparison Table

	RTO 78 wks./18 mos. to ownership	Credit Purchase 18 mos.	Cash Purchase
Cash Price	—	$331.76	$319.00 Price + 12.76 Sales Tax $331.76
Initial Payment/ Down Payment	First and last week's payment) $22.88	10% downpayment $ 33.00	—
Installment Payment	$11/wk. + 44 cents tax $49.19/mo.[1]	$ 19.49/mo.	—
"Extra $" (above the purchase price)	$560.56	$ 52.11	
	$11.44 × 78 = $350.82 loan payments + 33.00 down payment		
Total Cost	$892.32	$383.82	$331.76
Effective APR[2]	163%	21%	—

[1]The weekly payment should be multiplied by 4.3 weeks in a month, since assuming only 4 weeks per month would equal to a 48-week year, thus concealing the cost of 4 weeks' payments.

[2]The customer could not figure out the APRs without a special calculator, but comparing the relative total dollar costs is dramatic enough.

About This Publication . . .

Senior Consumer Alert is produced by the **American Association of Retired Persons' Consumer Affairs Section (Program Department)** and the **National Association of Attorneys General's Committee on the Elderly and the Law** (Chairman, Donald J. Hanaway, Attorney General, Wisconsin) in response to patterns of fraud or abuse detected nationwide affecting the older consumer.

To alert AARP/NAAG about subjects for future issues, please contact:

Robin Talbert
AARP Consumer Affairs
1909 K Street, N.W.
Washington, DC 20049
or Peg Schmidt
Steve Nicks
Office of the Attorney General
P.O. Box 7856
Madison, WI 53707

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Program Department
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Senior Consumer Alert "EXTRA"

Readership Survey

Thanks to all of you who responded to our readership survey. Based on the comments we received, we will continue to make the Senior Consumer Alert useful to lawyers, consumer advocates, and AARP volunteers by including both general information and legal references.

AARP Friend of the Court Briefs

During the last year, AARP has participated as amicus curiae in three cases affecting the rights of older consumers.

- A brief was filed in support of a Washington State Insurance Department rule banning the sale of low-value life insurance products marketed to older people. A favorable decision was issued October 25, 1990 by the Washington Supreme Court. (*Omega National Insurance Company et al. v. Marquardt*)
- In a case which was originally brought by the Alliance for Senior Citizens and the Gray Panthers, the U.S. District Court of Appeals, D.C. Circuit, is considering whether to require the Department of Health and Human Services to require recipients of federal funds to conduct a self-evaluation to ensure compliance with the Age Discrimination Act. AARP filed an amicus brief in June of this year (*Action Alliance of Senior Citizens et al. v. Sullivan.*)
- In *California State Board of Optometry v. FTC*, AARP supported a Federal Trade Commission (FTC) rule that held that state laws restricting the practice of optometry were unfair acts or practices. In a decision rendered August 28, 1990 the Court of Appeals for the DC Circuit found that the FTC lacked authority to promulgate such a rule.

Recent Cases of Interest

A class action has been filed on behalf of hundreds of older persons who lost investments as part of the Lincoln Savings and Loan fiasco. The complaint alleges that older persons were specifically targeted for investments that turned out to be disastrous. *Shields et al. v. Keating, Lincoln Savings and Loan Association, et al.* is pending in the United States District Court for the District of Arizona.

In Pennsylvania, a class action has been filed on behalf of individuals who purchased pre-need funeral plans, alleging their funds were misappropriated by an investment scheme. *Lebron et al. v. Copple et al.* is pending in the Court of Commmon Pleas, Erie PA.

ABA/AARP Legal Rights Campaign

Public service announcements with celebrity spokespersons are part of a legal rights campaign sponsored by AARP and the American Bar Association. Copies of the tv and radio public service announcements, background materials, and consumer information are available. Topics covered include credit discrimination, employment discrimination, funerals, lifeline telephone assistance, Medicare appeals, nursing home rights, and planning for incapacity.

Report on Older Consumers Available

Older consumers are less skeptical shoppers than younger consumers, a new study finds. Limited copies of *Older Consumer Behavior*, a national survey sponsored by AARP, are available from AARP Consumer Affairs.

Previous Editions of Senior Consumer Alert

Back issues of the following Alerts are available:

- Pre-need Funeral Plans (DI3242)
- Medigap Insurance (DI3572)
- Home Environmental Scams (DI3749)
- Investment Fraud (DI3915)
- Credit Discrimination (DI3497)

Write AARP Fulfillment, 1909 K Street NW, Washington, DC 20049. Allow 6-8 weeks for delivery.

AG's Issue Warning to Consumers on Energy Scams

The National Association of Attorneys General (NAAG) has issued a warning to consumers to be alert for scams and rip-offs that try to take advantage of concerns about petroleum supplies. Schemes may range from phony gas-saving devices to oil and gas investment fraud. Contact NAAG, 444 N. Capitol Street, Washington, DC 20001 (202) 628-0435, or your attorney general for more details.

(Continued on the next page)

Telemarketing Fraud

The National Association of Attorneys General and the Federal Trade Commission have published a brochure to alert consumers about the problem of telemarketing fraud, which costs Americans an estimated $1 billion a year. The brochure describes some of the most recent and widespread telemarketing scams, recommends ways for consumers to protect themselves from fraud, and points them toward the appropriate authorities for reporting possible fraudulent calls. For a free copy of the Telemarketing Fraud brochure, write to the Federal Trade Commission, Public Reference, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

"Spotters Project"

Attorney General Don Hanaway of Wisconsin has released results of a six-week project designed to ascertain the types of charitable contribution solicitations older citizens receive. Hanaway hopes the project and related consumer education will assist consumers in ensuring their contributions are put to good use. For more information call (608) 266-1221.

EXTRAs?

If you would like more information on any of the above, or have items of interest for future "Extras," write or call AARP Consumer Affairs, (202) 728-4355.

Gorby's
MUSIC, INC. • 214 SEVENTH AVE. • SOUTH CHARLESTON, W. VA. 25303 • DIAL (304) 744-9452

DATE: 18 February 1992
TO: Delegate Bonnie Brown (FAX 348-2182)
FROM: Jerry Gorby, President
Gorby's Music House, Inc.
214 7th Avenue
South Charleston, WV 25303
RE: SENATE BILL NO. 165 (Proposed) and others relating to RENTAL-PURCHASE AGREEMENTS.

For decades, all across the United States. school band instrument dealers have offered Rental-Purchase Agreements to parents of elementary and junior or middle school students as a menthod of trying musical instruments to see if their child either can play or has chosen the correct instrument. Parents expect this option. In fact, Gorby's is now having their third generation of such customers.

In our plan, which is typical, parents can terminate the Agreement at any time as long as their payments are current and the instrument is in good condition. It is their requirement to return the instrument to our store, a fact necessitated by the geography of our state. We may, for example, drive all the way to Pocahontas County to rent 6-12 instruments each with a monthly payment of only $20.00. To expect us to drive back and find a single customer who has only made one payment but wishes to terminate an Agreement would obviously be cost prohibitive.

Should a parent return an instrument after 30 days we are then forced to keep the instrument on the shelf for a full year or until another band instrument rental season (Sept.) rolls around again. When instruments are returned, and about 50% are, we retain the monies received as rental fees for the time the instrument was in the possession of the parents.

In our case, as it is with most retail music dealers, we use full and complete Federal Truth in Lending Disclosures in the Agreement. Attached is a copy of one such Agreement from this past fall, reduced by 25% so that it could be sent by FAX.

continued ....

EXHIBIT 6

Without continuing any further, we hope to illustrate that attempts to control certain types of retail Rental-Agreements which are clearly different than the normal type as used in retail music stores for band instruments would have a detrimental affect, perhaps a devastating effect, on those of us who are trying to deal fairly with a portion of the public who expects our type of service. We welcome this opportunity to make our views known and ask that you share these concerns with David McMahanon. Further, we are willing to answer any additional questions regarding any and all pending legislation on Rental-Agreements.

Reduced 25% from original size.

Book Out.

VGELWPLP

Gorby's Music, Inc.

214 7th Ave., South Charleston, WV 25303
744-9452

RETAIL INSTALLMENT CONTRACT WITH RENTAL OPTION AND SECURITY AGREEMENT

OLE 1427 $260.00 & 16.25
REF. # 260 816 2500

DATE 9-26-91

James H. Gilpen — 235-70-0370
APPLICANT'S NAME — SS #

Cynthia A Gilpen — SS#
SPOUSE'S NAME

2008 Frankhill Dr — ☐ RENT ☒ OWN
HOME ADDRESS

Chas WV 25312
LOCATION OF RESIDENCE

C & P Tel Co. — 24 YRS. — 344-7347 PHONE
APPLICANT'S EMPLOYER

U. C. Corp — 2 YRS. — 926-1500 PHONE
SPOUSE'S EMPLOYER

Lowes 816-0043 610045-3 — None
REF. CREDIT CARD WITH NUMBER — EXP. DATE

342-5015 Joey M King — Watts Elem.
HOME PHONE — STUDENT'S FULL NAME — SCHOOL

0926217 — W. Va
DRIVERS LICENSE NUMBER — STATE

PARTIES In this Contract, the words "I", "me" and "my" mean buyer and/or grantor. The words "you" and "your" mean the seller or any person to whom this Agreement is assigned.

You agree to sell to me the property described below and I promise to pay to you the unpaid balance (Amount Financed) shown in the Federal Truth in Lending Disclosure Box below plus Finance Charges at the Annual Percentage Rate shown in the Federal Truth in Lending Disclosure Box (the "Obligation"). I will make payments as shown below.

I agree to give you a security interest under the Uniform Commercial Code of West Virginia in the property described below and any equipment added to it or substituted for existing equipment to secure the payment of my obligation on this Agreement. I also agree that you may pay the amount I owe you under this Contract from any monies you owe me without telling me ahead of time.

OPTIONS:

#1—RENTAL If my payments are current I may terminate this Contract at any time by returning the Property in good condition to GORBY'S. All monies received by Gorby's will be retained as rental fees for my use of the Property during the time the Property was in my possession.

#2—MAINTENANCE AND REPAIR (see other side for details) (M&R) ☐ I select the maintenance option and agree to pay a monthly charge of $ ____ in addition to my rental payments as long as this Contract is in force.

#3—FINANCE CHARGE. There will be no Finance Charge & with M&R as listed if (#7) Amount Financed" OR b) without M&R if (#5) is paid on or before the end of the first monthly payment.

1) STAND FREE
2) BOOK
3) TAX
4) TOTAL $

DESCRIPTION OF RENTAL PROPERTY

1 QUAN. — 6 aw ITEM # — 274305 SERIAL # — 520.00

New King-600 Trumpet $535.00
NEW ☒ USED ☐ SLIGHTLY USED ☐ AMOUNT

SALES PERSON (NAME) Bob Hatfield 5725 (NAME) $

FEDERAL TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled.	The total cost of my purchase on credit, including my down-payment of $ 25.00
18 %	$ 121.97	$ 542.10	$ 664.07	$ 689.07

My payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
27	25.00	Monthly starting Oct. 25, 1991
Last Payment if different	14.07	

Filing fees $

Prepayment. If I pay off early, I will not have to pay a penalty.

I can see my contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and the security interest I have given to you.

LATE CHARGE: If a payment is more than 10 days late, I will be charged 5% of the payment. The late charge will be at least $1.00 but not more than $5.00

ITEMIZATION OF AMOUNT FINANCED:

1. Cash Price ..... $ 535.00
2. Amount Paid to Others on my behalf—Sales Tax ..... $ 32.10
3. Total Cash Price—1 & 2 ..... $ 567.10
4. Down Payment ☒ Ck. ☐ Cash ..... $ 25.00
5. Amount Paid On My Account—Unpaid Cash Balance (3-4) ..... $ 542.10
6. Maintenance & Repair (tax incl.) ..... $ See Above
7. AMOUNT FINANCED (5 & 6) ..... $ 542.10

SUBJECT TO CREDIT APPROVAL

I agree that (1) this Contract includes the information on the Reverse Side of this page; and (2) I have read and the Customer first signing below received a copy of this Contract with all blanks filled in before I signed it.

GORBY'S MUSIC, INC
By: CC
Credit Dept.
Date: 9-26-91

James H Gilpen — 9/24/91
APPLICANT'S SIGNATURE — DATE

SPOUSE'S SIGNATURE — DATE

SEE OTHER SIDE FOR IMPORTANT INFORMATION

SEP 26 1991

COPY

COPY

(SEE OTHER SIDE FOR IMPORTANT INFORMATION)

ADDITIONAL TERMS AND CONDITIONS

SECURITY: To protect us, you give us a purchase money security interest created under the Uniform Commercial Code of this state in the Property described under "Description of Purchase". You also give us a security interest in the proceeds from any unauthorized sale of the Property, and the proceeds of any insurance you request. We waive any other security interest or lien which may arise by operation of law, except the lien of any judgment which we may obtain if this Contract is not paid in accordance with its terms. Title of this merchandise will pass to customer when this agreement is completed.

USE AND REMOVAL OF PROPERTY: You are acquiring the Property primarily for personal and family use. You agree not to use the Property in violation of any law. If you plan to move and take the Property to another location, you must get our written permission in advance.

REPOSSESSION: If we retake the Property, we have the right to sell it at a public or private sale and apply the proceeds of the sale to what you owe. You agree to pay any difference between the sales proceeds and what you owe, if we are permitted by law to collect the difference from you. If we receive more money from the sale than you owe, we will pay the surplus amount to you.

PREPAYMENT: You may prepay all of the amount you still owe at any time.

DEFAULT: You are in default if: A. We do not receive a monthly payment from you on or before the date it is due; OR B. You break one of your promises under this Contract; OR C. You make any statement or representation in connection with this Contract which is false or incorrect in any material respect; OR D. Insolvency actions are begun by or against you, (insolvency includes situations where you are unable to pay all your debts as they become due).

ACCELERATION: If you default, we may demand immediate payment of the entire amount you owe. This includes all of the remaining monthly payments you must pay. We shall have all rights and remedies given by the Uniform Commercial Code. This includes the right to retake the Property.

INTEREST AFTER MATURITY: After maturity of this Contract, you shall pay interest at the rate permitted by law on any unpaid balance of the Amount Financed.

ENTIRE CONTRACT: No oral promises or statements are part of this Contract. No warranties or representations, whether they are written or arise by operation of law are part of this Contract unless we give you a written warranty in connection with this Contract. Customer agrees to assume full responsibility for this merchandise against its destruction, injury or loss, from any cause, excluding normal wear, until it is paid in full or returned to Corby's.

SIGNERS OF CONTRACT: If there are more than one of you signing this Contract, each of you is individually responsible to see that you fully perform all obligations under this Contract. It is your responsibility to know whether this Contract is in default or that payments have been missed. We are not responsible for notifying you of late payments, or any default proceedings.

NO WAIVER OF RIGHTS: We do not waive our right to have future payments made when due if we accept a late or partial payment or delay the enforcement of our rights on any occasion.

LAW APPLICABLE: This Contract is governed by the law of the state in which it is executed.

INVALID PROVISIONS: If any part of this Contract becomes invalid or unenforceable, the remainder of the Contract will be valid and enforceable.

CORBY'S MAINTENANCE AND REPAIR (M&R) AGREEMENT

Your Maintenance and Repair Agreement (M & R) protects against repair costs and keeps the instruments in good playing condition. The length of this Agreement is noted on the reverse side of this Contract. Failure to keep M & R payments current will cause this agreement to be forfeited.

THE M & R AGREEMENT INCLUDES:

Bent keys, broken springs, worn pads, felts, and corks; minor dent work; cracked wood joints on oboes or clarinets; trombone slide adjustments; brass mouthpiece and slide pullings; bow hair, post resetting, bridge fittings; gluing and case repair. Broken or damaged mouthpieces are not covered by M & R nor are disposable accessories such as reeds, oils, grease, drum heads or sticks, and strings. Fire and theft are not covered by M & R and are your responsibility. Restoration of finish, obvious abuse and neglect are not covered, and CORBY'S will be the sole judge in all cases.

CORBY'S will expedite the M & R with every means possible so that the instrument will be back in the hands of the customer at the earliest possible time. All M & R service work must be performed by Corby's Service Department. The instrument is to be brought or sent to Corby's at the address listed on side 1 at the customer's expense.

With the purchase of the M & R AGREEMENT, you are assured of having a well serviced and properly maintained instrument.

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.

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

Plaintiffs,

v. Civil Action No.

RTO RENTS,

Defendant.

AMENDED COMPLAINT

INTRODUCTION

The Plaintiffs paid over $700 in payments on a used washer. This is over $250 more than they should have paid if the legally maximum rate of 18% APR finance charge was applied. The Defendant still seeks to collect more than $100 more. In an attempt to avoid consumer protection statutes, the Defendant calls its consumer transactions "rent to own" agreements. In reality this transaction is a "consumer credit sale" with a sales finance charge of over 131.83% annual percentage rate. The Plaintiffs seek a declaration that they owe no further money, damages for violation of the sales finance charge laws under the West Virginia Consumer Credit and Protection Act, and actual and statutory damages for threatening to throw her "ass" in jail and for other violations of the collections provisions of the West Virginia Consumer Credit Protection Act.

EXHIBIT 7

FACTUAL ALLEGATIONS

1. is a natural person living in Wood County, West Virginia, who contracted to obtain the washer.

2. is mother who signed the paperwork as agent for .

3. RTO Rents #246 is the trade name for RTO, Inc. a Delaware corporation registered to do business in West Virginia with CT Corporation as its designated agent for receipt of service.

4. All transactions took place in Wood County, West Virginia.

5. Just prior to June 7, 1991, called RTO Rents Store #246 and asked them to bring her a new washer.

6. During the conversation she was told the payments would be $13.77 ($12.99 plus tax).

7. During the conversation she was told that the store did not have a new one on hand, that they would bring her a used one, and when the store got a new one in stock the store would bring her the new one.

8. Although called the Defendant many times the store never brought her a new washing machine.

9. continued to make the payments that she agreed to make for a new washer.

10. When the Defendant brought out the washing machine was not home and signed the contract on June 7, 1991, for with her permission. A copy of the contract is attached herein as Exhibit 1 and incorporated by reference the same as if fully set out herein. The contract describes the washer received as "previously rented."

11. Although made payments timely she would be called at her job by the Defendant in an attempt to collect the payment from her. She would tell the caller that she would take action. She would then call a woman who kept track of payments at the Defendant's store and be told that the payment was already received.

12. The occurrences alleged in the previous paragraph occurred at least ten times and probably more often than that.

13. lost her job as a deli clerk and cashier.

14. After lost her job she received communications from the Defendant seeking to collect payment. At one point it was agreed with callers from the Defendant that she would make what payments she could until she got her job and then a new contract would be signed for her to pay off the balance under the original contract.

15. Despite the above agreement she continued to get communications from the Defendant seeking to collect payments from her.

16. In one verbal conversation was told if she did not pay the Defendant would put her "ass" in jail for seven years.

17. In the same conversation, as she was hanging up the telephone after being cursed at, she heard the caller call her a "bitch."

18. She received one written communication stating that because she was late in payments her merchandise was categorized as "stolen" which was a clear implied threat to use criminal

process to collect a civil debt.

19. Despite the Defendant's many attempts to collect money from , the Defendant only actually attempted to retake possession of the goods on one occassion and when told the men who came to the house that she would make a payment they left.

20. The Defendant is a "debt collector", the Plaintiffs are "consumers", and the obligation or alleged obligation of the Plaintiffs to pay money is a "claim" for the purposes of West Virginia Code §46A-2-122.

FIRST CAUSE OF ACTION

21. Defendant's practice of quoting a weekly price rate for a new washing machine, delivering a used washing machine with the promise to replace it with a new washing machine, making out the papers to show that the washing machine was previously rented, and then failing to deliver the new washing machine is an unfair act or practice pursuant to West Virginia Code §46A-6-104 (1974) and §46A-6-102(f) (1988) entitling the Plaintiff pursuant to West Virginia Code §46A-6-106 to actual damages or $200 whichever is greater.

SECOND CAUSE OF ACTION

22. It is a violation of West Virginia Code §46A-2-127(e) (1974) for the Plaintiff to falsely represent the extent of a claim by calling to collect a payment when the payment had already been made.

23. A violation of West Virginia Code 46A-2-127 gives the Plaintiff a cause of action to recover actual damages and a civil penalty in an amount of not less than $100 and no more than $1000 for each violation pursuant to West Virginia Code 46A-5-101 (1974).

THIRD CAUSE OF ACTION

24. It is a violation of West Virginia Code §46A-2-125(a) (1974), for a debt collector to use profane or obscene language in connection with collection of or attempt to collect any claim alleged to be due and owing by that person to another.

25. A violation of West Virginia Code 46A-2-125 gives the Plaintiff a cause of action to recover actual damages and a civil penalty in an amount of not less than $100 and no more than $1000 for each violation pursuant to West Virginia Code 46A-5-101 (1974).

FOURTH CAUSE OF ACTION

26. Defendant's threats made to Plaintiff to put her in jail in an effort to collect the debt constitute unreasonable oppression and abuse, in violation of West Virginia Code §46A-2-12

27. A violation of West Virginia Code 46A-2-125 gives the Plaintiff a cause of action to recover actual damages and a civil penalty in an amount of not less than $100 and no more than $1000 for each violation pursuant to West Virginia Code 46A-5-101 (1974).

FIFTH CAUSE OF ACTION

28. The transaction which is the subject of this action is "consumer credit sale" as defined in W.Va. Code Section 46A-1-102(12) [a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA"] in that:

1. credit is granted by the defendants who regularly engages as a seller in these transactions;

a. "credit" as defined in W.Va. Code Section 46A-1-102(17) is granted in that plaintiffs were allowed to have possession and use of the goods while the defendants granted them the privilege of deferring the payment of the full "debt" necessary to obtain ownership thereof;

b. "debt" is the amount which the plaintiffs would have to pay to obtain ownership pursuant to the Contract or in the alternative the obligation to return the jewelry;

2. the plaintiffs are natural persons;

3. the goods purchased are for a household use;

4. the debt is payable in installments, or in the alternative a sales finance charge, as defined by W.Va. Code Section 46A-1-1-2(42), was made.

29. The contract does not disclose a cash price.

30. The fair market value of the washing machine is $409.18.

31. The calculated annual percentage rate of the transaction, which is at least 131%, exceeds the "sales finance charge" limitation of eighteen percent (18%) on consumer credit sales contained in W.Va. Code Section 46A-3-101; see, also, W.Va. Code Section 47A-101, et seq..

32. The difference between the cash price of the goods and the total weekly payments of the contract is a "sales finance charge" as defined by W.Va. Code Section 46A-1-1-2(42) in that the difference is a sum payable directly by the buyer and imposed directly by the seller and is a time-price differential, however denominated.

33. Plaintiffs are not obligated to pay charges in excess of those allowed in Chapter 46A and may recover (or have credited against outstanding debt) any excess charges, pursuant to W.Va. Code Section 46A-5-101(3).

34. In addition, plaintiffs are entitled to recover a civil penalty of not less than one hundred nor more than one thousand dollars because the defendant contracted for and received a payment in excess of the charges allowed by 46A-3-101, all pursuant to W.Va. Code Section 46A-5-101(4).

PRAYER

WHEREFORE the Plaintiff prays that the Court award judgment for the Plaintiffs against the Defendant as follows:

a. $200 or the difference between the amount she would have paid for a used washer and the amount that she agreed to pay for a new washer or $200, whichever is more, for the First Cause of Action ($200);

b. $100 to $1000 for each of the ten times she was called to collect the payment that she had already sent to the Defendant for the Second Cause of Action, ($10,000);

c. $100 to $1000 for referring to Kelly Coulter "ass" and $100 to $1000 for calling a bitch, for the Third Cause of Action, ($2,000);

d. $100 to $1000 for each time the Defendant threatened the Plaintiff with criminal proceedings, for the Fourth Cause of Action, ($2,000);

e. $5,000 annoyance and inconvenience damages;

f. Declare the rights of the Plaintiffs that they owe no further payments to the Defendant;

g. Excess finance charges to the plaintiff in the amount of at least $250 plus $100 for the Fifth Cause of Action ($350);

and that the Court award such other and further relief as the Court may deem just and proper.

and

By Counsel

Patricia Jackson
West Virginia Legal Services Plan
327 9th Avenue
Parkersburg, West Virginia 26101

David B. McMahon
West Virginia Legal Services Plan
1033 Quarrier Street, Suite 700
Charleston, West Virginia 25301

Counsel for Plaintiffs

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PATRICIA EVANS,

Plaintiff,

v. Civil Action No. 92-C-1786

NEW-RENTS, INC., and
COLORTYME, INC.

Defendants.

FILED
92 APR 27 PM 12:56

COMPLAINT

1. Patricia Evans is a natural person residing in Charleston, Kanawha County, West Virginia.

2. The defendant, New-Rents, Inc., is a West Virginia corporation.

3. The defendant, Colortyme, Inc., is a Texas Corporation registered with the Secretary of State to do business in West Virginia.

4. June 13, 1991, plaintiff entered into a contract in the form of a written agreement with defendants. A copy of the written agreement is attached here as Exhibit A and incorporated the same as if fully set out herein.

5. The plaintiff began making payments substantially in compliance with the terms and conditions of the contract.

6. The property in the possession of Patricia Evans pursuant to the contract was a man's gold chain necklace.

7. On October 22, 1991, while the plaintiff and her husband were carrying boxes from a yardsale into their house, and while both of them were in other rooms of the house, an unknown thief

stole Patricia Evans' purse from a table in the living room of her apartment. The chain necklace in question was in the purse.

8. Pursuant to instructions from an agent of the defendants, Patricia Evans supplied an agent of the defendants a copy of the police report made on the theft. A copy of the report is attached to this complaint as Exhibit B and incorporated the same as if sully set out herein.

9. The violations of the contract asserted herein caused annoyance and inconvenience to the plaintiff.

FIRST AND SECOND CAUSES OF ACTION

10. As a part of the contract with the defendants, the plaintiff paid a damage "waiver fee."

11. Under the terms on the back of the attached contract, payment of the damage waiver fee was specifically agreed to relieve the plaintiff from responsibility for "damage (including fire, theft, flood, tornado, or other acts of god) that might occur to the rental property . . .."

12. No terms of the contract between the plaintiff and the defendants required evidence of forced entry in order for burglary to be covered by the damage waiver fee.

13. Although the plaintiff complied with the terms of the contract after the theft by supplying the police report, etc. the agents of the defendants refused to honor the damage waiver provisions of the contract and continued to demand and accept payments from the plaintiff pursuant to the contract in the amount of $15.85 per week plus $1.00 per week waiver fee.

14. Refusal to honor the waiver provisions of the contract by adding additional requirements is an unfair act or practice pursuant to West Virginia Code 46A-6-104 (1974) and 46A-6-102(f) (1988) entitling the plaintiff pursuant to West Virginia Code 46A-6-106 to actual damages or $200.00 whichever is greater.

15. The representation made by the agents of the defendant that the plaintiff still owes for the goods, as alleged above was a false representation or implication of the extent and amount of the defendants' claim and of its status by a debt collector in violation of West Virginia Code 46A-2-127 and subsection (e) thereof entitling the plaintiff to recover actual damages and a penalty of $100.00 to $1000.00 pursuant to West Virginia Code 46A-5-101.

THIRD AND FOURTH CAUSES OF ACTION

16. Although the goods which were the subject of the contract were already gone, the agents of the defendants continued to demand and collect the damage waiver fee for property that had already been stolen.

17. The demand for, and collection of, waiver fees after the property had already been stolen is an unfair act or practice pursuant to West Virginia Code 46A-6-104 (1974) and 46A-6-102(f) (1988) entitling the plaintiff pursuant to West Virginia Code 46A-6-106 to actual damages or $200. whichever is greater.

18. The demand for, and collection of, waiver fees after the property had already been stolen is a false representation or implication of the extent and amount of the defendants' claim and

of its status by a debt collector in violation of West Virginia Code 46A-2-127 and subsection (e) thereof, and entitles the plaintiff to recover actual damages and a penalty of $100.00 to $1000.00 pursuant to West Virginia Code 46A-5-101.

FIFTH AND SIXTH CAUSES OF ACTION

19. The contract in question states that if the plaintiff is liable for loss the plaintiff "agrees to pay the owner the fair market value of the property at the time of said loss". See, Contract "Insurance and Damages".

20. Despite the above contract provision, the agents of the defendants continued to demand and collect not the fair market value of the goods which was no more than $129.00, but the full amount of the rental contract.

21. Collection of an amount not due under the contract is an unfair act or practice pursuant to West Virginia Code 46A-6-104 (1974) and 46A-6-102(f) (1988) entitling the plaintiff pursuant to West Virginia Code 46A-6-106 to actual damages or $200. whichever is greater.

22. The representation the the plaintiff still owes for the the damage waiver was a false representation or implication of the extent and amount of the defendants' claim and of its status in violation of West Virginia Code 46A-2-127 and subsection (e) thereof, and entitles the plaintiff to recover actual damages and a penalty of $100.00 to $1000.00 pursuant to West Virginia Code 46A-5-101.

SEVENTH CAUSE OF ACTION

23. After the goods were stolen, and after the plaintiff continued to make payments, although she was behind, an agent of the defendants came to her house to try to collect the payments.

24. While the agent was at the plaintiff's house, her husband, David Evans, advised the agent that Patricia Evans was at work, but that the agent should not call her at work because she was not allowed to receive telephone calls.

25. Immediately thereafter and on several later occasions agents of the defendants called the plaintiff's place of employment to communicate with her regarding the alleged debt in this matter.

26. It is a violation of West Virginia Code 46A-2-125 and subsection (d) thereof to call the plaintiff at a time known to be inconvenient.

27. A violation of West Virginia Code 46A-2-128 gives the plaintiff a cause of action to recover actual damages and a civil penalty in an amount not less than one hundred dollars and no more than one thousand dollars for each of the three violations pursuant to West Virginia Code 46A-5-101.

EIGHTH AND NINTH CAUSES OF ACTION

28. The transaction which is the subject of this action is "consumer credit sale" as defined in W.Va. Code Section 46A-1-102(12) [a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA"] in that:

A. credit is granted by the defendants who regularly engages as a seller in these transactions;

directly by the seller and is a time-price differential, however denominated.

33. Plaintiffs are not obligated to pay charges in excess of those allowed in Chapter 46A and may recover (or have credited against outstanding debt) any excess charges, pursuant to W.Va. Code Section 46A-5-101(3).

34. In addition, plaintiffs are entitled to recover a civil penalty of not less than one hundred nor more than one thousand dollars because the defendant contracted for and received a payment in excess of the charges allowed by 46A-3-101, all pursuant to W.Va. Code Section 46A-5-101(4).

PRAYER

WHEREFORE, plaintiff prays for a judgment against the defendant in the sum total of the following amounts:

A. Two hundred dollars or actual damages, and an additional $1,000.00 pursuant to the first and second causes of action regarding failure to honor the "waiver fee."

B. Two hundred dollars or actual damages, and an additional $1,000.00 pursuant to the third and fourth causes of action regarding collection of additional "waiver fees."

C. Two hundred dollars or actual damages and an additional $1,000.00 pursuant to the fifth and sixth causes of action regarding collection of total payments.

D. Actual damages plus $3,000.00 pursuant to the seventh cause of action regarding collection at work.

E. Excess charges and $1,000.00 pursuant to the eighth and ninth causes of action regarding finance charges.

F. Annoyance and inconvenience damages in the amount of $5000.00.

G. Such other and further relief as the court may deem proper.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.

PATRICIA EVANS
By Counsel

David B. McMahon
West Virginia Legal Services Plan
1033 Quarrier Street, Suite 700
Charleston, West Virginia 25301

Attorney for plaintiff

E 35080

THIS COLORTYME FRANCHISE OWNED AND OPERATED BY

DATE 6-13-91 S

1. LESSOR
NAME NEW RENTS INC
ADDRESS 1725 7th AVE
CITY CHARLESTON STATE WV
ZIP 25312 PHONE 346-7368

2. LESSEE
NAME PATRICIA EVANS
NAME
ADDRESS 715 KIRK CT #159
CITY CHARLESTON STATE WV
ZIP 25312 PHONE NONE

CODE 82

THE ABOVE RENTAL TERM BEGINS ON 6-13 TO 9

THE RENTAL PAYMENT IS DUE IN ADVANCE. RENEWAL PAYMENTS, IF ANY, ARE DUE ON OR BEFORE THE LAST DAY OF THE TERM.

NO CASH REFUNDS

NO CHECKS ACCEPTED

3. DESCRIPTION OF LEASED PROPERTY
QUANTITY 1 TYPE 20"THR CHA BRAND LONDON STAR
MODEL 411 SERIAL NO 1974 CONDITION (X) NEW ( ) USED

4. RENTAL PAYMENT AND TERM
THE TERM OF THIS LEASE IS

	( ) ONE MONTH	( ) SEMI-MONTH	( ) ONE WEEK
RENTAL RATE	$ 59.80	$ 29.90	$ 14.95
	$ 3.59	$ 1.79	$ .95
TOTAL RENTAL PAYMENT	$ 63.39	$ 31.69	$ 15.85
WAIVER FEE (X)	$ 4.00	$ 2.00	$ 1.00
IN-HOME COLLECTION FEE	$ 6.00	REINSTATEMENT FEE	3.00
	$		

THIS IS A NON-OPTIONAL AGREEMENT ONLY

THE UNDERSIGNED, HEREIN CALLED "LESSEE" HAS SIGNED AND OBTAINED FOR OWN MATERIAL PURPOSES ONLY THE RIGHT FROM THE LESSOR, HEREIN CALLED "OWNER", THE ABOVE DESCRIBED PERSONAL PROPERTY, HEREINAFTER CALLED "PROPERTY", FOR SHORT OCCASIONAL RENTAL, PAYABLE IN ADVANCE FOR THE RENTAL TERM BEGINNING ON THE COMMENCEMENT DATE STATED ABOVE, SUBJECT TO THE TERMS AND CONDITIONS HEREINAFTER SET FORTH.

TITLE AND TERM: TITLE TO THE PROPERTY REMAINS IN THE OWNER. LESSEE HEREBY RENTS THE USE AND POSSESSION OF THE PROPERTY DESCRIBED IN ITEM 3 ABOVE FOR THE RENTAL TERM INDICATED IN ITEM 4 ABOVE, BUT ONLY FOR SUCH PERIODS AS LESSEE MAKES THE REQUIRED RENTAL PAYMENT AND COMPLIES FULLY WITH ALL AGREEMENTS AND CONDITIONS IN THIS LEASE. IF THE LESSEE RETAINS POSSESSION OF THE PROPERTY FOR THE FULL RENTAL TERM FROM THE COMMENCEMENT DATE, HE/SHE MAY RENT THE PROPERTY FOR SUCH INTERIM PERIOD AT THE DAILY RENTAL RATE, ALSO IF THE LESSEE RETAINS POSSESSION OF THE PROPERTY BEYOND ANY TERM THEN HE/SHE SHALL BE LIABLE FOR RENTAL PAYMENTS AT THE DAILY RENTAL RATE FOR EACH DAY THAT HE/SHE RETAINS POSSESSION OF THE PROPERTY UNTIL THE PROPERTY IS RETURNED TO THE OWNER OR THE LESSEE RENEWS FOR AN ADDITIONAL TERM. THE LESSEE HAS NO RIGHT TO SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER, OR OTHERWISE DISPOSE OF SAID PROPERTY.

LESSEE'S RIGHT TO TERMINATE: THE LESSEE, AT HIS OR HER OPTION, MAY AT ANY TIME TERMINATE THIS AGREEMENT WITHOUT FURTHER OBLIGATION OR PENALTY BY SURRENDER OF THE PROPERTY TO THE OWNER IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED, AND BY PAYMENT OF ALL RENTAL PAYMENTS DUE THROUGH THE DATE OF RETURN.

LESSEE'S RIGHT TO RENEW: THE LESSEE, AT HIS OR HER OPTION, MAY RENEW THIS AGREEMENT FOR AN ADDITIONAL TERM AT THE CONCLUSION OF THE RENTAL TERM BY THE PAYMENT TO THE OWNER OF THE RENTAL PAYMENT ON OR BEFORE THE LAST DAY OF THE RENTAL TERM.

OWNER'S RIGHT TO TERMINATE: THIS AGREEMENT SHALL, AT THE OPTION OF THE OWNER, TERMINATE UPON THE FAILURE OF THE LESSEE TO MAKE A RENEWAL RENTAL PAYMENT BY THE LAST DAY OF THE TERM, OR BY BREACH BY THE LESSEE OF ANY AGREEMENT, CONDITION OR REPRESENTATION, ALL OF WHICH ARE AGREED TO BE MATERIAL.

LOCATION OF PROPERTY: LESSEE WARRANTS AND AGREES THAT HE/SHE WILL KEEP THE PROPERTY IN HIS/HER POSSESSION AT THE RESIDENCE ADDRESS ABOVE AND WILL NOT REMOVE SAID PERSONAL PROPERTY FROM SAID ADDRESS WITHOUT THE 411 20" EXECUTED BY THE OWNER. IF LESSEE MOVES SAID PROPERTY WITHOUT SECURING PRIOR AGREEMENT IN WRITING FROM OWNER, THIS AGREEMENT IS BREACHED, WHEREUPON THE OWNER THE RIGHT TO IMMEDIATE POSSESSION OF THE PROPERTY AND LESSEE MAY BE SUBJECT TO PROSECUTION UNDER APPLICABLE LAW.

INSURANCE AND SALVAGE: THE LESSEE IS FULLY RESPONSIBLE FOR THE LOSS, ... TION OF THE RENTAL PROPERTY FROM ALL CAUSES WHATSOEVER AND, IN THE EVENT OF SUCH LOSS, THEFT OR DESTRUCTION, THIS AGREEMENT SHALL TERMINATE AND THE LESSEE AGREES TO PAY TO THE OWNER THE FAIR MARKET VALUE OF THE PROPERTY AT THE TIME OF SAID LOSS, THEFT, OR DESTRUCTION. IN THE EVENT OF PARTIAL DAMAGE OR DESTRUCTION FROM ANY CAUSE WHATEVER, THE LESSEE AGREES TO PAY TO THE OWNER A REASONABLE COST OF REPAIR TO SAID PROPERTY. THE OWNER DOES NOT PROVIDE FOR ANY INSURANCE ON THE RENTAL PROPERTY.

MAINTENANCE AND CARE: FOR THE TERM OF THIS AGREEMENT AND ANY RENEWAL THEREOF, THE OWNER AGREES TO MAINTAIN THE LEASED PROPERTY IN GOOD WORKING ORDER, AND ANY AND ALL MAINTENANCE OR REPAIRS TO THE PROPERTY OF THE OWNER RENTED HEREUNDER MUST BE PERFORMED BY THE OWNER AND THE OWNER WILL NOT BE RESPONSIBLE FOR COSTS OF ANY REPAIRS DONE AT THE REQUEST OF THE LESSEE BY OTHERS. THE OWNER SHALL PAY ANY PERSONAL PROPERTY TAXES ON SAID PROPERTY. THE OWNER'S OBLIGATION TO MAINTAIN THE RENTED PROPERTY SHALL CONTINUE FOR THE RENTAL TERM INDICATED ABOVE AND ANY RENEWALS THEREOF.

ASSIGNMENT: THIS AGREEMENT MAY BE SOLD, TRANSFERRED, AND ASSIGNED BY THE OWNER WITHOUT RESTRICTION. THE LESSEE HAS NO RIGHT TO ASSIGN, SUBLEASE, OR TRANSFER HIS RIGHTS WITHOUT THE WRITTEN CONSENT OF THE OWNER.

WAIVER FEE, BY INITIALING HERE PC I HEREBY ELECT TO PAY A FEE IN THE AMOUNT OF $1 PER WEEK OR $2 SEMI-MONTHLY OR $4 PER MONTH. SEE DAMAGE RESPONSIBILITY PROVISION ON BACK.

IN-HOME COLLECTION FEE. SHOULD THE OWNER SEND A PERSON TO THE LESSEE'S RESIDENCE TO COLLECT ANY RENEWAL RENTAL PAYMENT, THE LESSEE WILL BE CHARGED AN EXTRA $ 6.00 FOR THAT SERVICE.

OWNER'S RIGHT TO PROPERTY. THE OWNER AND ITS AGENTS, UPON THE TERMINATION OF THIS AGREEMENT, ARE SPECIFICALLY AUTHORIZED TO TAKE POSSESSION OF THE RENTED PROPERTY. THE LESSEE AGREES TO INDEMNIFY THE OWNER AND ITS AGENTS FOR ALL COSTS, EXPENSES, AND DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, OCCURRING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THE TAKING POSSESSION OF SAID PROPERTY CAUSED BY THE FAILURE OF THE LESSEE TO VOLUNTARILY SURRENDER THE PROPERTY.

REINSTATEMENT: LESSEE MAY, WITH OWNER'S CONSENT, REINSTATE THIS AGREEMENT BY PAYMENT OF A $ 3.00 REINSTATEMENT CHARGE, ALL UNPAID RENTAL CHARGES AND COLLECTION EXPENSES THROUGH THE DATE OF THE REINSTATEMENT.

OPTION TO OWN: THE OWNER WILL TRANSFER OWNERSHIP OF THE PROPERTY RENTED TO YOU IF YOU, AT YOUR SOLE ELECTION, RENEW THIS LEASE FOR 65 SUCCESSIVE WEEKLY LEASE TERMS, OR FOR 30 SUCCESSIVE SEMI-MONTHLY LEASE TERMS, OR FOR 15 SUCCESSIVE MONTHLY LEASE TERMS. THIS IS A RENTAL AGREEMENT ONLY. THIS LEASE IS FOR WEEK-TO-WEEK, SEMI-MONTH TO SEMI-MONTH OR MONTH-TO-MONTH RENTAL OF THE PROPERTY ONLY. YOU WILL NOT ACQUIRE ANY EQUITY IN THE PROPERTY BY MAKING RENTAL PAYMENTS. YOU HAVE NOT AGREED TO PURCHASE THIS PROPERTY, BUT YOU MAY ACQUIRE OWNERSHIP IN THE FUTURE IF YOU MEET THE CONDITIONS OF THIS OPTION. IF YOU WANT TO PURCHASE THIS OR SIMILAR PROPERTY NOW, YOU MAY BE ABLE TO GET CASH OR CREDIT TERMS FROM OTHER SOURCES WHICH WILL USUALLY BE LOWER TOTAL COSTS THAN THE RENTAL PAYMENTS THAT YOU REMAKE.

OWNERSHIP OPTION DISCLOSURES

THE FOLLOWING DISCLOSURES ARE BEING MADE BY THE OWNER TO ASSIST YOU IN UNDERSTANDING THE OWNERSHIP OPTION AVAILABLE TO YOU.

1. YOU WILL MAKE WEEKLY PAYMENTS OF $ 15.85 OR PAYMENTS EVERY SEMI-MONTH OF $ 31.69 OR MONTHLY PAYMENTS OF $ 63.39
2. IN ORDER TO OWN THE PROPERTY, YOU WILL MAKE 65 WEEKLY PAYMENTS OR 30 PAYMENTS SEMI-MONTHLY OR 15 MONTHLY PAYMENTS, WHICH WILL TOTAL $ 1030.25 UNLESS YOU MAKE ALL OF THESE PAYMENTS, YOU WILL NOT OWN THE PROPERTY. IN THE EVENT THAT YOU CHOOSE TO CHANGE AT ANY TIME FROM A WEEKLY TO MONTHLY TERM OR VICE VERSA, YOUR TOTAL OF PAYMENTS TO OWN THE PROPERTY WILL BE LESS THAN THE TOTAL OF WEEKLY PAYMENTS REQUIRED TO ACQUIRE TITLE TO THE PROPERTY BUT MORE THAN THE TOTAL OF MONTHLY PAYMENTS TO ACQUIRE TITLE TO THE PROPERTY.
3. WHILE RENTING YOU ACQUIRE NO EQUITY INTEREST IN THE PROPERTY. YOU WILL NOT OWN THE PROPERTY UNLESS YOU CHOOSE TO RENEW FOR THE TOTAL NUMBER OF WEEKLY OR MONTHLY PAYMENTS INDICATED.
4. THIS PROPERTY IS XXX NEW, ____ USED.
5. THE TOTAL OF PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP DOES NOT INCLUDE OTHER CHARGES, SUCH AS IN-HOME COLLECTION FEES. SEE ABOVE FOR INFORMATION ABOUT THESE CHARGES.
6. YOU ARE RESPONSIBLE FOR THE FAIR MARKET VALUE OF THE PROPERTY IF IT IS LOST, STOLEN, DAMAGED, OR DESTROYED.

I HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS DISCLOSURE AND ALL OWNERSHIP OPTIONS.

DATE 6-13-91 LESSEE Patricia Evans 6/13/91

TIME IS OF THE ESSENCE OF THIS AGREEMENT

NO ORAL STATEMENTS OR AGREEMENTS SHALL BE BINDING ON THE PARTIES HEREIN. THIS RENTAL AGREEMENT MAY BE MODIFIED, VARIED, ALTERED OR EXTENDED ONLY BY AGREEMENT IN WRITING EXECUTED BY THE OWNER. LESSEE ACKNOWLEDGES RECEIPT OF THE PROPERTY IN SATISFACTORY OPERATING CONDITION.

READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT

LESSEE Patricia Evans

LESSEE

FORM NO. CSM 1581E

ORIGINAL

DAMAGE RESPONSIBILITY PROVISION:

IF I HAVE PAID ALL REGULAR RENTAL PAYMENTS INCLUDING THIS FEE AND I AM NOT IN DEFAULT UNDER ANY TERMS OF THIS RENTAL AGREEMENT THEN I WILL BE RELIEVED OF ANY RESPONSIBILITY FOR DAMAGE (INCLUDING FIRE, THEFT, FLOOD, TORNADO OR OTHER ACTS OF GOD) THAT MIGHT OCCUR TO THE RENTAL PROPERTY. EXCEPT THAT I WILL REMAIN RESPONSIBLE FOR INTENTIONAL DAMAGE TO THE RENTAL PROPERTY (OTHER THAN THEFT) BY ANY PERSON WHILE THE PROPERTY IS IN MY POSSESSION. IN THE EVENT OF THEFT OF THE RENTAL PROPERTY, I WILL REMAIN RESPONSIBLE FOR THE LOSS THEREOF UNLESS I FURNISH TO LESSOR A COPY OF AN OFFICIAL REPORT WHICH SHOWS THAT THE SAID THEFT OCCURRED AND THAT THE SAME WAS REPORTED TO A LAW ENFORCEMENT AUTHORITY. THE LESSOR CAN CANCEL THIS PROVISION AT ANY TIME UPON 30 DAYS WRITTEN NOTICE TO LESSEE.

...CT 62 Area 01

FAI TIME BURGULARY Date/Time Reported 22 OCT 91 1944 HRS

...me Occurred 22 OCT 91 1720-1744 HRS Evidence ☐ Yes ■ No

e Last EVANS First PATRICIA Middle A

...15 KIRK CT #152 Phone Home N/A Business 342-7882

26 AUG 59 Sex: F Soc. Sec. No. 234-08-0439 Race: W

☐ Yes ■ No Hospital: N/A Doctor: N/A

... Model ... Year ... Type: ☐ 2-Dr ☐ 4-Dr ☐ Truck ☐ Van ☐ Other-Specify

... License No. ... State ... Color ...

Towed ☐ Yes ☐ No Stored at ...

... Markings ■ NA

...ny was ... identified? ■ Yes ☐ No

...ck 7, & all information concerning property whether it can be identified or not. ☐ NA

...rency ☐ Auto ☐ Furs ☐ Office Equipment ☐ TV, Radios, Etc. ☐ Other

$0.00 $ ... $ ... $ ... $ ...

...ry ☐ Clothes ☐ Household Goods ☐ Firearms ☐ Consumable Goods

NONE $ ... $ ... $ ... $ ...

...ce Property Taken Brand Name	Property Identification Information Model/Ser. Number or Unusual Markings	Color	Value
U.S. CURRENCY		GREEN	$140.00
GOLD NECKLACE	MC DONALDS SIGN	GOLD	UNKNOWN
CHARGE CARD	MONTGOMERY WARD	WHITE	UNLIMITED
TAC-TAM PURSE	BLACK LEATHER	BLACK	50.00

OFFENDERS RELATIONSHIP

Severe Beating ☐ Shot
Beating - Pl Assault ☐ Stabbed
No Force ☐ Threat ■ NA

Hand Gun ☐ Knife
Shot Gun ☐ Other—Specify
Other Gun ■ NA

11. ☐ Husband ☐ Son ☐ Other—Specify
☐ Wife ☐ Brother
☐ Father ☐ Sister ☐ NA
☐ Mother ☐ Acquaintance
☐ Daughter ■ Stranger

749

POINT OF ENTRY

☐ NA

...sidence ☐ Auto
...ain Store ☐ Highway-Street
...ry Store ☐ Bank-Financial Co.
...s. Other ☐ Parking Lots-Building

13. ☐ N ☐ S ■ E ☐ W ☐ NA

■ Door ☐ Skylight
☐ Roof ☐ Other—Specify
☐ Window

POINT OF EXIT

14.

■ Same as Entry
☐ Other—Specify
☐ NA

AUTO ENTERED

☐ NA

...n Unlocked ☐ Broken Glass
...e Screen ☐ Rem. Door-Window
...Device ☐ Other-Specify
...y Force ☐ Pry Tool
...nel Lock ☐ Unknown

16.

☐ Window ☐ Door ☐ Front Left
☐ Other-Specify ☐ Rear Right
☐ Front Right ☐ Rear Left
☐ Hood ■ NA

Conditions ■ Fair ☐ Cloudy ☐ Rain ☐ Fog ☐ Snow-Sleet ☐ Hail ■ Dry ☐ Unknown Temp ...
■ Sun ☐ Moon ☐ Artificial-Exterior ■ Artificial-Interior ☐ Unknown

...osecute ☐ Will Not Prosecute ☐ NA

...ant ■ Same as Victim

... Date of Birth ... Business ... Home Phone ...

... Relationship ...

J. J L NOLLING JR Unit No. 112 Date 10-22-91 Shift C Total Man Hours 2

D. A KEE Unit No. 151 Date 10-22-91 Shift C

... Unit No. ... Date ... Shift ...

... Unit No. ... Date ... Shift ...

Supervisor SGT. HANDY FOX Unit No. 92 Date 10-22-91 Shift C

...s

OFFICE USE

UCR No ...E...

C T ...

Day ☐ S ☐ M ☐ T ☐ W ☐ T ☐ F ☐ S

Time

☐ 6 pm-6 am ☐ 12 pm-6pm
☐ 6 am-12 pm ☐ 12 am-6 am
☐ 6 am-12 pm ☐ 6 pm-12 pm
☐ 12 am-12 pm ☐ 12 pm-6 am
☐ Unknown

Complainant PATRICIA EVANS

...ddress

Incident 91-10-2234 U.C.R. 0826

CHARLESTON POLICE DEPARTMENT

GENERAL INVESTIGATIVE SUPPLEMENTARY REPORT

Complainant PATRICIA A. EVANS | Report Date-Time 91-10-24 1530 | Incident No. 91-10-2234

Victim S Anne | Address 715 Kiek CT. Apt. E52 | U.C.R. No. 05E

Corrected S.S. # 234-08-5390

ALSO @ 40.00 And some change to be added.

ALSO @ 60 - make up keys

WALLET, Burgandy (leather) - 25.00

CALCULATOR & CASE @ 10.00

COLOGNE - 15.00

PRESCRIPTION - "FASTIN" - 29.30
(Diet Pills)

AVON PIN - 16.00

ASST. PICTURES

J. L. Adams 689 91-10-24
Signature of Officer Employee No. Date

Complainant PATRICIA EVANS | Address | Incident 91-10-2234 | U.C.R. 05E

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

PATRICIA EVANS,

Plaintiff,

v. Civil Action No. _____

NEW-RENTS, INC., and
COLORTYME, INC.

Defnedants.

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha, to-wit:

This day before the undersigned authority came _____ PATRICIA A. EVANS, who deposes and says that (s)he is pecuniarily unable to pay fees, costs and counsel fees that are necessary and incident to the prosecution of the above-styled suit; that (s)he is a poor person as defined in Section 1, Article 2, Chapter 59 of the Code of West Virginia, as amended, and that as such poor person, (s)he desires to be allowed to prosecute said suit without paying fees and costs necessary and incident thereto.

Patricia A Evans

Taken, subscribed and sworn to before the undersigned authority, this 23rd day of April, 1992.

My commission expires Nov. 16, 1998.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Cora E. Price
Kanawha Co. Clerk's Office
409 Virginia St., E.
Charleston, W. Va. 25301
My Commission expires 11-16-98

Cora E Price
NOTARY PUBLIC

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

and

PLAINTIFFS,

V. CIVIL ACTION NO. 91-C-

T J M M., INC., a/k/a
RENTWORKS, and
MARK REEDER and
THEODORE REEDER, d/b/a
RENTWORKS,

DEFENDANTS.

COMPLAINT

INTRODUCTION

In November 1989, plaintiffs contracted with defendants for household appliances with a time-price differential of approximately $1527.58, an amount substantially exceeding the "cash price" of the items. In an attempt to avoid consumer protection statutes, defendants call their consumer transactions "rent-to-own" agreements. In reality they are credit sales with sales finance charges of more than 70% per year.

In December 1989, plaintiffs' home and contents, including the appliances they were purchasing from defendants, were destroyed in a fire. Subsequently, defendants sued plaintiffs civilly for the loss of the appliances and obtained a judgment against plaintiffs of $1497.95 in February 1990. Defendants subsequently threatened plaintiffs in an effort to collect the debt, then they obtained a criminal warrant against the plaintiffs in October 1990, claiming the plaintiffs feloniously

to do business in Berkeley County.

APPLIANCE AGREEMENT

9. On or about November 25, 1989, plaintiffs entered into a "rental agreement" (hereinafter "Contract") with defendants regarding a VCR, a vacuum cleaner, and a console television.

10. The plaintiffs entered into the contract with the intention of purchasing the VCR, vacuum cleaner and television.

11. Defendants knew plaintiffs entered into the contract with the intention of purchasing the VCR, vacuum cleaner and television.

12. Under the Contract, plaintiffs were to pay an initial amount, including tax, and a like amount, including tax, weekly. After approximately 78 weeks, plaintiffs would obtain ownership of the appliances after having paid approximately $1527.58, including tax.

13. Under the Contract, plaintiffs were entitled to purchase the appliances within 90 days for the cash price designated in the contract, plus tax.

14. Under the Contract, plaintiffs were entitled to purchase the appliances after 90 days up to 180 days for the cash price designated in the contract, plus 5% of the cash price.

15. Under the Contract, plaintiffs were entitled to purchase the appliances after 180 days up to one year by paying the balance of remaining payments required for ownership, less

40%.

16. The effective annual percentage rate of interest over the full term of the Contract is more than 70%.

FURTHER ALLEGATIONS

17. On December 9, 1989, plaintiffs' home was destroyed in a fire.

18. On December 9, 1989, the VCR, television and vacuum cleaner obtained from RentWorks were destroyed in a fire at plaintiffs' home.

19. In February 1990, defendants sued plaintiffs civilly in Berkeley County Magistrate Court, Case No. 90-C-161, for $1,497.95 and obtained judgment against them on February 22, 1990, for the full amount.

20. Defendants herein sued plaintiffs in the foregoing magistrate court case for the full remaining balance of the Contract rather than for the lesser amount of weekly installments accrued to the time they filed the magistrate court complaint.

21. Defendants acknowledged in the magistrate court complaint that the VCR, television and vacuum cleaner were "...apparently destroyed in a house fire at the [Walls'] residence."

22. Defendants sued plaintiffs for an amount greater than the amount due and owing.

23. Subsequently, defendants received payments from

plaintiffs, and on behalf of plaintiffs, from March through June 1990, of approximately $475.00.

24. On or about June 1990, defendants, by threatened to take everything the family had, and made other threats, in an effort to collect the debt.

25. On or about October 18, 1990, defendants, by , obtained a criminal warrant against the plaintiffs, claiming they feloniously converted the appliances to their own use.

26. Defendants intentionally and maliciously brought the foregoing criminal action, seeking to humiliate and coerce the plaintiffs into paying the debt.

27. Defendants brought the foregoing criminal action without having any factual basis for their claims that plaintiffs had feloniously converted the VCR, television, or vacuum cleaner to their own use.

28. On or about January 22, 1991, criminal charges were dropped against the plaintiffs.

29. Defendants accelerated maturity of amounts owing under the contract without providing plaintiffs notice of their right to cure default, as required by West Virginia Code section 46A-2-106.

CCPA INTEREST LIMITATION CAUSE OF ACTION

30. The transaction which is the subject of this action is

a "consumer credit sale" as defined in West Virginia Code section 46A-1-102(12) (a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA") in that:

A. credit is granted by defendants who regularly engage as a seller in these transactions;

i. "credit" as defined in West Virginia Code section 46A-1-102(17) is granted in that plaintiffs were allowed to have possession and use of the goods while the defendants granted them the privilege of deferring the payment of the full "debt" necessary to obtain ownership thereof;

ii. "debt" is the amount which the plaintiffs agreed to pay to obtain ownership pursuant to the agreement between the plaintiffs and the defendants;

B. the plaintiffs are natural persons;

C. the goods purchased are for a household use;

D. the debt is payable in installments, or in the alternative a sales finance charge, as defined by West Virginia Code section 46A-1-102(42), was made.

31. The calculated annual percentage rate of the transaction, which is at least 70%, exceeds the "sales finance charge" limitation of eighteen per cent (18%) on consumer credit sales contained in West Virginia Code section 46A-3-101; see, also, West Virginia Code section 47A-1-1, et seq. The difference between the cash price of the goods and the total weekly payments

of the contract is a "sales finance charge" as defined by West Virginia Code Section 46A-1-102(42) in that the difference is a sum payable directly by the buyers and imposed directly by the sellers and is a time-price differential, however denominated.

32. Plaintiffs are not obligated to pay charges in excess of those allowed in Chapter 46A and may recover the excess charges, pursuant to West Virginia Code section 46A-5-101(3).

33. In addition, plaintiffs are entitled to recover a civil penalty of not less than one hundred nor more than one thousand dollars because the defendants contracted for and received a payment in excess of the charges allowed by Section 46A-3-101, all pursuant to West Virginia Code Section 46A-5-101(4).

USURY CAUSE OF ACTION

34. The contract in question includes forbearance, or loan of money, at a greater rate of interest than is allowed by West Virginia Code Sections 47-6-5, 47-6-5a, 46A-3-101, 47A-1-1, et seq., or other law.

35. Plaintiffs are entitled to an amount equal to four times all interest agreed to be paid, pursuant to West Virginia Code section 47-6-6.

CCPA UNLAWFUL DEBT COLLECTION CAUSES OF ACTION

36. The defendants', threat to accuse plaintiffs of a crime, and defendants' accusations that plaintiffs committed a crime,

violate West Virginia Code Sections 46A-2-124(b) and (e)(1).

37. Defendants' threats to take everything the plaintiffs have violate West Virginia Code Section 46A-2-124(f).

38. Defendants' threats made to plaintiffs in an effort to collect the debt constitute unreasonable oppression and abuse, in violation of West Virginia Code Section 46A-2-125.

39. Defendants' foregoing actions constitute unreasonable publication, in violation of West Virginia Code Section 46A-2-126.

40. Defendants' foregoing actions constitute fraudulent, deceptive or misleading representations, in violation of West Virginia Code Sections 46A-2-127(a), (b), (d), and (e).

41. Defendants' foregoing actions constitute unfair or unconscionable means to collect or attempt to collect a claim, in violation of West Virginia Code Section 46A-2-128.

42. Plaintiffs are entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than nor more than one thousand dollars, for defendants' violations of the foregoing debt collection provisions of the CCPA, pursuant to West Virginia Code Section 46A-5-101(1).

UNFAIR OR DECEPTIVE ACTS OR PRACTICES CAUSE OF ACTION

43. Defendants' foregoing actions, including but not limited to, their threats of criminal action, their initiation of criminal action, and their entering into an installment purchase

agreement with plaintiffs which purported to be a rental agreement, constitute unfair and deceptive acts and practices, in violation of West Virginia Code Section 46A-6-104.

44. Plaintiffs are entitled to recover actual damages, including annoyance and inconvenience, for defendants' foregoing violations of West Virginia code, Chapter 46A, Article 6, pursuant to West Virginia Code Section 46A-6-106(1).

UNCONSCIONABILITY CAUSES OF ACTION

45. The amount of money required by the Contract before ownership of the property is obtained, in light of the "cash price" and the value of the goods, in light of the failure to disclose the effective annual percentage rate or other time price differential or sales finance charge, and in light of the failure to disclose the true cash price each, and taken together, makes the transaction or the relevant terms or parts thereof unconscionable at the time made and therefore unenforceable, pursuant to West Virginia Code section 46-2-302, and pursuant to common law, also entitling plaintiffs to attorneys' fees.

46. The transaction which is the subject of this action is a "consumer credit sale" as defined in West Virginia Code Section 46A-1-102(12) and is unconscionable, pursuant to West Virginia Code Section 46A-2-121, and unenforceable.

47. The plaintiffs are entitled to have the contract voided and to recover actual damages, including annoyance and

inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars, for violations of Section 46A-2-121, pursuant to West Virginia Code section 46A-5-101(1).

CCPA CONSUMER LEASE DISCLOSURE CAUSE OF ACTION

48. The transaction which is the subject of this action is a "consumer lease" as defined in West Virginia Code section 46A-1-102(14) in that:

A. the defendants are regularly engaged in the business of leasing goods to natural persons primarily for household purposes;

B. the amount payable does not exceed $25,000.00;

C. the term exceeds four months, in that more than 18 payments must be made at the weekly rate before ownership can be obtained.

49. The transactions which are the subject of this action violate West Virginia Code section 46A-2-111 in that the lessor failed to give the lessee the following required information: the total amount payable under the lease in that the stated total does not include tax, and the amount paid for taxes is not specified.

50. Plaintiffs are entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars, for violation of Section 46A-2-111, pursuant to West Virginia Code

Section 46A-5-101(1).

ABUSE OF PROCESS CAUSE OF ACTION

51. Defendants' foregoing action of initiating criminal action against the plaintiffs for felonious conversion of the appliances constitutes abuse of process, in violation of the common law of West Virginia, insofar as defendants willfully and maliciously misused and misapplied process to accomplish purposes not intended by that process.

52. Defendants' abuse of process caused plaintiffs substantial annoyance, inconvenience, humiliation and emotional distress.

53. Plaintiffs are entitled to recover actual damages and punitive damages for defendants' abuse of process in their actions toward them.

MALICIOUS PROSECUTION CAUSE OF ACTION

54. Defendants' foregoing action of initiating criminal action against the plaintiffs for felonious conversion of the appliances constitutes malicious prosecution, in violation of the common law of West Virginia, insofar as prosecution was caused by the defendants, it was without probable cause and was malicious, and the prosecution was terminated, resulting in plaintiffs' discharge.

55. Defendants' malicious prosecution caused plaintiffs

substantial annoyance, inconvenience, humiliation and emotional distress.

56. Plaintiffs are entitled to recover actual damages and punitive damages for defendants' malicious prosecution of them.

OUTRAGEOUS CONDUCT CAUSE OF ACTION

57. Defendants' foregoing actions constitute outrageous conduct, in violation of the common law of west Virginia, insofar as defendants recklessly and intentionally caused plaintiffs severe emotional distress.

58. Plaintiffs are entitled to recover actual damages and punitive damages for defendants' outrageous conduct toward them.

PRAYER

WHEREFORE, plaintiffs pray that the Court:

A. Declare the rights of the plaintiffs;

B. Award judgment of actual damages in favor of each plaintiff and against each defendant in the amount of $15,000.00;

C. Award judgment of punitive damages in favor of each plaintiff and against each defendant in the amount of $15,000.00;

D. Award plaintiffs statutory damages of $1,000.00 for each of defendants' violations of the CCPA, Article 2;

E. Award plaintiffs actual damages or $200.00, whichever

is greater, for each of defendants' violations of the CCPA, Article 6;

F. Award plaintiffs statutory damages of four times the amount of interest charged for defendants' usury;

G. Award plaintiffs costs and attorneys' fees; and

H. Grant such other and further relief as the Court deems just and proper.

PLAINTIFFS REQUEST A JURY TRIAL.

AND
PLAINTIFFS, BY COUNSEL

WILLIAM T. WERTMAN, JR.
WV LEGAL SERVICES PLAN, INC.
P. O. Box 1898
Martinsburg, WV 25401
COUNSEL FOR PLAINTIFFS

DAVID B. McMAHON
WV LEGAL SERVICES PLAN, INC.
1033 Quarrier Street
Charleston, WV 25301
COUNSEL FOR PLAINTIFFS

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

and

PLAINTIFFS,

V. CIVIL ACTION NO. 91-C-

T J M M., INC., a/k/a
RENTWORKS, and
MARK REEDER and
THEODORE REEDER, d/b/a
RENTWORKS,

DEFENDANTS.

COMPLAINT

INTRODUCTION

In November 1989, plaintiffs contracted with defendants for household appliances with a time-price differential of approximately $1527.58, an amount substantially exceeding the "cash price" of the items. In an attempt to avoid consumer protection statutes, defendants call their consumer transactions "rent-to-own" agreements. In reality they are credit sales with sales finance charges of more than 70% per year.

In December 1989, plaintiffs' home and contents, including the appliances they were purchasing from defendants, were destroyed in a fire. Subsequently, defendants sued plaintiffs civilly for the loss of the appliances and obtained a judgment against plaintiffs of $1497.95 in February 1990. Defendants subsequently threatened plaintiffs in an effort to collect the debt, then they obtained a criminal warrant against the plaintiffs in October 1990, claiming the plaintiffs feloniously

converted the appliances to their own use. The criminal charges against the plaintiffs were dropped in January 1991.

The plaintiffs seek relief that they are entitled to damages and statutory penalties for defendants' violations of consumer protection laws, usury, abuse of process, outrageous conduct, and malicious prosecution.

PRELIMINARY FACTS

1. [redacted] and [redacted] are natural persons residing in Berkeley County, West Virginia, now and at all times relevant hereto.

2. T J M M, Inc., is not chartered in West Virginia but is authorized to do business in West Virginia.

3. T J M M, Inc., conducts business in West Virginia as RentWorks.

4. Theodore Reeder and Mark Reeder conduct business in West Virginia in the names of RentWorks and T J M M, Inc., at 219 N. Queen Street, Martinsburg, Berkeley County, West Virginia.

5. Theodore Reeder and Mark Reeder are principals of T J M M, Inc.

6. All transactions in this case took place in Berkeley County, West Virginia.

7. RentWorks does not have a Certificate of Authority to do business in Berkeley County.

8. T J M M, Inc., does not have a Certificate of Authority

to do business in Berkeley County.

APPLIANCE AGREEMENT

9. On or about November 25, 1989, plaintiffs entered into a "rental agreement" (hereinafter "Contract") with defendants regarding a VCR, a vacuum cleaner, and a console television.

10. The plaintiffs entered into the contract with the intention of purchasing the VCR, vacuum cleaner and television.

11. Defendants knew plaintiffs entered into the contract with the intention of purchasing the VCR, vacuum cleaner and television.

12. Under the Contract, plaintiffs were to pay an initial amount, including tax, and a like amount, including tax, weekly. After approximately 78 weeks, plaintiffs would obtain ownership of the appliances after having paid approximately $1527.58, including tax.

13. Under the Contract, plaintiffs were entitled to purchase the appliances within 90 days for the cash price designated in the contract, plus tax.

14. Under the Contract, plaintiffs were entitled to purchase the appliances after 90 days up to 180 days for the cash price designated in the contract, plus 5% of the cash price.

15. Under the Contract, plaintiffs were entitled to purchase the appliances after 180 days up to one year by paying the balance of remaining payments required for ownership, less

40%.

16. The effective annual percentage rate of interest over the full term of the Contract is more than 70%.

FURTHER ALLEGATIONS

17. On December 9, 1989, plaintiffs' home was destroyed in a fire.

18. On December 9, 1989, the VCR, television and vacuum cleaner obtained from RentWorks were destroyed in a fire at plaintiffs' home.

19. In February 1990, defendants sued plaintiffs civilly in Berkeley County Magistrate Court, Case No. 90-C-161, for $1,497.95 and obtained judgment against them on February 22, 1990, for the full amount.

20. Defendants herein sued plaintiffs in the foregoing magistrate court case for the full remaining balance of the Contract rather than for the lesser amount of weekly installments accrued to the time they filed the magistrate court complaint.

21. Defendants acknowledged in the magistrate court complaint that the VCR, television and vacuum cleaner were "...apparently destroyed in a house fire at the [Walls'] residence."

22. Defendants sued plaintiffs for an amount greater than the amount due and owing.

23. Subsequently, defendants received payments from

plaintiffs, and on behalf of plaintiffs, from March through June 1990, of approximately $475.00.

24. On or about June 1990, defendants, by Mark Reeder, threatened to take everything the Walls family had, and made other threats, in an effort to collect the debt.

25. On or about October 18, 1990, defendants, by Mark Reeder, obtained a criminal warrant against the plaintiffs, claiming they feloniously converted the appliances to their own use.

26. Defendants intentionally and maliciously brought the foregoing criminal action, seeking to humiliate and coerce the plaintiffs into paying the debt.

27. Defendants brought the foregoing criminal action without having any factual basis for their claims that plaintiffs had feloniously converted the VCR, television, or vacuum cleaner to their own use.

28. On or about January 22, 1991, criminal charges were dropped against the plaintiffs.

29. Defendants accelerated maturity of amounts owing under the contract without providing plaintiffs notice of their right to cure default, as required by West Virginia Code section 46A-2-106.

CCPA INTEREST LIMITATION CAUSE OF ACTION

30. The transaction which is the subject of this action is

a "consumer credit sale" as defined in West Virginia Code section 46A-1-102(12) (a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA") in that:

A. credit is granted by defendants who regularly engage as a seller in these transactions;

i. "credit" as defined in West Virginia Code section 46A-1-102(17) is granted in that plaintiffs were allowed to have possession and use of the goods while the defendants granted them the privilege of deferring the payment of the full "debt" necessary to obtain ownership thereof;

ii. "debt" is the amount which the plaintiffs agreed to pay to obtain ownership pursuant to the agreement between the plaintiffs and the defendants;

B. the plaintiffs are natural persons;

C. the goods purchased are for a household use;

D. the debt is payable in installments, or in the alternative a sales finance charge, as defined by West Virginia Code section 46A-1-102(42), was made.

31. The calculated annual percentage rate of the transaction, which is at least 70%, exceeds the "sales finance charge" limitation of eighteen per cent (18%) on consumer credit sales contained in West Virginia Code section 46A-3-101; see, also, West Virginia Code section 47A-1-1, et seq. The difference between the cash price of the goods and the total weekly payments

of the contract is a "sales finance charge" as defined by West Virginia Code Section 46A-1-102(42) in that the difference is a sum payable directly by the buyers and imposed directly by the sellers and is a time-price differential, however denominated.

32. Plaintiffs are not obligated to pay charges in excess of those allowed in Chapter 46A and may recover the excess charges, pursuant to West Virginia Code section 46A-5-101(3).

33. In addition, plaintiffs are entitled to recover a civil penalty of not less than one hundred nor more than one thousand dollars because the defendants contracted for and received a payment in excess of the charges allowed by Section 46A-3-101, all pursuant to West Virginia Code Section 46A-5-101(4).

USURY CAUSE OF ACTION

34. The contract in question includes forbearance, or loan of money, at a greater rate of interest than is allowed by West Virginia Code Sections 47-6-5, 47-6-5a, 46A-3-101, 47A-1-1, et seq., or other law.

35. Plaintiffs are entitled to an amount equal to four times all interest agreed to be paid, pursuant to West Virginia Code section 47-6-6.

CCPA UNLAWFUL DEBT COLLECTION CAUSES OF ACTION

36. The defendants' threat to accuse plaintiffs of a crime, and defendants' accusations that plaintiffs committed a crime,

violate West Virginia Code Sections 46A-2-124(b) and (e)(1).

37. Defendants' threats to take everything the plaintiffs have violate West Virginia Code Section 46A-2-124(f).

38. Defendants' threats made to plaintiffs in an effort to collect the debt constitute unreasonable oppression and abuse, in violation of West Virginia Code Section 46A-2-125.

39. Defendants' foregoing actions constitute unreasonable publication, in violation of West Virginia Code Section 46A-2-126.

40. Defendants' foregoing actions constitute fraudulent, deceptive or misleading representations, in violation of West Virginia Code Sections 46A-2-127(a), (b), (d), and (e).

41. Defendants' foregoing actions constitute unfair or unconscionable means to collect or attempt to collect a claim, in violation of West Virginia Code Section 46A-2-128.

42. Plaintiffs are entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than nor more than one thousand dollars, for defendants' violations of the foregoing debt collection provisions of the CCPA, pursuant to West Virginia Code Section 46A-5-101(1).

UNFAIR OR DECEPTIVE ACTS OR PRACTICES CAUSE OF ACTION

43. Defendants' foregoing actions, including but not limited to, their threats of criminal action, their initiation of criminal action, and their entering into an installment purchase

agreement with plaintiffs which purported to be a rental agreement, constitute unfair and deceptive acts and practi violation of West Virginia Code Section 46A-6-104.

44. Plaintiffs are entitled to recover actual damage including annoyance and inconvenience, for defendants' for violations of West Virginia code, Chapter 46A, Article 6, pursuant to West Virginia Code Section 46A-6-106(1).

UNCONSCIONABILITY CAUSES OF ACTION

45. The amount of money required by the Contract befo ownership of the property is obtained, in light of the "cash price" and the value of the goods, in light of the failure t disclose the effective annual percentage rate or other time differential or sales finance charge, and in light of the fa to disclose the true cash price each, and taken together, ma the transaction or the relevant terms or parts thereof unconscionable at the time made and therefore unenforceable, pursuant to West Virginia Code section 46-2-302, and pursuant common law, also entitling plaintiffs to attorneys' fees.

46. The transaction which is the subject of this action a "consumer credit sale" as defined in West Virginia Code Sect 46A-1-102(12) and is unconscionable, pursuant to West Virginia Code Section 46A-2-121, and unenforceable.

47. The plaintiffs are entitled to have the contract voi and to recover actual damages, including annoyance and

inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars, for violations of Section 46A-2-121, pursuant to West Virginia Code section 46A-5-101(1).

CCPA CONSUMER LEASE DISCLOSURE CAUSE OF ACTION

48. The transaction which is the subject of this action is a "consumer lease" as defined in West Virginia Code section 46A-1-102(14) in that:

A. the defendants are regularly engaged in the business of leasing goods to natural persons primarily for household purposes;

B. the amount payable does not exceed $25,000.00;

C. the term exceeds four months, in that more than 18 payments must be made at the weekly rate before ownership can be obtained.

49. The transactions which are the subject of this action violate West Virginia Code section 46A-2-111 in that the lessor failed to give the lessee the following required information: the total amount payable under the lease in that the stated total does not include tax, and the amount paid for taxes is not specified.

50. Plaintiffs are entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars, for violation of Section 46A-2-111, pursuant to West Virginia Code

Section 46A-5-101(1).

ABUSE OF PROCESS CAUSE OF ACTION

51. Defendants' foregoing action of initiating criminal action against the plaintiffs for felonious conversion of the appliances constitutes abuse of process, in violation of the common law of West Virginia, insofar as defendants willfully and maliciously misused and misapplied process to accomplish purposes not intended by that process.

52. Defendants' abuse of process caused plaintiffs substantial annoyance, inconvenience, humiliation and emotional distress.

53. Plaintiffs are entitled to recover actual damages and punitive damages for defendants' abuse of process in their actions toward them.

MALICIOUS PROSECUTION CAUSE OF ACTION

54. Defendants' foregoing action of initiating criminal action against the plaintiffs for felonious conversion of the appliances constitutes malicious prosecution, in violation of the common law of West Virginia, insofar as prosecution was caused by the defendants, it was without probable cause and was malicious, and the prosecution was terminated, resulting in plaintiffs' discharge.

55. Defendants' malicious prosecution caused plaintiffs

substantial annoyance, inconvenience, humiliation and emotional distress.

56. Plaintiffs are entitled to recover actual damages and punitive damages for defendants' malicious prosecution of them.

OUTRAGEOUS CONDUCT CAUSE OF ACTION

57. Defendants' foregoing actions constitute outrageous conduct, in violation of the common law of west Virginia, insofar as defendants recklessly and intentionally caused plaintiffs severe emotional distress.

58. Plaintiffs are entitled to recover actual damages and punitive damages for defendants' outrageous conduct toward them.

PRAYER

WHEREFORE, plaintiffs pray that the Court:

A. Declare the rights of the plaintiffs;

B. Award judgment of actual damages in favor of each plaintiff and against each defendant in the amount of $15,000.00;

C. Award judgment of punitive damages in favor of each plaintiff and against each defendant in the amount of $15,000.00;

D. Award plaintiffs statutory damages of $1,000.00 for each of defendants' violations of the CCPA, Article 2;

E. Award plaintiffs actual damages or $200.00, whichever

is greater, for each of defendants' violations of the CCPA, Article 6;

F. Award plaintiffs statutory damages of four times the amount of interest charged for defendants' usury;

G. Award plaintiffs costs and attorneys' fees; and

H. Grant such other and further relief as the Court deems just and proper.

PLAINTIFFS REQUEST A JURY TRIAL.

PLAINTIFFS, BY COUNSEL

WILLIAM T. WERTMAN, JR.
WV LEGAL SERVICES PLAN, INC.
P. O. Box 1898
Martinsburg, WV 25401
COUNSEL FOR PLAINTIFFS

DAVID B. McMAHON
WV LEGAL SERVICES PLAN, INC.
1033 Quarrier Street
Charleston, WV 25301
COUNSEL FOR PLAINTIFFS

CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. Civil Action No. 90C1393

RTO INC.,

Defendant.

/S/ JOHN L. CUMMINGS

(12616)

C O M P L A I N T

INTRODUCTION

In the course of one year, plaintiff Mr. Gravely has paid more tnan one thousand one hundred and ninety dollars ($1,190.00) for furniture with a "cash price" of approximately six hundred eighty six dollars ($686.00), but according to the defendant still owes six hundred ninety five dollars ($695.00) under his contract. In an attempt to avoid consumer protection statutes, the defendant calls its consumer transactions "rent-to-own" agreements. In reality they are credit sales with sales finance charges of more than 160% and 234% per year. The plaintiff seeks declaratory and injunctive relief that he is entitled to the furniture plus damages, and statutory penalties for violations of consumer protection laws.

PRELIMINARY FACTS

1. Roger Gravely, Sr. is a natural person residing in Cabell County, West Virginia.

EXHIBIT 11

2. RTO, Inc. is a Delaware corporation that is registered to do business in West Virginia.

3. RTO, Inc. conducts business as RTO Rents.

4. All transactions in this case took place in Cabell County, West Virginia.

FURNITURE AGREEMENTS

5. On November 18, 1988, Mr. Gravely entered into a "rental purchase agreement" (hereinafter "Agreement") with defendant with regard to a two piece living room suite and end tables which were used goods in that they had been previously rented from the defendant or its predecessor. A copy of this Agreement is attached as Exhibit A and is incorporated by reference.

6. Under this Agreement, Mr. Gravely agreed to pay defendant twenty six dollars and ninety cents ($26.90) plus tax per week. After fifty two weeks of payments, Mr. Gravely would obtain ownership of the furniture, after having paid one thousand three hundred ninety eight dollars and eighty cents ($1,398.80) plus tax.

7. Under the terms of the Agreement, at the end of the first week of the contract Mr. Gravely was entitled pay off the Agreement early and purchase the furniture for approximately six hundred eighty six dollars ($686.00) plus tax.

8. No true cash price (a price for which a consumer could purchase the property outright) was given for the furniture at the point of sale by price tags, etc., or in any of the rental agreement documents provided to Mr. Gravely. Only a weekly or monthly payment price was shown at the point of sale and in the rental agreement documents.

9. Using six hundred eighty six dollars ($686.00) as the cash price for the furniture, the effective annual percentage rate of interest under the Agreement is more than 161%.

10. As of August 21, 1989, nine months later, Mr. Gravely had paid more than nine hundred twenty dollars ($920.00) plus tax under the Agreement. At that time, he could have paid off the Agreement early and purchased the furniture for less than two hundred and ten dollars ($210.00) plus tax.

11. On September 25, 1989, with two months to go on the one year contract, the Agreement with regard to the furniture was rewritten. A copy of this new Agrement is attached as Exhibit B and is incorporated by reference. Under the terms of the September 1989 Agreement, at the end of the first week of the contract, Mr. Gravely was entitled to purchase the furniture for approximately four hundred and seventy dollars ($470.00) plus tax.

12. Under the new Agreement, Mr. Gravely would not obtain ownership of the same furniture until he made an additional thirty six weekly payments of twenty six dollars and ninety cents ($26.90) plus tax for a total of nine hundred sixty eight dollars and forty cents ($968.40) plus tax.

13. The early pay-off purchase price in September 1989 was more than twice the purchase price a month earlier for the same furniture. The total of payments was four times the purchase price a month earlier. It was only four hundred thirty dollars ($430.00) less than the original purchase price of November 1988 even though Mr. Gravely

had paid more than ninety hundred eighty dollars ($980.00) in the interim.

14. Using four hundred seventy dollars ($470.00) as the cash price for the furniture, the effective annual percentage rate of interest under the Agreement is more than 234%.

15. As of November 16, 1989, two months later, Mr. Gravely had paid the defendant more than two hundred and seventy dollars ($270.00) plus tax on the second September Agreement.

16. From November 1988 to November 1989, Mr. Gravely paid the defendant in excess of one thousand one hundred and ninety dollars ($1,190.00) plus tax for the furniture which had an initial "cash price" of six hundred eight six dollars ($686.00) plus tax. By continuing to make weekly payments under the terms of the September 1989 Agreement, Mr. Gravely would not gain ownership of the property until April 1990. RTO, Inc. claimed he still owed approximately six hundred ninety five dollars ($695.00) plus tax.

17. By the time the November 1988 Agreement would have been completed, November 1989, the terms of the new September 1989 Agreement called for Mr. Gravely to make additional weekly payments in excess of the cash price in November 1988.

TELEVISION AGREEMENT

18. On December 12, 1988, Mr. Gravely entered into a separate Agreement pursuant to which he obtained possession of a two year old, previously rented television set.

19. Under the December 1988 television Agreement, Mr. Gravely agreed to pay the defendant thirteen dollars ($13.00) plus tax per week. After fifty two weeks of payments, Mr. Gravely would obtain ownership of the television set having paid six hundred and seventy six dollars ($676.00) plus tax.

20. No true cash price (a price for which a consumer could purchase the property outright) was given for the television at the point of sale by price tags, etc., or in any of the rental agreement documents provided to Mr. Gravely. Only a weekly or monthly payment price was shown at the point of sale and in the rental agreement documents.

21. Under the terms of the Agreement, at the end of the first week Mr. Gravely was entitled to purchase the television set for approximately three hundred thirty two dollars ($332.00) plus tax.

22. Using three hundred thirty two dollars ($332.00) as the "cash price" for the television set, the effective annual percentage rate of interest under the Agreement is more than 160%.

23. As of August 21, 1989, Mr. Gravely had paid the defendant approximately four hundred forty and fifteen dollars ($415.00) plus tax on the December 1988 television Agreement.

24. Mr. Gravely obtained ownership of the 1986 television set under the terms of the December 1988 Agreement.

FURTHER ALLEGATIONS

25. In April 1989, Mr. Gravely temporarily stopped making weekly payments on the furniture and television agreements in the belief that he had paid sufficient funds to obtain legal title to the property.

26. In April 1989, defendant began requesting return of the goods or additional payments.

27. In April 1989, defendant orally threatened to obtain a criminal warrant unless Mr. Gravely returned the property.

29. The defendant is currently using the same form or a form which incorporates substantially the same provisions.29. The November 1988, December 1988 and September 1989 agreements between the Mr. Gravely and the defendant were made on the same standard form.

CCPA INTEREST LIMITATION CAUSE OF ACTION

30. The transactions which are the subject of this action are "consumer credit sales" as defined in W. Va. Code section 46A-1-102(12) [a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA"] in that:

A. credit is granted by the defendant who regularly engages as a seller in these transactions;

i. "credit" as defined in W Va. Code section 46A-1-102(13) is granted in that Mr. Gravely was allowed to have possession and use of the goods while the defendant granted

him the privilege of deferring the payment of the full "debt" necessary to obtain ownership thereof;

ii. "debt" is the amount which the plaintiff agreed to pay to obtain ownership pursuant to the agreement between the plaintiff and the defendant;

B. the plaintiffs are natural persons;

C. the goods purchased are for a household use;

D. the debt is payable in installments or in the alternative a sales finance charge as defined by W. Va. Code section 46A-1-102(16) was made.

31. The calculated annual percentage rate of the transactions, which is at least 160%, exceeds the "sales finance charge" limitation of eighteen percent (on transactions of $1,500.00 or less) on consumer credit sales contained in W.Va. Code section 46A-3-101; see also W. Va. Code section 47A-1-1 et seq. (1987). The difference between the cash price of the goods and the total weekly payments of the contract is a "sales finance charge" as defined by W. Va. Code §46A-1-102(42) in that the difference is a sum payable directly by the buyer and imposed directly by the seller and is a time-price differential however denominated.

32. Mr. Gravely is not obligated to pay charges in excess of the those allowed in Chapter 46A and may recover (or have credited against outstanding debt) the excess charges pursuant to W.Va. Code section 46A-5-101(3).

33. In addition, Mr. Gravely is entitled to recover a civil penalty of not less than one hundred nor more than one thousand

dollars because the defendant contracted for and received a payment in excess of the charges allowed by 46A-3-101, all pursuant to W. Va. Code section 46A-5-101(4).

USURY CAUSE OF ACTION

34. The contract in question was made including forbearance or loan of money at a greater rate of interest than is allowed by W. Va. 47-6-5, W. Va. Code section 47-6-5a, W. Va. Code section 46A-3-101, W. Va. Code section 47A-1-1 et seq or other law.

35. Mr. Gravely is entitled to avoidance of all interest still claimed under the contract and an amount equal to four times all interest agreed to be paid pursuant to W. Va. Code section 47-6-6.

CCPA CRIMINAL THREAT CAUSE OF ACTION

36. The defendant's threat to accuse Mr. Gravely of a crime is a violation of W Va. Code section 46A-2-124(b) and (e)(1).

37. Mr. Gravely is entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for violation of 46A-2-124 pursuant to W. Va. Code section 46A-5-101(1).

UNCONSCIONABILITY CAUSES OF ACTION

38 The amount of money required by the contract before ownership of the property is obtained, in light of the "cash price" and the value of the goods, in light of the failure to disclose the effective annual percentage rate or other time price differential or sales finance charge, and in light of the failure to disclose the true cash price each, and taken together, make the transaction or the relevant terms or parts thereof unconscionable at the time made and therefore unenforceable pursuant to W. Va. Code section 46-2-302 and pursuant to commonlaw, also entitling Mr. Gravely to attorneys fees.

39. The transactions which are the subject of this action are a "consumer credit sale" as defined in W. Va. Code section 46A-1-102(12) and therefore are unconscionable pursuant to W. Va. Code section 41A-2-121 (1974) and unenforceable.

40. The Mr. Gravely is entitled to have his contract voided as to future payments and to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for violation of 46A-2-124 and pursuant to W. Va. Code section 46A-5-101(1)(1974).

CCPA CONSUMER LEASE DISCLOSURE CAUSE OF ACTION

41. The transactions which are the subject of this action are a "consumer lease" as defined in W. Va. Code section 46A-1-102(13)(1986) in that:

A. the defendant is regularly engaged in the business of leasing goods to natural persons primarily for household purposes

B. the amount payable does not exceed $25,000.00;

C. the term exceeds four months, in that thirty six or fifty two weekly payments must be made at the weekly rate before ownership can be obtained.

42. The transactions which are the subject of this action are in violation of W.Va. Code section 46A-2-111 in that they are a "consumer lease" and the lessor failed to give the lessee the following information:

A. the actual lawful insurance provision; and

B. the total amount payable under the lease in that the stated total does not include tax etc.

43. Mr. Gravely is entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for each violation of 46A-2-111 pursuant to W. Va. Code section 46A-5-101(1).

PRAYER

Wherefore, the plaintiffs pray that the Court:

A. Grant the plaintiff an injunction prohibiting the defendant from pursuing or threatening to pursue a criminal warrant or taking other actions to collect this debt during the pendency of this action;

B. Declare the rights of the individual plaintiff;

C. Award judgment in favor of the plaintiff and against the defendant in amount of $20,000.00; and

D. Award the plaintiff costs and attorney's fees; and

E. Grant such other and further relief as the Court may seem just and proper.

ROGER GRAVELY, SR.,
By Counsel,



David B. McMahon and Ann Hicks
Counsel for Plaintiff
West Virginia Legal Services Plan, Inc.
By Counsel,
1033 Quarrier Street, Suite 700
Charleston, WV 25301

ROGER GRAVELY

1ST AGREEMENT

ALSO ASSIGNED TO #

Agreement No. 100174

1. **RENTAL CO:** .O RENTS
335 FOURTH AVE.
HUNTINGTON, WV 25704
(304) 523-3399

RENTAL CU MER: GRAVELY, ROGER
1023 10TH ST.
HUNTINGTON WV 25701
522-6048

RTO RENTS

In this agreement, "you" and "your" mean the person(s) signing the agreement as Rental Customer(s). "We," "us," and "our" mean

2 **DESCRIPTION OF RENTAL PROPERTY** (For furniture, see attached list ☐) **FURNITURE**

ITEM	SERIAL	MODEL #
243620020	243620020	2/PC
243620023	243620023	END TABLES

REWRITE

		WEEKLY		WEEKLY
3 **TOTAL PAYMENT DUE AT BEGINNING OF AGREEMENT:**				
One Rental Payment	(a)	[illegible]	(d)	[illegible]
Use Tax	(b)	28.51	(e)	[illegible]
Subtotal	(c)	[illegible]	(f)	[illegible]
Additional, one-time fees:				
Processing Fee/Including Use Tax		0.00		0.00
Delivery/Pick-Up/Including Use Tax		0.00		0.00
Installation Fee				
Total		28.51		28.51

4 **TERM OF THIS AGREEMENT:** This agreement is for 1 WEEK You are not obligated in any way to renew this agreement after the first rental period. You may renew this agreement, if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a grace period for late payment and you must make payment in advance to continue using the property. You understand this agreement terminates automatically if you do not renew it. 28.

5 **TOTAL PAYMENT:** WEEKLY 28.

6 **TOTAL WEEKLY PAYMENTS:** Weekly rental, Item 3(a), multiplied by 52 weeks to obtain ownership. (This amount does not include use tax or other charges, see Item 7.) You are not obligated to pay this amount, but if you renew this agreement for 52 weeks, this is the total amount you will have paid and you will obtain ownership of the property. You will not own this property if you do not make all the payments and the total payment necessary to acquire ownership. You can obtain ownership other ways. See Item 11 below. Since renting by the month is less expensive than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is an agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options. 1398.

7 **TOTAL OF OTHER CHARGES PAYABLE TO RENTAL CO:** This agreement does not bear interest and there is no default or late charge. However, if you wish to rent the property for more than one week or one month, the payment for the next week or month is due on the same day of the following week or month, and likewise as to each additional week or month that you wish to rent the property. If you do not make your payment when due and we send an employee to your house to collect money due, or if you request that we collect a rental payment at your house, you agree to pay us a fee for making the trip to your house. The amount of this charge is 7.00 per trip.

If you elect to make your payment by check and your check is dishonored by the bank, we will charge you an additional 10.0

8. **FEES AND TAXES** (other than use tax). You do not have to pay any fees or any other taxes during this agreement.

9 **INSURANCE AND DAMAGE TO THE PROPERTY:** You do not have to carry insurance on the property. However, we do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to, or loss, or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the fair market value of the property if any of the above occur and/or if you fail to return it to us when the lease terminates.

10 **CONDITION OF PROPERTY:** (Check One) ☐ New ☐ Previously Rented

11 **OPTIONS TO PURCHASE:** If you have complied with the terms of this agreement, you can buy the property at anytime during the first 36 weeks. The purchase price for the property must be paid in cash or money order and will be computed as follows: Total of weekly payments (item 6) less total of rental payments you have already paid (not including tax or fees) multiplied by 50 % plus sales tax. Or, if you rent the property for 52 successive one-week terms, we will transfer ownership of the property to you. In either event we will also transfer any unexpired warranties as described in item 13.

12. **EQUITY:** You understand that we own the property until you buy it or get ownership as stated in this agreement. During the rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this agreement is terminated.

13. **WARRANTIES:** If you choose to exercise your purchase option as discussed in Item 11, we will give you any manufacturer's warranty which may still be in effect. You can read these warranties at our store any time you choose.

14 **TERMINATION AND DEFAULT:** You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this agreement.

We may terminate this agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

15. **MAINTENANCE:** During the period of this agreement we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others.

16. **LOCATION OF PROPERTY:** You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this agreement immediately.

17. **RETURN OF PROPERTY ON TERMINATION:** If this agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

18. **ASSIGNMENT:** We may sell, transfer, or assign this agreement. However, you have no right to sell, transfer, assign, pawn, or sublease the property.

19. **REIMBURSEMENT OF COSTS:** If you do not keep this agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and if permitted by state law.

20. **DAMAGE TO PERSONS OR PROPERTY:** You understand that we will not be responsible for any loss of or damage to any person or property arising out of the use of this property.

21. **MISCELLANEOUS PROVISIONS:** YOU UNDERSTAND THAT NO CHANGES MAY BE MADE IN THIS AGREEMENT EXCEPT BY US IN WRITING. YOU UNDERSTAND THAT THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY UNLESS OTHERWISE STATED IN ITEM 10. YOU HAVE EXAMINED THE PROPERTY AND YOU AGREE THAT YOU HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. YOU UNDERSTAND THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT AND THAT WE DO NOT HAVE A "GRACE PERIOD" FOR LEASE PAYMENTS OR OTHER TERMS.

I HAVE READ THIS AGREEMENT, AND I UNDERSTAND IT.

DL NO. _____ EXPIRATION DATE: _____ RENTAL COMPANY: _____

RENTAL CUSTOMER: _____ FIRST RENEWAL DATE: _____

RENTAL CUSTOMER: [signature] REPRESENTED BY: [signature]

STORE COPY

EXHIBIT A

[redacted]

In this agreement, "you" and "your" mean the person(s) signing the agreement as Rental Customer(s). "We," "us," and "our" mean

2. DESCRIPTION OF RENTAL PROPERTY (For furniture, see attached list ☐) FURNITURE

ITEM	SERIAL	MODEL #
[illegible]020	3436200[illegible]20	3/PC
[illegible]023	3436200[illegible]23	END TABLES

		WEEKLY		MONTHLY
3 TOTAL PAYMENT DUE AT BEGINNING OF AGREEMENT:		36.[illegible]		36.[illegible]
One Rental Payment	(a)	[illegible]	(d)	[illegible]
Use Tax	(b)	2.[illegible]	(e)	6.[illegible]
Subtotal	(c)		(f)	
Additional, one-time fees:		0.00		0.00
Processing Fee/Including Use Tax		[illegible]		[illegible]
Delivery/Pick-Up/Including Use Tax				
Installation Fee		33.[illegible]		33.[illegible]
Total				

4. TERM OF THIS AGREEMENT: This agreement is for [illegible] You are not obligated in any way to renew this agreement after the first rental period. You may renew this agreement, if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a grace period for late payment and you must make payment in advance to continue using the property. You understand this agreement terminates automatically if you do not renew it.

5. TOTAL PAYMENT: [illegible]

6. TOTAL WEEKLY PAYMENTS: Weekly rental, Item 3(a), multiplied by [illegible] weeks to obtain ownership. (This amount does not include use tax or other charges, see Item 7.) You are not obligated to pay this amount, but if you renew this agreement for [illegible] weeks, this is the total amount you will have paid and you will obtain ownership of the property. You will not own this property if you do not make all the payments and the total payment necessary to acquire ownership. You can obtain ownership other ways. See Item 11 below. Since renting by the month is less expensive than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is an agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase the property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options.

7. TOTAL OF OTHER CHARGES PAYABLE TO RENTAL CO: This agreement does not bear interest and there is no default or late charge. However, if you wish to rent the property for more than one week or one month, the payment for the next week or month is due on the same day of the following week or month, and likewise as to each additional week or month that you wish to rent the property. If you do not make your payment when due and we send an employee to your house to collect money due, or if you request that we collect a rental payment at your house, you agree to pay us a fee for making the trip to your house. The amount of this charge is [illegible] per trip.

If you elect to make your payment by check and your check is dishonored by the bank, we will charge you an additional [illegible]

8. FEES AND TAXES (other than use tax): You do not have to pay any fees or any other taxes during this agreement.

9. INSURANCE AND DAMAGE TO THE PROPERTY: You do not have to carry insurance on the property. However, we do not carry insurance on the property and you are responsible for its safety until it is returned to us. You are fully responsible for damage to, or loss, or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the fair market value of the property if any of the above occur and/or if you fail to return it to us when the lease terminates.

10. CONDITION OF PROPERTY: (Check One) ☐ New ☑ Previously Rented

11. OPTIONS TO PURCHASE: [illegible]

12. EQUITY: You understand that we own the property until you buy it or get ownership as stated in this agreement. During the rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this agreement is terminated.

13. WARRANTIES: If you choose to exercise your purchase option as discussed in Item 11, we will give you any manufacturer's warranty which may still be in effect. You can read these warranties at our store any time you choose.

14. TERMINATION AND DEFAULT: You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this agreement.

We may terminate this agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

15. MAINTENANCE: During the period of this agreement we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others.

16. LOCATION OF PROPERTY: You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this agreement immediately.

17. RETURN OF PROPERTY ON TERMINATION: If this agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

18. ASSIGNMENT: We may sell, transfer, or assign this agreement. However, you have no right to sell, transfer, assign, pawn, or sublease the property.

19. REIMBURSEMENT OF COSTS: If you do not keep this agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and if permitted by state law.

20. DAMAGE TO PERSONS OR PROPERTY: You understand that we will not be responsible for any loss of or damage to any person or property arising out of the use of this property.

21. MISCELLANEOUS PROVISIONS: YOU UNDERSTAND THAT NO CHANGES MAY BE MADE IN THIS AGREEMENT EXCEPT BY US IN WRITING. YOU UNDERSTAND THAT THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY UNLESS OTHERWISE STATED IN ITEM 10. YOU HAVE EXAMINED THE PROPERTY AND YOU AGREE THAT YOU HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. YOU UNDERSTAND THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT AND THAT WE DO NOT HAVE A "GRACE PERIOD" FOR LEASE PAYMENTS OR OTHER TERMS.

I HAVE READ THIS AGREEMENT, AND I UNDERSTAND IT.

RTO RENTS

DL NO. _____ EXPIRATION DATE: _____ RENTAL COMPANY: [illegible]

RENTAL CUSTOMER: Roger L. Brady Sr. FIRST RENEWAL DATE: [illegible]

RENTAL CUSTOMER: _____ REPRESENTED BY: [illegible]

STORE COPY [illegible]

EXHIBIT B

CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

ROGER GRAVELY, SR.,

Plaintiff,

v. Civil Action No. 90C1393

/S/ JOHN L. CUMMINGS

RTO INC.,

Defendant.

COMPLAINT

INTRODUCTION

In the course of one year, plaintiff Mr. Gravely has paid more than one thousand one hundred and ninety dollars ($1,190.00) for furniture with a "cash price" of approximately six hundred eighty six dollars ($686.00), but according to the defendant still owes six hundred ninety five dollars ($695.00) under his contract. In an attempt to avoid consumer protection statutes, the defendant calls its consumer transactions "rent-to-own" agreements. In reality they are credit sales with sales finance charges of more than 160% and 234% per year. The plaintiff seeks declaratory and injunctive relief that he is entitled to the furniture plus damages, and statutory penalties for violations of consumer protection laws.

PRELIMINARY FACTS

1. Roger Gravely, Sr. is a natural person residing in Cabell County, West Virginia.

EXHIBIT 11

2. RTO, Inc. is a Delaware corporation that is registered to do business in West Virginia.

3. RTO, Inc. conducts business as RTO Rents.

4. All transactions in this case took place in Cabell County, West Virginia.

FURNITURE AGREEMENTS

5. On November 18, 1988, Mr. Gravely entered into a "rental purchase agreement" (hereinafter "Agreement") with defendant with regard to a two piece living room suite and end tables which were used goods in that they had been previously rented from the defendant or its predecessor. A copy of this Agreement is attached as Exhibit A and is incorporated by reference.

6. Under this Agreement, Mr. Gravely agreed to pay defendant twenty six dollars and ninety cents ($26.90) plus tax per week. After fifty two weeks of payments, Mr. Gravely would obtain ownership of the furniture, after having paid one thousand three hundred ninety eight dollars and eighty cents ($1,398.80) plus tax.

7. Under the terms of the Agreement, at the end of the first week of the contract Mr. Gravely was entitled pay off the Agreement early and purchase the furniture for approximately six hundred eighty six dollars ($686.00) plus tax.

8. No true cash price (a price for which a consumer could purchase the property outright) was given for the furniture at the point of sale by price tags, etc., or in any of the rental agreement documents provided to Mr. Gravely. Only a weekly or monthly payment price was shown at the point of sale and in the rental agreement documents.

9. Using six hundred eighty six dollars ($686.00) as the cash price for the furniture, the effective annual percentage rate of interest under the Agreement is more than 161%.

10. As of August 21, 1989, nine months later, Mr. Gravely had paid more than nine hundred twenty dollars ($920.00) plus tax under the Agreement. At that time, he could have paid off the Agreement early and purchased the furniture for less than two hundred and ten dollars ($210.00) plus tax.

11. On September 25, 1989, with two months to go on the one year contract, the Agreement with regard to the furniture was rewritten. A copy of this new Agrement is attached as Exhibit B and is incorporated by reference. Under the terms of the September 1989 Agreement, at the end of the first week of the contract, Mr. Gravely was entitled to purchase the furniture for approximately four hundred and seventy dollars ($470.00) plus tax.

12. Under the new Agreement, Mr. Gravely would not obtain ownership of the same furniture until he made an additional thirty six weekly payments of twenty six dollars and ninety cents ($26.90) plus tax for a total of nine hundred sixty eight dollars and forty cents ($968.40) plus tax.

13. The early pay-off purchase price in September 1989 was more than twice the purchase price a month earlier for the same furniture. The total of payments was four times the purchase price a month earlier. It was only four hundred thirty dollars ($430.00) less than the original purchase price of November 1988 even though Mr. Gravely

had paid more than ninety hundred eighty dollars ($980.00) in the interim.

14. Using four hundred seventy dollars ($470.00) as the cash price for the furniture, the effective annual percentage rate of interest under the Agreement is more than 234%.

15. As of November 16, 1989, two months later, Mr. Gravely had paid the defendant more than two hundred and seventy dollars ($270.00) plus tax on the second September Agreement.

16. From November 1988 to November 1989, Mr. Gravely paid the defendant in excess of one thousand one hundred and ninety dollars ($1,190.00) plus tax for the furniture which had an initial "cash price" of six hundred eight six dollars ($686.00) plus tax. By continuing to make weekly payments under the terms of the September 1989 Agreement, Mr. Gravely would not gain ownership of the property until April 1990. RTO, Inc. claimed he still owed approximately six hundred ninety five dollars ($695.00) plus tax.

17. By the time the November 1988 Agreement would have been completed, November 1989, the terms of the new September 1989 Agreement called for Mr. Gravely to make additional weekly payments in excess of the cash price in November 1988.

TELEVISION AGREEMENT

18. On December 12, 1988, Mr. Gravely entered into a separate Agreement pursuant to which he obtained possession of a two year old, previously rented television set.

19. Under the December 1988 television Agreement, Mr. Gravely agreed to pay the defendant thirteen dollars ($13.00) plus tax per week. After fifty two weeks of payments, Mr. Gravely would obtain ownership of the television set having paid six hundred and seventy six dollars ($676.00) plus tax.

20. No true cash price (a price for which a consumer could purchase the property outright) was given for the television at the point of sale by price tags, etc., or in any of the rental agreement documents provided to Mr. Gravely. Only a weekly or monthly payment price was shown at the point of sale and in the rental agreement documents.

21. Under the terms of the Agreement, at the end of the first week Mr. Gravely was entitled to purchase the television set for approximately three hundred thirty two dollars ($332.00) plus tax.

22. Using three hundred thirty two dollars ($332.00) as the "cash price" for the television set, the effective annual percentage rate of interest under the Agreement is more than 160%.

23. As of August 21, 1989, Mr. Gravely had paid the defendant approximately four hundred forty and fifteen dollars ($415.00) plus tax on the December 1988 television Agreement.

24. Mr. Gravely obtained ownership of the 1986 television set under the terms of the December 1988 Agreement.

FURTHER ALLEGATIONS

25. In April 1989, Mr. Gravely temporarily stopped making weekly payments on the furniture and television agreements in the belief that he had paid sufficient funds to obtain legal title to the property.

26. In April 1989, defendant began requesting return of the goods or additional payments.

27. In April 1989, defendant orally threatened to obtain a criminal warrant unless Mr. Gravely returned the property.

29. The defendant is currently using the same form or a form which incorporates substantially the same provisions.29. The November 1988, December 1988 and September 1989 agreements between the Mr. Gravely and the defendant were made on the same standard form.

CCPA INTEREST LIMITATION CAUSE OF ACTION

30. The transactions which are the subject of this action are "consumer credit sales" as defined in W. Va. Code section 46A-1-102(12) [a provision of the West Virginia Consumer Credit and Protection Act, hereinafter "CCPA"] in that:

A. credit is granted by the defendant who regularly engages as a seller in these transactions;

i. "credit" as defined in W Va. Code section 46A-1-102(13) is granted in that Mr. Gravely was allowed to have possession and use of the goods while the defendant granted

him the privilege of deferring the payment of the full "debt" necessary to obtain ownership thereof;

ii. "debt" is the amount which the plaintiff agreed to pay to obtain ownership pursuant to the agreement between the plaintiff and the defendant;

B. the plaintiffs are natural persons;

C. the goods purchased are for a household use;

D. the debt is payable in installments or in the alternative a sales finance charge as defined by W. Va. Code section 46A-1-102(16) was made.

31. The calculated annual percentage rate of the transactions, which is at least 160%, exceeds the "sales finance charge" limitation of eighteen percent (on transactions of $1,500.00 or less) on consumer credit sales contained in W.Va. Code section 46A-3-101; see also W. Va. Code section 47A-1-1 et seq. (1987). The difference between the cash price of the goods and the total weekly payments of the contract is a "sales finance charge" as defined by W. Va. Code §46A-1-102(42) in that the difference is a sum payable directly by the buyer and imposed directly by the seller and is a time-price differential however denominated.

32. Mr. Gravely is not obligated to pay charges in excess of the those allowed in Chapter 46A and may recover (or have credited against outstanding debt) the excess charges pursuant to W.Va. Code section 46A-5-101(3).

33. In addition, Mr. Gravely is entitled to recover a civil penalty of not less than one hundred nor more than one thousand

dollars because the defendant contracted for and received a payment in excess of the charges allowed by 46A-3-101, all pursuant to W. Va. Code section 46A-5-101(4).

USURY CAUSE OF ACTION

34. The contract in question was made including forbearance or loan of money at a greater rate of interest than is allowed by W. Va. 47-6-5, W. Va. Code section 47-6-5a, W. Va. Code section 46A-3-101, W. Va. Code section 47A-1-1 et seq or other law.

35. Mr. Gravely is entitled to avoidance of all interest still claimed under the contract and an amount equal to four times all interest agreed to be paid pursuant to W. Va. Code section 47-6-6.

CCPA CRIMINAL THREAT CAUSE OF ACTION

36. The defendant's threat to accuse Mr. Gravely of a crime is a violation of W Va. Code section 46A-2-124(b) and (e)(1).

37. Mr. Gravely is entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for violation of 46A-2-124 pursuant to W. Va. Code section 46A-5-101(1).

UNCONSCIONABILITY CAUSES OF ACTION

38 The amount of money required by the contract before ownership of the property is obtained, in light of the "cash price" and the value of the goods, in light of the failure to disclose the effective annual percentage rate or other time price differential or sales finance charge, and in light of the failure to disclose the true cash price each, and taken together, make the transaction or the relevant terms or parts thereof unconscionable at the time made and therefore unenforceable pursuant to W. Va. Code section 46-2-302 and pursuant to commonlaw, also entitling Mr. Gravely to attorneys fees.

39. The transactions which are the subject of this action are a "consumer credit sale" as defined in W. Va. Code section 46A-1-102(12) and therefore are unconscionable pursuant to W. Va. Code section 41A-2-121 (1974) and unenforceable.

40. The Mr. Gravely is entitled to have his contract voided as to future payments and to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for violation of 46A-2-124 and pursuant to W. Va. Code section 46A-5-101(1)(1974).

CCPA CONSUMER LEASE DISCLOSURE CAUSE OF ACTION

41. The transactions which are the subject of this action are a "consumer lease" as defined in W. Va. Code section 46A-1-102(13)(1986) in that:

A. the defendant is regularly engaged in the business of leasing goods to natural persons primarily for household purposes

B. the amount payable does not exceed $25,000.00;

C. the term exceeds four months, in that thirty six or fifty two weekly payments must be made at the weekly rate before ownership can be obtained.

42. The transactions which are the subject of this action are in violation of W.Va. Code section 46A-2-111 in that they are a "consumer lease" and the lessor failed to give the lessee the following information:

A. the actual lawful insurance provision; and

B. the total amount payable under the lease in that the stated total does not include tax etc.

43. Mr. Gravely is entitled to recover actual damages, including annoyance and inconvenience, and a civil penalty of not less than one hundred nor more than one thousand dollars for each violation of 46A-2-111 pursuant to W. Va. Code section 46A-5-101(1).

PRAYER

Wherefore, the plaintiffs pray that the Court:

A. Grant the plaintiff an injunction prohibiting the defendant from pursuing or threatening to pursue a criminal warrant or taking other actions to collect this debt during the pendency of this action;

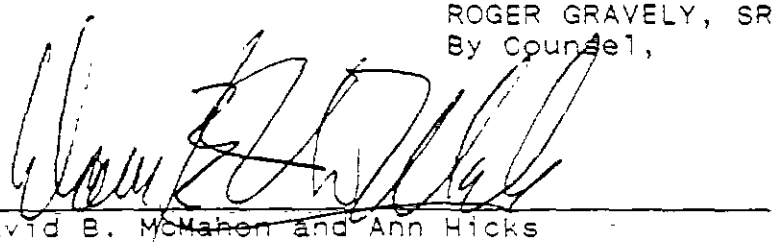
B. Declare the rights of the individual plaintiff;

C. Award judgment in favor of the plaintiff and against the defendant in amount of $20,000.00; and

D. Award the plaintiff costs and attorney's fees; and

E. Grant such other and further relief as the Court may seem just and proper.

ROGER GRAVELY, SR.,
By Counsel,



David B. McMahon and Ann Hicks
Counsel for Plaintiff
West Virginia Legal Services Plan, Inc.
By Counsel,
1033 Quarrier Street, Suite 700
Charleston, WV 25301

...OCUMENT HAS BEEN ASSIGNED TO #

Agreement No. 10017A

1. **RENTAL CO:** ...O RENTS
335 FOURTH AVE.
HUNTINGTON, WV 25704
(304) 523-3399

RENTAL CUSTOMER: GRAVELY, ROGER
1023 10TH ST.
HUNTINGTON WV 25701
522-6048

RTO RENTS

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ROGER GRAVELY

2. **DESCRIPTION OF RENTAL PROPERTY** (For furniture, see attached list ☐) **FURNITURE**

ITEM	SERIAL	MODEL #
243620020	243620020	2/PC
243620023	243620023	END TABLES

REWRITE

		WEEKLY		WEEKLY
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One Rental Payment	(a)	[illegible]	(d)	[illegible]
Use Tax	(b)	2.51	(e)	[illegible]
Subtotal	(c)	[illegible]	(f)	[illegible]
Additional, one-time fees:				
Processing Fee/Including Use Tax		0.00		0.00
Delivery/Pick-Up/Including Use Tax		0.00		0.00
Installation Fee				
Total		28.51		28.51

4 **TERM OF THIS AGREEMENT:** This agreement is for 1 WEEK You are not obligated in any way to renew this agreement after the first rental period. You may renew this agreement if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a grace period for late payment and you must make payment in advance to continue using the property. You understand this agreement terminates automatically if you do not renew it. 28.

5 **TOTAL PAYMENT:** WEEKLY 28.

6 **TOTAL WEEKLY PAYMENTS:** Weekly rental, item 3(a), multiplied by 52 weeks to obtain ownership. (This amount does not include use tax or other charges, see item 7.) You are not obligated to pay this amount, but if you renew the agreement for 52 weeks, this is the total amount you will have paid and you will obtain ownership of the property. You will not own the property if you do not make all the payments and the total payment necessary to acquire ownership. You can obtain ownership other ways. See item 11 below. Since renting by the month is less expensive than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is an agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options. 1398.

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If you elect to make your payment by check and your check is dishonored by the bank, we will charge you an additional 10.0

8 **FEES AND TAXES** (other than use tax). You do not have to pay any fees or any other taxes during this agreement.

9 **INSURANCE AND DAMAGE TO THE PROPERTY:** You do not have to carry insurance on the property. However, we do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to, or loss, or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the fair market value of the property if any of the above occur and/or if you fail to return it to us when the lease terminates.

10 **CONDITION OF PROPERTY:** (Check One) ☐ New ☐ Previously Rented

11 **OPTIONS TO PURCHASE:** If you have complied with the terms of this agreement, you can buy the property at anytime during the first 36 weeks. The purchase price for the property must be paid in cash or money order and will be computed as follows:
Total of weekly payments (item 6) less total of rental payments you have already paid (not including tax or fees) multiplied by 50 % plus sales tax. Or, if you rent the property for 52 successive one-week terms, we will transfer ownership of the property to you. In either event we will also transfer any unexpired warranties as described in item 13.

12. **EQUITY:** You understand that we own the property until you buy it or get ownership as stated in this agreement. During the rental term, you do not have any ownership interest in the property at all and you do not have the right to a refund of any rental payments when this agreement is terminated.

13. **WARRANTIES:** If you choose to exercise your purchase option as discussed in item 11, we will give you any manufacturer's warranty which may still be in effect. You can read these warranties at our store any time you choose.

14 **TERMINATION AND DEFAULT:** You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this agreement.
We may terminate this agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

15. **MAINTENANCE:** During the period of this agreement we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others.

16. **LOCATION OF PROPERTY:** You agree to keep the property at the address shown in item 1. If you remove the property without our written permission, we have the right to terminate this agreement immediately.

17. **RETURN OF PROPERTY ON TERMINATION:** If this agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

18. **ASSIGNMENT:** We may sell, transfer, or assign this agreement. However, you have no right to sell, transfer, assign, pawn, or sublease the property.

19. **REIMBURSEMENT OF COSTS:** If you do not keep this agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and if permitted by state law.

20. **DAMAGE TO PERSONS OR PROPERTY:** You understand that we will not be responsible for any loss of or damage to any person or property arising out of the use of the property.

21. **MISCELLANEOUS PROVISIONS:** YOU UNDERSTAND THAT NO CHANGES MAY BE MADE IN THIS AGREEMENT EXCEPT BY US IN WRITING. YOU UNDERSTAND THAT THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY UNLESS OTHERWISE STATED IN ITEM 10. YOU HAVE EXAMINED THE PROPERTY AND YOU AGREE THAT YOU HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. YOU UNDERSTAND THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT AND THAT WE DO NOT HAVE A "GRACE PERIOD" FOR LEASE PAYMENTS OR OTHER TERMS.

I HAVE READ THIS AGREEMENT, AND I UNDERSTAND IT.

DL NO. _____ EXPIRATION DATE: _____ RENTAL COMPANY: _____

RENTAL CUSTOMER: _____ FIRST RENEWAL DATE: _____

RENTAL CUSTOMER: [signature] REPRESENTED BY: [signature]

STORE COPY

1ST AGREEMENT

EXHIBIT A

In this agreement, "you" and "your" mean the person(s) signing the agreement as Rental Customer(s). "We," "us," and "our" mean

2. DESCRIPTION OF RENTAL PROPERTY (For furniture, see attached list ☐) FURNITURE

ITEM	SERIAL	MODEL
[illegible]	843620020	3/PC
[illegible]	843620023	END TABLES

		WEEKLY		WEEKLY
3. TOTAL PAYMENT DUE AT BEGINNING OF AGREEMENT:		36.30		36.30
One Rental Payment	(a)	1.01	(d)	1.01
Use Tax	(b)	2.51	(e)	2.51
Subtotal	(c)		(f)	
Additional, one-time fees:		0.00		0.00
Processing Fee/Including Use Tax		0.00		0.00
Delivery/Pick-Up/Including Use Tax				
Installation Fee		33.51		33.51
Total				

4. TERM OF THIS AGREEMENT: This agreement is for [illegible] You are not obligated in any way to renew this agreement after the first rental period. You may renew this agreement, if you have complied with its terms, by sending or delivering a weekly or monthly payment to us before the end of the rental period. You understand that we do not have a grace period for late payment and you must make payment in advance to continue using the property. You understand this agreement terminates automatically if you do not renew it.

5. TOTAL PAYMENT: [illegible]

6. TOTAL WEEKLY PAYMENTS: Weekly rental, Item 3(a), multiplied by [illegible] weeks to obtain ownership. (This amount does not include use tax or other charges, see item 7.) You are not obligated to pay this amount, but if you renew this agreement for [illegible] weeks, this is the total amount you will have paid and you will obtain ownership of the property. You will not own this property if you do not make all the payments and the total payment necessary to acquire ownership. You can obtain ownership other ways, See Item 11 below. Since renting by the month is less expensive than renting by the week, you will pay less than this amount if you make monthly payments instead of weekly payments. Since this is an agreement for weekly or monthly rental of the property only, you are only obligated to make one rental payment. If you want to purchase this property now, you may be able to get cash or credit terms and pay less for ownership than through our ownership options.

7. TOTAL OF OTHER CHARGES PAYABLE TO RENTAL CO: This agreement does not bear interest and there is no default or late charge. However, if you wish to rent the property for more than one week or one month, the payment for the next week or month is due on the same day of the following week or month, and likewise as to each additional week or month that you wish to [illegible] property. If you do not make your payment when due and we send an employee to your house to collect money due, or if you request that we collect a rental payment at your house, you agree to pay us a fee for making the trip to your house. The amount of this charge is 1.00 per trip.

If you elect to make your payment by check and your check is dishonored by the bank, we will charge you an additional [illegible]

8. FEES AND TAXES (other than use tax): You do not have to pay any fees or any other taxes during this agreement.

9. INSURANCE AND DAMAGE TO THE PROPERTY: You do not have to carry insurance on the property. However, we do not carry insurance on the property, and you are responsible for its safety until it is returned to us. You are fully responsible for damage to, or loss, or destruction of the property from all causes, including, but not limited to theft, vandalism, malicious mischief, or mysterious disappearance. If the property is damaged, you must pay us immediately for all repairs. You must pay us the fair market value of the property if any of the above occur and/or if you fail to return it to us when the lease terminates.

10. CONDITION OF PROPERTY: (Check One) ☐ New ☑ Previously Rented

11. OPTIONS TO PURCHASE: [illegible]

12. EQUITY: You understand that we own the property until you buy it or get ownership as stated in this agreement. During the rental term, you do not have any ownership interest in the property at all, and you do not have the right to a refund of any rental payments when this agreement is terminated.

13. WARRANTIES: If you choose to exercise your purchase option as discussed in Item 11, we will give you any manufacturer's warranty which may still be in effect. You can read these warranties at our store any time you choose.

14. TERMINATION AND DEFAULT: You are not obligated in any way to renew this agreement or to buy the property. You can terminate this agreement by providing for the immediate return of the property to us or by not renewing this agreement before the end of any paid rental period. You agree to pay rent until the property is returned to us or until you own it as stated in this agreement.

We may terminate this agreement if you fail to keep any of your agreements. We may notify you of termination in writing or by telling you.

15. MAINTENANCE: During the period of this agreement we will provide service for the property, covering normal repairs, at no additional charge to you. We will not be responsible for the costs of unauthorized repairs done by others.

16. LOCATION OF PROPERTY: You agree to keep the property at the address shown in Item 1. If you remove the property without our written permission, we have the right to terminate this agreement immediately.

17. RETURN OF PROPERTY ON TERMINATION: If this agreement is terminated for any reason, you agree to make arrangements with us immediately for possession of the property. You agree to pay us any rent and other charges that you owe when the property is returned.

18. ASSIGNMENT: We may sell, transfer, or assign this agreement. However, you have no right to sell, transfer, assign, pawn, or sublease the property.

19. REIMBURSEMENT OF COSTS: If you do not keep this agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our property back. These costs may include attorney's fees and court costs if they are incurred and if permitted by state law.

20. DAMAGE TO PERSONS OR PROPERTY: You understand that we will not be responsible for any loss of or damage to any person or property arising out of the use of this property.

21. MISCELLANEOUS PROVISIONS: YOU UNDERSTAND THAT NO CHANGES MAY BE MADE IN THIS AGREEMENT EXCEPT BY US IN WRITING. YOU UNDERSTAND THAT THIS PROPERTY IS NOT REPRESENTED TO BE NEW PROPERTY UNLESS OTHERWISE STATED IN ITEM 10. YOU HAVE EXAMINED THE PROPERTY AND YOU AGREE THAT YOU HAVE RECEIVED THE PROPERTY IN SATISFACTORY CONDITION. YOU UNDERSTAND THAT TIME IS OF THE ESSENCE IN THIS AGREEMENT AND THAT WE DO NOT HAVE A "GRACE PERIOD" FOR LEASE PAYMENTS OR OTHER TERMS.

I HAVE READ THIS AGREEMENT, AND I UNDERSTAND IT.

RTO RENTS

DL NO. _____ EXPIRATION DATE: _____ RENTAL COMPANY: [illegible]

RENTAL CUSTOMER: Floyd L. Crowley Sr. NEXT RENEWAL DATE: [illegible]

RENTAL CUSTOMER: _____ REPRESENTED BY: [illegible]

STORE COPY

EXHIBIT B

COLORTYME
TV • Video • Audio • Appliances

THIS COLORTYME FRANCHISE OWNED AND OPERATED BY

RENTAL AGREEMENT

E 21549

DATE 7/30/90

1. LESSOR
NAME NEW RENTS INC.
ADDRESS 1725 7th AVE
CITY CHAS. STATE WV
ZIP 25312 PHONE 346-7368

2. LESSEE
NAME Donna Wills
NAME
ADDRESS P.O. Box 103
CITY [redacted] ZIP 7[redacted] 252

CODE 86

THE ABOVE RENTAL TERM BEGINS ON _____ 19 ____

THE RENTAL PAYMENT IS DUE IN ADVANCE. RENEWAL PAYMENTS, IF ANY, ARE DUE ON OR BEFORE THE LAST DAY OF THE TERM.

NO CASH REFUNDS

NO CHECKS ACCEPTED

3. DESCRIPTION OF LEASED PROPERTY
QUANTITY ONE WEDDING BAND [redacted] ENT
MODEL 116 SERIAL NO 0796 CONDITION (X) NEW ( ) USED

4. RENTAL PAYMENT AND TERM

THE TERM OF THIS LEASE IS	( ) ONE MONTH	( ) SEMI-MONTHLY	( ) ONE WEEK
RENTAL RATE	$ 39.80	$	$ 9.45
	$ 2.39	$	$ .60
TOTAL RENTAL PAYMENT	$ 42.19	$	$ 10.55
WAIVER FEE ☐	$ 4.00	$ 2.00	$ 1.00
IN-HOME COLLECTION FEE	$ 6.00	REINSTATEMENT FEE	3.00
	$		

THIS IS A RENTAL AGREEMENT ONLY

THE UNDERSIGNED HEREIN CALLED "LESSEE", WHETHER ONE OR MORE, DOES JOINTLY AND SEVERALLY HEREBY RENT FROM THE LESSOR, HEREIN CALLED "OWNER", THE ABOVE DESCRIBED PERSONAL PROPERTY, HEREIN CALLED "PROPERTY", AT THE RENTAL RATE SET FORTH ABOVE, PAYABLE IN ADVANCE FOR THE RENTAL TERM BEGINNING ON THE COMMENCEMENT DATE STATED ABOVE, EXCEPT AS STATED BELOW.

TITLE AND TERM. TITLE TO THE PROPERTY REMAINS AT ALL TIMES IN THE OWNER. THE LESSEE RECEIVES THE USE AND POSSESSION OF THE PROPERTY DESCRIBED IN ITEM 3 ABOVE FOR THE RENTAL TERM INDICATED IN ITEM 4 ABOVE, SO LONG AS THE LESSEE PAYS THE RENTAL PAYMENT AND COMPLIES FULLY WITH ALL AGREEMENTS AND CONDITIONS IN THIS LEASE. IF THE LESSEE DESIRES TO USE THE PROPERTY PRIOR TO THE COMMENCEMENT DATE, HE/SHE MAY RENT THE PROPERTY FOR SUCH INTERIM PERIOD AT THE DAILY RENTAL RATE. ALSO, IF THE LESSEE RETAINS POSSESSION OF THE PROPERTY BEYOND ANY TERM, THEN HE/SHE SHALL BE LIABLE FOR RENTAL PAYMENTS AT THE DAILY RENTAL RATE FOR EACH DAY THAT HE/SHE RETAINS POSSESSION OF THE PROPERTY UNTIL THE PROPERTY IS RETURNED TO THE OWNER OR THE LESSEE RENEWS FOR AN ADDITIONAL TERM. THE LESSEE HAS NO RIGHT TO SELL, MORTGAGE, PAWN, PLEDGE, ENCUMBER, OR OTHERWISE DISPOSE OF SAID PROPERTY.

LESSEE'S RIGHT TO TERMINATE. THE LESSEE, AT HIS OR HER OPTION, MAY AT ANY TIME TERMINATE THIS AGREEMENT, WITHOUT FURTHER OBLIGATION OR PENALTY, BY SURRENDER OF THE PROPERTY TO THE OWNER IN ITS PRESENT CONDITION, FAIR WEAR AND TEAR EXCEPTED, AND BY PAYMENT OF ALL RENTAL PAYMENTS DUE THROUGH THE DATE OF RETURN.

LESSEE'S RIGHT TO RENEW. THE LESSEE, AT HIS OR HER OPTION, MAY RENEW THIS AGREEMENT FOR AN ADDITIONAL TERM AT THE CONCLUSION OF THE RENTAL TERM BY THE PAYMENT TO THE OWNER OF THE RENTAL PAYMENT, ON OR BEFORE THE LAST DAY OF THE RENTAL TERM.

OWNER'S RIGHT TO TERMINATE. THIS AGREEMENT SHALL, AT THE OPTION OF THE OWNER, TERMINATE UPON THE FAILURE OF THE LESSEE TO MAKE A RENEWAL RENTAL PAYMENT BY THE LAST DAY OF THE TERM, OR BY BREACH BY THE LESSEE OF ANY AGREEMENT, CONDITION OR REPRESENTATION, ALL OF WHICH ARE AGREED TO BE MATERIAL.

LOCATION OF PROPERTY. LESSEE WARRANTS AND AGREES THAT HE/SHE WILL KEEP SAID PROPERTY IN HIS/HER POSSESSION AT THE RESIDENCE ADDRESS ABOVE AND WILL NOT REMOVE SAID PERSONAL PROPERTY FROM SAID ADDRESS WITHOUT AN AGREEMENT IN WRITING EXECUTED BY THE OWNER. IF LESSEE MOVES SAID PROPERTY WITHOUT SECURING PRIOR AGREEMENT IN WRITING FROM OWNER, THIS AGREEMENT SHALL BE THEREBY BREACHED, GIVING THE OWNER THE RIGHT TO IMMEDIATE POSSESSION OF THE PROPERTY AND LESSEE MAY BE SUBJECT TO PROSECUTION UNDER APPLICABLE STATE LAW.

INSURANCE AND DAMAGES. THE LESSEE IS FULLY RESPONSIBLE FOR THE LOSS, THEFT OR DESTRUCTION OF THE RENTAL PROPERTY FROM ALL CAUSES WHATSOEVER AND IN THE EVENT OF SUCH LOSS, THEFT OR DESTRUCTION, THIS AGREEMENT SHALL TERMINATE AND THE LESSEE AGREES TO PAY TO THE OWNER THE FAIR MARKET VALUE OF THE PROPERTY AT THE TIME OF SAID LOSS, THEFT OR DESTRUCTION. IN THE EVENT OF PARTIAL DAMAGE OR DESTRUCTION FROM ANY CAUSE WHATEVER, THE LESSEE AGREES TO PAY TO THE OWNER A REASONABLE COST OF REPAIR TO SAID PROPERTY. THE OWNER DOES NOT PROVIDE FOR ANY INSURANCE ON THE RENTAL PROPERTY.

MAINTENANCE AND TAXES. FOR THE TERM OF THIS AGREEMENT AND ANY RENEWAL THEREOF, THE OWNER AGREES TO MAINTAIN THE LEASED PROPERTY IN GOOD WORKING ORDER, AND ANY AND ALL MAINTENANCE OR REPAIRS TO THE PROPERTY OF THE OWNER RENTED HEREUNDER MUST BE PERFORMED BY THE OWNER AND THE OWNER WILL NOT BE RESPONSIBLE FOR COSTS OF ANY REPAIRS DONE AT THE REQUEST OF THE LESSEE BY OTHERS. THE OWNER SHALL PAY ANY PERSONAL PROPERTY TAXES ON SAID PROPERTY. THE OWNER'S OBLIGATION TO MAINTAIN THE RENTED PROPERTY SHALL CONTINUE FOR THE RENTAL TERM INDICATED ABOVE AND ANY RENEWALS THEREOF.

ASSIGNMENT. THIS AGREEMENT MAY BE SOLD, TRANSFERRED, AND ASSIGNED BY THE OWNER WITHOUT RESTRICTION. THE LESSEE HAS NO RIGHT TO ASSIGN, SUBLEASE, OR TRANSFER HIS RIGHTS WITHOUT THE WRITTEN CONSENT OF THE OWNER.

WAIVER FEE. BY INITIALING HERE XDW I HEREBY ELECT TO PAY A FEE IN THE AMOUNT OF $1 PER WEEK OR $2 SEMI-MONTHLY OR $4 PER MONTH AS SET DAMAGE RESPONSIBILITY PROVISION ON BACK.

IN-HOME COLLECTIONS. SHOULD THE OWNER SEND A PERSON TO THE LESSEE'S RESIDENCE TO COLLECT ANY RENEWAL RENTAL PAYMENT, THE LESSEE WILL BE CHARGED AN EXTRA $ 6.00 FOR THAT SERVICE.

OWNER'S RIGHT TO PROPERTY. THE OWNER AND ITS AGENTS UPON THE TERMINATION OF THIS AGREEMENT ARE SPECIFICALLY AUTHORIZED TO TAKE POSSESSION OF THE RENTED PROPERTY. THE LESSEE AGREES TO INDEMNIFY THE OWNER AND ITS AGENTS FOR ALL COSTS, EXPENSES, AND DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES, OCCURRING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THE TAKING POSSESSION OF SAID PROPERTY CAUSED BY THE FAILURE OF THE LESSEE TO VOLUNTARILY SURRENDER THE PROPERTY.

REINSTATEMENT. LESSEE MAY, WITH OWNER'S CONSENT, REINSTATE THIS AGREEMENT BY PAYMENT OF A $ 3.00 REINSTATEMENT CHARGE, ALL UNPAID RENTAL CHARGES AND COLLECTION EXPENSES THROUGH THE DATE OF THE REINSTATEMENT.

OPTION TO OWN. THE OWNER WILL TRANSFER OWNERSHIP OF THE PROPERTY RENTED TO YOU IF YOU AT YOUR SOLE ELECTION, RENEW THIS LEASE FOR 52 SUCCESSIVE WEEKLY LEASE TERMS, OR FOR 24 SUCCESSIVE SEMI-MONTHLY LEASE TERMS, OR FOR 12 SUCCESSIVE MONTHLY LEASE TERMS. THIS IS A RENTAL AGREEMENT ONLY. THIS LEASE IS FOR WEEK-TO-WEEK, SEMI-MONTH TO SEMI-MONTH, OR MONTH-TO-MONTH RENTAL OF THE PROPERTY ONLY. YOU WILL NOT ACQUIRE ANY EQUITY IN THE PROPERTY BY MAKING RENTAL PAYMENTS. YOU HAVE NOT AGREED TO PURCHASE THIS PROPERTY, BUT YOU MAY ACQUIRE OWNERSHIP IN THE FUTURE IF YOU MEET THE CONDITIONS OF THIS OPTION. IF YOU WANT TO PURCHASE THIS OR SIMILAR PROPERTY NOW, YOU MAY BE ABLE TO GET CASH OR CREDIT TERMS FROM OTHER SOURCES WHICH WILL RESULT IN LOWER TOTAL COSTS THAN THE RENTAL PAYMENTS THAT WE REQUIRE.

OWNERSHIP OPTION DISCLOSURES

THE FOLLOWING DISCLOSURES ARE BEING MADE BY THE OWNER TO ASSIST YOU IN UNDERSTANDING THE OWNERSHIP OPTION AVAILABLE TO YOU.

1. YOU WILL MAKE WEEKLY PAYMENTS OF $ 10.55 OR PAYMENTS EVERY SEMI-MONTH OF $ 21.10 OR MONTHLY PAYMENTS OF $ 42.14
2. IN ORDER TO OWN THE PROPERTY, YOU WILL MAKE 52 WEEKLY PAYMENTS OR 24 PAYMENTS SEMI-MONTHLY OR 12 MONTHLY PAYMENTS WHICH WILL TOTAL $ 548.60 UNLESS YOU MAKE ALL OF THESE PAYMENTS, YOU WILL NOT OWN THE PROPERTY. IN THE EVENT THAT YOU CHOOSE TO CHANGE AT ANY TIME FROM A WEEKLY TO MONTHLY TERM OR VICE VERSA, YOUR TOTAL OF PAYMENTS TO OWN THE PROPERTY WILL BE LESS THAN THE TOTAL OF WEEKLY PAYMENTS REQUIRED TO ACQUIRE TITLE TO THE PROPERTY BUT MORE THAN THE TOTAL OF MONTHLY PAYMENTS TO ACQUIRE TITLE TO THE PROPERTY.
3. WHILE RENTING YOU ACQUIRE NO EQUITY INTEREST IN THE PROPERTY. YOU WILL NOT OWN THE PROPERTY UNLESS YOU CHOOSE TO RENEW FOR THE TOTAL NUMBER OF WEEKLY OR MONTHLY PAYMENTS INDICATED.
4. THIS PROPERTY IS XX NEW, _____ USED.
5. THE TOTAL OF PAYMENTS NECESSARY TO ACQUIRE OWNERSHIP DOES NOT INCLUDE OTHER CHARGES, SUCH AS IN HOME COLLECTION FEES. SEE ABOVE FOR INFORMATION ABOUT THESE CHARGES.
6. YOU ARE RESPONSIBLE FOR THE FAIR MARKET VALUE OF THE PROPERTY IF IT IS LOST, STOLEN, DAMAGED, OR DESTROYED.
7. I HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS DISCLOSURE AND ALL OWNERSHIP OPTIONS.

[signature] DATE 7/30 WITNESS

Donna Wills DATE 7/30/90 LESSEE

TIME IS OF THE ESSENCE OF THIS AGREEMENT

NO ORAL STATEMENTS OR AGREEMENTS SHALL BE VALID OR BINDING ON THE PARTIES HERETO. THIS RENTAL AGREEMENT MAY BE MODIFIED, VARIED, ALTERED OR EXTENDED, OR THE AGREEMENTS OR CONDITIONS HEREOF WAIVED ONLY BY AGREEMENT IN WRITING EXECUTED BY THE OWNER. LESSEE ACKNOWLEDGES RECEIPT OF THE PROPERTY IN SATISFACTORY OPERATING CONDITION.

I HAVE READ AND UNDERSTAND THE ABOVE RENTAL AGREEMENT.

[signature] WITNESS

Donna Wills LESSEE

[signature] LESSEE

FORM NO. DSM 1501E

EXHIBIT 12

EXHIBIT 13

The Herald-Dispatch

METRO FINAL

...T NEWSPAPER | HUNTINGTON, W.VA., NOVEMBER 8, 1990 | 35 Cents

RENT TO OWN

Low payments conceal final costs double or triple retail, critics say

By KENNETH R. BLAKE
Of The Herald-Dispatch staff

Marlene Jeffers-Watts wanted a television set.

But she couldn't afford to pay cash for one, and her poor credit rating at the time made getting a loan impossible.

So when she heard that a store in Huntington would rent her a TV for $18.95 a week, she was interested.

When she heard she could apply her rent toward buying the TV, she was even more interested.

When she heard the company required no credit check, she was hooked.

She ended up paying $1,200 for a TV worth $499.

She's still angry.

"A lot of people ask me for advice about renting to own, and I tell them, 'No, don't rent to own,'" Jeffers-Watts, 33, said last week as she sat curled up in one of her living room chairs.

Across the room, the closing credits of an Andy Griffith Show rerun played across the television — a color Panasonic floor model — which she has owned for about a year now.

"I don't want to see them do the same stupid thing I did," she said.

It's called renting to own because customers get the chance to rent appliances, televisions, stereos, furniture and other items for weekly or monthly payments.

The customer can cancel the rental arrangement at any time with no penalty. However, if the customer makes a specified number of rental payments, the customer gets to keep the item.

Rental payments often are attractively low, but customers like Jeffers-Watts who make all the payments required to own an item usually end up paying two or three times the item's retail price.

That's certainly the case locally. A recent Herald-Dispatch study comparing the total cost of seven items at local rent-to-own stores with the cost of identical or comparable items at local retail stores found that the rent-to-own costs ranged from 126 percent to 320 percent higher.

The study also found that if the items were financed — say through a bank or a lending company — at the same terms set by the rent-to-own stores, interest rates on the loans would range from 125.7 percent to 318.9 percent.

Figures like those show that the rent-to-own industry is ripping off consumers, especially poor ones attracted by low monthly payments and the promise of no credit checks, critics say.

Some, like Dave Grubb, director of the West Virginia Citizen Action Group, say rent-to-own agreements actually are thinly disguised credit sales that charge outrageously high interest rates.

Rent-to-own dealers disagree, though, and during the upcoming legislative session, the two sides most likely will continue their two-year-old fight over how to regulate the industry in West Virginia.

Grubb and other rent-to-own critics have written a bill that basically defines renting to own as a credit transaction subject to the laws that cap interest rates at 18 percent.

However, rent-to-own industry representatives have written a bill that specifically exempts rent-to-own agreements from laws regulating credit sales.

The bill does, however, require that rent-to-own stores disclose certain information about each transaction such as the total rent-to-own cost of an item and the cash price of the item.

The bill also gives the consumer the right to return a rented item and then rent it again up to three rental terms later without losing any progress toward ownership of the item.

Both bills failed to pass during the last two sessions, and Grubb said the issue probably will be taken up again during the next session.

Meanwhile, another rent-to-own critic, Francie Roberts-Buchanan, says something needs to be done to keep the rent-to-own industry from preying on low-income people.

"Rent-to-own dealers don't ask the customer, 'What will you live without in order to live with this?'" said Roberts-Buchanan, director of the Information and Referral Service in Huntington, an agency which aids low income people.

Too often, clients come in with a bill for electricity, medicine or food that they can't afford to pay because they are on a rent-to-own program, she said.

Although getting the client to cancel the rental agreement in order to free up money for the bill is an option in theory, it often isn't an option in practice, she said.

"When they're paying 60 bucks a month to a certain rent-to-own place for a set of bunk beds or a VCR or a television or an entertainment center, and they've paid that for quite a few months and they've got all that money invested, it's hard for us to say, 'Give it all up and lose everything you've put into it,'" she said.

But rent-to-own dealers have neither the responsibility nor the right to decide how people should spend their money, according to Roger Sharp, president of the West Virginia Rental Dealers Association and co-owner of Appalachian Rentals in Huntington.

"There are people that shouldn't gamble. There are people that shouldn't drink. And I'm sure there are people that shouldn't rent to own," he said.

Also, saying that rent-to-own dealers charge excessive interest rates is both inaccurate and unfair, he said.

In a rent-to-own agreement, the customer is never in debt. Therefore, there can be no interest, he said.

Furthermore, comparing the final rent-to-own cost of an item with the local retail price of the same item is equally unfair, he said.

That's because rent-to-own customers get more than the item they rent, he said.

Rent-to-own dealers, for example, usually offer free service throughout the rental term and free use of a comparable item if a rented item needs repair.

They also must absorb the cost of processing a customer's weekly or monthly rental payment and refurbishing items that are returned when a customer cancels a rental agreement, he said.

Retail dealers have no comparable costs, he said.

Finally, rent-to-own customers pay for the ability to cancel the arrangement at any time with no impact on their credit rating, Sharp said.

"That non-obligation, that ability to keep your credit in good standing, has got to mean something. It's got to have some kind of value."

In fact, rent-to-own stores actually offer a necessary service to those who can't get loans because of poor credit, he said.

"I think the estimate I've heard is that about 35 percent of Americans today don't have access to any kind of credit. So there is a large market out there that is not being serviced," he said.

At a rent-to-own store, though, the same people can acquire new merchandise — merchandise that increases their net worth, he said.

He has many customers who, unlike Jeffers-Watts, are perfectly happy with their rent-to-own arrangements, he said.

"I'm not the type of person who could feel comfortable with myself or who would be able to sleep at night if I didn't think I was providing a service that the people I'm dealing with actually need," Sharp said.

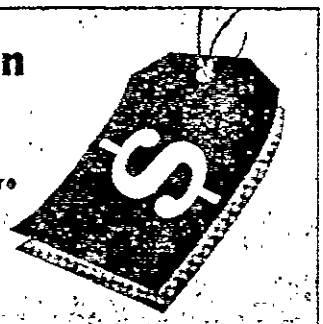
But Grubb doesn't quite see it that way.

"To say we're doing somebody a favor by allowing them to pay 200 percent interest on a transaction is nuts. I don't think we're doing low-income people a great service by giving them access to unconscionable interest rates.

The result for the customer is the same as it would have been if the customer had paid interest, he said.

The cost of renting to own

Comparisons of local retail prices of seven items with the total cost of identical or comparable items at Huntington rent-to-own stores. The chart also shows what the interest rate would be if the transactions were considered credit sales.



Item: Boom box with tape deck
Local retail price: $169.95
Store: Alrenco
Rental terms: $48 a month for 12 months
Total rent-to-own cost: $576
Interest rate if financed at same terms: 318.9%

Item: 19-inch color TV (used) with remote control
Local retail price: $249.97 (new)
Store: Rent A Center
Rental terms: $39.99 a month for 16 months
Total rent-to-own cost: $639.84
Interest rate if financed at same terms: 168.5%

Item: Microwave oven, 600-watts
Local retail price: $159.97
Store: Appalachian Rentals
Rental terms: $32 a month for 21 months
Total rent-to-own cost: $672
Interest rate if financed at same terms: 234.4%

Item: Video cassette recorder, 2-heads, remote control
Local retail price: $249.95
Store: Curtis Mathes Home Entertainment Center
Rental terms: $39.95 a month for 24 months
Total rent-to-own cost: $958.80
Interest rate if financed at same terms: 185.7%

Item: Video cassette recorder, 4-heads, remote control
Local retail price: $269.97
Store: Colortyme
Rental terms: $59.80 a month for 18 months
Total rent-to-own cost: $1,076.40
Interest rate if financed at same terms: 257.8%

Item: Electric range, self-cleaning
Local retail price: $499
Store: RTO Rents
Rental terms: $75.44 a month for 18 months
Total rent-to-own cost: $1,357.92
Interest rate if financed at same terms: 183.1%

Item: Washer and dryer set, stacked
Local retail price: $700
Store: National Appliance & TV
Rental terms: $87.95 a month for 18 months
Total rent-to-own cost: $1,583.10
Interest rate if financed at same terms: 125.7%

GOOD MORNING!
MONDAY

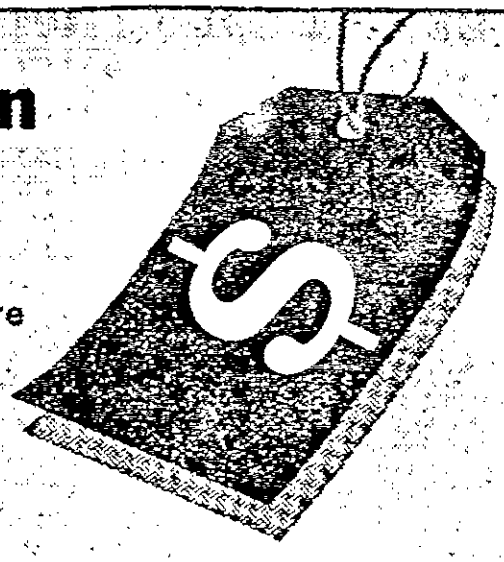
THE ST. JAMES
Neighborhood
The St. James blends the old with the new/B1

Overpowering
Bengals come home, and Saints march in/C1

The Herald-Dispatch
METRO FINAL

A GANNETT NEWSPAPER HUNTINGTON, W.VA., [illegible] 6, 1990 25 CENTS

The cost of renting to own



Comparisons of local retail prices of seven items with the total cost of identical or comparable items at Huntington rent-to-own stores. The chart also shows what the interest rate would be if the transactions were considered credit sales.

Item: Boom box with tape deck
Local retail price: $169.95
Store: Alrenco
Rental terms: $48 a month for 12 months
Total rent-to-own cost: $576
Interest rate if financed at same terms: 318.9%

Item: 19-inch color TV (used) with remote control
Local retail price: $249.97 (new)
Store: Rent A Center
Rental terms: $39.99 a month for 16 months
Total rent-to-own cost: $639.84
Interest rate if financed at same terms: 168.5%

Item: Microwave oven, 600-watts
Local retail price: $159.97
Store: Appalachian Rentals
Rental terms: $32 a month for 21 months
Total rent-to-own cost: $672
Interest rate if financed at same terms: 234.4%

Item: Video cassette recorder, 2-heads, remote control
Local retail price: $249.95
Store: Curtis Mathes Home Entertainment Center
Rental terms: $39.95 a month for 24 months
Total rent-to-own cost: $958.80
Interest rate if financed at same terms: 185.7%

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Sunday Outlook
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January 12, 1992

Rent-to-own dealers target the poor

TVs, furniture are easy to get, but they come with a high price

Ken Ward Jr.
SUNDAY GAZETTE-MAIL

You won't find many rent-to-own dealers in South Hills.

Aaron's Charleston store is in an East End strip plaza next door to a state welfare office.

National TV & Appliance Rental Center is on Virginia Street in a run-down section of the West Side. There are bars on the large windows.

West Virginia's poor people want the same things everybody else has — a comfortable chair, a refrigerator, maybe a color television. Many get them at any of a dozen local rent-to-own stores for only a few dollars a week.

Dealers offer free service, free same-day delivery and, most importantly, no credit checks.

"A lot of people are not able to buy on credit," says rent-to-own customer Kathy Jones of Cross Lanes. "This is the reason a lot of people rent to own."

Rent-to-own dealers target customers in the bottom 40 percent of the nation's economic population, according to the Council of Better Business Bureaus.

Roger Sharp, president of the West Virginia Rental Dealers Association, says his members give these people a service.

"We fill a niche for certain individuals," Sharp says.

Families, single mothers and the elderly all shop at rent-to-own businesses, Sharp says, and get needed items and a few luxuries they couldn't otherwise have.

But look at the final price, says legal aid lawyer Dave McMahon, and rent-to-own is a rip-off.

A 19-inch color television, for example, goes for $12.89 a week at National. Through a standard 78-week rent-to-own contract, the $340 set costs more than $1,000.

Want a video cassette recorder to go with it? RTO Rent To Own, with stores in Charleston, Huntington and Beckley, has a Fisher for $9.99 a week. In 78 weeks, that's $779, $504 more than retail.

Almost anything you buy from a rent-to-own dealer costs two or three times the retail price.

"They take somebody who is in a position that can't get credit anywhere else," McMahon said. "The rent-to-own system, I guess you would call it, is basically a marketing scheme to avoid the consumer protections that consumers have in other sales transactions."

Rent to own isn't considered a credit sale by West Virginia or federal law. That technicality does two things:

- It allows dealers to hide the final costs from customers. The costs can be written in fine print on a contract, or maybe not at all.
- Dealers don't have to comply with the state's 18 percent interest limit for credit sales. In rent-to-own purchases, interest often reaches 300 percent to 400 percent.

"If you buy under a credit card or if you go to a store and use their payment over time scheme, two sets of laws kick in to protect the consumer," McMahon said. "If you're going to go down to rent to own, they use word games to dodge the consumer laws and the finance charge you'll have to pay is anywhere between 75 percent and 300 percent."

Delegate David Grubb, D-Kanawha, is director of the West Virginia-Citizen Action Group, a liberal political and consumer advocate organization.

Working with McMahon, Grubb plans to introduce legislation this year making rent-to-own dealers subject to disclosure and interest limit laws.

Their bill would protect poor consumers from inflated rent-to-own prices, Grubb says.

Legal aid groups, Consumer Reports and the American Association of Retired Persons have all published warnings about rent-to-own dealers. All generally support Grubb and McMahon's strict regulations.

"This is basically the new loan shark," Robert J. Hobbs, deputy director of the National Consumer Law Center Inc. in Boston, said in one report on rent to own.

West Virginia lawmakers have talked about rent to own before. An industry-supported bill requiring price disclosures passed the Senate in 1989 and the House of Delegates in 1990.

It didn't become law because both houses didn't approve it the same year.

Consumer advocates called the bill phony regulation, because it still allowed rent-to-own to dodge interest limits. Roger Tompkins, then-state Attorney General, opposed the industry bill for this reason.

Senate Judiciary Chairman James Humphreys, D-Kanawha, promises any bill approved this year will protect poor consumers.

* * *

The salesman at Appalachian Rentals in Huntington answers the phone.

"Thank you for calling," he says. "What can I rent you today?"

Maybe a microwave oven. For a Quasar or Panasonic, you could pay $21.95 a month for 18 months, or $395.10.

[illegible] weekly payment plan, you pay even more, about $5 a week for 78 weeks, or $465.

The retail price: $274.[illegible]

[illegible] Appalachian Rentals [illegible] [illegible] rent-to-own stores won't.

[illegible] example, doesn't [illegible] cash sales [illegible] salesman [illegible]

[illegible] make a few weekly payments and then [illegible]

[illegible] arrangement [illegible]

[illegible] customers never [illegible] rent-to-own contract. [illegible] return the merchandise, then start renting [illegible] again. The process is repeated over and over.

[illegible] from Charleston rent-to-own [illegible] Orchard Manor and other housing projects daily picking up furniture and appliances from residents.

By renting this way, those residents can pay equal to or more than the retail price each time they rent an item.

Rent-to-own [illegible] $2.5 [illegible] business [illegible]

[illegible] biggest [illegible] Thomson Consumer Electronics [illegible] $336 million [illegible] consumer electronics [illegible] in the world.

[illegible] years ago, few of these dealerships were in West Virginia. Sharp worked at one of them.

More stores sprang up, and Sharp started his own. Now he has six stores, two of them in West Virginia.

More than 50 dealers in the state, he says, do $30 million in business a year. Most are part of a national chain such as ColorTyme.

[illegible] dealers aren't eager to talk.

At Aaron's on Charleston's East End, Manager Tonya Kirby refers all questions to the home office in Ohio.

"My problem is they have asked us to just refer everything to them," Kirby said. "I would be fired. I have kids to raise."

"We never know that people know exactly what we do [illegible] things," says a corporate spokesman asked to explain the [illegible]. "We just like to have a [illegible] corporate [illegible]."

[illegible] rent-to-own dealers [illegible] supporting [illegible] regulation.

[illegible] legislators across the [illegible] are debating the issue [illegible] regulation.

Sharp says he's been pushing [illegible] in West Virginia for years.

"There aren't too many hostages out there that want to be regulated," he says.

See RENT, Page 4B



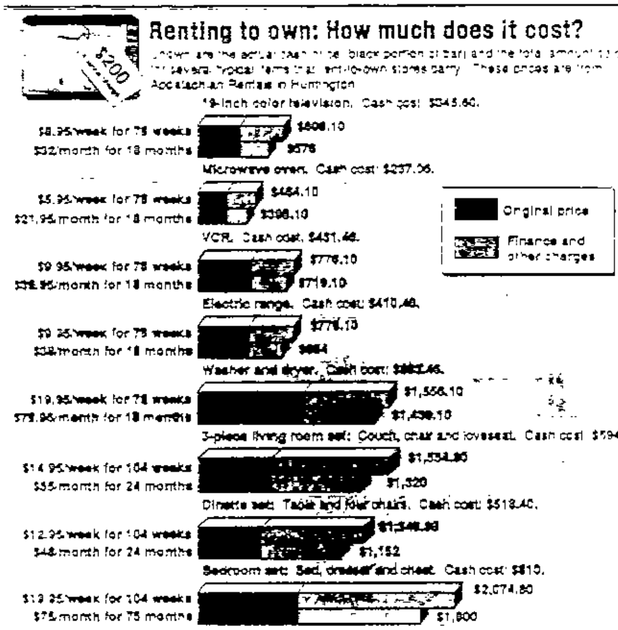
Photo by [illegible]

Rent-to-own companies such as Colortyme are often seen in the Orchard Manor housing project, dropping off and picking up televisions, stereos, and rent-to-own furniture.

Almost anything you buy from a rent-to-own dealer costs two or three times the retail price.

Renting to own: How much does it cost?

Shown are the actual cash price (black portion of bar) and the total amount paid for several typical items that rent-to-own stores carry. These prices are from Appalachian Rentals in Huntington.



Source: Roger Sharp, president W.Va. Rental Dealers Association

Graphic by BRENDA PINNELL

Rent-to-own dealers target poor customers

Continued From Page 1B

Under the industry bill, dealers would disclose their final rent-to-own price. They would have to describe the merchandise to customers in writing, reveal the amount of initial and periodic rental payments and the cash price of the property.

But consumer advocates say Sharp's bill does little to control rent-to-own prices and protect poor consumers from paying two or three times what an item really costs. He says that's fair.

"You've got to realize that not everybody who comes in and rents a television is intending to buy it," Sharp said. "We do not know to finest whether they're intending to buy or just going to rent."

When a rental item is returned, Sharp said, dealers have to repair it so they can rent it again. This creates higher overhead than normal retail dealers have, he said.

Comparing rent-to-own prices with retail prices, you're comparing apples to oranges, Sharp said.

"We're not in the business of selling. We're in the business of renting," Sharp said. "That's where our pricing is geared to."

What's more, Sharp insists, some rent-to-own merchandise costs less than retail. Televisions and stereos grab headlines, but furniture through rent-to-own is a bargain, he said.

At Sharp's store, however, a three-piece living room set with couch, chair and loveseat costs more than $1,500 through rent-to-own. The cash price is about $600.

A stereo with table and four albums costs more than $1,100. The set retails for $5.8.

Sharp couldn't provide an example of a furniture bargain.

Only Pennsylvania has truly attacked rent-to-own dealers. Lawmakers there made rent-to-own subject to consumer protection laws.

Some dealers challenged this in court and others have simply ignored it. But the state's attorney general now has the power to prosecute the ones that do.

"I would say that we are in favor of bringing all those companies under the 18 percent limit," said Margie Stuski, deputy director of the Pennsylvania Attorney General's Consumer Protection Division.

* * *

Kathy Jones thinks she got a bargain, even though she paid much more than retail.

Jones and her husband virtually furnished their Cross Lanes home with rent-to-own furniture. They couldn't get it any other way, she said.

"I didn't have the money at the time and I want to have a lot of nice stuff."

Alternatives exist for people like Jones, says Ray Adkins at Easy Deal Used Furniture on the West Side.

There a used electric range costs between $75 and $150, depending on how old it is and what shape it is in, Adkins said. A rent-to-own range from Sharp would cost more than $775.

Adkins can sell a 19-inch color television for $ 0 to $125.

Sure, he says, the stuff is used. But the store offers a limited warranty and services what it sells.

If they could just hold on to their money for a month, they could buy it straight out, Adkins said. "Then it's theirs. No more payments or this $50 a week stuff. They pay for it and it's theirs."

But as long as rent-to-own is available and enticing, Markanich said, people will continue to use it.

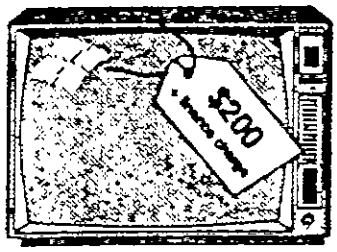
Cake Marinella, owner of Kanawha City, for example. She's a big rent-to-own believer and knows it costs her.

Still, she's looking around for a rent-to-own dinette set.

"I'm divorced and it's hard for me to get credit," Fix said.

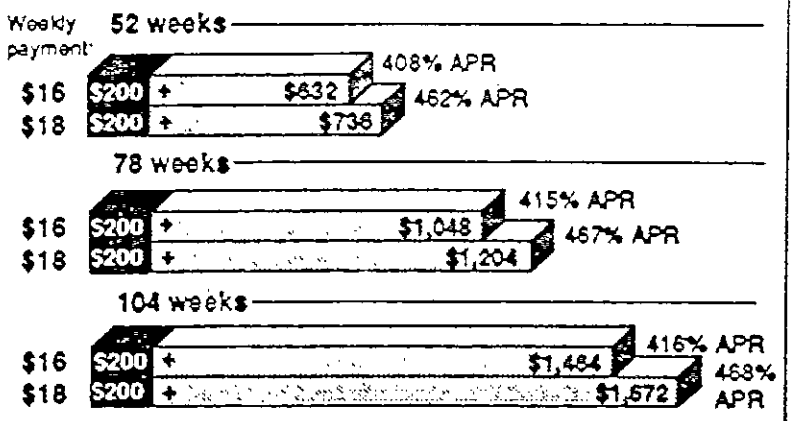
That's about the only choice you have. They get you. They get you really bad."

Renting to own: how much does it cost?



Purchasing an item from a rent-to-own company can be very costly because of dramatically inflated finance charge rates. For example, a television with a retail value of $200 will cost $1,248 to $1,404 at $16 or $18 per week over 78 weeks.

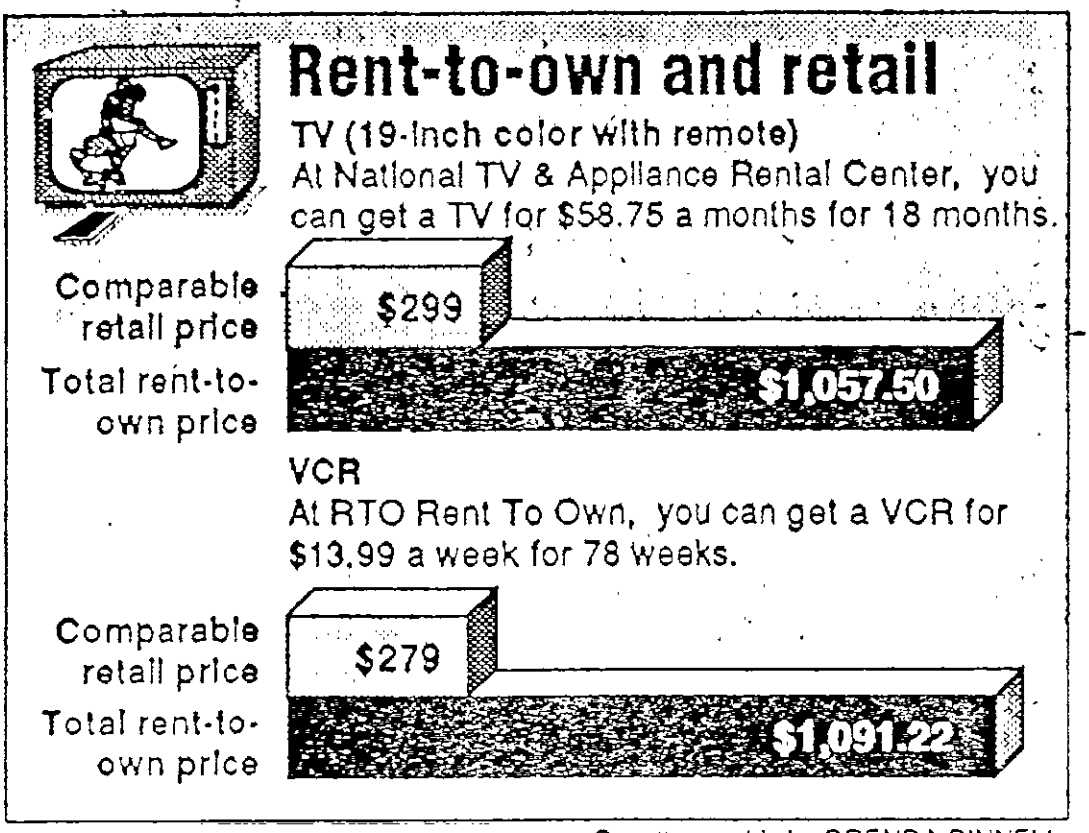
Amount financed Finance charge



Source: W.Va. attorney general's office, division of consumer protection

Gazette graphic by BRENDA PINNELL

EXHIBIT 15



Gazette graphic by BRENDA PINNELL

West Virginia Legal Services Plan, Inc.

Suite 700
1033 Quarrier Street
Charleston, W. Va. 25301



Phone (304) 342-6814
(Toll Free) 1/800/642-8279

James P. Martin
Program Director

Technical Comment on
Proposed Legislative Rule
on Consumer **Lease Disclosures** in
Rent to Own Transactions
142 C.S.R.-15-1 et seq
David B. McMahon, Attorney at Law
September 9, 1992

A. "Cash Price"

Section 3.1.6 requires disclosure of an imputed interest rate. Part of the computation of such an interest rate is the "cash price." There is no definition of cash price in this rule. This is a serious flaw in imputed interest rate calculation.

Disclosure of the interest rate is one of the two most important disclosures. This is the only disclosure which will allow consumers to compare the finance charge in Rent to Own transactions with the finance charge in the other consumer transactions which are available to them.

A definition of cash price needs added which will tie it to a fair market retail value. To avoid requiring dealers to sell goods outright if they do not want to, the item could be labeled "fair market value/cash price." Because most Rent to Own consumers cannot go elsewhere, they do not shop around and compare cash price or quality of goods. Because these consumers could not go elsewhere even if the cash price was lower the Rent to Own dealers have no incentive to have a low cash price. Similarly, because these consumers cannot shop and are not familiar with the quality of other goods for the same price, they do not recognize when goods are overpriced. They typically value the goods based on the stated cash price. Because the stated cash price is taken by the unsophisticated consumer as the indicator of the true value of the goods, Rent to Own dealers inflate the cash value so the consumer thinks that he is getting a much more valuable item than he really is.

So, not only does the Rent to Own dealer have no incentive to put a low cash price on his merchandise, he has an incentive to put a high cash price on his merchandise. Imputed interest rate disclosure without a fair market cash price definition will be an additional incentive to have high cash prices. The higher the cash price, the lower the calculated imputed interest rate.

The most practical fair market "cash price" would allow a presumption for a cash price found in any other unconnected retail outlet in the market area, or perhaps a percentage markup over the actual wholesale, to be a fair market cash price. References to manufacturer's price quotes, etc. are not useful because those are easily manipulated, particularly in dealings by the larger Rent to Own dealers with the manufacturers. The manufacturers are only too happy to print out any price lists for their Rent to Own dealer customers.

B. Credits.

Section 3.2.2 requires disclosure of credits when consumers trade in or re-sign. This is particularly needed for those who re-sign. Typically a consumer gets three payments behind. The Rent to Own dealers tell the consumer he will do the consumer a favor and let him re-sign for about the same or maybe a little higher or even lower periodic payment. What the consumer does not realize is even though he was only <u>three</u> payments behind, there the new contract has <u>six</u> additional payments tacked on to the end of the contract.

The flaw in the proposed disclosure is that it does not state whether the credit will be in terms of cash price or total of payments. For the reasons made in the previous subsection, total of payments should be the method of disclosure used. Cash price is too easily manipulated. Dealers can easily make a "cash price" credit disclosure meaningless in order to undervalue the payments made on the returned item. All the dealer has to do is to raise the cash price of the new goods for which the consumer is trading.

C. Wear and Tear

Section 3.2.10 does not take into account that Section 3.2.1 does not require the dealer to be responsible for maintenance due to wear and tear. There is similarly no regulation about who is responsible for damage in excess of wear and tear. One of the come-ons that Rent to Own dealers use is that the dealer is responsible for maintenance due to wear and tear. Dealers should be required to be responsible for maintenance due to normal wear and tear. Dealer responsibility for wear and tear should not be part of the definition of what is or is not a Rent to Own transaction to avoid creating a loophole. To be consistent with 3.2.1 however, 3.2.10 needs rewritten. Drop the first word and add on: "If the lessee is liable for damage beyond wear and tear, whether"

West Virginia Legal Services Plan, Inc.

Suite 700
1033 Quarrier Street
Charleston, W. Va. 25301



Phone (304) 342-6814
(Toll Free) 1/800/642-8279

James P. Martin
Program Director

Technical Comments on
Proposed Interpretative Rule Pertaining to Treatment
of Rent to Own Transactions as Consumer Leases
Consumer Credit Sales
142 C.S.R.-14-1 et seq
David B. McMahon, Attorney at Law
September 9, 1992

Despite my strong support for clarifying that Rent to Own agreements are "consumer credit sales," the rule proposed has a difficulty followed by a huge loophole. The difficulty is that it cannot be determined until after four months whether the transaction was a consumer credit sale or a bona fide rental. If the transaction becomes a rental purchase agreement/consumer credit sale then the dealer had previously to have limited the payments to the proper annual percentage rate. However no dealer is going to do that. Every four months when the customer comes in to make his payment the dealer is going to hand the customer the waiver form and say, "I know you really are going to buy this, but this is something the State makes us do." The consumer will sign the waiver and go on paying the outrageous finance charges.

It is recommended that any contract which on its face provides for an ownership option, or which is induced by advertising or other inducement on the basis that ownership could occur, is a rent to own transaction and is, in fact, a consumer credit sale. The ownership option representation eliminates the problems with U-Haul and party rentals.

In addition to this problem, the use of the four month limit in Section 3.1 also creates a loophole. All rental purchase agreements in West Virginia will now read that they are for four months. The consumer will be told by the dealer, though it will not be written down anywhere, that after four months the consumer can come back in and sign another lease.

B. "$1,000"

While the reference to West Virginia Code 46A-2-119 is understood, the $1,000 limit is much too low. All rent to own transactions regardless of whether West Virginia Code provides for deficiencies are really consumer credit sales.

C. Reference to 46A-2-119(2)

Section 4.1 refers to this section of the Code. If the reference was to make sure the figure in the regulation stayed the same as the code in the event that the code section was amended, then the reference to the code makes sense. Otherwise it is not clear what effect the reference to the code section will have on the operation of the rule.

D. "Cash Price"

For reasons stated in comments on proposed 142 C.S.R. 15-1 et seq, a "cash price" definition needs included.

RENTEX
RENTAL DEALER EXPO '91
February 8-11, 1991

INTRODUCTION TO ACCOUNT MANAGEMENT

Larry Sutton

I'm Larry Sutton, I'm with Champion TV and Appliance Rental. Some people call me the Sears Poster Boy. Y'all seen those silly ads they run across the country. I spent seven hours on Bourbon Street yesterday so if I talk funny you'll have to forgive me. This is going to be a two phase deal and I don't know if it was properly explained that way but basically we have about three and a half to four hours worth of material to cover. We're going to cover it in two sessions. This is session number one. So we're going to build up to a point where we're going to talk about designing an account management system for your operation and tell you a little about me. I've got 20 of the Champion Stores in Central Florida, been in business about ten years and I love the rent-to-own business. I used to teach the rent-to-own business when I was with Curtis Mathis and that was about 11 years ago and I been in it and I love it. And I think that probably y'all do too or you wouldn't be here. We're going to be talking about communication this morning because that's what we do in account management is that we communicate. I tell you a real quick story about a guy that had a fantastic attitude because to me in business your attitude is everything. If you go to work feeling good, you go to work feeling like I'm here to get the job done no matter what, I'm havin' fun doin' what I do, you're gonna do well. No matter what you do.

Last year when they called me about doing a seminar, they said what we want you to talk about is collection. And I said well, Gee Whiz! Of all the interesting things in our business to talk about -- there's planning, there's buying and there's managing. There's all these wonderful things out there to talk about. Why on the face of this Earth does anybody want me to talk about account management? Then I got to thinking about that and I said well I'll do it. I didn't know what I was gonna talk about or what I was gonna do. Every once in a while I'm not the brightest guy in the world but every once in a while I figure if I got a problem, the place to find out is to go out there and ask the people who are doing the job. That's usually what it comes down do. Usually I get my best answers that way.

I got to looking around my own company because what I felt about account management at that time is that what is the world am I gonna say about account management. Everybody does it the same way. I mean this is the rent-to-own business right? Everybody does it the same way. What's the big deal. What we gonna talk about. What could be so revolutionary that I can stand up and tell these people about account management's gonna make a difference in their business.

Well I had an awakening in front of me because when I looked at the 19 stores that we were managing, I tell you what I found out. I found out I had 19 stores doing account managing different. Completely different within our own organization. I said "Well that's amazing. Wonder how that happened." So I figured out that if 19 stores in one organization were doing it somewhat different, probably across the United States and across the country there's

a lot of people with a lot of different ideas and concepts on how to manage their accounts. So we began to look into it in our own company.

Now one of the things I came to the realization of that's real basic and real simple that I hadn't really thought about before, and that is this -- is that of all the businesses we're in, we're in the retail merchandising business when you get right down to it. We don't want to say that in Court. Let's face it we're in the retail business, we sell. Of all the businesses we're in the inventory management business. We're in the people management business. Of all those businesses, the most important thing that any of us do in our organization is manage our accounts. Because if we fail to manage our accounts properly, we'll be out of business. So that's really our business, is account management. I mean it's really relatively simple to get a unit in the street when you get right down to it. Bud Holiday says it better than anybody. He says our business is real simple, everybody that wants one gets one. And everybody that pays gets to keep it. You know that's really what it comes down to. That is our business.

What I want to find out is a couple of questions. Number one, how many owners do we have in the room? Business owners? That would be my assumption, business managers? Have we got any store managers? Multi-unit managers? People like that? Okay. Let me ask you a question. How many people in the room in the organization are closing on Saturday night at less than 5% or less consistently? I got what about five or six. Which one of you guys wants it? What are you doing here, that's what I want to know. Okay we got about six of them at 5% or less. Alright, how many are between five and seven percent on a Saturday night? My assumption would be that Saturday night are what most people are looking at for closing percentages, is that correct? Awright, how many people are between five and seven percent? Another one, five to seven percent. How about seven to ten? Picked up a few more, I'd say about 11. Okay, how many people are above ten percent on Saturday. I guess that kind of takes care of everybody. So what we're finding out is that most of us are in this seven to 11% range. How many people are totally happy where they're closing on Saturday night. Well, you ought to be. If you ain't happy with less than five, I gotta flash for ya.

Awright, since we got mostly owners and multi-unit managers, the way I'm gonna approach this, and for those of you who came in a little late, I want to reiterate just one thing and that is that this is a two part seminar. Part of its going to be done this morning, the second half will take place this afternoon at 4:00 o'clock. So you're welcome to come to that and get into the second half because we will be getting into designing some account management systems at that section.

The first thing that came to me when they called me and asked me to talk about account management, and I always start out with the basics in life, I said well, let's ask this question. Why do my people think that we want to close good. That we use this percentage of measuring up there. What reason do we have a percentage -- why is that percentage what it is and what do my people think is the reason that they should be closing low. Well, I don't know about you but I'll tell you what I found out, I found out that most of my people are closing low because they felt like they was gonna lose their job if they didn't. They felt

like they would please their manager if they didn't and they just didn't really know exactly why, when it came right down to it, why it was important to have a low closing percentage at the end of the week other than the fact that they got a bonus based on it or that it was just what they were supposed to do as part of their job. I thought well, gee whiz, you know we been in business 11 years and it's hard for me to believe that my own people do not understand why we're doing what we do as the most important part of our job.

So I thought we better talk about that and get involved in it. What I had to ask myself is why? What is the main reason that we want that to happen? So I came up with three different things that are most important to me. One of them is not that complicated, its somewhat complicated. But one of the things that you know most people told me when you asked that question around, you know why do you close good, and they said well it's helps my yield. Because if I'm yielding $60 and closing at ten percent per account, if I can close at five percent, I really think I can yield about $63 and if I can yield $63, I'm doing better. Now I said to the guy, why? He said what do you mean why? He says $63 is better than $60. Any idiot can figure that out. I said, well ya, that makes sense to me but I want to get a little deeper than that. I want to know why. He said well, cause that's $3 more. And I said, ya well I understand that. I began to look around at my organization and I found out I had stores closing at five percent that were yielding $60 and I had other stores closing at ten percent that were yielding $70. I said well now wait a minute. There's a discrepancy here. There's something wrong because this guy is supposed to be yielding better but you know in our business, how many factors go into your yield. There's a lot of factors that go into that monthly yield and account management is only about 10% to 20% of that factor. So you can be running a company closing at 5% and still be yielding a low number depending upon the kind of merchandise you yield, depending on how many weeks of the month you're collecting from that particular account. I'll get into that in a minute and you'll see what I'm saying, maybe. I don't know what I'm saying yet, but I'll get there.

So we started talking about that and I said what I want is three well founded reasons that I can take out to the field. One of 'em is that they can totally understand the main reason every employee that is in account management and everybody that's in the organization is in account management when you get right down to it cause it starts when they walk in the door. But what I want everybody knowing and focused on one area: why do we do this? Why do we focus on our efforts and everything else toward managing those accounts properly. Why do we do that? I want everybody thinking the same way.

One of the things that it comes down to if you're a business owner in here is this; and if you're a multi-level manager responsible for profit, or if you're a store manager responsible for profit, one of the main things that good account management or bad account management does for you is it totally and unequivocally is the most important factor in your gross margin in your monthly gross margin in running your business. Unquestionably, it effects your gross margin more than anything else you do. Whether you discount product, no matter what you buy, account management will affect your gross margin quicker than anything else you do in your business.

Now if you look at the first handout on gross margin comparison – handout #1, first thing in the book. Everybody I know in the business, most people I know in the business, and there's some people that do it differently, but everybody I know for a long time when they get a piece of merchandise in and they determine a price, they generally use some sort of multiple of that cost. Everybody with me? This unit cost me $400. I'm going to charge three times and buy me a big mansion and a fancy car and get rich. Okay? This unit cost me $500. I'm going to charge three times and buy me a new place in the county and I'm going to get rich.

The problem with that is this, is that first of all if you look at the example here and go to the first portion -- I'm going to assume that item cost $400 for this example. I'm going to look at a company that's looking for an average across the board in their business of 3.5 turn on their cost. And the reason I'm using 3.5 is that, as far as I'm concerned in my business, I couldn't take anything less and run it and be profitable. And if it's furniture, I couldn't even begin to take 3.5 because I'm going to be a losing dude down the road. There's a lot that goes into that and we can expand on that a little bit but the bottom line is, I'm looking for an across the board average of 3.5. Now why am I looking for 3.5. I'll tell you why. Because it gives me a 71% monthly gross margin.

When you think of rent-to-own, you got to think this way, I believe, and that is that number one we're a business that says there is no obligation to continue the use of this merchandise. Is that correct? That's on my agreement, is that on yours? We're a business who says if you don't want this tomorrow Mrs. Jones all you got to do is give it back. We're a business that says if you don't pay me, all you're going do is turn it in. Everybody run pretty much that way? Well, my question would be this, if all of these factors can cause that unit to come back in to a non-revenue producing state, then how on Earth can we sit there in our right mind and figure a multiple based on a payout of unknown income. Everybody follow where I'm coming from? We don't know the day we price those goods we're going to get 18 months out of that. We don't have the slightest idea we're going to get 18 months. We don't know if we're going to get 13 months, we don't know if we're going to get 21 months. Who knows exactly what they're going to get on every piece? So how can we sit there and price our goods on a multiple based on an 18 month term or a 21 month term and then walk out the door and buy a new car based on that fact? We can't do it. Just ask Transamerica how many rental companies they own today. There's a bunch of them that think that way. You can even think your way right out a business thinking that way because we're in a non-obligatory business and it ain't gonna happen. So what are we left with? We're left at going back to gross margins. Anybody come from the retail business? I grew up in the retail business selling retail. I used to think, well man if it cost me $400 bucks, I know a lot of retailers used to think this way, if it costs me $400 and I put a $50 bill on it, I make $50. If it costs me $500 and I put a $50 bill on it, I make $50. If it costs me $1,000 and I put a $50 bill on it, I make $50. How many of you know retail business gone down the tubes from thinking like that. Its crazy. Its gross margin. You want to know what your gross margin is in the rental business then what I think you need to do is you need to figure out what the average income per unit in your organization will yield you over the time that it stays in your system. And that means this -- it may be here 24 months. You hear these guys say well man, that sucker has been around here for seven years and look at it. You

know, this great. And that is great. Awright, but tell me how many months of income it yielded your company while it was there. That's what I want to know.

Now our industry, how many people use 18 month depreciation for operating statement? Not for income taxes but just to operate your business? Then you people use 21 or something longer? Awright, I believe in our organization that our average piece will yield us, whether its there 24 months, whether it's there 70 months, that the average piece of goods in my organization is going to yield me about 18 months worth of income. That's what I think. Okay? Now, if that's the case, then what's my real cost of the merchandise on its own rent? Or when it's in my system? It's the monthly depreciation if I'm using 18 months. Is everybody with me? So if we go back to this organization, this plan here, I've got a $400 cost, company looking for 3.5 turns, that's a 71% gross margin. That means on a monthly basis, the way I figure gross margin is I figure $400 divided by 18 and that gives me a monthly cost figure. If you want to do that figure and put it there to explain where that 71% comes you can.

That gives me $1,400 for 71% gross margin on the total piece. If you take the $1,400 divided by $78 equals $17.95 per week. Everybody there? $1,400 divided by 18 equals $77.00 per month. The normal income received by your company on a month of four pay periods would be $71.80. A company using 18 months appreciation for cost of goods $400 divided by 18 is $22.22. To me, that's what my cost of product is. It wasn't the $400 cause you know what? That piece may be stolen next month. And next month its going to cost me whatever the unappreciated value is. All I know and all I can predict in my business is one month at a time, one week at a time when you get right down to it. Bottom line is that's what it costs me this month. I'm going to make a payment somewhat similar to that to Transamerica or whoever you're doing business with, now that's going to cost me a little interest on top of that right? So the difference in that figure and what I am able to extract in income on that piece, is the gross margin. And I can tell you now that retail businesses across this land are out of business because they didn't operate here and there's a lot of rental companies that aren't in the room today because they didn't operate here. They operated up here. Long as I get three times I don't have a problem. But you do have a problem cause if you're not getting about a 71% gross margin or 70% gross margin, you got a severe problem because you got operational costs, you got service, you got all these other costs that come down here and I think in our business, if you want a 15% net, you better start right there.

When I look at our P&Ls and we may not be operating as efficiently as you are, but when I look across the board, our P&Ls, anything less than that, I got big trouble. And that's after service and write offs and everything else. That's after the initial easy stuff. That's before you get to basic operating store costs. Everybody with me so far? If I get off on a tangent just raise your hand and say you're babbling or somebody hold up a sign and say babble alert. Awright. Cause what I want to get down to is simply this, the way I figure my business is making money on a monthly basis is how much money I can extract against how much money it costs me on a month because I don't know what's going to happen next month. And I certainly don't know what that piece is going to get me over the time its in my system. So if I'm going to figure like that, then how important is it, and let's go on down

on the example here. When figuring gross margins, it doesn't matter what is used in accounting wise, only how many months income you get while its in your system.

Example A, if you get four payments at $17.95 on a weekly basis, you got a monthly gross margin of 70%. Look at example B. You get three payments, $17.95, you got a 59% gross margin. I can tell you right now, if you operated at 59% gross margin in the rent-to-own business you won't be here next year. Promise you. Unless you're just the best business operator in the world. Better than any I've ever met or better than I'll ever, ever meet.

But yet, many times, our biggest problems we face down in stores, we'll look at a store now, all of us we started out this meeting talking about percentages. What are you closing at? You know what the better question is? How many weeks are you collecting from each customer? That's really the question. I talk to guys in this business I talked to a guy that would close at 17 or 18% and you know what he told me? He said look, Larry, I don't care, as long as they pay me, you know, that's a good customer. As long as she pays me. She pays me when. She pays me when she gets darn good a ready. She pays me when she gets her paycheck from the government and if she don't have somebody else to pay, she pays me. A lot of account managers feel that way. Hey, I'm working with Mrs. Jones. Hell, her grandfather's died seven times. Getting kind of rough on her. I'm working with Mrs. Jones, you know? And some of 'em do. Some of 'em die a bunch. But I tell you it gets rough on 'em too. But I'm working with her. I'm working with her. You hear that all the time in account managers. How come that account 30 days late, bud? I'm working with her. She's a real nice lady, I'm working with her. That's fantastic but they're going to work with them all the way til you ain't got a business. And I'll tell you why, there's the answer right there on black and white. If you've got that piece of merchandise in your system, I can ship you an account manager that can close you at 8 or 9% every single week. Every single week and give you three weeks income for the four weeks you're supposed to get. And you get that store's P&L and you look at it and you go, wait a minute here. John's got this dadgummed thing he's closing at 8%. He's only a few points off company average and gee whiz, his yield looks okay, but I lost $3,000. What in the hell's going on here? I don't know. I'll tell you what's going on. Let's go back and look at whose paying him and when they're paying him. Because that example right there is the key to why about 70 rental companies went out of business last year. Because they're sitting there looking at these percentages and everything's just rosey, especially multi-stores where they don't have that hands-on management and the manager's not there. But Mrs. Jones is pulling somebody's string because Mrs. Jones is paying three weeks out of four. She has joined the three for four club and your account manager is convinced that she is one of his best customers because after all she's giving him three out of four weeks and doesn't that make a good rental company? I mean, you know, after all she's paying three weeks. Hell, some of 'em run off with it. She's beating the heck out of them. You know, he feels pretty good about what he's doing. What he's doing for you is he's giving you a 59% gross margin. And what that will do for you is put you flat dab out of business. The only way you can go out of business quicker is to rent more. Now ain't that fun. You know we put out another hundred accounts, I can go broke quicker. And I'm telling you it's a fact. If you look at that sheet.

Now the other famous thing that happens is you start looking in there, that's what you need to watch in those account management departments. Pull those accounts up most of you probably on computer. You pull 'em up and give me a 30 day period of time and on your weekly customers, tell me how many times they pay. Don't tell me they were three days late or four days late. Tell me how many times they paid. If they paid four times, then you're holding your gross margin up here. If they paid three, look at the difference in your gross margin. It'll ruin you.

I tell you the other thing is at $53.85 is only 75% of $71.80. I made a note of that. You actually are getting 25% less. That makes sense too. It's one out of three not one out of four. You actually getting 25% less gross margin when you take three weeks out of four. And I can tell you right now, I got stores that ran for a year or two giving me a 6% close feeling good about it doing my three for four plan. They just managed to get that three weeks but yet they did it at the right time and see in our business if you get it at the right time and they're not in the account, your percentage looks pretty good. I'm doing good, I got that 6%. We got to get off of just looking at a percentage and the main thing we gotta do is make our account people understand what they're doing for a living. They're not just getting you a percentage number looking at this set of cards. They've got to get down to individual value judgments with each particular customer. That's why when you hear me talk about collections, I don't talk about collections because I'm not at the barbershop and I'm not at the hotel and I'm not at the electric company and I don't talk about collections. I'm talking about managing accounts. Because a properly managed account yields me four weeks not three. An improper account means that I am helping finance those poor souls at my expense because my cost of business was service and everything combined exceeds 59%. And I'll bet you your's does too. So you look at those customers that are giving you three weeks and buddy, they ought to be smiling at you when you come in there because you're doing them a heck of a favor. Your trading bucks with them. And if you trade bucks long enough, you can survive only for so long. That's a long way of saying, for a business owner or a multi-level manager, that's reason number one. Now you write that down on that cover sheet. That's reason number one why account managing better be the number one thing to be focused on in all of our companies because it is what will keep us in business or send us out of business. We can be good friendly joes and we can work with 'em till heck freezes over but I tell you what, if we're gettin three for four, sooner or later you'll be out of business. Trust me as they say.

Reason number two. I'd sum that up by saying reason number one to focus on account management to me was to protect companies gross margin of profit. To me that's everything. The gross margin of profit is going to be the difference of us being here ten years from now and not being here ten years from now.

The reason number two for me became this. Is that the people that weren't doing a good job in account management, they were getting down to the point where they were uh, well I'll tell you what we did in one market we had forever and these guys were cowboys. We have a like a rural market and these guys week after week after week after week would come in and call me up and every week they would close me and I had one store closing at 2%. Call me up and say ain't that great. And I'd say Yah man, that's great and everybody

would get excited. Another store in that market was closing about 3.5, another store was closing about 4. I mean the average for that whole market there with six stores and the average close is about 3.9. And I thought, man, them dudes know what they're doing. Those guys are really doing the job for me. Problem is you'd look down at their payroll and their payroll is running about 2 to 3 points higher than the rest of them. Not only that but their cost of product was running more. And I got to lookin at that and I said well what's going on here? Well, what was going on there was simply this, that all week long these dudes would go along and run up about 28, 29, 31% on Monday, Tuesday, Wednesday, and Thursday. Then come Friday, these boys would load up the trucks and say let's go catch some ass. Excuse the language. But that was pretty much what the fact was going on. So we was going out and we was having us a turn-in party. Mrs. Jones you hadn't paid me, I'm going to get your stuff. I had a guy one time tell me the best close he ever used was if you don't pay the shit don't stay. He said everybody understood that and I don't know, that's gettin down to the raw basics of account management there, buddy, I'm gonna tell you. Really build up their esteem ya know. But the bottom line is these boys were running high on Monday, high on Tuesday, high on Wednesday, high on Thursday and come Friday, buddy, it was a rodeo. I mean trucks and merchandise flying everywhere. Going out there collecting money. Some of them would come back in, and here's the funny part, they come walking in with a $1,000 they picked up in the field and the manager's patting them on the back and saying man, John, you are good. And little Fred comes in with another $700 and I'm walking in saying look at Fred he's got $700 isn't that fantastic. And we're passing out stars and making everybody feel real good and then I figured out one day that for every, every ten dollar bill that I collect in the field, it was costing me $20 to get it. I said hum. Now figure this out, I got a $15,000 truck, a $6.00 an hour guy, he's spending all of his time out in the field and he's out there picking up a $15.00 bill. Excuse me, can't get that percentage off my mind. I just spent $30 for that guy to go out there and get $15. Now that's not the worse part, the worst part is I'm patting him on the back telling him to go do it again. Look, keep doing it this is fun. We're getting a lot of money here. The definition of taste folks is something that costs you twice, I call it spending $20 to receive $10.

If you do not have an account management system that dictates and is focused on using the telephone, you gonna have to have a higher payroll percentage. Your gonna have a higher trucking percent. You are going to have, it's going to cost you more money to collect your money that it's worth doing. You have to have a system. Now we're going to talk about a system at this afternoon's session that we have in our company. That doesn't mean that's the system you ought to have but I can tell you this much, you have to have a system that's based on phone contact because it's cheaper. And it doesn't cost all that money to go get. Because if you're going to pay $30 to get $15, that's another way you're going to go broke. So reason number two, absolute reason number two is that it costs you, well that's part of reason number two. The other reason I told you about cost of goods, well here's the funny thing is that these guys because of the way they were operating, because of the way we were causing them to operate by patting them on the back and telling them how good they were, we kept buying merchandise every time, every week they'd call me up on Thursday and say hey we're going into the weekend and I need like ten more washers. So we'd send ten more washers. On Saturday, they'd go pick up ten and come Monday, they'd have twenty. Then the next week the same thing. I need ten more 20" colored televisions. We send ten more

20" televisions in there for the weekend. Come Saturday they'd go pick up thirty of them. Now I got 40 of 'em. Pretty soon you look at your bottom line, you got a cost of merchandise down there that is choking a horse running about 30%, you got guys that are closing at 3% and you're looking at a store doing $50,000 and saying what's wrong with this picture. I ain't making any money. Why? The why is because they're doing it wrong. They're out there spending $30 to get $15. You're spending twice as much on your cost of merchandise and it just isn't a whole lot of fun doing business like that. Now I love business and I probably do it for free but it sure is a whole lot more fun getting paid for it, ain't it? I don't here like an amen or a yah, yah, yah. You guys all must have been on Bourbon Street yesterday.

I hired a kid one time about ten years ago and I used to go out on a truck with all of them because I just loved that and I told this kid on the way up to the first house, I said fella here's the whole game, the whole trick is this, we get to that house you got to build a rapport. You got to find something about that house to talk about, you know, say something. We got out at the first house, and we was getting ready to rap up the deal, and he looked at that lady and he said, god you sure do have a lot of roaches. I thought I was gonna have a damn heart attack. I looked at him, I said son. We got back in the truck, I said fella let me talk to you about this. I said, if you gonna have a long career here, we need to understand something. I said that's not exactly what I had in mind. I said what you got to do is you got to find something nice to say. I said you understand? And he said, "yes sir I understand." We got to the next house, we got the washer all hooked up and got ready to go and he looked at the lady and he said "you know this house don't smell half as bad as the last house I was in." I don't know what you'd a done, I made him a manager. I thought he's catching on quick.

But, so that to me is the second reason why this is the most important thing we do. Is that it absolutely, we've already found out one thing is that number one is the whole key to gross margin which is why we're in business and number two, not only does it have everything to do with gross margin, but it has everything to do with the two things that costs us the most in business. Look at your P&L. What costs you the most, payroll and cost of product. That's the two highest costs on the sheet. Absolutely every time. Is there anybody don't operate like that? You got payroll and you got cost of product. Everything else, buddy, account management controls those two elements more than anything else in your operation. So, it not only controls gross margin and cost of product and payroll. But now let's get down to the real reason, if that wasn't enough. The real reason, the number one reason and the reason that I want my people to focus on because little ole Tom that came to work for you three months ago and you train him on costing them cards and stuff. He don't know nothing about gross margin. Hell, I know people been in business and don't know anything about gross margin. In fact, I had a retail business for four years and didn't know anything about gross margin. Course I went broke when I was about 21 years old. See I used to think if you had more money in the cash register than you didn't, then you were making it. You know, it made sense to me. So I didn't know anything about gross margin. I went to SMU and found out about it though. Cause going broke wasn't a whole lot of fun. Riding bicycles to work instead of driving cars just wasn't for me.

I don't want him really focusing on gross margin and, after all, is it his responsibility? No sir. It's my responsibility to determine what our gross margin's gonna be. So what do I want him focusing on? And this is so basic its ridiculous. This is so basic its scary and so basic that there's probably not even need in bringing it up here. But number one, there is unquestionably and unequivocally without a doubt that good regular account payments from your customer that you require is the absolute best possible service you can give to your customer. Now what I contend to you today is that if you practice lousy account management standards, that is the worse customer offense that you can have in your business. No I'm a firm believer in not having any customer offenses. I hate to walk in a store and see negative signs, no checks, no shirt, no service. They ought to add a little clause down at the bottom, no business. Because they're not going to have any. Awright. But I'm gonna tell you right now that I want my people to understand and what the reality of the situation is simply this, that if you do not have a good account management system and if they are not practicing a four for four basis from their customers, what's gonna happen eventually to that piece of merchandise? Anybody. You're going to get it back.

Now what Mrs. Jones -- you know a lot of people in the what I like to call the, let's call 'em for lack of a better word, communist pinko fags, that's like the ultra liberals that don't believe in our business. Today we might call them like Iraqi sympathizers. But those folks say that, in fact, in our business, that we don't provide a service. They say that what we do is that we extract an awful lot of money from an awful lot of people then we go pick up their goods. And they say that's not a value. Guess what? They're absolutely right. That ain't a value. You got a lady out here that's busting her butt to raise three kids and in maybe in some cases she's busting her butt and getting a government assistance check, but it don't matter. She's still raising three kids. She's taking everything she can do, she's trying to pay you and after a while you get this three for four program going and then all of a sudden, some owner or some high level manager comes to a seminar and says oh I'm getting three for four, I'm going to go get that stuff picked up and you better, because you'll go broke if you don't but when you do that, you find out that you picked up Mrs. Jones and Mrs. Jones has paid you $500 over the past several months and you find out that Mr. Williams has turned in his piece of merchandise and he's paid you $750 and in some extreme cases, I hope to God not in my organization, but I've seen it where they've picked up Mrs. Sucker and she's paid in $1,500. And some wise ass comes walking in the store and says I got that one. And some great manager pats him on the back and says "Good going Dude." If we operate our businesses like that we should be out of business folks, we shouldn't be in business.

Because what do we do, what does any business do? We provide service to a customer. Now in our company, I'd like to think we provide the best service possible to the customer. The best service to the customer is a lot of things. Sure, it's getting out there and getting that unit fixed. It's getting out there and being on time when you say you're going to be on time and it's doing all those things. But what the customer's paying us for, more than anything else, and make no mistake about it, they are paying us to manage their money. That's what they're paying us for. They're paying us to manage their account. And yet in some of our companies, and I have to admit in my own, we took that so lightly, we took that so insignificantly, to say that we were managing our whole account management be requiring

certain closing percentages and patting people on the back and forgetting them. The bottom line is, that's our business. The bottom line is when you pick up Mrs. Jones and she's given you $500 and she isn't going to do business with you anymore, you know what she's going to do? She's going to go down to one of the other guys and she's going to pay him $500 until he mismanages her account and then, she going to end up eventually paying about $45,000 by the end of her life for a 19" television set. Now we've done her a hell of a service, haven't we? We've just treated her great. You say, well what are you saying? I'm saying every time Mrs. Jones calls up and wants to double up next week, you want to manage your account properly, you don't tell her ya, you tell her no. That's what I'm saying. What I'm saying is that we owe it to the customer to teach our people when to say no. We owe it to the customer - see this little guy that thinks he's working with her and doing her a favor -- needs to come to the understanding of this -- is that every time he does that, he's screwing up and he's probably going to cost her a lot of money. And then he needs to be taught how to convince her that that's the fact when she calls up and says I can't pay you this week, I want to double. And you get that all the time. We get it all the time.

Let's look at that really quickly, just for a moment. Somebody tell me, somebody tell me (check this time here, okay) how much money do you think the average rent-to-own customer makes. Somebody give me a figure. A week. $150. Somebody else. $200 - 225. Anybody got higher customers in there, that are making lots of money. That are making $25,000 a year. Awright. We got three numbers here, let's take the middle number. Everybody give me $200? You say $200 be a good number? Somebody just nod your head, act like you're awake. Makes me feel better, makes me think you're ya know. Okay. That's $800 a month right? Now, I need some more help. I got $800 to work with here. How much do ya reckon they pay in rent? Average rental customer on a monthly basis. $300. Anybody want to argue with that number? Can you get a place for $300? In Tampa it might be a little higher because I know a lot of people pay a lot more than that. Let's use $300. We got rent, $300. Awright, most of 'em drive a car. Hell, some of 'em drive a better car than I do. Lot of 'em drive a better car than I do. Awright. What do you suppose the average car payment is? Most of them are doing business where? Buy here, pay here. Okay, how much you reckon they're paying for their car? $200 - 225. I hear more? 225, 225, 225, going once, goin' twice, goin' up? Okay, $225, car. Awright, you don't suppose they get their electricity free, do you? Probably not? Give me a figure, how much? Hundred a month. I don't know where you guys live but in Tampa, it'd be more than that. Let's go $125. Okay, electricity. Awright, most of the ones we do business with I find have a couple of kids, let's say average four family? Four in a family, everybody give me that? How much money they gonna spend on food? At least right? Is that too high, $300. Okay. That's probably all the expenses they got in the whole world right. We got entertainment. These folks like to be entertained, right? We got stuff we haven't even started with up here but I want you to see something. We got, three, six, seven, eight twenty-five, nine fifty, and we haven't entertained anybody, we haven't paid some of the bills that are coming in every month, okay? If the average is here, does that not create a little bit of a problem? It doesn't create a problem for the government, but it creates a problem for the human being that has to pay taxes and stuff. We don't have sales tax in there, there's a lot of things we missed. We've already got $150 deficiency. And yet, well, you know one thing we left out was how much was your average customer going to pay to you? The rental customer, what

do you think? You going to give them one account or two? One and a half. Give him one and a half. What's the yield, $60. So we figure $90. Okay? The way to manage an account, is to simply find out how to get that up in front of everything else. It's an easy job isn't it? Gosh I don't have to eat but I do have to pay Champion, ya know. I may not have to do my car but I have to pay Champion. I don't know, my customers usually don't think like that do your's? So the bottom line is, you tell me how we figure in our right mind, that it's a legitimate deal? That this guy, you say he's a monthly payer and he can't pay me this month, and God knows I can figure out why. But if he can't pay me $90 this month, what in God's name thinks he can pay me $180 next month? He going to win the lottery? Ship's going to come in? Boat's going fly? What's going to happen? Something going to happen in his life that's going to drastically going to change his financial position so much, that he's going to gladly walk in my store a month from now and bring me two payments, plus late charges, plus everything else and everybody's going to be happy.

In the meantime last month, what was my gross margin on his account? Why he didn't pay me nothing, like zero. That's really trouble. You know, if you think 59% is bad, oh man. I'm telling you that's real bad. You can go broke real fast and have a lot of fun. The bottom line, what does all that say? We got to have unequivocally, without question, we've got to have a system in place in our organization that focuses on payment now. It's what it comes down to isn't it? When I say we have to have a system, the reason I say system, let me, before I do that, let me say that going back to where we were with reason number three -- there were basics I said I was going to give you three reasons why I felt that account management was what we really are in, we call it rent-to-own, but we're in the account management business folks. That's what we do. If anybody in your organization doesn't understand that down to the salesperson, the delivery guy or anybody else, is not going to help you be successful in business if they don't understand that before they understand anything else and the reason is that it does all of those things. The bottom line is I want my people knowing one thing -- that good, continuous account management is the best thing I can do for my customer. That's reason number three and as far as I'm concerned, the most effective and most efficient reason for doing it right the first time. Because if we do not provide good customer service to our customers, where will we be. You guys pick up real quick. It's amazing.

Focus on payment now. So now what we need's a system. Why do I say we need a system? Well, ya'll probably ain't this way but I found 19 stores doing it 19 different ways and figured we better have a system. So I figured if we're in that shape there's probably some others in that shape so we better start figuring out a system so that -- what we found is that a guy would come in, account managers are funny people -- they come in, the first day, man, the first two or three weeks, you find they trust everybody. Six months later, you talk to them, they don't even trust their mother. I mean it's incredible, ya know? My mother calls me, says she's coming over, but I don't believe her. You know, my dad says I was a good kid growing up, and I don't believe him either. I don't believe nobody because they're all a bunch a lying b. . . .

Ya know, six months later, that's the way they think. Mrs. Jones says I'm coming in and he says prove it. You know, what time you coming in? They get that way after about six

months. So what we looked at is, we said, what we gotta do about this? Well we found was we get a guy in there, he'd be dynamic for about six months. After about six months, you'd talk to him, he'd be burned out. Cause you look at it this way, every Saturday night he walks out of there with his interest. Man I'm pumped and this is great and Monday morning he comes back there, he's got 300 fallouts on his desk, you know. Every single week the same people lie to him. Same people. And then he's got new people that lie to him. And what does he think? He thinks they're lying to him. See that's a big, big mistake cause they're not lying to him, they're lying to the system.

They're lying to the system. So what happens when most of the people in the rent-to-own business, and I think they're wonderful people and this isn't a slam on em but when they get about 12 to 15 years old they're taught the basic rule of account management in the negative way, and that is, son, let me tell you the facts of life. You pay those who will be not put off and you don't pay those you can. And they're better at it than most of the people you can hire. They're going to come up with 85 million reasons and your people gonna buy 'em. What you gotta convince your people is that we do what we do here is we manage their accounts and it's our responsibility to get the money. It's our responsibility to get the money all the time. All the time. Or, within that window that you accept in your company of a reasonable time. I've always said, you know, you show me a rental company that's got all their customers paying on time and I'll show you a rental company that ain't a rental company. That don't happen. They wouldn't be in the rental business if that was the case.

What's a good rental customer? A good rental customer to me pays me four payments a month and gives me a 70% gross margin. Whether or not he manages to pay that within two or three days of his due date, that's fine. He can give me a little late charges and make me a better gross margin. But a rental customer, a good rental customer, pays me four times a month. Sometimes, four times a month, I get four payments a month out of them I'm getting a good gross margin, a good return on my investment. To me, that's what a good rental customer is. Somebody comes in there every Saturday and says hi, how you doin'? and brings me a customer, that's what I call gold man. I mean give me millions of those and we'll build our business.

We decided that we're going to take a look at our business and the first thing we were going to do in our company is that we were going to go back to some basics I had learned a long time ago in this business and that is that what you say, what comes out of your mouth, often times is what you operate by. What you continue to talk about on a daily basis is often times what you begin to believe.

If you'll look at the next handouts, turn the page. I like that that's simple. Rich old terminology.

One of the first things that we wanted to do collectively around our company was that we wanted to stop hearing negative sounding things that did not comply with our business. That should have been something we did in 1981 and never gotten away from. I got news for you. I knew better than that. But it wasn't. We got back to it and said this is what we're gonna

do. And we passed these sheets out and we started practicing thinking about the kind of terminology that we used.

Number one, account management vs collections. I don't want a guy thinking he's a collector if he's running the account management department because, guess what? Mr. Jones is talking to 15 different collectors. He's talking to collectors from the power company. He's talking to collectors from the car company. He's talking to collectors from all these different companies and if you happen to call on the day that those others have called, you may be the tenth guy that calls and you're talking about getting your payment, you're too late, bud. You ain't even in the jar. You're outta there. Okay? I don't want a guy thinking that way. I want a guy thinking what he's supposed to think and that is that his job is to manage that account. That entails managing that person's money. That's what he does. If he does not understand that, if he thinks that he's going for percentage to make you happy, he might get a good raise but he's manage you into oblivion. If he comes to understand that account management is individual value judgments and that's what's going to keep that guy from getting to that burn-out stage. If he comes down to one single fact and that is, I have 300 people in here. I have 500 people here. I have 1,000 people here, the bottom line is that each account comes down to one thing and that individual value judgment. And if your account manager doesn't think like that, he ain't gonna last. He is not going to last. He's got to have individual value judgment, the ability to evaluate each individual and the situation and be able to make a decision. And that's when he can be called an account manager vs a collection manager.

Lot of people hire, there's a lot of different systems out there. A lot of different systems. We run a few different systems within our organization to fit the area that we're in. Lot of people hire people in off the street and call them account managers. And they put them in charge of a certain area or something like that. I personally would be a lot more pretentious, a lot more careful with that particular position. And I don't know if, in fact, in our business that we've gone the right direction by an entry level position being the account manager with the knowledge that we have of knowing that account management is our gross margin, our cost of doing business our payroll, and the easiest place to offend the customer. But yet Johnny comes in, we hire him for $4.50 and call him an account manager. I don't know. To me that doesn't make a lot of sense. But maybe that guy should be called a collection manager at that point if that's the business you're in. We try and not talk about collections, collection manager.

Closing percent, this is a tough one. What's my renewal percentage? You know, in other words we closed at 7%, how bout we renewed at 3%. You know, it's like is the water half full or is it half empty? It's just part of that attitude, part of that daily thinking. You know, what'd you do this week? Man, we collected 97%. You guys may focus a little better on that than focusing on we closed at 3%.

Turn-in vs pick-up. That's an easy one. That's a real easy one. Cause you know what? If you're managing accounts properly, people don't get picked-up. Never. They get talked into turning in their goods if you're doing it the right way. They get talked into turning in their goods. The guys come in with truckloads of goods, man, I picked up everybody. I had an

account manager, somehow got hired in my company, and I don't know how some things happen, that probably never happened to yu'all. But I was talking to him on the phone, I said well how you like Champion. He says I like it. I said well, how's everything going? Now this guy was an account manager. And he says, well, he says I'm getting it done he says but he says I don't know if you know me he said but my reputation with that other company he said, man they had to run a warehouse to put the goods in I went out a got. And he was proud out it! He was proud of it! He was out there taking that merchandise away from them folks. He doesn't work for me anymore. And neither does the guy that hired him.

Expired agreement, past due or late. That's a biggie and when we get in this afternoon, when we get into the actual system that we're using, you will find how important that one particular statement can be in managing accounts. Some of y'all probably be using it already. That is like account manager's dream to a man because he don't ever have to talk about money. He don't ever, you know, our account managers, if they're trained right, and we got some that haven't been, just like everybody else, if they know the system, and they're using is properly, when you close that agreement, and that's all part of it and that's part of this afternoon's session in closing agreements and setting up the account right, but if you set that agreement up right and you explain to that customer that, you know, ma'am there's no such thing as being late here. It doesn't happen. Now, your agreement will expire. If you don't renew this agreement next week, I didn't ask her to make a payment, but if you don't renew this agreement next week, the agreement's going to expire and you know that's a dangerous situation because you're going to have a piece of merchandise in your home that belongs to somebody else, generally, not me, belongs to Transamerica or Borg Warner or somebody else. You're going to have it in your home and we don't even have an agreement. That's a dangerous situation. I don't really want your money. Ya know? I really don't want your money, Mrs. Jones, I'm not calling you for a payment. God knows, if you live like most people you got enough payments but I got me a problem. And you got a problem, and that is that we've got an expired agreement and, unfortunately, we can't operate with an expired agreement, what can you help me do about that? And you can take it guy and I've heard guys talk for 45 minutes with a past due customer and never mention money. Never talk about money until he resolved the fact that she understood that we cannot operate with an expired agreement. We cannot operate with an expired agreement because it's in my best interest, I'm the customer, and if that agreement expires I'm going to end up losing my investment and now when you get a group of account managers to start thinking in those terms. When they start to understand that what they're doing is helping Mrs. Jones become the eventual owner by keeping her agreement from a desparate expiration date, that's going to eventually require you to get her to turn in the goods, then you going to have some successful account managing going on in your operation and then everybody's going to be a lot happier. Awright? That expired agreement, if you come to this afternoon's session, that is one of the major issues in rethinking and involved in rethinking, it's so basic and so crazy I used to teach that ten, eleven years ago when I was with Curtis Mathis, taught that terminology. And yet I had 19 stores owned by me and wasn't using it. You know, I'll admit that, shame on me. Okay? I'll admit that. Eight years goes by, we use it, we do like everybody else, we use something, if it works real good, we quit. Now y'all probably don't do that.

Renew the agreement, you heard me say that a couple of times. I don't want you to make a payment, Mrs. Jones. I don't care if you never make a payment. But I do need to get the agreement renewed. I do need to get the agreement renewed. To me, the reason that's important is because if you believe that that customer is the guy we've discovered over here, this guy right here. If you believe that, and I do. How many calls do you think that dude's getting? You think you're the only one? Do you think that $90 he's just spends his life thinking about that? He just goes to the movie and says man, I just got to get to Champion tomorrow. Goes out drinking, tells his friends, Champion's the most important thing in my life. Renewing my agreement is big. You know? I mean that ain't happening is it? Bottom line is, what does he have to do? You have to prioritize that in his mind. You've got to somehow convince him that you're different than all the rest. You got to somehow convince him that you didn't call him to talk about money because John's Finance Company called him about money. Fred from the car company called him about money. Jackson Brown from the clothing store called him about money. You don't want no money, you just got to get an agreement renewed. Now it does require money to make that happen, but you got nothing to do with that. All you need is an agreement renewed because we can't operate with an expired agreement. And an expired agreement is something you just can't have. And I understand your grandfather dying seven times. And I understand that you had to leave town for the funeral seven different times. But, unfortunately, see what this does for you? You can always come back to it. Because after you play your ping pong game, and after you listen and you understand and you feel profound and you go through all those things that you teaching people to do, he can always come back and say, gee, that's unfortunate and I really sympathize with you but what we gonna do about this expire agreement. And see that one single question always brings everything back into focus. Somebody's got to stop and somebody's got to think, my God, I got an expired agreement.

Now, we're going to be talking about this this afternoon but let me tell you something, if your sales people don't close it that way up front, the first time you ever say to a customer, you got an expired agreement they say huh? What's an expired agreement? And you, you know, I've made calls myself when I was in training account management people and I'd call 'em up and say hey, you know we got an expired agreement here and we need to. . . what's an agreement. You know somebody just wasn't closed. You know what they thought they was doing, and this happens in rental stores all across the country, because someone didn't close them properly, they think they're buying it. They really think they're buying it. Watch the TV shows that the communist pinko fags do. You know. They think they're buying it. That's what they think. And you know why? Because we allow people to make them think they're buying it. Now, why do we do that? Because we think that's what everybody has on their mind when they come in anyway, and it is. Awright. But when we're going to set it up and sell it properly, what's the strongest thing we got going for us in our business. The strongest thing we got going is that there is no obligation. And time after time, after time, I'll call one of my stores, I'll go in one of my stores, some dude calls up and says how much is a washer and I'll hear somebody say $13.99 a week for 18 months. It ain't 18 months. It is $13.99 a week. Why? Because there is no obligation.

Now, Mrs. Jones, it would be wonderful if you paid for 18 months and renewed for 18 months. Because if you renew this rental agreement for 18 months, see a lot of times we

hurt our account managers because we don't set it up right when we close the deal. We do not close properly up front, the customer walks away thinkiing one thing, the account manager comes back and starts to manage the account and no one's set it up right so he don't have the tools to do his job. Because they think they signed an 18 month agreement. Says all over every rental agreement I've ever seen, no obligation. We have a week-to-week agreement, a month-to-month agreement. Yet what do our sales people do, $13.99 for 18 months. You ever heard that? It's for 18 months. It ain't for 18 months, it's for one week, or one month. What its really for is for how much money you give me today is what it's for. That's our agreement. Now after that time period elapses, we don't have an agreement anymore. That's what my agreement says, is that what your agreement says? And if you can teach your sales people to effectively talk to the customer about that, what do we say? I've had people tell me, you don't want to say that.

About time for questions and answers. We've talked to them and they've said you don't want to say that. What you want to say is this and time, and time, and time again, they don't want to say there's no obligation because what they think is they think they're making an offer to the customer on day one to turn it in. They're afraid to do that. But I'm telling you right now, that is our business. That's why we succeed. That's why we're here. Because there's no obligation. And if we don't make that one, that's really one of the selling features, not one of the negatives. And its the best selling feature you can do for your account managers because they have to understand that if they do not renew the agreement, they won't be able to use the goods any more. Most of our account management problems come from one area and that's because people assume ownership from day one. You ain't getting my stuff. And why do they do that? Cause that's the way we let our sales people sell them. That's the way we train our sales people to sell em most of the time. Let 'em assume the ownership. Let 'em assume the ownership. Why? Why do we call ourselves the rental business if that's the case.

If we close 'em up right and set 'em up properly, we can help our account manager run a system that makes sense every time. Appointment vs commitment. How many people you say well how many commitments you got this week? Okay? This is a tough one for account managers to get used to. Cause they say well I got to get a commitment. We try to talk to them about making an appointment. You got an appointment to come in. How many times do you know these people don't get many appointments. They don't go to the doctor like we do, the attorneys like we do and all that kind of stuff. And hell, we won't even make them wait an hour like the doctor does. We gotta. Can you imagine this, if you got your business in such good shape you make an appointment for Mrs. Jones to come in and renew her agreement and she has to wait. Wouldn't that be great? Mrs. Jones, he's kind of busy right now. If you could wait right there and have a cup of coffee, we'll let you renew your agreement in about 30 minutes. Thanks. The rent-to-own of the future. Wouldn't that be great?

Talk about applications. You hear people talk about in our business applications. No such thing as an application in the rent-to-own business. And there shouldn't be. There should be a rental order with information on it that either verifies or doesn't verify. But if you approve or disapprove rental orders, you ain't in the rental business, you in the credit

business. You gonna make decisions based on the guy's ability to pay you ain't in the rental business. Your in the credit business. Okay? We don't want our rental order to be called an application. I'm gonna make an application. Cause we believe what Buzz Holiday says. Everybody that wants one, gets one. And everybody that pays, gets to keep it. It's pretty basic business when you get right down to it. That's the business.

Now that's providing we got a phone number. We're going to talk about this afternoon's session going to be continued there is when does account management start. How to set it up properly, closing the account, and so forth and so on. Account management visits instead of chases. Can you see your account manager saying that? Where you going? I'm going out to do some account management visits. Ya know? And guess what? Even if he switches from calling them chases to account management visits, they'll still cost you $30 to get $15. Changing the name don't reduce the cost. Cause you're still spending the same amount of money to send him out there.

And them most of all, an agreement instead of a contract. See that's where we got off base real, real bad. Nobody calls it a contract but nobody calls it an agreement. They just said sign here. You know nobody ever closed that sucker. Close an agreement and having an agreement means that what you will do is that he's going to agree to do a certain amount of things and you're going to agree to a certain amount of things. You know all this is and the funny part about this is all we talked about this morning is basics in the business. It's going back about 11 or 12 years ago when I used to teach at Curtis Mathis and sitting down and saying what is our business and getting back to the basics. And often times in our businesses, we get off track and go on down the road and we leave the things that brought us to where we're going. We don't go back and focus from the very beginning and get back to the basics. And all we did in our company, and I'll tell you about that if you're coming to this afternoon's session in designing the system. Is that we sit down and we said where we gonna start? Where are we and where we gonna start? And everytime that we get off track in our company, generally, we go back to the front and say we're going to start back at the basics. And everytime that seems to bring us back into focus of what we're doing. You know, what are we doing, we're serving the customer. How can we do that the best, we can manage their accounts properly. Now there's a lot more to serving your customer than that. But that's where it starts. That's where it starts. And if you fail to manage your accounts properly, its the worst thing you can do. And remember the definition of the chase. If you're going to design a system of management in your company that makes any sense, remember that one factor is that if I'm going to chase 'em in the field, then what I'm saying is that I'm willing to spend $30 for $15. If you guys agree to that, I'd like to see you after the meeting cause I got lot of $20 I want to trade with you.

Awright, we got about ten minutes for a question and answer period. *I assume you say no obligation that must mean that you have no minimum.* No sir, no sir. None whatsoever. And really don't think we should.

What are your average number of accounts the account manager has in your company? I tell you that's a good question. In our system we do things a little bit differently than some and we talked about that last year a little bit. Rather than have like an area manager that has

like he delivers, what we generally do in our stores. In a store of up to 750 accounts to 800 - 900 and in some stores up to 1,000 accounts, what we do, we have a person in that store what we call a designator. He's an account manager. Or she's an account manager. We find that often times women are phenominally good at this position. And that is that there main focus is organizing that department and calling cards. We think mailing letters and calling cards is the most important thing you do in account management. So that person would focus in on that okay? So she's really, or he, is handling is kind of responsible for all of it. But what she would do in that situation is that if she's got field calls that she needs to send out, the regular drivers that are in the store, they've generally been there a while, they will do the field calls when they're doing deliveries and they'll just kind of change that around. Now that's different in a store in Tampa. We got 1,600 accounts in Tampa and there we've got an account manager and three people with routes and they each make their own calls and this other guys the supervisor. That is something if you come this afternoon, that's something we're going to talk about is the different kind of systems and stuff like that. But that's about our average.

I used a letter that you had last year it worked real well. Can you see putting other stuff in the letter or just the mailer for other? On the first two letters, those were developed and again that will be this afternoon as part of the system. But the reason for those letters is that about four years ago I picked up a newspaper article, not a newspaper article but a magazine article and one of the things it said is what's your attitude to your customers? And it said if you really want to know what your attitude is toward your customers look at your past due notice. And I looked at ours. And I threw up. And I said ours aren't friendly. And if I'm talking to these people at least I want to be friendly and that's where that came from. So to say that we would never add to them would be kind of crazy but you know, right now we've stayed with them.

We're putting referral letters in any customers. Absolutely, that's great idea, great idea.

I like the example there where you adding up the customer's income and his expenses. Do you have any guidelines for a customer if you have established that has maybe two acocunts and they come in and they want to add another account and another account. We've done that I don't know how many times, have a customer eight ten months into an agreement and I can't say no. Absolutely cause if you do he's going to go down the street. *What I end up doing is adding accounts until they (???????????)* Right. Well, that's exactly what happens. I tell you basically what we do probably what a lot of other people do, if that guy can walk and talk and sign, he gets another account. And the reason for that is because if I don't give it to him, if he really wants something and I don't give it to him, what's he going to do? He'll go get it somewhere else and you don't pick those up anyway. I feel like that's a wash. Because if he really wants it, he's going to get it whether you give it to him or not. Okay? Especially in Tampa, we got like 57 rental companies, you know, in town. I mean he can go like down the street and get it. So our basic rule if thumb is, if I give it to him, I might be able to manage to take one of them away when he gets too much. Especially if I got a good account manager that really understands managing accounts. I might be able to talk to him about those other two he's got a lot of money in. Why don't you turn that third one back in and then when you pay this one down, I can see where you can get this one. But

I got news for you, I tell him no, and he goes down to Rent-A-Center or someplace else and gets it, I don't have that kind of control over that third account anymore. I have to say that I understand the problem and we have the same problem. But I would rather have control over it by renting him that third account or fourth account or fifth account or sixth account than not doing it because I don't have to control somebody else's going to and they might turn in my stuff and I don't want that to happen. I don't make money when that happens.

Anything else?

What do you rent in your stores ?????????????????????? Boy, that's a good one. You mean like merchandise? God, we, that's a big question. How long is a rope kinda like. We got a lot of different things. We just took on jewelry, we're doing well with that. Listen, if there's anything I can rent and they pay and they pay me four out of four, I like it. And it doesn't cost me a lot of money to service and stuff like that. It's pretty basic. We got a real strong television line, the main thing we will not buy anything that somebody hadn't heard of. You know, a funkinwaca or something like that? We won't touch those. Guy comes in tells me he's got a television he can give me for $180 and I can rent it for $9.99, if I hadn't heard of it, I don't know where the parts come from, I have to assume my customer's the same way. We operate under the theory that a customer in our business is probably more brand name conscious that any other kind of customer. That was proven when I was with Curtis Mathis. We used to advertise the most expensive stuff and all that kind of stuff when I was Nippon out of Japan. The bottom line is that we attracted more low income people with that message than any other kind of people and so we believe that when you come in if the guy's going to see a brand name that he's heard of, he's comfortable with, he's heard it all his life, that he is going to appreciate that fact. He knows he's going to be able to get it fixed. So that's the one thing I would say to you whether it's furniture, which I detest, but we rent a lot of, cause I don't think we make a lot of money on furniture to be perfectly honest with you. I hope there's no furniture salesman in here. But, anyways, we'll try anything. We're flexible. We'll try it and if we like it, we'll stick with it. But I can talk to you about that and expand on that, you know, outside the meeting here.

Question inaudible That's on Saturday night? If you are, I am too, cause that's what we're looking for. Our target is 8%. Give me less than 8% and we try to let them understand that's only a measuring figure. Well, I'm at 9.5%, boss wants 7.9% I prefer revenue and the third finger gets stuck on the button. Or John, go out and gets Mrs. Jones. She's got four accounts. We got to beat 7.999% so I think it's a good number.

I'm not a proponent of not working with people. I just want to make sure we work them and are getting those four payments a month. I work all I can but I want four payments cause I can't operate at 59%.

I'll take one more question and that's it. *You don't want to turn anybody down, you know they're going to be a bad risk. Do you suggest having a co-guarantor for them or let them have it.* That's not a bad idea. I think you gotta make a determination. You know I mentioned individual value judgment. There are people and I'll end with this. We used to have, I used to go through a little routine with our people in the stores. What was funny is that when

someone was on your books for a long time and they had paid you an awful lot of money and then eventually you got them returning their goods and generally what happens anfd I don't know, in your organizations, a lot of times they may owe you three weeks by the time you finally resolve it. They hide. People probably don't do this to you but every once in a while they won't come to the door and stuff. That probably don't happen to y'all. But in Tampa they do that, it's weird. So what happens is that sometimes you get three or four weeks or sometimes its even more than that so you turn in the goods and now they're in the store and you know that guy comes back in and all of a sudden you got people and what they do is they go. Yah, we can do business with you but you're going to have to like pay me three weeks. Or yah, we can redeliver that but you're going to have to give me four weeks money. So I started thinking about that one day now here comes, let's say that's customer B. Okay, he owes you four weeks from when he was renting. He walks in the door and everybody's kind of like looking at him. You know, one of those deals, I wonder if he's going to give us our damn money, you know, that kind of stuff. Now here's customer A, customer A walks in and if you got your people geared, you know, they're jumping up and down and turning flips. Yeah, rent-to-own the Champion way I'm excited, you're excited, let's do business. You got a dollar? You know, they're pumped. How do you know customer A ain't the four week guy that just left Buy Right, or Rent-A-Centimeter [sic], or someone of them guys? You know what I'm saying. So what happens is that you end up with a company that is treating your own. Here's a guy that's paid you $750 and you've tried to work with him and everything else and he walks in and everybody trying to give him the cold shoulder. Here's the guy that paid Buy Right $700 and you're turning flips over the guy. You know, does that make sense? Doesn't make any sense. So what we try to do is explain to our people. Look, the guys paid you a lot of money. He owes you four weeks. So what? He owed you 12 months when you got him so now just put him out for 13 months. He owes you 12, right and he owed you another month, so what? Now get him a 13 month agreement. You still getting your money aren't you. You're getting it on the end. So when you put the agreement back out, add it to the end. Say, we can do business with you. If your account managers are picking up the goods, that's wrong. And the last thing to tell them is, "You can get that back. All you gotta do is bring me $77," and then the next day on TV, the guy comes on and he says, "_____, first week, five bucks - where do you think he's going? Because these people don't think about the $700 they've invested with you. That's why they're _____ in the first place. What you gotta do, is you've got to do is you got to have your sales manager say, "Look, I know you think you owe me $77, but if you come down to the store and talk to my manager, I think we can work that out. And you need to do it today." So, my friends - this afternoon, we'll talk more and more about that and everything else. If you all will take a minute and fill out your evaluations, we would very much appreciate it and I hope you all come back this afternoon and we'll get more and more involved.

1991

RENT-TO-OWN

STATISTICAL SURVEY RESULTS

Published
By



THE
ASSOCIATION
OF
PROGRESSIVE RENTALS
6300 Bridgepoint Parkway, Austin, Texas 78730
Telephone (512) 794-0095 FAX (512) 794-0097

EXHIBIT 19

THE RENT-TO-OWN INDUSTRY

It is generally believed that there are approximately 7,500 stores in the United States that consider Rent-To-Own their predominant line of business. Other sources have placed this number closer to the 11,000 level, but we believe that this level includes many outlets who merely dabble in Rent-To-Own or generally do not consider it to be their primary course of business. APRO prefers to conservatively define the industry as those outlets who derive the majority of their revenues from Rent-To-Own transactions and who regularly advertise their services as Rent-To-Own.

The 1991 Rent-To-Own statistical survey provides a fairly detailed profile of the "average" Rent-To-Own store. This profile was derived from a reasonable sample (over 25%) of the stores in the industry. The following industry statistics are extensions of those averages:

. Total R-T-O industry annual revenue		$ 3,574,500,000
. Total wages paid to R-T-O employee annual by R-T-O dealers		$ 810,339,200
. Total payroll taxes paid by R-T-O dealers annually		$ 84,00,800
. Total merchandise units on rent (BOR)		4,575,000
Breakdown by product category		
TV	1,033,950	
VCR	635,935	
Stereo	443,775	
Appliances	1,098,000	
Furniture	1,175,775	
Jewelry	54,900	
Other Products	132,665	
. Total customers (households) on rent		2,914,000
. Average household annual expenditure for Rent-To-Own products (National avg annual expenditure for household furnishings is $ 900)		$ 1,226
. Deliveries of R-T-O products annually		9,000,000
. Pickups of R-T-O products annually		6,120,000
. Payouts of R-T-O products annually		2,160,000
. Charge off of R-T-O products annually		270,000
. Residential households per R-T-O stores in the United States		12,533
. Population per R-T-O store in the U.S.		33,338
. Estimated number of R-T-O employees		38,403
. Average annual wage of all R-T-O employees (national average per capita is $ 13,712)		$ 21,101

APRO wishes to thank all of the companies who participated in this survey, and encourage their continued interest and participation.

APRO STATISTICAL SURVEY

General Survey Scope	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Number of Companies Responding	16	26	24	11	13	90
Number of Questionaires Sent	N/A	N/A	N/A	N/A	N/A	323
% of Response	N/A	N/A	N/A	N/A	N/A	27.9%
Total Number of Stores Represented	16	74	156	184	1519	1949
Avg Number of Stores per Company	1.00	2.85	6.50	16.73	44.33	10.81
General						
% RTO	87.8%	84.9%	90.2%	97.6%	88.9%	89.2%
% RTR	7.2%	7.4%	3.7%	.8%	8.9%	5.6%
% RETAIL	5.0%	7.7%	6.1%	1.6%	2.2%	5.2%
Type of Organization						
"C" Corporation	36.4%	50.0%	52.2%	50.0%	70.0%	51.7%
"S" Corporation	54.5%	45.5%	39.1%	50.0%	30.0%	43.8%
Propriatorship	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Partnership	9.1%	4.5%	8.7%	0.0%	0.0%	4.5%
Employees						
Average Home Office Employees	1.0	2.0	6.0	6.0	26.0	7.0
Average Store Employees @ Store	4.7	3.1	4.8	3.2	5.5	5.0
Average Other Employees	.1	1.8	1.9	3.3	7.7	3.0
Computerization						
Stores Computerized	63.6%	90.1%	90.0%	91.0%	100.0%	86.9%
Home Office Computerized	45.4%	81.8%	100.0%	100.0%	100.0%	85.4%
Store & Home Office Computerized	18.3%	45.5%	80.0%	72.8%	100.0%	63.3%

APRO STATISTICAL SURVEY

Facilities	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Avg Sq. Feet Per Store	4091	3466	3027	2827	3017	3285
Avg Rent $ Per Store Per Month	$ 2476	$ 1715	$ 1675	$ 1627	$ 2530	$ 1913
$ Rent Per SqFt Per Year	$ 7.24	$ 5.94	$ 6.64	$ 6.90	$ 10.06	$ 6.99
Avgerage # of Warehouses	.54	.77	.65	.45	2.20	.84
Average SqFt of Warehouse	3833	4318	6318	10300	13300	7614
State RTO Associations						
Member of 1 or More State Assoc	45.5%	77.3%	85.0%	90.9%	80.0%	75.7%
Average # of St Assoc Memberships	1.0	1.1	1.3	1.7	2.6	1.6
Products						
Count Washer/Dryer 2 Units on Rent	90.9%	81.8%	78.9%	90.9%	70.0%	82.5%
Count Refrig/TV 2 Units on Rent	90.9%	90.9%	100.0%	90.9%	90.0%	92.5%
Count 5pc Furn Grp 1 Unit on Rent	90.9%	77.3%	89.5%	100.0%	80.0%	87.5%
Count HEC 1 Unit on Rent	60.0%	81.8%	68.4%	63.6%	90.0%	72.8%
% of Units on Rent TV's	19.1%	21.1%	22.1%	24.0%	22.4%	22.6%
% of Units on Rent VCR's	12.7%	10.2%	11.6%	11.6%	15.8%	13.9%
% of Units on Rent Stereo's	8.2%	7.3%	9.5%	8.7%	10.5%	9.7%
% of Units on Rent Appliances	23.3%	25.4%	27.4%	23.9%	23.1%	24.0%
% of Units on Rent Furniture	27.7%	28.0%	25.2%	26.6%	25.2%	25.7%
% of Units on Rent Jewelry	6.2%	2.2%	2.3%	1.6%	.4%	1.2%
% of Units on Rent Other	2.8%	5.8%	1.9%	3.5%	2.6%	2.9%
Items Most Often Kept to Term						
Electronics	18.2%	4.5%	10.0%	0.0%	10.0%	8.5%
Furniture	27.3%	45.5%	30.0%	45.5%	30.0%	35.7%
Appliances	36.4%	31.8%	45.0%	36.4%	40.0%	37.9%
Other	9.0%	4.6%	5.0%	0.0%	0.0%	3.7%
Don't Know	9.1%	13.6%	10.0%	18.1%	20.0%	14.2%

APRO STATISTICAL SURVEY

Items Least Often Kept to Term	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Electronics	72.7%	68.2%	70.0%	100.0%	70.0%	76.2%
Furniture	0.0%	0.0%	0.0%	0.0%	10.0%	2.0%
Appliances	9.1%	9.1%	20.0%	0.0%	10.0%	9.6%
Other	0.0%	9.1%	5.0%	0.0%	0.0%	2.8%
Don't Know	9.2%	13.6%	5.0%	0.0%	12.0%	9.4%
% of Deliveries Going to Term	56.75%	38.65%	28.71%	25.98%	25.94%	35.17%
Range High	90%	80%	65%	64%	68%	73%
Range Low	17%	10%	6%	4%	4%	8%
Operations						
Repair Service - Internal	27.3%	36.4%	40.0%	36.4%	30.0%	34.0%
Repair Service - External	54.5%	50.0%	45.0%	36.3%	30.0%	43.2%
Repair Service - Both	18.2%	13.6%	15.0%	27.3%	40.0%	22.8%
Average Monthly Deliveries @ Store	73	90	97	126	133	100
Average Monthly Pickups @ Store	39	59	68	91	95	68
Average Monthly Payouts @ Store	20	21	25	23	32	24
Average Monthly Chg Offs @ Store	3	2	5	3	4	3
Average BOR @ Store	666	530	609	620	716	610
Average Idle Inventory % to Total	22.35%	19.88%	19.46%	19.08%	18.66%	19.85%
Average # of Idle Units @ Store	192	132	147	146	164	161
Average # of Units @ Customer	1.25	1.59	1.84	1.68	1.51	1.57
Average Price Per Unit per Month	$49.21	$53.46	$53.56	$55.91	$57.18	$53.86
Average Yield Per Unit per Month	$51.93	$39.02	$50.13	$46.60	$58.22	$49.18
Average % of Available Rent Recvd	90.23%	67.24%	87.78%	74.93%	92.50%	82.50%
Average % Weekly Accounts	48.5%	60.2%	57.0%	55.5%	46.4%	55.0%
Average % Monthly Accounts	51.5%	39.8%	43.0%	44.5%	43.6%	45.0%
Keep Rate (del-(pu+co)/del)	42.5%	32.2%	24.7%	25.4%	25.6%	28.0%
Deliveries to BOR %	12.2%	18.3%	15.8%	21.2%	18.3%	17.1%
Pickups to BOR %	6.8%	12.0%	11.0%	15.4%	13.1%	11.6%
Payouts to BOR %	4.0%	3.8%	4.2%	3.6%	4.4%	4.0%
Chg Offs to BOR %	.5%	.6%	.7%	.5%	.6%	.6%

APRO STATISTICAL SURVEY

	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Annual Pay - Assistant Manager	$ 18,440	$ 15,313	$ 17,670	$ 17,610	$ 19,990	$ 17,401
Annual Pay - Store Manager	$ 31,315	$ 22,276	$ 24,236	$ 24,500	$ 29,870	$ 25,506
Annual Pay - Account Manager	$ 16,353	$ 15,094	$ 14,180	$ 14,420	$ 16,500	$ 15,070
Annual Pay - District Manager	N/A	$ 35,313	$ 34,664	$ 41,045	$ 47,900	$ 39,458
Fringe Benefits						
Employer Paid Employee Health Ins	70.0%	71.4%	94.7%	90.9%	100.0%	85.4%
Average Percent Paid	76.4%	85.3%	69.8%	92.6%	77.1%	80.2%
Paid Dependent Coverage	9.1%	14.3%	42.1%	18.2%	30.0%	22.7%
Paid Vacations	100.0%	95.2%	100.0%	100.0%	100.0%	99.0%
Paid Holidays	100.0%	95.2%	78.9%	90.9%	100.0%	93.0%
Employee Discounts	90.9%	90.4%	89.5%	81.8%	80.0%	86.5%
Life Insurance	63.6%	38.1%	68.4%	72.7%	100.0%	68.6%
Pension Plan	18.2%	23.8%	21.1%	72.7%	30.0%	33.2%
Provide Other Fringe Benefits	0.0%	19.0%	15.8%	18.2%	40.0%	18.6%
Have Formalized Training Program	18.2%	33.3%	31.6%	90.9%	60.0%	46.8%
Projected Growth						
Projctd Rental Revenue Growth 1991	+ .2%	+ 37.5%	+ 15.0%	+ 28.9%	+ 16.2%	+ 19.6%
Projctd Rental Revenue Growth 1992	+ 10.0%	+ 22.0%	+ 8.7%	+ 15.9%	+ 21.7%	+ 15.7%
Projctd Rental Revenue Growth 1993	+ 53.9%	+ 10.9%	+ 17.4%	+ 14.4%	+ 5.7%	+ 20.5%
Projected Store Growth 1991	+ 20.0%	+ 7.0%	+ 29.2%	+ 12.1%	+ 7.5%	+ 15.2%
Projected Store Growth 1992	+ 30.0%	+ 15.5%	+ 27.5%	+ 14.2%	+ 7.0%	+ 18.8%
Projected Store Growth 1993	+ 53.8%	+ 25.4%	+ 9.0%	+ 15.0%	+ 8.3%	+ 22.3%
Financing						
Use Traditional RTO Lender	36.4%	40.9%	66.7%	54.5%	70.0%	53.7%
Use Bank	36.4%	27.3%	22.2%	18.2%	20.0%	24.8%
Use Both Traditional & Bank	0.0%	9.1%	11.1%	27.3%	0.0%	9.5%
Use Other Source	27.2%	22.7%	66.7%	54.5%	70.0%	53.7%

APRO STATISTICAL SURVEY

	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Length - Current Loan Contract (yrs)	1.71	2.27	2.27	2.45	2.14	2.17
Loan Type - Revolving Credit Line	40.0%	57.9%	68.4%	81.8%	100.0%	69.6%
Loan Type - Principal Reduction	10.0%	36.8%	26.3%	18.2%	0.0%	18.3%
Loan Type - Other Types	50.0%	5.3%	5.3%	0.0%	0.0%	12.1%
Loan Cap Type - Dollar Amount	100.0%	71.4%	76.5%	90.0%	90.0%	85.6%
Loan Cap Type - Receivable Value	0.0%	14.3%	11.8%	50.0%	66.7%	28.6%
Loan Cap Type - Multiple / Revenue	0.0%	21.4%	47.1%	80.0%	88.9%	47.5%
Loan Cap Type - Other	0.0%	7.1%	0.0%	0.0%	0.0%	1.4%
Changed Lender in Recent Years	60.0%	38.9%	64.7%	90.0%	55.6%	62.0%
Anticipate Changing Lender in Future	30.0%	35.0%	26.7%	9.1%	25.0%	25.1%
Inventory Depreciation						
Tax Basis Depreciation - MACRS	9.1%	23.8%	25.0%	36.4%	20.0%	22.9%
Tax Basis Depreciation - 18 Mo SL	18.2%	23.8%	25.0%	0.0%	20.0%	17.4%
Tax Basis Depreciation - Income Fcst	9.1%	19.0%	15.0%	36.4%	50.0%	25.9%
Tax Basis Depreciation - 24 Mo SL	36.4%	14.3%	35.0%	27.2%	0.0%	22.6%
Tax Basis Depreciation -Other	27.2%	19.1%	0.0%	0.0%	10.0%	11.2%
Financial Stmnt Depr. - MACRS	0.0%	19.0%	15.0%	18.2%	0.0%	10.4%
Financial Stmnt Depr. -18 Mo SL	36.4%	33.3%	25.0%	18.2%	30.0%	28.6%
Financial Stmnt Depr. -Income Fcst	9.1%	14.3%	10.0%	36.2%	20.0%	17.9%
Financial Stmnt Depr. - 24 Mo SL	27.3%	14.3%	50.0%	27.4%	30.0%	29.8%
Financial Stmnt Depr. - Other	27.2%	19.1%	0.0%	0.0%	20.0%	13.3%

APRO STATISTICAL SURVEY

Profit & Loss Statements

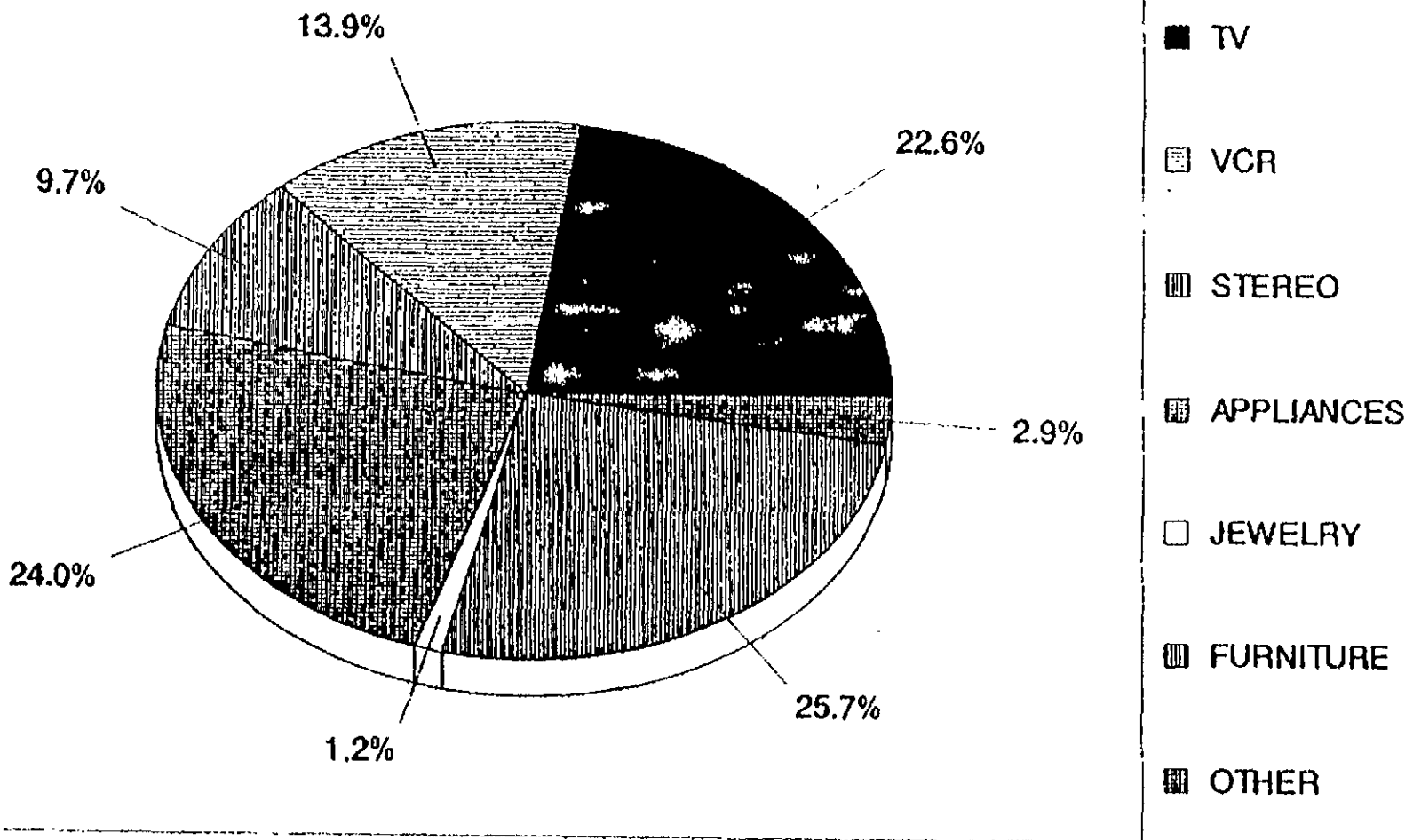
	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Rental Income	89.64%	87.52%	87.58%	90.52%	88.57%	88.44%
Insurance / Damage Waiver	2.22%	2.97%	1.52%	3.15%	2.54%	2.43%
Extended Warranty / Club Fees	.04%	.13%	.04%	.11%	.00%	.09%
Late Fees	2.29%	4.55%	3.65%	2.43%	1.92%	3.30%
Delivery Fees	.37%	.79%	.20%	.76%	.86%	.56%
Other Fees	1.35%	2.04%	.95%	1.13%	3.88%	1.76%
Sale of Rental Products	4.09%	2.00%	6.06%	1.90%	2.23%	3.42%
Total Revenues	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Salaries & Wages	21.32%	24.68%	21.57%	22.53%	22.08%	22.67%
Payroll Taxes	1.71%	2.77%	2.73%	1.71%	2.08%	2.35%
Health Insurance	.59%	.85%	1.16%	.98%	1.09%	.95%
Advertising	5.20%	6.60%	4.94%	5.37%	5.90%	5.66%
Depreciation - Merchandise	23.58%	22.60%	25.33%	27.94%	28.66%	25.10%
Depreciation - Fixed Assests	1.71%	3.67%	3.38%	2.03%	1.01%	2.70%
Distribution Cost	2.63%	4.28%	3.02%	3.15%	4.32%	3.53%
Store Expenses	9.71%	13.26%	8.11%	8.59%	9.71%	10.17%
Store Admin Expenses	3.47%	2.32%	2.73%	4.21%	2.07%	2.85%
Skip & Stolen Expenses	.99%	1.10%	.89%	3.09%	2.37%	1.49%
Cost of Sold Merchandise	5.28%	6.55%	5.17%	5.92%	2.65%	5.37%
Home Office Expenses	.18%	5.50%	9.92%	8.77%	8.61%	6.81%
Interest Expenses	4.81%	4.14%	5.09%	4.08%	5.52%	4.67%
Insurance Expenses	1.42%	2.15%	2.20%	1.90%	2.33%	2.04%
Total Expenses	82.59%	100.45%	96.24%	100.27%	98.42%	96.36%
Profit Before Tax	17.41%	(.45)%	3.76%	(.27)%	1.58%	3.64%

APRO STATISTICAL SURVEY

Balance Sheet

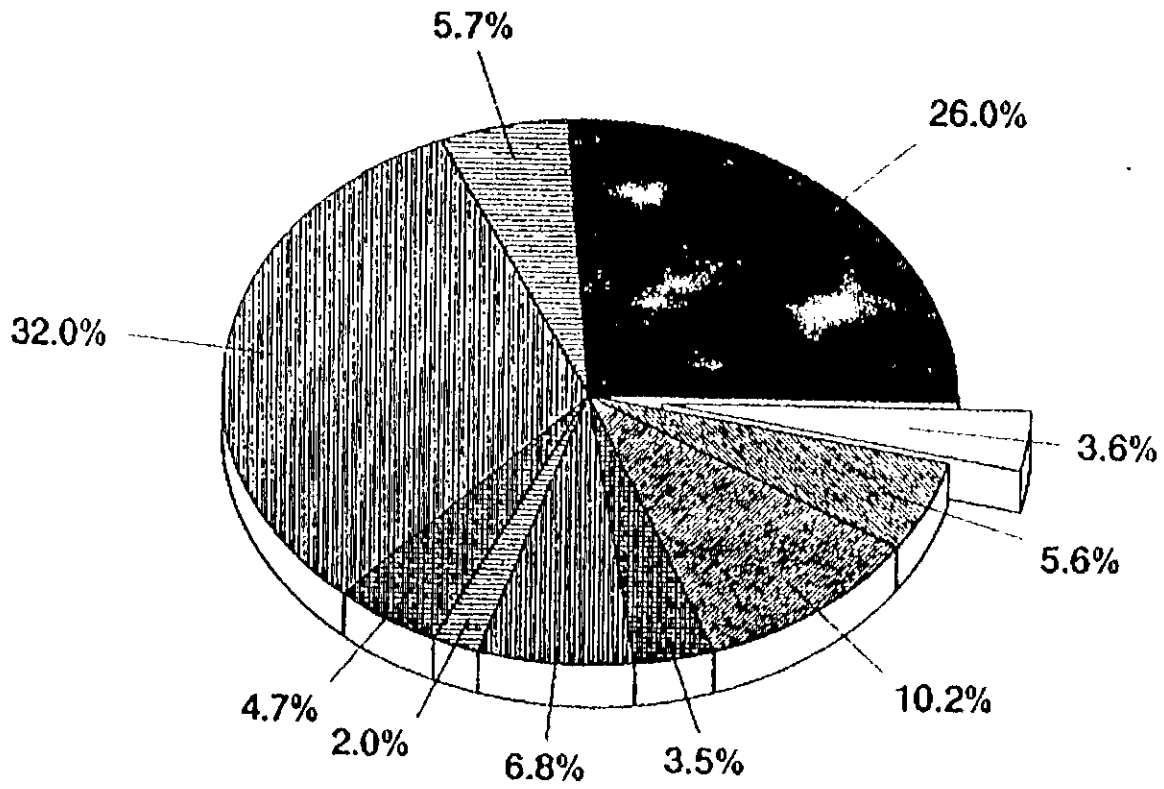
	1 Store	2-4 Stores	5-10 Stores	11-20 Stores	20+ Stores	Total
Assets						
Cash and Equivalents	15.85%	6.87%	9.92%	8.72%	4.32%	8.96%
Inventory - Net	48.75%	65.87%	66.38%	56.74%	57.96%	62.93%
Other Current Assets	2.34%	5.60%	3.46%	12.07%	4.92%	5.41%
Total Current Assets	66.94%	78.34%	79.76%	77.53%	73.20%	77.30%
Fixed Assets - Net	23.31%	19.73%	17.15%	13.63%	10.53%	16.60%
Other Assets	9.75%	1.93%	3.09%	8.84%	16.27%	6.10%
Total Assets	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Liabilities & Net Worth						
Accounts Payable & Accrued Exp	15.35%	10.86%	10.44%	8.16%	9.79%	10.23%
Notes Payable	28.46%	49.88%	62.46%	65.59%	59.22%	54.92%
Other Current Liabilities	10.16%	12.53%	4.51%	5.88%	3.87%	7.58%
Total Current Liabilities	53.97%	73.27%	77.41%	79.63%	72.88%	73.23%
Long Term Debt	29.03%	16.25%	15.28%	11.77%	18.07%	16.65%
Total Liabilities	83.01%	89.52%	92.69%	91.40%	90.95%	89.88%
Net Worth	16.99%	10.48%	7.31%	8.60%	9.05%	10.12%
Total Liabilities & Net Worth	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
Current Ratio	2.58	1.50	1.56	1.05	1.35	1.61
Quick Ratio	1.19	.25	.23	.14	.41	.50
% Return on Debt	33.02%	35.21%	21.68%	4.07%	12.41%	21.28%
Debt / Revenue Ratio	3.16	4.95	3.09	4.12	3.41	3.75
Net Worth / Debt Ratio	.60	.60	.30	.15	.23	.38
Debt / Net Inventory $	$0.90	$1.03	$0.93	$1.25	$0.86	$0.99
% Return on Assets	37.52%	23.56%	18.49%	4.61%	3.46%	17.53%
Debt $ Per Unit of Inventory	$126.66	$132.54	$126.76	$174.86	$162.90	$144.70

RENT TO OWN INDUSTRY
DISTRIBUTION OF PRODUCTS
ON RENT



FEB-26-1992 15:25 FROM MID-MN LEGAL ASST. -NORTH TO 13043823011 P.13

APRO STATISTICAL SURVEY
PERCENTAGE BREAKDOWN OF
AVERAGE RENT-TO-OWN DOLLAR



Kelly

Your account with RTO is now 34 days late. The merchandise is now categorized as stolen. We must hear from you today or we will enforce our rights under the rental agreement and the laws of this state.

Rick
RTO Rents
455-1160

MANSFIELD & TANICK

A PROFESSIONAL ASSOCIATION
Attorneys at Law
620 NATIONAL CITY BANK BUILDING
510 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402-1034

SEYMOUR J. MANSFIELD †
MARSHALL H. TANICK *
ROBERT A. JOHNSON

RICHARD J. FULLER
TERESA J. AYLING **
PATRICIA D. ALTON
EDWIN GREENSBORO

EARL H. COHEN ***
DANIEL S. KLEINBERGER
Of Counsel

TEL (612) 339-4295
FAX (612) 339-3161

† ALSO ADMITTED IN CALIFORNIA
* ALSO ADMITTED IN D.C. AND WISCONSIN
** ALSO ADMITTED IN WISCONSIN
*** ALSO ADMITTED IN DISTRICT OF COLUMBIA

September 16, 1992

BY TELECOPIER AND U.S. MAIL

Tim Winslow, Esq.
Assistant Attorney General
West Virginia Attorney General's Office
812 Quarrier Street
L&S Building, 6th Floor
Charleston, West Virginia 25305

Dear Mr. Winslow:

Enclosed please find my Comments on West Virginia Proposed RTO Rules 14 and 15.

Very truly yours,

MANSFIELD & TANICK, P.A.

Richard J. Fuller

RJF:skm
Enclosure

COMMENTS OF RICHARD FULLER ON
WEST VIRGINIA PROPOSED RTO RULES 14 AND 15

INTRODUCTION TO COMMENTS

Our office has represented low-income consumers in a number of class actions against rent-to-own companies in Minnesota. In the course of representing our clients, we have amassed a considerable body of expertise and knowledge concerning the industry, both nationally and locally. Studies show the typical rent-to-own customer is a single parent (usually female) with two children who earns less than $15,000 per year. Approximately one-fourth of all rent-to-own customers receive some sort of public assistance based on need. Most rent-to-own customers rent such things as furniture, home appliances, or home entertainment equipment. A significant number of customers have incomes below the federal poverty guidelines.

The continued practice of rent-to-own dealers is to charge excessive interest, misrepresent the quality and value of their products, and fail to comply with UCC § 9-504 when repossessing goods. Efforts to alleviate the problem through legislation and negotiation with industry representatives have been extensive. A typical case study of a rental-purchase customer would be as follows. Ms. Doe is a customer of Renters Choice. In December 1990, she executed a contract, nominally in the form of a short-term lease, which provides that after 18 monthly payments title to certain furniture passes to her for no additional consideration. The total of payments greatly exceeds the value of the goods and services she obtains. The contract appears to

satisfy all the criteria of a credit sale set out in Minn. Stat. § 325G.15, subd. 5. The difference between the market value of the goods and services and the total of payments indicates an effective annual percentage rate of somewhere between 80% and 110% (depending on whether one uses Renters Choice's estimate of market value or our estimate).

COMMENTS

RTO RULE 14

§ 142-14-3, ¶ 3.2.2.

Change the word "should" in the second line of paragraph 3.2.2 to "shall." If the rental-purchase agreement is deemed a consumer lease there is no reason why consumer lease disclosures should not be mandatory.

§ 142-14-4, ¶ 4.1

This paragraph provides that a rental-purchase agreement cannot be deemed a consumer credit sale if the total of payments exceeds $1,000. Such a provision immediately eliminates nearly half of all rental-purchase agreements from coverage since, in our experience, about half of all such contracts have a total of payments which exceed $1,000. It invites rental-purchase dealers to exclude themselves from coverage by the simple expedient of structuring their transactions to result in a total of payments which exceeds $1,000.

RTO RULE 15

§ 142-15-3.

The primary deficiency of this rule is that it provides no guidance for defining or setting the cash price. Disclosure of an imputed interest rate is of no value if the creditor/seller can artificially inflate the cash price of the article to whatever level he/she sees fit. In Minnesota, for example, dealers are required to disclose a "cash price" which is the equivalent of "fair market value for goods offered under a consumer credit sale." Minn. Stat. § 325F.84, subd. 3. By defining the cash price in terms of prices that actually exist in the local market, Minnesota's statute seeks to avoid allowing dealers to disclose and artificially low imputed interest rate simply by inflating the cash price. Such an approach is essential if West Virginia's regulation is to be effective.

Respectfully submitted,

Richard J. Fuller

National
Consumer
Law Center
Inc.
Eleven Beacon St.
Boston, MA 02108
(617) 523-8010

Robert J. Hobbs
Deputy Director

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For Immediate Release

Wednesday, March 2, 1988

Contact: Jack J. Lewis
Assistant Press Secretary
717-787-5211 (home: 657-9840)

(ALSO RELEASED VIA MEDIAWIRE)

HARRISBURG — Attorney General LeRoy S. Zimmerman today praised the state Legislature for approving a bill that limits the maximum interest rate on all rent-to-own purchases in Pennsylvania to 18 percent.

At the same time, Zimmerman announced that his Bureau of Consumer Protection is asking Pennsylvania's rent-to-own companies to supply copies of their contract forms to his office "so that we can make certain that these companies bring their contracts into compliance with the new law."

Senate Bill 167, which was signed into law Friday by Gov. Robert P. Casey, amends the state's Goods and Services Installment Sales Act by extending for three years the 18 percent maximum interest charge on credit-card and retail purchases.

In addition, it requires that consumer credit contracts be written in "plain language" and, in what Zimmerman called a "significant victory for Pennsylvania consumers," imposes the same 18 percent interest ceiling on rent-to-own contracts.

"This is the first time that a state has imposed interest rate ceilings on all rent-to-own purchases," the Attorney General said.

-more-

First add Rent to own — Wednesday, March 2, 1988

Rent-to-own companies sell furniture, appliances and other items through contracts under which customers rent goods for weeks or months. If they make all the payments, customers can buy their rented merchandise for a fee at the end of the rental period.

Zimmerman said the Legislature's action will bring about major changes in the way rent-to-own companies do business.

"I believe this will put an end to sales practices that have resulted in consumers being lured into signing rent-to-own contracts that require them to pay two or three times what the merchandise is actually worth.

"The law also will prohibit rental companies from disguising their credit charges as fees of one sort or another in complicated contract language."

Zimmerman noted that in 1986 a Northampton County Common Pleas Court judge ruled that the Goods and Services Installment Sales Act with its 18 percent ceiling applied to rent-to-own transactions. Additional court proceedings in that matter are pending.

"But now the law is clear," Zimmerman said. "All contracts generally known as rent-to-own contracts are covered by the Goods and Services Installment Sales Act."

A letter sent today by Zimmerman's office to rental companies in Pennsylvania spells out the changes in the law and asks the companies to provide copies of their contract forms to the Bureau of Consumer Protection by March 11.

"Among other things, we will be checking to see that the contracts include the necessary disclosure requirements," said Deputy Attorney General Douglas P. Yauger, director of the Bureau of Consumer Protection.

-more-

He said the bureau intends to take legal action against companies which don't bring their contracts into conformance with the law.

Yauger noted that in many cases consumers who make purchases through rent-to-own contracts are low-income people who are lured into the contracts by the attraction of instant credit without a background check.

"Unfortunately, these are the same people who can least afford to pay the excessive finance charges that traditionally have been associated with rent-to-own contracts."

Yauger advised all consumers to "shop around to see what credit options are available to them."

He said consumers can reduce the amount of finance charges they pay or eliminate them altogether by saving for the item they want to purchase.

"Obviously, if you can make a substantial downpayment or pay the full price, you're going to save a significant amount on interest payments," he said.

-30-



"Rent to own consumers end up paying substantially more than it would have cost to buy the product for cash or on an installment plan."

J. Joseph Curran, Jr.
Attorney General

the cash price of the product as a charge for the opportunity to pay for the product over time. This cost can be measured as an annual percentage rate (APR) above the cash price. In the example given above, the APR in the rent-to-own plan was 145%—far above the 24% legal limit for credit sales. Rent-to-own dealers often charge APRs as high as 120%–150%. Maryland law does not place any limits on the APR which a rent-to-own dealer can charge.

Rent-to-own dealers are also not required to disclose to consumers the APR that the consumer ends up paying to own the product. In addition, the APR is very difficult to calculate because of compounded interest. This makes it hard for a consumer to compare the cost of a purchase on a rent-to-own plan with the cost of a purchase on a credit installment plan. However, consumers can estimate the APR themselves before entering into a rent-to-own transaction. Figure A (see page 4) is a chart which can help you estimate the APR for a particular transaction, such as renting to own a television or refrigerator. Once you have determined the APR, you should carefully compare the rent-to-own deal with whatever other options are available to you for purchasing the product you want. Figure B (see page 5) describes some of these options. With this information, you can make an informed decision about which deal is the best for you.

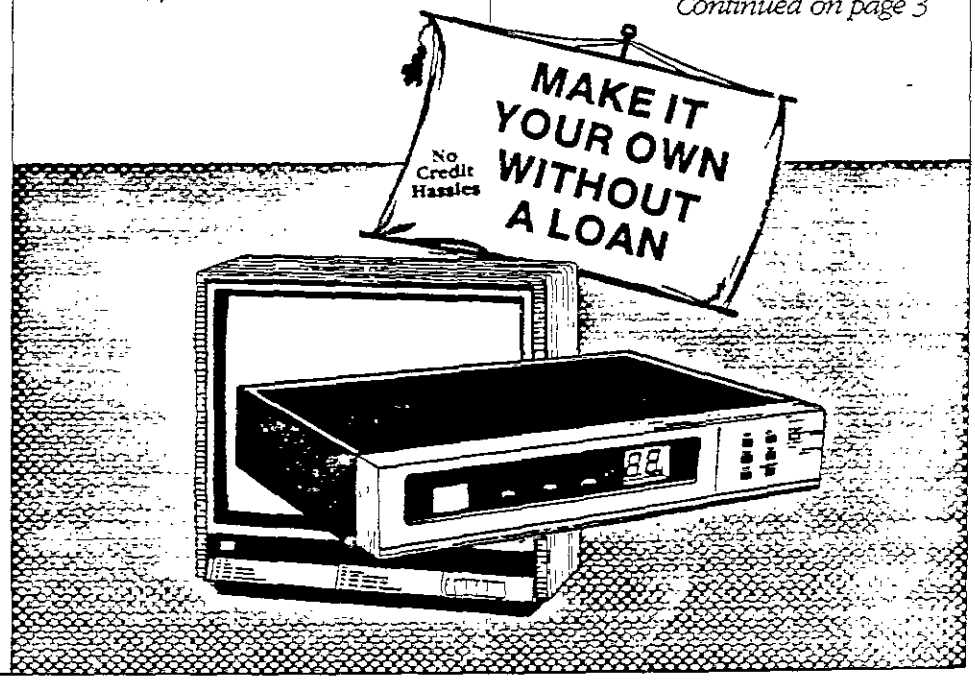
Another important factor to keep in mind is that an appliance obtained under a rental purchase contract might be several years old and may previously have been in numerous other homes. Ask the dealer about the appliance's age and history. In order to choose your best deal, you need to know:

New Laws Help Consumers

Although there is no regulation of the APR charged by rent-to-own dealers, in 1989 the Maryland General Assembly passed a law that provides some new protections for rent-to-own consumers. Rent-to-own dealers are now required to disclose the following important terms in their contracts:

- How much the item would have cost if the consumer bought it for cash;
- How many rental payments the consumer must make to own the item;
- How much each rental payment will be;
- How much the consumer will have to pay in total to own the item;
- How the consumer can buy the item early;
- Whether the item is new or used;
- That the merchant is responsible for repairing the item; and
- How the consumer can reinstate the agreement if he misses a payment.

Continued on page 3



#5 Rent-To-Own

CONSUMER EDUCATION SERIES

J. Joseph Curran, Jr.,
Attorney General

I'll Buy That!

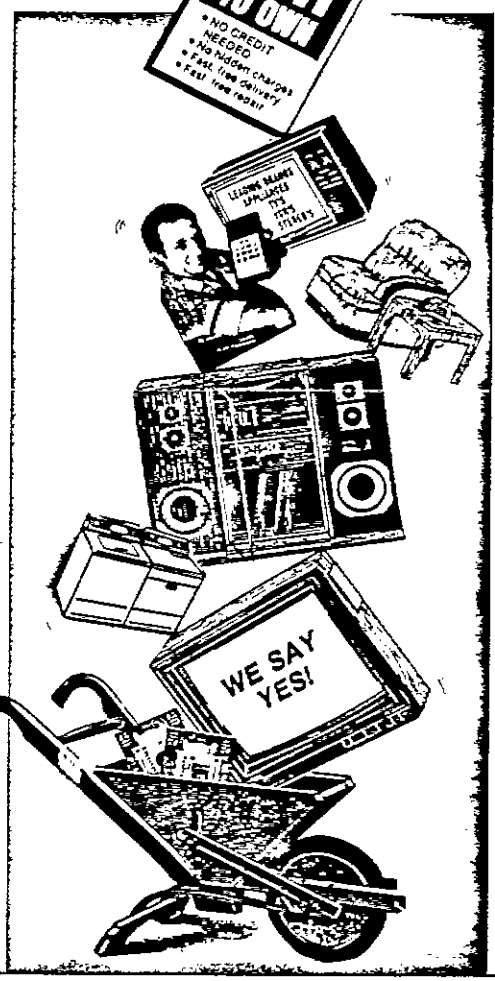
Maryland Attorney General's Office Consumer Protection Division

The "Rent-To-Own" Alternative

Although Ads Tout Easy Terms and No Security Deposit, Customers Pay Premium Prices to "Own"

If you need a television, refrigerator, or other "big ticket" item, you probably buy it from a retail store and pay cash or use credit. If you buy on credit, Maryland law protects you by limiting the amount of interest retail merchants can charge to no more than 24%. Merchants are also required to tell you up front how much interest you will have to pay.

Some consumers are attracted to an arrangement commonly called "rent-to-own." Rent-to-own dealers advertise that—without a credit check or down payment—a consumer can own a product after paying a weekly or monthly "rental" payment for a certain period of time. The consumer is obligated to pay the weekly or monthly rental for the period that he has the item, and can end the arrangement by returning the rented item to the merchant. If the consumer returns the item and is paid up in back rent, he will have no further obligation to the rent-to-own merchant.



Rent-To-Own vs. Installment

Rent-to-own consumers who ultimately buy the product by making the required amount of rental payments end up paying substantially more than the amount it would have cost to buy the product for cash or on an installment plan. For example, if a consumer buys a new $400 television on an 18-month installment plan at the maximum allowable interest, the total cost is $480. Under an 18-month rent-to-own plan, the consumer typically pays $1000 or more for the same television, even though it might be used.

As this example illustrates, the real decision you face as a consumer is whether the ability to return an item without any consequences is worth paying more than double for that item.

Under both the installment plan and the rent-to-own plan, the consumer pays some amount above

Continued on page 2

The new law also protects consumers who are late in making a rental payment from having the item taken away immediately.

An appliance obtained under a rental purchase contract might be several years old and may previously have been in many other homes.

Before 1989, a rent-to-own merchant could repossess an item as soon as a consumer missed a rent-to-own payment. This repossession usually had the effect of ending the rent-to-own arrangement, and the consumer lost the benefit of all the payments made toward owning the item.

Under the new law, a consumer who misses a payment has at least fifteen days after the merchant repossesses the item to make the late payment and regain his or her rights under the agreement. If the consumer who has missed a payment voluntarily permits the rental merchant to pick up the property, the consumer will then have from 21 to 45 days to make the late payment and reinstate the agreement, depending on how many payments the consumer had already made toward owning the property. These new requirements will protect consumers who have made a substantial investment toward owning the item.



Attention!

We are interested in hearing about your experiences with rent-to-own contracts. If you want to share your experience with us, or if you want assistance in reading the charts in this brochure, please use the form below.

Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____

Household good rented: _____

Number of payments to own: _____ Total price to own: _____

Did you acquire ownership? ☐ Yes ☐ No

Describe your experience or question: _____

_____

_____

_____

Send to: Consumer Protection Div./200 St. Paul Place/Balto. MD/21202

FIGURE A

Is the

CASH PRICE OF PRODUCT	$400 ($22.22 a month)	$600 ($33.33 a month)
$200	103%	185%
$300	38%	103%
$400	0	56%
$500		24%
$600		0
$700		
$800		
$900		
$1000		
$1100		
$1200		

By using this chart, you can estimate the implicit interest which you will be charged if you make enough rental payments to own the product. Along the left side of the chart is the "cash price," or the amount which you would pay to buy the product with one payment. Along the top of the chart are the total amounts which you would be paying to buy the product under a rent-to-own plan. In parentheses under each total amount

Convenience Worth the Cost?

How to Compute Rent-to-Own Implicit Interest

TOTAL OF PAYMENTS OVER 18 MONTHS									
$800 ($44.44 a month)	$1000 ($55.55 a month)	$1200 ($66.66 a month)	$1400 $77.77 a month)	$1600 ($88.88 a month)	$1800 ($100.00 a month)	$2000 ($111.11 a month)	$2200 ($122.22 a month)	$2400 ($133.33 a month)	$2600 $144.44 a month)
258%									
158%	210%	258%							
103%	145%	185%	222%	258%					
66%	103%	137%	169%	200%	229%				
39%	72%	103%	132%	159%	185%	210%			
17%	48%	77%	103%	127%	151%	174%	196%	217%	
0	29%	56%	80%	103%	124%	145%	165%	185%	204%
	13%	38%	61%	83%	103%	122%	140%	158%	176%
	0	24%	45%	66%	85%	103%	120%	137%	153%
		11%	32%	51%	69%	86%	103%	119%	134%
		0	20%	38%	56%	72%	88%	103%	118%

How To Use This Chart

is the cost of each monthly payment. All three of these amounts should appear on the rent-to-own contract.

To figure out the implicit interest, you should first find the cash price of the product you are buying. Then follow across the chart to the column that corresponds to the total amount you must pay to own the product. For example, if the cash price is $400 and the total amount which you must pay to own is $1000, the implicit interest would be 145%.

If your cash price or total payment amount falls between the numbers on the chart, you can use the chart to estimate the implicit interest. For example, if the cash price is between $400 and $500 and the total payment amount is $1000, your implicit interest will be between 103% and 145%. If the cash price is between $400 and $500, and the total amount to be paid is between $1000 and $1200, then the implicit interest would be between 103% and 184%.

This chart is based upon your paying the total amount needed to own the product in 18 months. If your agreement permits you a longer time to pay that amount, your implicit interest would be less than shown on the chart. If your agreement gives you less time to pay that amount, your implicit interest would be higher than shown on the chart. ■

FIGURE B

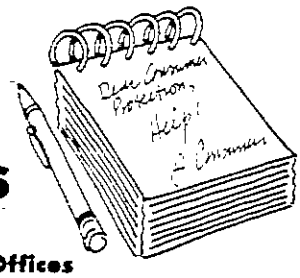
What Are Your Options?

Use this chart to compare rent-to-own with other payment methods.

Payment Options	Cost To Consumer	Ownership And Possession	Consumer's Liability	Service	Needs Credit Check?	Down Payment
Pay Cash	Cash price of item.	Must have full price available in cash; immediate ownership.	None.	Covered by manufacturer's warranty and by implied warranty under Maryland law.	Not with cash; check payment might require credit card for identification.	N/A
Delay purchase until money saved in bank.	For $400 TV, cost is cash price minus interest earned in bank.	No possession until full price is saved. Can usually save enough to purchase the product in a third to a half of the term of a rent-to-own if amount of rent-to-own payments banked each month.	N/A	Same as if you pay cash.	No.	Some banks may have minimum balance requirement.
Layaway	For $400 TV, cost is cash price plus small handling charge.	No ownership or possession of goods until full price paid; can pay in installments over time.	If default or cancellation, 10% of purchase price or amount already paid, whichever is less, may be retained by merchant.	Same as if you pay cash.	Usually not.	Some payment is required at time of layaway.
Installment Sale	Cash price of item plus finance charges (maximum 24% interest rate); property insurance might be required. For $400 TV, cost is $480 assuming 24% interest over 18 months.	Ownership and possession once installment contract signed; periodic installment payments thereafter.	Owe full contract price except in limited circumstances. If repossessed, no further obligation unless cash price is more than $2000.	Covered by manufacturer's warranty and implied warranty under Maryland law.	Yes.	Usually some down payment required upon signing of contract.
Rent-to-Own	Cash price of item plus implicit finance charges (unlimited interest rate, often as high as 120%-150%). For $400 TV, cost is $1000 assuming 145% implicit interest and 18-month payment schedule.	Possession at time contract is signed and initial rental payment made. No ownership until total of required rental payment made. Goods offered for rent-to-own contract are often used.	No liability for future rental payments if property is returned. Liability for damage, theft, or loss up to value of property.	Lessor must service and maintain while payments being made. Often, no warranty after ownership acquired.	No, but verification of income and residence might be required.	At least one rental payment is usually required.



How You Can Reach Us



Attorney General's Consumer Offices

Downtown Baltimore

Consumer Protection Division
200 St. Paul Place , 16th Floor
Baltimore, MD 21202

Complaints: 528-8662 (9 a.m. to 3 p.m., M-F

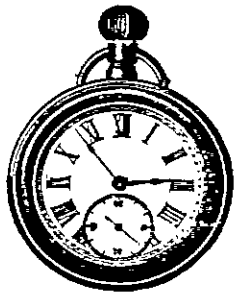
Health Complaints: 528-1840 (9 a.m. to 5 p.m. M-F)

TDD for hearing impaired persons:
Baltimore Area: 576-6372
D.C. Metro Area: 565-0451

Branch Offices

- **Hagerstown**
  138 Antietam Street
  Hagerstown, MD 21740
  791-4780 (8:30 a.m. to 4:30 p.m., M-F)
- **Cumberland**
  City Hall
  Centre Street
  Cumberland, MD 21502
  722-2000 (9 a.m. to 12 p.m., 1st and 3rd Tues. of each month)
- **Salisbury**
  State Office Complex
  Route 50 and Cypress Street
  Salisbury, MD 21801
  543-6620
  (8:30 a.m. to 4:30 p.m., M-F)
- **Frederick**
  Citizens Services Bldg.
  Frederick County Government
  520 N. Market Street, 2nd Floor
  Frederick, MD 21701
  694-1071 (9 a.m. to 4 p.m., Thurs. only)

It's Not Too Late to Change



The difference between the rent-to-own cost and the installment sale cost is so great that a rent-to-own consumer can make a substantial amount of rental payments, return the product, buy the same product on the installment plan, and still save money. In the example of the $400 TV (see page 5), the consumer could make up to nine monthly rental payments, return the television, buy the same television on an 18-month installment plan at maximum allowable interest, and still end up paying less for the television than if he or she had continued on the rent-to-own plan.

I'll Buy That!, a series of consumer publications, is produced by the Consumer Education Unit of the Consumer Protection Division, Office of the Attorney General, 200 St. Paul Place, 16th Floor, Balto., MD 21202, (301) 576-6550.

J. Joseph Curran Jr.
Attorney General

William Leibovici
Chief, Consumer Protection Division

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to: Hobbs — for your response if you wish —

The University of Georgia

Department of Housing and Consumer Economics

January 17, 1991

Robert A. Sable
National Consumer Law Center, Inc.
Eleveln Beacon Street
Boston, MA 02108

Dear Mr. Sable:

Enclosed please find a copy of the most recent draft of the paper in which I asked for help in gathering resources. I want to thank you again for sharing the resources with me because they have been very helpful in defining my research problem. I do hope that you understand that a more exhaustive draft will serve as my thesis proposal later. This article is to be published in the 1991 Southeastern Regional Conference of Family Economics & Home Management proceedings, and I would appreciate any comments or critiques that I may include in future drafts.

Sincerely,

Sandra J. Cantrell
Graduate Student

Enclosure

Dawson Hall • Athens, Georgia 30602 • (404) 542-4856 • FAX (404) 542-4862
An Equal Opportunity/Affirmative Action Institution

RENT-TO-OWN: AN ALTERNATIVE TO CREDIT?

Sandra J. Cantrell
Graduate Student, University of Georgia

Because an English piano manufacturer, Mr. H. Moore, wanted to increase his business by making it easier for customers to purchase pianos on credit, he created the hire-purchase marketing concept in 1846. Today, a similar adaptation of the hire-purchase method of buying products is commonly known as renting-to-own (Goode, 1970). Many dealers rent-to-own major household appliances, televisions, stereos, furniture, and sometimes jewelry. In 1988, industry sales were estimated as follows: color televisions 40-45%; white goods (i.e., washers, dryers, etc.) 20-25%; brown goods (i.e., stereos) 15-20%; video cassette recorders 10-15%; and other goods (i.e., microwave ovens, air conditioners, etc.) 5-15% of rent-to-own (RTO) sales. Of those dealers that stock furniture, between 10 and 20% of the store's revenue directly comes from furniture sales/rentals (Stein & Brown, 1988). Recently dealers have begun offering telephones, especially cordless phones, on RTO plans because the telephone is no longer considered an average household utility (Cerny, 1989).

A representative RTO transaction consists of several rental payments renewable for 18 months or 78 weeks that allow the consumer to retain the item as long as payments are made. If the consumer stops paying, the agreement is terminated, and the undamaged rented item must be returned (Reiter, 1988). This type of transaction is unique because it combines features of an installment sale and a lease, but there is no ownership of the merchandise until the final payment is made (Council of Better Business Bureaus, 1990).

The industry has seen rapid growth in the past seven years, and the number of stores has more than doubled since 1983. In 1990, the Association of Progressive Rental Organizations (APRO) reports that there are an estimated 7,000 RTO retailers operating in the United States, and that RTO has grown to a $2.5 billion industry. These figures are probably underestimated because they do not reflect those traditional furniture and appliance stores that are now using RTO as a purchasing alternative to those customers denied credit (APRO, 1990).

Two events are responsible for the upsurge in RTO stores. First, many finance companies and banks have reduced their loan offerings (Marini, 1983). Secondly, an estimated 35% of the American adult public doesn't have access to credit (Rosenblum, 1984). With the retail loan market drying up and the high number of consumers without credit, many consumers are turning to the RTO method of purchasing. As the overall number of RTO transactions increase, so does the number of complaints. For instance, the California Department of Consumer Affairs receives a small but steady number of complaints about RTO transactions (Lamb, 1989). A New Haven Legal Aid office received more than 200 rental complaints in just two years (Scott, 1984).

Controversy between consumer advocates and the RTO industry continues to appear in newspaper headlines and courtrooms across

the country. Most disagreements center on the total costs of RTO transactions, but other disputes arise about reinstatement rights, used products, classifying RTO transactions as credit sales, and the focus of RTO dealers on marketing to low-income consumers. Growth of the RTO industry has been so rapid that consumer legislation and education has not kept pace.

Many disagreements between RTO dealers and consumer advocates remain unresolved. Few individuals have successfully identified salient issues and concepts about RTO transactions that need to be researched in detail. Speculating about what is taking place in the RTO market seems difficult without having conducted scientific research. Further research will be beneficial in three respects. First, research may be practical for consumer educators in assisting consumers make informed decisions. Second, further research could illuminate this aspect of consumers' behavior which appears irrational in most respects. Most importantly, the third reason for further research is to inform federal and state policy-makers. The purposes of this paper are to: (1) identify relevant issues needing research, (2) review the existent literature on these issues, and (3) propose new research to investigate RTO transactions.

COSTS

The total cost of RTO transactions causes the most conflict between consumer advocates and RTO dealers. This conflict arises over the total costs of an item purchased under RTO plans versus traditional installment arrangements.

Consumer Advocates' Concerns

According to Curran and Leibovici (1990), typical RTO costs are so great that a RTO consumer can pay some rental renewal payments, return the product, buy the same product on an installment plan, and still save money. In his letter to the Senate Judiciary committee, North Carolina's Attorney General points out that a small number of RTO companies are able to charge rates as high as 250% per year or more (Thornburg, 1987). Most importantly, consumer advocates present four arguments that support the notion that rental-purchase agreements are simply credit sales disguised as rental contracts and thus, should be regulated as credit transactions.

Termination Clause. First, every rental-purchase contract contains a termination clause that permits the consumer to terminate the transaction at any time. The customer's option to try out the product and later return it is functionally no different than a credit sale in which the buyer exercises a "satisfaction or your money back" guarantee. Essentially the only difference in the termination clause and the money back guarantee is that the RTO customer receives no refund whereas a credit customer does (Ramp, in press).

Keep Rate Formula. Second, a "keep rate" formula is used by the industry to maintain the idea that RTO dealers are primarily engaged in renting. The industry reports a low 20% "keep rate" reflects that few customers ultimately pay off the goods. Fssentially, a lower keep rate is ideal from the RTO industry's perspective because it represents fewer customers paying out, or "buying," the merchandise. The formula is misleading because it

only compares the customers who pay out new products as opposed to everyone accepting delivery, including those products rented for shorter terms, early pay outs, and those contracts terminated involuntarily.

$$\text{Keep Rate} = \frac{\text{Pay outs this month}}{\text{Deliveries (18 months ago)}}$$

Although the following formula is criticized by the industry because it does not tell the dealer who is acquiring ownership, or when, or what products are "sticking" and which products are coming back, this proposed formula compares the number of pay outs to the balance on rent for any given period of time. Therefore, this formula gives a more accurate depiction of whether the RTO dealer is selling inventory or renting goods (Ramp, in press).

$$\text{Proposed Keep Rate} = \frac{\text{Monthly pay out}}{\text{Units on Rent}}$$

RTO dealers would rather rent goods with high keep rates because these goods are more profitable than goods sitting idle in the store. However, a high keep rate creates serious legal risks when distinguishing between rental and sales transactions. Rent-to-own jewelry has a very high keep rate which makes it difficult to persuade policy makers that customers are only renting, not buying, engagement rings (Ramp, in press).

Store Inventory. Third, units that are being rented remain in the stores' inventory until they are paid out by the customer. A court case, *Starks v. Rent-a-Center*, revealed that 66% of all Rent-a-Center stores' inventory for one year had been sold through a regular full-term RTO contract, early pay out, or sold outright. If over half of the merchandise carried by a RTO store is paid for in a year's time, the RTO store must be in the business of selling goods and should be subject to traditional credit laws. Additionally, this court case revealed that during a fiscal year, an average unit was rented 2.6 times. Contrary to what one would expect, this figure does not mean that 2.6 different people rented the same product. If financial difficulties pose a threat of losing the merchandise, sometimes customers may sign a new RTO contract (Ramp, in press).

Store Revenue. Finally, RTO businesses generate over 70% of total revenue from transactions in which the product is purchased through a regular pay off or early pay off of the contract. The number of skip stolens (rented merchandise moved from one residence to another without notifying the dealer) only comprise 2% of revenue losses (Ramp, in press). The idea that RTO businesses are primarily in rentals is challenged by the behaviors of lenders (i.e., Transamerica Commercial Finance) because these lenders have begun to make loans to RTO companies based on each stores' projected income. Since lenders are recognizing the RTO contracts as accounts receivable to the dealer, this upholds the concept that RTO dealers want customers to obtain ownership (Ramp, in press).

In 1989, when Pennsylvania attempted to pass a bill that defined RTO transactions as credit sales and make them subject to

usury laws, the statute was challenged by RTO dealers because it would have put RTO dealers out of business (Winn, 1989). The fact that RTO dealers challenged the idea of being classified as "credit" sales could be interpreted as meaning the industry could not survive without charging such high rates.

Industry Responses

The RTO industry does not recognize rental payments as equivalent to installment payments. Customers do not pay interest because there is no debt (Scott, 1984). The industry vehemently rejects arguments that RTO transactions are a form of a credit sale, arguing that customers can terminate the RTO contract at anytime differentiates RTO arrangements from all forms of credit. The industry recognizes that the RTO transaction is more costly to consumers but justifies the high costs by offering services that are not available through other credit purchases. Most RTO dealers offer free delivery, no credit checks, free repairs and a replacement or a loaner good while the product is being repaired ("How to pay $1300. . .", 1986; Scott, 1984). Edward Winn, III, an industry representative, states that you cannot buy a service contract from any retailer that will come out to the consumer's home and fix the product or replace it (Scott, 1984). The RTO dealers must also absorb costs such as opportunity costs, depreciation, and the gamble of renting to high risk consumers (Stein & Brown, 1988). If profit rates of RTO businesses were revealed, perhaps one would be able to determine whether or not the revenues are balanced by the high costs of RTO. RTO dealers also face a delicate balance between protecting inventory and maintaining revenues. If the account managers are too soft, the customers delay paying, and if they are too tough, the store receives back a beat-up television set (Henry, 1987).

REINSTATEMENT RIGHTS AND EARLY PURCHASE OPTION

Another area that consumer advocates and RTO dealers debate is consumer satisfaction related to reinstatement rights when delinquency occurs.

Consumer Advocates' Concerns

The majority of RTO customers fall in the low-income range and their probability of not being able to make payments on time is rather high. The results of a California market survey revealed that consumers do not build "equity" in rented merchandise, and if the renter misses a payment, the product must be returned, and the money already paid in rent is jeopardized (Lamb, 1989). So what happens to the consumer who has already paid $300 but cannot make a rental renewal payment? Other than the dealer making individual arrangements, the rental merchandise is returned voluntarily or repossessed. Most state laws do not prescribe a specific formula for calculating the early purchase price (Council of BBB, 1990). This issue is a particular problem when consumers move from one region to another and cannot pay for the merchandise in one lump sum. Unless the RTO company is a nationwide chain and has a store in the new location, the account cannot be transferred and the rented good must be returned. A staff attorney for Consumers Union (1988) made two important proposals to the California Assembly: (1) to require a certain percentage of each payment apply to the purchase, and (2) to

prohibit RTO dealers from repossessing merchandise without three days written notice and an opportunity to reinstate.

Industry Responses

Some companies offer consumers the opportunity to resume payments at a later date or may add payments to the end of the contract in the form of an extension. Since most contracts do not provide for a grace period for missing a scheduled payment, many states have spelled out grace periods ranging from none to as many as seven business days (Winn, 1990). Some states stagger the grace period according to how long the consumer has rented the product, but one common thread found in all state statutes is that once the property is surrendered, the dealer is not required to hold the property for the original renter.

OTHER ISSUES

No credit check! No money down! Low weekly payments! Delivered today! These statements describe just a few of the advertising slogans that draw consumers to RTO purchases.

Marketing

Often times the RTO industry is charged with "creating" a market or a desire for products through this "easy" method of acquiring access to goods. On the other hand, an industry attorney insists that the industry has seen a market and provided what people want (Johnson, 1985).

Consumer Advocates' Concerns. Tateraka (1987) charges that the industry is marketing to society's most vulnerable consumers. The Council of Better Business Bureaus (1990) reports that the industry targets the 40% of the population at the lower end of the income distribution. Stein and Brown (1988) attempted to profile the RTO customer and found the largest customer base to be comprised of low-income families. The head of the households ranged from age 18 to 34 with incomes of $20,000 or below. Most families were found to have limited opportunity to purchase in the traditional manner of cash retail and had limited access to credit or savings (Stein & Brown, 1988).

In 1989, Swagler and Wheeler sampled 61 individuals in the West Palm Beach, Florida area. Their finding further supports the notion that RTO consumers are disproportionately low-income. Among the 61 individuals questioned, the average income was $13,000, and the average education was 11.5 years. Nearly three times more women participated in RTO programs than men with 39.3% renting-to-own more than once. Over half of the consumers questioned had been denied credit at some point. When given a list of seven common reasons for renting-to-own, 68.9% of the respondents ranked "get it right away" as the primary reason and "no credit check" as the second reason for participating in RTO programs. Among repeat users, 70.8% reported having been denied credit, as compared with only 51.4% of those who had just one RTO transaction. These results would support the consumer advocates' charge that RTO dealers are catering to consumers with little or no access to credit. Furthermore, Henry (1987) reports that in the near future the RTO market may become more appealing to people who have credit, but whose credit is overextended.

Industry Responses. Industry representatives admit that the industry's image has been plagued by "a few bad apples" (Scott,

1984). In an attempt to improve the image of the industry, in 1984, Rent-a-Center, a nationwide chain, launched a campaign to assure customers that it is all right to rent and try out new technologies before making a purchase (Bayer, 1984). In David Henry's (1987) article, a 26-year-old garbage truck driver, admits that he can purchase goods cheaper, but he explains that he wants the merchandise now and does not want anybody hassling him about his creditworthiness. Rath (1983) reports that RTO businesses are popular with the public, and RTO dealers are thought of as neighborhood businesses because 80% of their customers live within five miles of the stores. Most often, the RTO dealers do well in markets that appear saturated to traditional appliance and furniture dealers (Rath, 1983).

Used Goods

The subject of used goods is a complaint that frequently arose in the Council of Better Business Bureaus' overall review of complaints. Many consumers were either told they would receive a new product on delivery or signed a contract for used products with the understanding they would receive a new product later. A survey conducted by the North Carolina Attorney General's office found that 51% of the contracts studied involved used goods (Council BBB, 1990). The Better Business Bureau (1990) states that dealers should adopt the BBB Code of Advertising that states "a product previously used by a consumer should be clearly and conspicuously described as such" (Council of BBB, 1990, p. 4).

Service

Servicing the product at no charge is a big selling feature that is promoted by nearly every RTO dealer. The Council of Better Business Bureaus (1990) reports that delays encountered when trying to get appliances repaired was the problem seen most frequently in the complaints reviewed. Many consumers expressed frustration at paying for appliances that were not functioning properly, and many consumers were not satisfied with loaner items of lower quality that they were given to use while their product was being serviced. The RTO industry cites the servicing of merchandise in RTO contracts as a major difference between RTO transactions and traditional credit sales, but complaints indicate that repairs are not always made in a timely manner. Because of the high number of products that have been rented before, it comes as no surprise that repairs would need to be made more frequently (Council of BBB, 1990).

RENT-TO-OWN LEGISLATION

Although the RTO industry claims to market over 10% of the major appliances in the U.S., the business remains exempt from nearly every statute regulating other retailers and financers of consumer goods (Lamb, 1989). Since the terms "lease" and "rent" are defined differently than "credit," traditional credit laws (i.e. Truth-in-Lending, usury ceilings, Fair Credit Billing, etc.) have not been applied to RTO transactions. According to industry attorneys, RTO transactions also are not regulated by the Consumer Leasing Act of 1976 because this Act only applies to those leases for a period of more than four months (Stein & Brown, 1988). Also, the federal Fair Debt Collection Practices Act does

not apply to rental dealers attempting to recover their own merchandise or collect their own debts because the statute only applies to third-party debt collection agencies (Winn, 1990).

Regulation of RTO transactions varies by state. Some states have passed laws requiring price-tag disclosures, advertising disclosures, lease disclosures or some combination. Requiring lease disclosures is the most common measure taken in regulating RTO businesses, but advertising and price-tag disclosures are the most aggressive. Most importantly, specific RTO legislation is needed in all 50 states because many of the traditional federal laws have not been applied to RTO transactions.

EMPIRICAL RESEARCH ON RENT-TO-OWN TRANSACTIONS

As stated earlier, the issues in RTO transactions have not been adequately researched, however, a few individuals have laid the groundwork for future research.

Rent-to-Own v. APR

Attempts have been made to calculate an implicit annual percentage rate (APR) for specific rental contracts. Since the terms "rent" or "lease" are legally defined differently than "credit," attempts to calculate APR are theoretical in nature. However, consumers must use this APR formula to compare the overall costs of renting-to-own versus traditional credit arrangements until a better measurement is devised.

Swagler & Wheeler (1989) randomly sampled nine rental agencies in the greater Atlanta area. The weekly rental rates for identical 19-inch portable television sets ranged from $11.25 to $15.55, and monthly rental rates ranged from $40.00 to $54.20. APR figures were estimated as high as 193% for the products sampled (Swagler & Wheeler, 1989). A 1988 study of six stores in the Baton Rouge, Louisiana area compared the retail prices and RTO costs of a microwave oven, a 16 cubic foot refrigerator, a video cassette recorder, a clothes washer, a 19" color television, and a stereo. The results indicated that the implicit interest rates ranged from 118% to 288% (Caruso, Desobry, LeBeouf, Thomasson & Lawrence, 1988).

Swagler and Wheeler (1989) and Caruso, et. al.(1988) treated the rental rates as installment payments and calculated a theoretical annual percentage rate using the standard APR formula. The major problem with this method of calculating APR is in the formula itself. The number of payments in a year, the number of payments over the life of the loan, total finance charges, and the loan principal are all in the standard APR formula. However, variables that take into account the dealers' costs of servicing the contracts, depreciation of the products, and the opportunity costs are not included in the formula. Walden (1989) clearly recognizes this problem and proposes a more complex formula since the contracts are part rental contract and part purchase contract. Walden (1989) takes into account the costs of depreciation, maintenance and repair, servicing the contract (i.e., collecting, processing payments, etc.), and opportunity costs if the consumer returns the product. The depreciation costs is measured by the product of the depreciation rate and the original cash value of the good. Maintenance and repair costs of goods are measured by the product of maintenance

rate and the cash value of the good. Unlike the depreciation and maintenance costs, the servicing of the contract is assumed to be unrelated to the cash value of the good. This calculation is much more complex because the opportunity cost of having the cash value committed to the good rather than in an investment earning the current interest rate is included. Most importantly, Walden (1989) adds a risk component equal to the same level of risk associated with its alternative use. These costs will vary among RTO dealers. Furthermore, Walden (1989) sampled eleven RTO contracts in North Carolina and analyzed them using his proposed formula. After considering these costs to the RTO dealer, Walden (1989), still reports an average APR costs of 144%.

Satisfaction. In addition to the surveys that have examined the costs of renting-to-own, a few researchers have attempted to look at the implications on consumers' well-being. One issue that has been recently studied is consumer satisfaction with the RTO option. Swagler & Wheeler (1989) administered a brief questionnaire to 61 individuals in West Palm Beach, Florida who had participated in RTO programs. Overwhelmingly, 70.5% indicated that RTO is "much more expensive than buying on credit" and just over half of the consumers were able to correctly identify the cost of renting-to-own a television. Finally, when given a five-point scale ranging from "not satisfied at all" to "it was great; it was everything I'd wanted it to be," 44.3% of the respondents selected "it was ok, not great, but no bad problems either" and 34.4% selected "not satisfied at all" as an indicator of their overall level of satisfaction with RTO programs (Swagler & Wheeler, 1989).

Clearly there are advantages and disadvantages of renting-to-own. The most important question to ask is whether the advantages outweigh the disadvantages. Stein and Brown (1988) attempt to answer this question by stating that when an item is used only occasionally, renting-to-own makes sense, but this method of purchasing is rather expensive when buying furniture and large appliances. Furthermore, Stein and Brown (1988) support the idea of consumer education because consumers need to make informed decisions, not decisions made out of apathy or lack of understanding.

Critiques of Existent Literature

After careful review of the literature it is apparent that this issue simply lacks adequate empirical research. The samples (i.e., 6 stores, 11 products, 61 people) used in previous research are too small to acquire generalizable knowledge about RTO transactions. The focus of previous studies has been narrow, and few details about the methodology are disclosed. Research questions have not been defined well, and none of the studies have utilized any theoretical approach. Many questions that need to be answered have been ignored, and more defined research may clarify whether or not RTO dealers should be regulated and by what means.

Swagler and Wheeler (1989) also point out that the individuals were about to undergo credit counseling. These findings may be biased because the consumers were about to undergo credit counseling and may have tried to answer the questions by anticipating a "correct" or response deemed to be

desirable. Most importantly, this sample is not representative of all RTO customers. However small the sample and biased the results may be, currently this study is the only one that has attempted to determine the level of consumers' understanding of, satisfaction with, and attitudes about renting-to-own.

NEEDED RESEARCH ON RENT-TO-OWN TRANSACTIONS

Many questions about RTO transactions and their implications on consumers could be answered by further research. Some questions that need to be dealt with in more depth include: Why do consumers RTO? Why are consumers that are informed of the total costs and alternatives still willingly spend more on the RTO option? Do the economics of leasing automobiles and jets apply to RTO contracts? How do RTO prices compare to pure rental prices or buying on credit? Are the portable goods that are made available in RTO transactions priced higher due to the ease of transporting the item from one household to another without notifying the dealer? Which serves the consumers best: price tag disclosures? lease disclosures? advertising disclosures? Where would RTO customers go to acquire goods if such an option weren't available? What role does short-run hedonism play in consumers' decision to RTO?

Since a well-balanced empirical research project is needed, the author proposes that Lancaster's theoretical approach would be most appropriate in answering the question: why consumers are willing to pay more for goods purchased through a RTO contract as opposed to layaway, installment credit, and revolving credit (Lancaster, 1966)? Unlike neoclassical theorists, Lancaster (1966) proposes that consumers are still utility maximizers, but they do not receive utility from the good itself. Instead of receiving utility from a product, a consumer receives satisfaction from the inherent characteristics of that good. Rather than focusing on the actual purchase of the good, Lancaster (1966) is more concerned with the purchase of a bundle of optimal characteristics as described by each individual consumer. Essentially, this means that the characteristics that one individual believes to be positive may be a less positive or render less utility to another individual. Therefore, this theoretical approach is extremely subjective by nature. In addition to examining the characteristics of products, Lancaster (1966) plots each characteristic relative to its price and the consumer's budget. The combination of these plots results in an efficiency frontier that represents the optimal purchase of two characteristics. Furthermore, Lancaster (1966) compares the quantity of attributes that a good has and the price of those characteristics in a hedonic price index. This index is very practical to marketers of goods because it measures what extra price consumers are willing to pay for specific characteristics (Lancaster, 1966).

Although this theoretical approach is very practical in answering specific questions about the RTO issue, there are a few critiques that are important to recognize. First, consumer preferences are difficult to measure. In actuality consumers' preferences are not the same from one purchase to the next, but Lancaster (1966) assumes preferences are constant. Secondly,

Lancaster's theoretical approach also assumes away the idea that two consumers could be consuming the exact same good and not get the same amount of satisfaction. If this assumption was not consistent, the joint production problem would begin to break down the entire theoretical framework. Despite these drawbacks of Lancaster's approach, the approach remains to be the most practical in answering the question: Why do consumers RTO?

The first step in answering this question is to determine what characteristics of the conditions of sale draw consumers to the RTO option over traditional forms of credit. The author proposes that by holding the inherent characteristics of exact products constant in a RTO versus a credit purchase, one can compare the characteristics of the condition of sale. Essentially the analysis would be a derivation of Lancaster's model, and it would include characteristics of conditions of sale found in renting-to-own, installment credit, revolving credit, and layaway. Perhaps consumers are more willing to choose the RTO method of purchasing because of the gratification they receive from characteristics such as service, low opportunity cost of initial payment, and the absence of credit checks. Once it is determined why consumers are willing to pay higher prices for RTO goods, then some of the controversies presented in this paper may be illuminated.

Despite the many criticisms consumer advocates have levied against the RTO industry, in order to survive, RTO dealers continue to rejustify the legality of renting-to-own and its value to customers with each court battle. Clearly RTO is here to stay, but Winn (1990) also points out that many issues besides the legalities of RTO are still ahead: "rent-to-own price caps . . . theft of rental property statutes . . . 'lease' taxes that cannot be passed on to consumers; the double taxation issue . . . applying deceptive trade practices statutes to rental transactions; licensing of rental dealers and employees . . . and limits on public assistance money being used for rental payments" (p. 23). Obviously, there is a high demand for RTO products, but how do we strike a balance between providing the credit-needy consumers with a reasonable alternative and protecting them from less reputable dealers? Although these questions remain unanswered, many of them will be answered after a long struggle between consumer advocates and RTO dealers in the near future.

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WHAT CAN'T THE CONTRACT SAY (cont.)

- Require you to pay a larger than usual payment (balloon) at the regular end of the lease in order for you to assume ownership. **NOTE: A large payment amount may be necessary to assume ownership if you purchase an item before the end of the lease.**
- Penalize you if you decide to return an item or want to end the lease early.
- Require you to buy insurance from the business.

WHAT HAPPENS IF I'M LATE OR MISS A PAYMENT?

Rent-To-Own contracts are automatically renewed when you make a payment. Of course, under Rent-To-Own you must make the required number of consecutive payments in order to assume ownership. Rent-To-Own arrangements, unlike most installment purchases, do not have payment grace periods. Rent-To-Own payments are expected to be paid on or before the due date. However, sometimes financial emergencies do arise or a payment is accidentally forgotten. The Act has several built in protections that allow you to continue to Rent-To-Own under certain circumstances.

Specifically, under law you may make up (2) missed or late payments without losing any of your rights or options that you would normally have under your contract. Also among your protections are:

- If, after missing one (1) payment and returning the item, you've decided that you do want to continue leasing the item, you can reinstate the contract with no penalty or late charge.
- No late charge or "reinstatement fees" may be charged unless you have missed more than one (1) payment.
- Any reinstatement fee that is charged may not exceed the unpaid balance of the missed payments plus the lesser of 5 percent of the missed payments or $5.00. For example: if your missed two (2) $15 payments, the reinstatement fee could be 5 percent of $30 ($1.50) plus the two missed payments ($30) for a total of: $31.50.
- If you reinstate your contract, you must be provided with the same item that you were renting or one of comparable quality and condition.
- You may be charged a delivery fee equal to the original delivery charge when the item was first rented.

IF I HAVE QUESTIONS

HOW DO I BECOME THE OWNER?

Under Rent-To-Own, you take over ownership of the item when:

- You have rented the item for the specified length of time outlined in the contract, OR
- You exercise your option to buy the item sooner by applying 45 percent of what you've already paid toward the total Rent-To-Own 78-week purchase price, and then pay the remaining balance due for the outright purchase price. OR
- A minimum of 45 percent of your payments equals or exceeds the original outright purchase price of the item.

Remember, you can't be charged extra for buying the item before the end of your Rent-To-Own contract.

WHERE DO I GO IF I HAVE QUESTIONS OR PROBLEMS?

If you have any questions or concerns about Rent-To-Own, you may contact the following agencies for help:

Michigan Consumers Council
414 Hollister Building
Lansing, Michigan 48933
(517) 373-0947
(517) 373-0701 (TDD for the Hearing Impaired only)

Attorney General's Consumer Protection Division
525 West Ottawa Street
Law Building, South 1-floor
Lansing, Michigan 48913
(517) 373-1140

Your local county prosecutor's office or a private attorney.

If a consumer has reason to believe that a Rent-To-Own business has not followed the procedures outlined under the Act, he or she may seek legal redress as provided under law.

Michigan Consumers Council
KENT S. WILCOX, DIRECTOR

RENT TO OWN FACTS

WHAT MICHIGAN CONSUMERS SHOULD KNOW ABOUT RENT-TO-OWN

Many consumers buy their washers, dryers, color televisions, stereos and other appliances and furnishings. However, for some, their budget just can't handle the strain of buying such items outright. That's when the concept of Rent-To-Own is most appealing. But it's sometimes not a wise choice, unless all available alternatives are explored first — alternatives such as delaying a purchase until enough money has been saved, using a store's layaway plan, buying on credit, or taking out a short-term consumer loan from a bank or a credit union.

Rent-To-Own, although it can be the most expensive method of buying an item, is an alternative that is known and used by many. To give consumers some protections in Rent-To-Own transactions, on April 1, 1985, Public Act 424 of 1984 became law. Under this Michigan law, consumers may make more informed renting versus purchasing decisions by requiring Rent-To-Own businesses to disclose certain information. In addition, the Act provides specific remedies and penalties for violations of the law.

WHAT SHOULD I LOOK FOR ON A RENT-TO-OWN ITEM?

When looking at items that you can rent before owning them, you should make sure that the item has a stamp or a "price" tag that tells you the regular purchase price of the item, the amount of the regular payment you'd have to pay if you wanted to Rent To-Own it, and the number of payments involved before you own the item. This information can be used to make some comparisons of what method you should use to buy an item.

For example, if you wanted to compare the costs of buying or renting to own a new color television, you would go to a retail store and get the price of a set you liked and find out:

- the price you'd pay if you bought the set outright,
- the cost of buying the set using a bank or other credit card, and
- the total cost of the set if you bought it through a store's credit arrangement.

Then compare those amounts with the price calculated from information at the Rent-To-Own store. What you may find is something like this:

Retail Store Price Tag $450*

18-Month Bank Card Plan (VISA, MasterCard) @ 18 percent Annual Percentage Rate (APR) $517* (interest adds $67 to price)

18-Month Fixed Retail Installment Contract @ 20 4 APR . . . . . $530* (interest adds $80 to price)

78-Week Rent-To-Own Maximum Price . . . . . $1000 (This law allows Rent To Own businesses to charge you up to 2 2 times the actual retail value in order to purchase an item)

*Prices shown do not reflect any optional service contract which may be offered by a retail store to cover repairs during the typical 18-month purchase plan. Rent-To-Own plans automatically include service and repairs.

Remember, under Rent-To-Own:

- The purchase price shown is not the total amount you'll have to pay if you decide to Rent-To Own. When comparing prices, you should always multiply the amount of your rental payments times the number of payments you'll have to make, to find out how much you'll actually spend in order to buy the item. This amount must also be included in the Rent-To-Own contract.

- You may end your Rent-To Own contract at any time by simply returning the item to the business.
- When your item needs service, a substitute item must be provided at no extra charge, or your rental payments are temporarily stopped until the merchandise is repaired and returned to you.
- If you decide to buy your Rent-To Own item outright at any time during the contract period, you must receive a discount of at least 45 percent of your rental payments to date off the original price of the item.

For example, if you decide to buy the color television discussed at the beginning of this brochure six months after you enter into the Rent-To-Own agreement:

Outright purchase price of television $460
Six Months (24 weeks) of payments @ $12.82 per week = $307.69
To determine discount, $307.69x45 percent = $138 46
$460-$138 46 = $311.54 purchase price with discount

WHAT CONTRACT INFORMATION IS REQUIRED?

Under Michigan law, every Rent-To-Own transaction must be covered by a written contract. In addition, the business must have a copy of the Rent-To Own contract available to you on its premises. This copy must be available to you before you sign anything.

The contract is required to outline for you such important information as:

- The name of the item you want to rent, its purchase price and whether the item is new or has been previously rented.
- The amount of your regular payments and how often you're to pay.
- A statement on how you can own the item and the actual final price or how the final price will be determined.
- Any delivery charges involved.

WHAT CAN'T THE CONTRACT SAY?

The Act prohibits Rent-To Own contract clauses which:

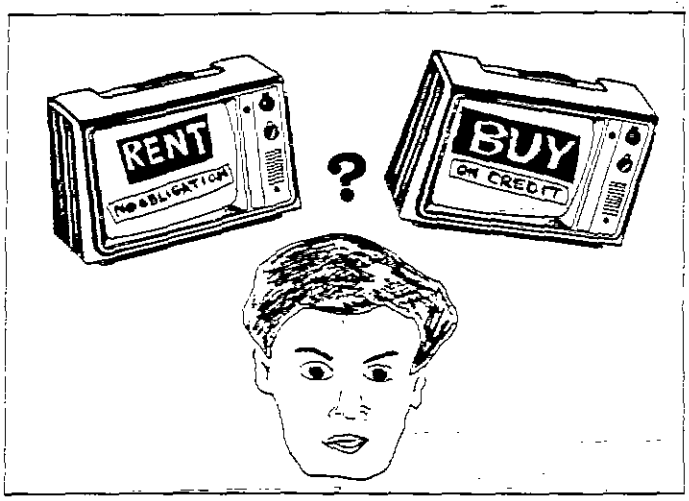
- Say that the business may illegally enter your home or "breach" the peace in order to repossess the Rent-To Own goods.

In This Issue: Directory of Bilingual Training Programs

Legal Services Digest

Volume 3, Number 7 September, 1984

"RENT-TO-OWN" CONTRACTS: No Bargain for Consumers



The ad in the housing project lobby says: "Color TVs • stereos • furniture • appliances. Option to own--No long term obligation--Free service and delivery." The ad in the TV guide says "Name brands, no money down. $5.00 first week's rent with this coupon. Spanish spoken here."

If these offers sound too good to be true, it's because they don't tell the whole story.

Renting a TV set, a stereo or a washer or dryer can be a real convenience if you need it for several weeks or months, until an insurance settlement comes through or the appliance you ordered from a retail store is delivered. But for hundreds of thousands of low-income consumers throughout the nation, renting has become the way to purchase an appliance without having to apply for credit. And it's a very expensive way to buy, consumer advocates caution--with extremely high interest rates and without the basic protections that the law provides consumers who buy retail, "on time" or on "lay-away."

Rent-to-own transactions have become a booming business, by advertising to low-income customers that they can lease toward purchase without credit. Two top executives of Rent-A-Center, an appliance rental business with 89 stores, are each paid more than $399,000 a year--"more than Lee Iaccoca, President of Chrysler, or the chief executive officers of American Airlines, Clorox, or Black & Decker," according to the National Consumer Law Center in Boston.

See RENTAL CONTRACTS, page 2

Long Distance Info Waiver Available to Handicapped

Since May 25th when AT&T began billing customers 50 cents per request for out-of-state information, SNETCO has been accepting applications from handicapped people for exemptions from these charges.

If you are legally blind, unable to read normal printed matter, or are physically handicapped and provide documentation of your condition by a medical professional, case worker, counselor, rehabilitation teacher or social worker, you are eligible for this exemption.

Waiver forms may be obtained by contacting your SNET business office or the company's Disabled Services Coordinator, 640 Chapel St., New Haven, Conn. 06506.

All other customers will receive 2 free out-of-state requests per month if they make the same number of out-of-state calls.

Published by LSTAP, Hartford, Connecticut Diana Scott, Editor Elliot Ginsberg, LSTAP Director

Rental Contracts (from page 1)

Costly rental terms mean record profits--as much as $40,000-$60,000 a month for some stores, according to one newspaper account.

For the low-income consumer who rents-to-own instead of buying on credit, the difference between renting and buying may become clear too late--after a payment is missed and an "almost purchased" appliance is reclaimed by the rental business. By this time, the only remedy for the consumer may be to bring a lawsuit to recover the merchandise and money overpaid. This can be difficult to accomplish because rental businesses claim your contract is just a lease, and you have no right to a refund.

The problem is illustrated by a 1982 lawsuit filed on behalf of Regina Allen, a New Haven resident against Rent-A-Center of North Haven by New Haven Legal Assistance Association (NHLAA). Allen had signed an agreement to "rent" a stereo with the "option to own" it, by paying $17.95/week, for 17 months. After she had paid over $1,000 on the contract, with $382 still to go before the $500 stereo was hers, Rent-A-Center asked for the stereo back, claiming she had missed three payments. Under the terms of most rental agreements, each payment renews the rental contract, and a missed payment cancels the contract.

DIDN'T KNOW MARKET VALUE

Ms. Allen disagreed with the rental company; she said she'd made the payments and refused to return the stereo. She then went to NHLAA to prevent the company from taking back her rental, and to make sure she got credit for all payments made. She later told her attorney that she was not aware that the fair market value for the stereo she had "rented" for $1,382 was only $500.

Today, Ms. Allen's claim is part of a class action lawsuit filed by NHLAA on behalf of 3,600 customers of Rent-A-Center (which has since closed its Connecticut stores). The suit seeks to recover $800-$1,000 per customer in overcharges, and obtain punitive damages.

Two recent court ruling in Connecticut, one state and one federal, support the claim that rent-to-own transactions are covered by the laws which regulate credit sales. The lawsuit filed by NHLAA against Rent-A-Center could, however, drag on for years, and customers must wait to recover overcharges that are, in many cases, greater than the fair market price of the appliance they "rented."

CREDIT DISCRIMINATION ILLEGAL

Although it may be more difficult to get credit today than it was five years ago, credit anti-discrimination laws protect consumers with a regular source of income from being unfairly denied credit; and state agencies--like the State Banking Department--are responsible for enforcing the law. That means if you have a regular source of income--whether you are a single woman with children, dependent for your income on a state or city income maintenance program, or an elderly person living on SSI disability payments--you cannot have your application for credit turned down because of race, sex, marital status, source of income or other discriminatory factors.

So before you decide to sign a rent-to-own agreement, make sure you know what you're getting into and consider the alternatives. Learn "What You Should Know About Appliance Rentals" (pp. 2-4 of this issue). Then pass along this information to someone else who can use it.

(The following article is adapted from a pamphlet prepared by New Haven Legal Assistance Association.)

CONSUMERS' RIGHTS:
What You Should Know About Appliance Rentals

Have you ever considered renting something with the "option to buy" because you were afraid you couldn't get credit? Many people rent televisions, stereos, washing machines or even bedroom furniture "with the option to buy" because they think they can't afford to buy "on time." Few of these people realize that renting to own is a much more expensive way to buy than buying "on time" or on "lay-away" from a retail business.

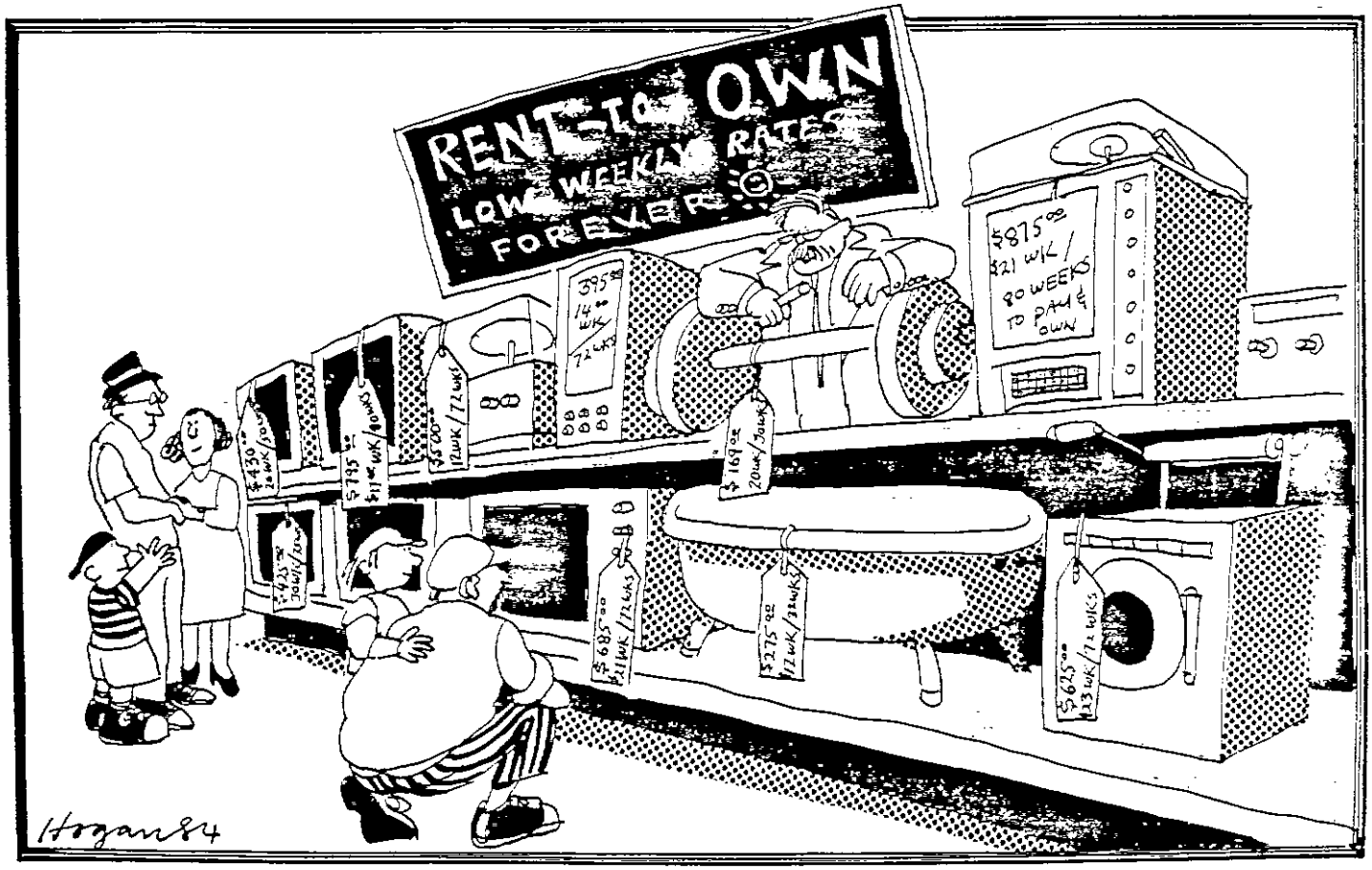
UNLIMITED RENTAL FINANCE CHARGE

When you buy a TV, stereo, appliance or furniture "on time" from a retail store, the seller cannot legally charge you over 21% per year interest. But if you decide to "rent" an item week after week until you own it, by the time you have finished paying for it you will have spent more than twice as much as you could legally be charged if you bought retail, on the installment plan. This is because rent-to-own businesses take advantage of a legal "loophole" to charge you much more than 21% per year interest.

Rent-to-own businesses call their contracts "rental contracts" or "lease agreements." They say these agreements are not subject to the consumer protection provisions of federal and state laws, including the "retail installment law" which limit the interest rate you can be charged for credit. They claim their agreements aren't covered because you are, technically, "renting" and can stop making payments at any time, "with no obligation" to buy. As a result, many so-called rental or lease agreements are the same as installment sales contracts with a finance charge of over 100% interest per year!

WHAT DOES RENTING REALLY COST?

The following example shows you how much more you pay if you rent-



Bill Hogan, The Record, Hackensack, N.J.

to-own than if you buy on credit.

Say you want a new color TV that costs $600 in a retail store, and you can only afford to make payments of $16/week. At 21% per year interest, you could buy this TV on credit in less than a year (41 weekly payments of $15.91/week) at a total cost of $652.31, according to figures provided by the State Banking Department. That would make your finance charge only $52.31.

On the other hand, statistics recently compiled for the Boston area show that if your "rent" the same TV with the "option to own" and pay $16/week for 52 weeks, the finance charge you must pay is $232. That's 68% interest! And if the rent-to-own agreement is for 78 weeks at $16/week (a more common contract length), the finance charge for the same TV set is 113% or $648 over and above the $600 purchase price! (This example is based on actual statistics compiled by the National Consumer Law Center.)

YOU LOSE OTHER PROTECTIONS BY RENTING

If you rent you may also lose other legal protections that apply to credit sales. Rent-to-own businesses urge you to "rent" by saying you don't need a good credit record and can become the owner of an item by making regular rental payments. While they say that you have "no obligation" to buy, they don't tell you that this really means that if you miss a payment--even if you have almost finished paying for the item--you may lose your right to purchase it. "No obligation" to buy really means "limited right" to own.

On the other hand, if you buy "on time" you have more rights and no greater obligations. If you miss a payment and your purchase is repossessed, you are not obligated to continue making payments except for certain automobile sales. (For more details, see our pamphlet, "What You Can Do About Repossession.")

In addition, laws regulating credit sales outline a procedure for getting your purchase back if it is repossessed because you have missed payments. No such procedure is outlined for rental transactions.

THE MORAL: SHOP AROUND

Rent-to-own businesses don't tell you that they are charging you more than 21% a year interest, or that this is the legal limit for financing a credit purchase. They don't tell you what the average retail price of the item you're "renting" is, or even whether it is new or used. Some rent-to-own companies don't state the total price of your purchase in the rental agreement; others state it at the end of the contract, where you're less likely to notice it. This makes it difficult for you to compare prices before deciding whether to rent or to buy on the installment plan.

Not only can you get the same thing cheaper "on time" or with a "lay-away" contract, but you can probably own it sooner for the same weekly fee.

Two important things to remember are: (a) it's cheaper to buy on credit than to rent until you own, and (b) it may also be easier to get credit than you think. The Equal Credit Opportunity Act forbids discrimination based on the source of your income, so that you can't be denied credit because you rely on a government income support program--like SSI, or AFDC. You should, therefore, always be able to buy from a normal retail outfit, either on lay-away or on the installment plan, as long as you have a regular source of income. If a merchant tells you something different, contact:

The State Banking Department
Consumer Credit Division
State Office Building
Hartford, CT 06106

For additional help, call your local legal services program.

Vocational Training: A Hands-On Approach

The State Department of Education's Division of Vocational-Technical Schools is working with Hispanic community agencies to develop bilingual training for employment programs which also teach job-specific English of the trade. In September, recruiting will take place in New Britain for trainees for the positions of secretary, food services workers and nurses aide. In Danbury, recruiting for trainees in electronic assembly is also scheduled for September. Other programs will train participants for jobs in:

- food services
- clerical work
- electronic assembly
- gas and oil heat repairs
- machine shop.

Programs usually train 15-20 people at a time by trade and are open to men and women who will be at least 18 years old by the time the program ends. Programs last from 12-26 weeks, depending on the trade, and meet Monday through Thursday from 3:00 PM to 9:30 PM; Friday, 3:00 PM to 6:00 PM. There is no fee for this training, and help with child care and transportation is provided. Textbooks and employee uniforms are often provided as well.

This fall, bilingual training for employment programs will be offered in the following towns: **Bridgeport, Danbury, Hamden, Hartford, Meriden, New Britain, New Haven, and Willimantic.** Programs in **New London/Groton, and Waterbury** are planned for the spring of 1985.

Since these training programs are usually announced only three (3) weeks ahead of time, it's important to contact your local sponsoring agency now, if you want your name to be placed on the list of eligible applicants. The following directory of agency contacts will help you find out about training offerings in your area.

See DIRECTORY, page 6

A One Day Conference On MEDIATION IN CONNECTICUT: A Broad-Based Perspective

will be held,
Friday, November 2, 1984,

at the
Yale Inn, Meriden, Connecticut.

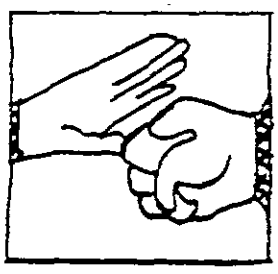
This conference is open to anyone with an interest in this alternative approach to dispute resolution.

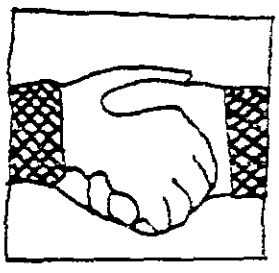
Thirteen workshops are scheduled on mediation policy, process and practice, including mediation of interpersonal, interorganizational and system versus individual disputes.

Featured speakers will include:
Professor **Dan McGillis**, Harvard Law Institute for Criminal Justice;
Claire Gallant, President, Connecticut Chapter of the National Organization of Social Workers;
Henry Naruk, past President, Connecticut Bar Association;
Marcia Lebowitz, Director, Children's Divorce Center (New Haven).

For registration information and brochure, contact:

Carole Anastasio, Director
Fair Haven Mediation Project
162 Filmore Street
New Haven, CT 06513
Tel. 787-9586





DIRECTORY OF AGENCIES CO-SPONSORING BILINGUAL EMPLOYMENT TRAINING PROGRAMS

BRIDGEPORT:
Goodwill Industries of Western CT
165 Ocean Terrace
Bridgeport, CT 06605
Domingo Arias, 368-6511

DANBURY:
Spanish Learning Center
36 Liberty Street
Danbury, CT 06810
Bernie Diaz, Director
792-2822

HARTFORD:
A.I. Prince Regional Vocational-Technical School
500 Brookfield Street
Hartford, CT 06106
Bob Lombardi, Contact person
(After 3:00 PM) 246-8594

MERIDEN*:
Casa Boricua
204 Colony Street
Meriden, CT 06450
Sebastian Duarte, Job Developer
235-1125

NEW BRITAIN*:
Spanish Speaking Center of New Britain
118 Main Street
New Britain, CT 06051
Antonio Rodriguez, Job Developer
224-2651

NEW HAVEN/HAMDEN:
JUNTA for Progressive Action
690 Howard Avenue
New Haven, CT 06519
Eduardo Baez, Director
787-0191, 865-7901

NEW LONDON/GROTON:
Centro de la Comunidad
109 Blinman Street
New London, CT 06320
Luz Gonzalez, Director
442-4463

WATERBURY:
Spanish Action Council
629 South Main Street
Waterbury, CT 06706
Elida Santana, Director
756-2220/5715

WILLIMANTIC:
Puerto Rican Organization Program
463 Main Street
Willimantic, CT 06226
Juan Morales, Director
423-8600/8502

* Serves residents of Middletown.

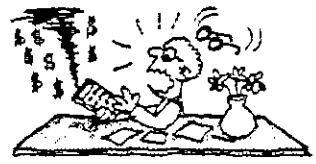
LEGAL SERVICES DIGEST
c/o Legal Services Training and Advocacy Project, Inc.
140 Huyshope Avenue
Hartford, CT 06106

mailed to
Robert Hobbs
NCLC Boston

Non-profit Organization
U.S. Postage
P A I D
Hartford, CT
Permit No. 1138



RENT-TO-OWN
Hot Deal or Raw Deal?



By: Kathleen Keest*

Have you seen those comercials on T.V.? You know, the ones that say, "Run on down to our rent-it shop, and you can be watching T.V. in color tonight. Low weekly payments. No down payment. No credit needed. No repair bills." And, if you keep making the rental payments, you can eventually own that color T.V.

Is rent-to-own a good idea? Well, that depends. Do you think paying $1652 for a T.V.-stereo worth $480 is a good idea? Or paying $1268 for a $500 color T.V.? If you don't, maybe you should think twice before you run on down and sign that rental agreement.

First, it is important to keep in mind the difference between rent-to-own contracts, and the more usual rental agreements. Many rental places will rent for one day or one week items for which you are liable to have just a short term need, such as a van to help you on moving day, or a roto tiller to help get your garden ready. This article is not about those kinds of rental arrangements. Rather this is about the rent-to-own places which have sprung up in recent years. Many people do not look upon them as genuine short term rental arrangements, but rather as a way to purchase a desired appliance or home entertainment unit with low installment payments and no need to have a good credit record. Those very factors, in fact, are the kind of arguments used to attract customers. But before you get too taken away by the idea of $15 weekly payments, it is a good idea to stop and do what our smart shopper Marjorie did -- a little comparison shopping and a little arithmetic.

Marjorie was interested in getting a 19-inch color portable T.V. to replace her old one. She called a local rent-to-own shop to discuss their terms for a rent-to-own purchase of a 19-inch color portable. Their weekly payments on such a television are $11 plus $.44 tax. After 18 months (78 weekly payments) Marjorie would automatically own it "at no additional charge." The only initial payments required upon delivery were the first and last weeks' payments, which would be a total of $22.88.

Marjorie then called Tom Terrific's T.V. Sales. The cash price on a comparable T.V. is $319, plus sales tax of $12.76. At Tom's, they have a 90 day same as cash payment plan. She then asked Tom if they had a credit plan, where she could make installment payments on such a television. Because she wanted to be able to compare the cost with the rental arrangement directly, she asked what the costs would be for an 18 month credit sale arrangement, the same amount of time which would lead to ownership under the rental contract. Tom had a financing arrangement with a local finance company, which charged 21% interest. For a sale on credit, Tom required 10% down. That would mean Marjorie would have to pay about $33 at the time she got the T.V., and then would "borrow" just under $300. Her monthly payments would be $19.49, and her finance charge for 18 months would be $52.11. (This figure assumes that Marjorie refuses extra credit costs, such as credit insurance).

When Marjorie took all of this information and compared it, it didn't seem like rent-to-own was such a good deal.

More...

Rent-to-own...

By doing the comparison shopping and actually stopping to consider what the weekly payments would amount to, Marjorie found out that the rental arrangement would be enormously expensive. In fact, for the amount that she paid the rental place, she could buy two 19 inch color televisions and still have enough left over to replace that old sofa that was wearing out. The lack of a credit check and the "no-repair costs" provision of the rent-to-own were hardly worth all that extra money. Besides, if Marjorie buys a T.V. with a good warranty, the difference in repair costs won't be much anyway.

We can all learn a lesson from Marjorie. Don't take their word for it. Just pull out your old multiplication tables when they tell you how much the weekly payments are and how many weeks it would take you to own it, and let your common sense be your guide from there on out.

* *

*At the time she wrote this article, Kathleen Keest was the Managing Attorney of LSCI's South Central Office. She now works for the National Consumer Law Center in Boston.

	RENT-TO-OWN (78 weeks to ownership)	TOM TERRIFIC'S SALE ON CREDIT (18 months)	TOM TERRIFIC'S CASH PRICE
TOTAL COST	$892.32	$350.87 (loan pmts) +33.00 (down pmt.) $383.87	$319.00 price +12.76 tax $331.76
CASH PRICE	-------	$331.76	$331.76
"EXTRA" $	$560.56	$ 52.11	$ .00
EFFECTIVE APR**	163%	21%	-------
INSTALLMENT PAYMENT	$11.44/wk (equals $49.19/mo	$ 19.49/mo	-------
INITIAL/DOWN PAYMENT	$22.88 (1st & last week pmt.)	$ 33.00 (10%)	-------

**APR means the Annual Percentage Rate--what it costs you to pay over time.

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

May 18, 1990

Robert J. Hobbs
Deputy Director
National Consumer Law Center Inc.
Eleven Beacon Street
Boston, MA 02108

Re: CBBB's Rent-to-Own Report

Dear Bob:

Enclosed please find a copy of our final RENT-TO-OWN report, an earlier version of which you reviewed some time ago. Your comments were most helpful and, as you can see, several of your suggestions have been incorporated into the report.

Two versions of the report are being disseminated: the detailed one you reviewed and a shorter, more concise one. We felt that many consumers may not want to read several pages, but would benefit from a briefer outline and listing of advantages vs. disadvantages. We hope that the longer one will serve to educate local Bureau staff as well as others who may not be that familiar with the industry, but who work in the field of consumer education and protection.

The report's redistribution is not restricted; in fact, we hope it will be widely distributed. If parts of the report are referred to in other publications, we just ask that proper credit be given to CBBB. The short version will soon be converted into booklet form; when completed, I will send you a copy.

Again, thank you very much for your review of our previous draft report.

Sincerely,

Marsha Goldberger

Marsha Goldberger, Director
Standards and Practices Division

Enclosure

4200 Wilson Boulevard • Arlington, VA 22203-1804 • (703) 276-0100 • FAX (703) 525-8277

COUNCIL OF BETTER BUSINESS BUREAUS
Standards & Practices Division

REPORT

RENT-TO-OWN
Summary Report

May 1990

If you are planning to purchase a TV, washer, dryer, stereo, or other merchandise, you may have thought that renting the merchandise over time would be an easy way to buy. Rent-to-own (RTO) contracts usually have either a weekly or monthly rental period and are renewable at the end of each week or month. You are not obligated to continue renting the merchandise and can return it to the store at any time. At the end of the contractual period, you will own the merchandise.

There are, however, several problems with RTO contracts.

☞ The total cost of ownership through RTO should be compared to the cost of merchandise sold outright, on credit through installment sales, or by use of credit cards. Consumers generally end up paying much more for merchandise purchased through rent-to-own contracts.

Although a company's advertised weekly or monthly amount may sound low and affordable, when that amount is multiplied by the number of weeks or months before you own the merchandise, the total cost is usually far higher than for other ways of purchasing. What amounts to an annual percentage rate of 100% up to 350% may be charged by RTO companies. Because of this high "implicit interest" rate, you would pay two to three or even four times the amount for merchandise as compared to merchandise purchased in other ways.

Even if you cannot qualify for a regular credit card, you may be able to receive a collateralized or secured credit card. With a secured card, you must deposit in a bank a certain amount of money, for instance, $500, which serves as your credit limit. That money would be used by the bank to pay any credit card bills that you fail to pay. Merchants have no way of knowing if your card is a secured one and after a reasonable length of time, your collateral would be returned to you.

You should ask yourself if you could buy the merchandise through a layaway plan or with personal savings. Also consider that used merchandise, costing only about as much as a few rent-to-own payments, could be found through classified ads, yard sales, or appliance repair shops.

"Implicit Interest"

We say "implicit interest" because the amounts paid over the course of the rental in excess of the cost of an outright cash purchase are not really interest payments. These amounts are simply the cost of the RTO arrangement, which reflects, among other things, maintenance and repair costs, collection costs, and profit. We compare these costs to true interest costs incurred in a purchase so that a fair association can be made between the costs of acquiring ownership through the different approaches.

☞ Compare RTO contracts of different companies. Costs, including the total charges for ownership, and other conditions, like whether or not the item is new, can vary.

☞ Consider the period of time you need the appliance. Are you renting or really trying to buy? If you are going to be renting only for a short period of time, compare the short-term costs of renting through a rent-to-own company with other businesses that rent merchandise.

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The information contained herein has been compiled from sources deemed to be reliable and, while not guaranteed, is believed to be factual and accurate. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgment.
THIS REPORT IS NOT TO BE USED FOR SALES OR PROMOTIONAL PURPOSES.

4200 Wilson Boulevard • Arlington, VA 22203-1804 • (703) 276-0100 • FAX (703) 525-8277

☞ Make sure any contract you are considering contains all important financial information: the cash selling price of the merchandise, at the beginning of the contractual period or later; the amount and timing of rental payments; the amount of any other charges, such as deposits, delivery or reinstatement charges, late fees, and fees to be paid at the end of the contract before ownership; and the total cost of the agreement.

You should understand that you will generally not own the merchandise until the total cost indicated in the contract is paid. Even though you are making payments for the merchandise every week or month, you are not building up any ownership in the merchandise (unless otherwise required under your state law).

☞ Learn what will happen if your payments are late and the merchandise is repossessed. Some, but not all, states say that you can continue the contract where you left off under certain circumstances. Also, most contracts reviewed by CBBB stated that there are no grace periods, meaning that the payments must be made before or on a certain date every week or month.

Major differences between RTO and other ways of purchasing goods without full cash payment:

Using a **credit card** entitles the customer to immediate ownership of the merchandise at the time of purchase. Non-payment of the credit card bill can subject the customer to legal action, but the merchandise itself may not be repossessed. Interest rates for credit card transactions are subject to state regulation.

In an **installment sale**, the customer receives possession and ownership once the installment contract is signed, though the seller may retain a security interest in the goods. The seller may repossess in the case of non-payment, but the goods can be redeemed once payments are resumed, though sometimes by the consumer paying past due amounts. Interest rates for installment sales are also regulated.

In the case of most **rent-to-own** transactions, the customer takes possession at the time the contract is signed, but there is no ownership until the total of required rental payments is made. The goods can be repossessed, without a right to reinstatement in many states. "Implicit interest" rates are not regulated, with the exception of one state.

☞ Make sure the contract describes the merchandise accurately and notes whether it is new or used. Because most consumers do not end up owning the merchandise as they may have planned, the same merchandise may be rented to several consumers. Do not accept used merchandise with the promise of receiving new as soon as possible, unless you are willing to rent the used item.

☞ Find out who is responsible for any necessary repairs and if you will get a loaner or can stop payments while the appliance is being repaired. Delays encountered when trying to get appliances repaired was cited most frequently as the cause of complaints reviewed by CBBB. Consumers expressed frustration at paying for appliances which were not working properly and for having to use loaner items they thought were not as good as what they had contracted for.

☞ Make sure the contract describes the conditions under which you can end the rental-purchase agreement. Most contracts allow for termination after the initial period of one week or one month. However, one contract we reviewed obligated the consumer to pay for three months, even if the property was returned to the company. Also learn if there is an early purchase option, required by some state laws, and how to take advantage of it. In an early purchase option, you can buy the merchandise during the term of the agreement, without waiting until the end of the contractual period.

☞ Don't assume that the RTO company will automatically be reporting your good payment record to your local credit reporting agency, thus establishing a better credit record. Some consumers complained to local Better Business Bureaus that a company said it reported information to the credit bureau when it did not. One major credit reporting agency told us that it did not have any RTO companies reporting information to it.

☞ Before signing any agreement, make certain that you understand all the provisions. Although some states now provide that contracts be written in "plain English," the contracts contain much information and can be confusing. Do not be afraid to ask questions to satisfy yourself on all terms and conditions.

☞ Always check with your local Better Business Bureau regarding the reliability of any RTO company before signing a contract. The Bureau or your local consumer protection agency can also advise you of any regulations pertaining to the rent-to-own industry in your state.

Advantages and Disadvantages of Rent-to-Own Contracts

Advantages

- Consumers with poor credit or no credit can buy appliances and other household goods they might not otherwise be able to afford.
- RTO payments generally can be made weekly, every other week, or monthly, and periodic payments may be more affordable to many consumers than other arrangements.
- Consumers can end their contracts at any time and return the merchandise without penalty.
- Appliances are delivered and service is provided free when appliances are broken.

Disadvantages

- In most cases, it will cost consumers much more to acquire ownership from RTO companies than from other sellers. Also, few RTO customers actually end up owning the merchandise they have been renting-to-own.
- Consumers may not be aware of the actual price of merchandise, how much they will have to pay for ownership, and how much the "implicit interest" adds up to.
- RTO merchandise is often not new and may have been used by several other customers previously.
- Generally depending on state law, consumers who miss payments and have merchandise repossessed may not be able to get the merchandise back and have their contracts reinstated.

A more in-depth report on Rent-to-Own is available upon request from your local Better Business Bureau.

Standards and Practices Division
Council of Better Business Bureaus, Inc.
May 1990

State Regulation of Rent-To-Own Transactions

State	No Regulation	Rent-to-own Transactions Exempt From Retail Sales Regulations	Rent-to-own Transactions Subject to Retail Sales Laws	Requires That a Certain Percentage of Payment Be Applied to Equity	Requires Disclosure of Charges
Alabama					X
Alaska	X				
Arizona	X				
Arkansas					X
California	X				
Colorado	X				
Connecticut	X				
Delaware	X				
Florida					X *
Georgia					X
Hawaii	X				
Idaho	X				
Illinois					X *
Indiana					X
Iowa				X *(50% to equity)	X
Kansas	X				
Kentucky	X				
Louisiana	X				
Maine		X			
Maryland					X *
Massachusetts					X
Michigan				X (45% to equity)	X
Minnesota			X * (no rate cap)		
Mississippi	X				
Missouri					X
Montana	X				
Nebraska					X *
Nevada	X				
New Hampshire	X				
New Jersey	X				
New Mexico	X				
New York				X (50% to equity)	X
North Carolina		X			
North Dakota	X				
Ohio				X (50% to equity)	
Oklahoma					X *
Oregon	X				
Pennsylvania			X (18% rate cap)		
Rhode Island	X				
South Carolina				X *(55% to equity)	X
South Dakota	X				
Tennessee					X
Texas					X
Utah	X				
Vermont	X				
Virginia					X
Washington	X				
West Virginia	X				
Wisconsin		X			
Wyoming	X				
Totals:	26	3	2	5	18

Reprinted with permission of North Carolina Insight magazine, quarterly journal of the N.C. Center for Public Policy Research, June 1988. *Indicates changes made by CBBB.

STATE OF INDIANA

INDIANAPOLIS

OFFICES OF ATTORNEY GENERAL
LINLEY E. PEARSON, ATTORNEY GENERAL
219 STATE HOUSE
46204

April 1991
Contact: Dan Foley or
Vicki Hermansen
(317) 232-6203

MEDIA ADVISORY - 5063F

INDIANAPOLIS--During difficult economic times, it is sometimes difficult to make purchases of normal household entertainment items such as televisions, stereos or even necessary household appliances such as refrigerators and stoves.

If you are considering buying a television, stereo or household appliance through a rent-to-own business, make certain you determine the total cost before signing a contract.

Attorney General Linley Pearson says many consumers are enticed into renting televisions, stereos and household appliances when they see low weekly or monthly rates advertised by the rent-to-own businesses.

Before agreeing to sign a rent-to-own contract consumers should investigate the many ways items can be purchased.

"Rent-to-own agreements allow the renter to own the item after a series of payments are made," Pearson explains. "If you sign an 18-month contract with a rent-to-own business, you could actually pay three times the retail price of the item."

Pearson says surveys of Indianapolis rent-to-own businesses checked the rental price of a 19-inch television set. The business was asked to give a monthly quote for a certain brand-name television set. The business was also asked the length of time necessary to purchase the item, and in each instance the time period quoted was 18 months.

In the first call, the business stated it would cost $40 a month to rent the television set. After 18 months, the consumer would own the television set. The total cost of the set over 18 months would be $720.

The second business offered to rent a television set for $54.95 a month. Over an 18-month period a consumer would spend $990 to own the set. The third business quoted a monthly rental price of $43. The cost of the set over 18 months would be $774.

Pearson says a similar 19-inch television set was advertised at an appliance store for about $290. Financed at 21 percent, the usual finance charge on credit purchases, the monthly payment would have been less than $20 and the total cost of the television would have been under $350.

"Don't be fooled by low weekly or monthly rental rates," Pearson explains. "Because the laws governing credit purchases and limits on annual percentage rates do not apply to rent-to-own businesses, consumers can end up paying finance charges two or three times the retail price of the item."

Pearson says consumers instead should investigate purchasing items from a retail store which offers a credit plan or seek a small loan from a lending institution or credit union. If the item was purchased with a credit card which charged 21 percent interest the final cost would be less than that of a rent-to-own agreement.

Pearson says rent-to-own agreements can allow the business to take back the item if a payment is missed. If a consumer is renting the item with the hope of ownership after a certain period, payments up to the time the company took back the item could be forfeited. Consumers may also be charged additional fees by rent-to-own businesses to reinstate a rental agreement if a consumer wants to continue renting the item after missing a payment.

Elder Law FORUM

Vol. III, No. 2 A Newsletter of Legal Counsel for the Elderly March/April 1991
A Department of the American Association of Retired Persons (AARP)

Making Sense of Medigap

When it comes to purchasing a Medicare supplemental health insurance policy, "one plus one equals too much," said Jim Firman, chief executive officer of the United Seniors Health Cooperative in Washington, D.C.

About 25 percent of elderly people have more than one supplemental policy and "I guarantee you they are wasting their money," Firman said in an interview. He estimated that excessive Medigap insurance policies sold in the United States add up to $3 billion annually.

Unscrupulous insurance companies "prey on people on the margin," he said. "People without a lot worry most" that skyrocketing medical bills will overwhelm their capacity to finance medical care. Then they "load up on policies."

To curb abuses and to reduce confusion, Congress passed legislation regulating Medigap policies more closely. The legislation was part of the Omnibus Budget Reconciliation Act of 1990 (OBRA) signed into law November 5, 1990.

OBRA simplified, standardized, and greatly reduced the number of Medigap policies a state may sell, Bess Brewer noted. She is a staff attorney with the National Senior Citizens Law Center in Los Angeles.

Prior to OBRA, insurance companies offered a bewildering number of policies with widely varying types of coverage. Just choosing among the policies required the skill of Daedulus, who legend says built the intricate labyrinth on the island of Crete.

Under OBRA, a state may sell no more than 10 different types of Medigap

continued on page 4

Renting to Own: Scam or Bargain?

Would you pay $2,000 for a $300 television set? Too often, elderly people do just that when they fall for advertisements ballyhooed by rent-to-own companies.

RTOs appeal is to people who doubt their ability to get credit and who need to purchase an appliance, a Catch 22 that traps many elderly poor. For them, RTOs offer an almost irresistible deal: an opportunity to rent an appliance with no credit check and no money down, and with low weekly payments going toward ownership.

But the reality can be different, consumer advocates say. Often, the merchandise provided is "exorbitantly overpriced. People pay two to three times the retail price for appliances," said Bob Hobbs, deputy director of the National Consumer Law Center in Boston.

"Even worse, the appliance may not even be new," Hobbs said. He estimated that often appliances sold as new by RTO companies have "been owned three times before."

For 20 years Hobbs has listened to elderly clients' tales of being duped by RTO companies. They come to the center saying, "I've paid twice the value (for this appliance). When will I own it?" Or, "Can they take this appliance from me?"

Often clients have made regular payments surpassing the value of the appliance only to be frightened by the abusive tactics used by collection agents when they miss a payment. A North Carolina woman, for example, was threatened with arrest by an RTO collection representative when she fell behind after paying $750 in rental payments on a $450 television set.

Regulating RTOs: A Sticky Wicket?

A major difficulty in pressing for a solution to RTOs is the ongoing battle on the state and federal level on the question of whether RTOs should be subject to the same limits as other forms of credit sales contracts. No agreement is yet in sight.

Hobbs noted that states with RTO restrictions still face a sticky question: "Does the law applying to retailers apply to RTO?" Several states have amended their retail installment sales acts to expressly include RTO transactions. He said that in 1990, 23 states had statutes "treating RTOs as different from retail installment sales.

Hobbs said that the RTO industry often supports legislation "because it legitimatizes them." But they prefer states where regulations do not limit the interest rate. He said that courts have split on whether RTOs are subject to the same laws as other retailers.

Many RTO companies operate "as if they were not subject to retail laws," Hobbs said. The industry argument runs that RTOs are "more like leases than purchase" agreements.

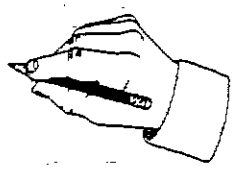
For Hobbs, regulating RTOs has some

continued on page 5

Readers Take Note

A new column begins in this issue of ELF and will appear regularly. Written by Beverly Bryant, senior program specialist at LCE, the article will spotlight innovative practices at legal services agencies around the United States. See page 5.

An Invitation to Readers



LCE has received many inquiries about management problems. On occasion, this column will address reader problems. Names, of course, will be withheld to protect privacy. If you have a management problem you would like addressed, please write:

Managing Attorney,
Legal Counsel for the Elderly
1331 H Street, N.W., Suite 1005
Washington, D.C. 20005

Dear Managing Attorney:

I have recently been made a supervisor of an attorney with 12 years experience. However, attorney X has significant deficiencies in fundamental lawyering skills (issue identification, problem analysis, fact gathering, recordkeeping). He has not been properly supervised or evaluated. How do I begin? (Perple"x"ed)

Dear Perple"x"ed:

Wasn't it a Chinese philosopher who said that a journey of a thousand miles begins with one step? The first step might be to start a dialogue. Concentrate on establishing a good working relationship. This is a critical factor in change.

Attorney X needs a more accurate assessment of his performance, especially his weaknesses. Collect recent examples of inferior performance and review in detail how his performance could be improved. Be careful and detailed in your examples and explanations. Point out his strengths as well.

It is important to sever the connection with the past, and clearly establish new standards. Determine whether he has the willingness and capability to embark on the arduous path toward meeting new program goals.

If the answer is no, your best course is to confront the problem in a timely manner and work toward an amicable separation. If the answer is yes, the solution lies in developing a mutually agreeable work plan. Set objectives and action steps with timetables.

For example, if issue identification and legal analysis are weak, meet with him weekly to review up to five cases. Let him articulate the issues and analysis. Then give him feedback.

Twelve years is a long time. You may be dealing with years of bad habits, so don't expect miracles overnight. Slow, steady improvement, reinforced by you and recognized by his peers, may be the best you can hope for.

But if this improvement translates into significantly improved service to clients and a fully functional attorney with improved self-esteem, then you as a manager have done your job; a job that many managers lack the moral fortitude to address.

Dear Managing Attorney:

I am the new managing attorney in a legal service office with eight attorneys and five paralegals. Some people I supervise have more experience in legal services than I, as well as more seniority in the particular program.

How can I deal logically and professionally with this? I was hired for this position, and chosen over one person with more experience. He is a man. (Female New Kid On the Block)

Dear New Kid on the Block:

Few things are more disarming than candor. You are dealing with largely emotional issues: male attorneys' discomfort with a female boss, being passed over for a promotion.

Laying those issues out on the table and establishing yourself in charge may be the best way to deal with them. Consider speaking with the people you supervise along these lines:

"In the few months I've been in this position, I have talked with many of you, listened, and observed how the program operates. As the managing attorney, I now want to share with you my ideas on future directions and some changes aimed at improving our services.

"I am new to this program while many of you have years of experience. You also may be uncomfortable because I am a woman. But we have to work together. I'd like that working relationship to be as productive as possible.

"Each of you has a lot to offer. I am interested in your ideas on what we can do to establish sound relationships, evaluate how we're doing, and improve services."

By taking that approach, you show that you are in charge and also create some trust by your honest assessment. You recognize people for their contributions and let them know that their input is valuable.

I am not so naive as to think that everyone will be won over. But my hunch is that your leadership and candor will be a welcome relief to the gamesmanship that can surround emotional issues. If your actions are consistent with your words, a team approach focused on client service should develop.

J. Allen May
Managing Attorney

Elder Law Forum is published by Legal Counsel for the Elderly, a department of AARP, 1909 K Street, N.W., Washington, DC 20049; (202) 833-6720

Director: Wayne Moore

Program Coordinator: Ayn Hartman Crawley

Editor: Katharine Bird

Layout & Design: Donna Barker

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LEGISLATIVE UPDATE

April 1991

Legal Services

No bill number	Fiscal Year (FY) 1992 Budget - Requests $327.2 million for the Legal Services Corporation (LSC), the same amount as the FY 1991 appropriation.	Hearings completed by both the House and Senate Commerce-Justice-State-Judiciary Appropriations Subcommittees.
No bill number	FY 1992 Budget - Requests $25.9 million for the Older Americans Act Title IV Training, Research, and Demonstration program, the same amount as the comparable FY 1991 appropriation for basic Title IV activities. Title IV includes funding for national legal services support and demonstration programs. Title IV had an additional $1 million in FY 1991 for White House Conference on Aging planning and preparatory activities.	Hearings completed by Senate Labor-HHS-Education Appropriations Subcommittee. House Labor-HHS-Education Appropriations Subcommittee expects to complete its hearings in mid-May.
H.R. 2039	1991 Legal Services Reauthorization Act - Would extend the authority of the Legal Services Corporation for five years, through FY 1996. Would also authorize a study on the extent and effectiveness of the legal services program for older Americans.	House: Reported out by Subcommittee on Administrative Law and Governmental Relations of the Judiciary Committee on 4/25/91.

Civil Rights

H.R. 1	1991 Civil Rights Act - Would overturn five recent Supreme Court decisions which made it more difficult for persons alleging job bias because of race, sex, and other prohibited discriminatory practices to prevail in court. Would codify the *Griggs v. Duke Power Co.* holding and would reaffirm that Title VII of the Civil Rights Act outlaws both (1) intentional discriminatory practices and (2) those having a discriminatory effect (disparate impact) which cannot be justified by a "business necessity".	House: Reported out by Judiciary Committee on 3/19/91.

Older Americans Act (OAA)

H.R. 597	1991 Older Americans Equity and Service Improvement Amendments - Would require (1) area agency on aging plans to have specific objectives for providing services to low-income minorities, (2) state plans to provide assurance that technical assistance will be available to minority service providers, and (3) the Commissioner on Aging to approve the state plan.	House: OAA reauthorization hearings underway before the Human Resources Subcommittee of the Education and Labor Committee.
H.R. 1327	Would require the U.S. Commissioner on Aging to publish an annual report concerning training, research, and demonstration projects completed under Title IV.	House: OAA reauthorization hearings underway before the Human Resources Subcommittee of the Education and Labor Committee.
H.R. 1533	Would require the number of persons 85 years of age or older to be considered by states when establishing planning and service areas.	House: OAA reauthorization hearings underway before the Human Resources Subcommittee of the Education and Labor Committee.
S. 243	1991 Older Americans Act Reauthorization Amendments - Would extend all Older Americans Act programs for three years, through FY 1991.	Senate: OAA reauthorization hearings underway before the Subcommittee on Aging of the Labor and Human Resources Committee.
No bill number	Heinz Elderly Life Program (HELP) Act - Would develop guidelines for area agencies on aging to follow in choosing and evaluating legal assistance providers and developers. Would provide an informal grievance procedure for older Americans denied services, with further appeal to area agency on aging. Would authorize a protective services program under Title IV in a wide range of areas, including living wills, durable powers of attorney, and other life planning areas.	Senate: OAA reauthorization hearings underway before the Subcommittee on Aging of the Labor and Human Resources Committee.

Veterans

H.R. 3	1991 Veterans Compensation Amendments - Provides a 5.4-percent cost-of-living adjustment (COLA) in the rates of (1) compensation for veterans with service-connected disabilities and (2) dependency and indemnity compensation (DIC) paid to surviving spouses or children of veterans who die because of service-connected causes. The 5.4-percent COLA is retroactive to January 1, 1991.	Public Law 102-3, 2/6/91.

To obtain copies of these bills, write House Documents Room, H-226, U.S. Capitol, Washington, D.C. 20515; (202) 225-3456 or Senate Documents Room, SHB04, U.S. Capitol, Washington, D.C. 20510; (202) 244-7860

policies. Currently some states literally sell dozens of different policies.

Counseling Clients About Medigap

Lawyers and counselors who work with the elderly poor can start by keeping in mind that many OBRA-mandated changes will not go into effect for at least a year from the November 5, 1990, date of enactment, Brewer cautioned.

The time lag gives states, the National Association of Insurance Commissioners (NAIC), and insurance companies time to comply with OBRA changes.

Once the OBRA-mandated changes are in place, an advocate's task in advising clients on how to choose a Medigap policy becomes easier. "OBRA, in effect, creates national standards" governing what Medigap policies will contain, Firman said.

Once the policies are available, probably in 1992, one of an advocate's jobs will be to counsel people on whether they should switch policies, Firman said. And the answer depends on a close comparison between the old and new policies.

Lawyers for the elderly poor also will want to keep a sharp eye alert for clients going onto Medicare for the first time. For them, "a new window of opportunity exists for the first six months" of eligibility for Medicare, Firman said.

Under OBRA (§4357), an insurance company may not discriminate, or refuse, to sell a Medigap policy to people for health reasons during the first six-months they are eligible for Medicare Part B. A company may require up to a six-month waiting period before preexisting conditions must be covered.

This provision is of special significance to sick people who may be able to sign up for benefits such as prescription drugs that won't be available later, Firman said.

Advocates and lawyers also will want to check into a client's eligibility for Medicaid. Many elderly poor do not know what the rules for eligibility are and therefore do not apply for it, Firman said. Usually clients on Medicaid do not need Medigap policies.

Katharine Bird
Elder Law Forum editor

Resources

Polniaszek, Susan. *Managing Your Health Care Finances: Getting the Most Out of Medicare and Medigap Insurance.* 1991. United Seniors Health Cooperative, 1331 H St., N.W., #500, Washington, DC, 20005.

OBRA-Mandated Medigap Policy Changes

Simplifying choice among policies (§4351)

OBRA requires insurance companies to offer at least one policy, but not more than nine or ten, with a common group of standardized benefits. States may decide how many plans to offer.

Insurers also must provide an outline of coverage using uniform language and format so clients may compare policies easily

OBRA delegated the National Association of Insurance Commissioners (NAIC) to develop a model Medigap policy for states to adopt. Nine months from the OBRA enactment, NAIC must promulgate Medigap standards. The standards will apply to policies issued after a state adopts the NAIC or federal standards, or one year after NAIC or the Secretary adopt such standards, whichever is earlier.

OBRA calls for a fine of up to $25,000 for anyone selling a policy that does not comply with these standards (42 U.S.C. §1395ss).

Guaranteeing renewability (§4352)

Companies offering Medigap policies must guarantee renewability and may not use a patient's health status as an excuse to cancel policies. The only grounds for canceling a policy are nonpayment or material misrepresentation.

Loss ratio and premium refund (§4355)

Policies must have a minimum actual loss ratio of 75 percent for groups and 65 percent for individuals. Otherwise, the insurance company must give policy holders a premium refund or credit. In addition, states must ensure that loss ratio information is available to people and provide a process for approving or disapproving increases (42 U.S.C.: s1395 ss (b) (1)).

Limitations on pre-existing conditions and on medical underwriting (§4357)

When people purchase a supplemental policy to replace another Medicare supplementary policy, the replacement policy must waive any time periods applying to preexisting conditions to the extent they were satisfied under the replaced policy. If the policy was in effect for six months or more, the replacement policy cannot require a waiting period for preexisting conditions.

OBRA lists up to a $5,000 fine for violating these provisions.

Enforcing standards (§4353)

After the effective date of standardized policies, an insurance company may issue no policy in a state unless the state has a regulations program that provides for applying and enforcing the standards.

Preventing duplication (§4354)

As part of the application process, applicants for a Medigap policy must provide a signed statement listing current health insurance coverage, including Medicaid. This statement must provide the applicant with such consumer information as: 1. A statement that Medicare beneficiaries usually only need one Medicare supplemental policy; 2. Individuals entitled to Medicaid generally do not need any Medigap insurance; 3. A notice with phone number that counseling services may be available to provide advice on Medigap policies.

OBRA states that no policy may be sold if the form is not returned; if the applicant has another policy; or the applicant is on Medicaid, unless the applicant states on the form that the policy being purchased replaces the old policy or does not duplicate information.

OBRA imposes up to a $25,000 fine for violations (42 U.S.C. §1395ss).

Spotlight on Innovative Legal Services Agencies

This issue of ELF introduces a new occasional column describing some innovative activities in legal services agencies. The column's purpose is to inform people in the field about workable practices with the idea that others might want to duplicate them, or adapt them to local needs.

Seniors Legal Line

The Senior Law Project in Duluth, Minn., offers legal advice in a Question and Answer column called "Seniors Legal Line." Now 10 years old, the column appears in about 20 newsletters and newspapers in northeastern Minnesota.

The column highlights client problems and is based on actual cases. Topics include consumer issues such as salespersons pressuring older persons into buying expensive medical alert systems or living trusts.

"Seniors Legal Line" lets readers know about their substantive rights and the agency's legal services. The agency reports that interest in the column is high, judging by the many interested readers who call for information and services.

For more information contact:

Dale Lucas, managing attorney,
Senior Law Project
Legal Aid Service
of Northeastern Minnesota
302 Ordean Building
424 West Superior Street
Duluth, MN 55802
218-726-4800

On-Call Tenancy Assistance

Once a week while in tenancy court on behalf of clients, the Somerset-Sussex Legal Services conducts an On-Call Tenancy Assistance Program. Judges permit agency staff to accept clients who need legal assistance with landlord tenant problems.

How does the program work? At the start of the court session, the judge announces that agency staff persons, an intake specialist and an attorney, are present. Sometimes five or more clients sign up.

The intake specialist obtains financial information to determine eligibility. If the client is eligible, the attorney proceeds to handle the case before the court. The agency has developed an extensive tenancy manual which the attorney refers to as needed.

In addition, because the agency maintains a good relationship with the local social services office, staff often can arrange by phone for emergency funds for clients.

Now a year old, the program has prevented numerous evictions. In most cases, the agency reports, a settlement is reached. Landlords are less likely to take advantage of tenants when staff are present to handle cases.

For more information contact:

Diane Smith, director
Somerset-Sussex Legal Services
Corporation
78 Grove Street
Somerville, NJ 08876
202-231-0840

Beverly Bryant
Senior Program Specialist

RTOs *continued from page 1*

definite advantages in of helping advocates protect clients.

1. It gives clients the right to catch up if payment is missed without repossession of the appliance.
2. It requires disclosure of payment and total price charged. If not provided, the client may have a financial claim against the RTO.

What Consumer Advocates Can Do

- Take advantage of private litigation remedies

RTO statues. Consumer advocates should check for compliance with requirements in states which have enacted specific RTO statues under federal Truth in Lending Act disclosure requirements. This is particularly helpful in states with sanctions for violations.

To date, 10 states have passed legislation: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Maryland, Tennessee, Texas, and Virginia.

States which regulate RTOs usually require disclosure of total amount to the customer, but generally do not limit the amount of finance charges. States may allow rates of up to 150 percent.

State usury or retail installment sales acts. In states without laws regulating RTOs, contracts may violate state usury laws. Some state courts have found RTO transactions to be credit sales. If so, advocates should see if they are subject to state usury or Retail Installment Sales Act laws and whether the client's RTO contract is out of compliance.

UCC Article 9. In the Uniform Commercial Code, Article 9 applies to leases intended for security. Consumer advocates may argue that the default and repossession provisions of Article 9 should apply to RTO transactions. Since RTO companies often are out of compliance with Article 9, statutory damages of the finance charge plus 10 percent of purchase price might be available under UCC 9-507. This presupposes the lease is intended for security.

- Help clients find alternatives to renting-to-own

Elderly clients are best off not touching RTOs with a 10-foot pole. Advocates do their clients a favor by guiding them to check out other means of purchasing appliances on credit. Using a credit card, putting an item on lay away, or buying a used appliance are all better, cheaper, and less potentially troublesome ways for the elderly to buy appliances on credit.

Contact your local state Attorney's General office since many states have significant consumer protection units with the AG's office

Katharine Bird
Elder Law Forum editor

Resource:

"Senior Consumer Alert: Renting to Own: Convenience or Just Plain Con?" AARP with the National Association of Attorneys General. Prepared by the National Consumer Law Center. Order free from AARP, 1909 K Street, N.W., Washington, DC 20049, Stock #D14197.

Who Reads *Elder Law Forum*?

I like the Forum.
Always helpful newsletter — always one or two articles of interest.
The Manager's Corner is my favorite item as it is the most helpful to me and does not duplicate other materials sent to me.
Advocacy Tip is most useful, easy to read and could easily be converted to an understandable client letter.

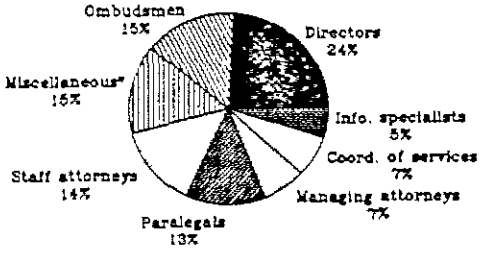
Elder Law Forum's readers made the above comments in responding to a 1990 Readership Survey. *ELF* is distributed directly to more than 4,000 legal services and aging organizations. But since many respondents said that each *ELF* issue is passed on to other people in the same office and in other offices, the total readership may be three or four times that high.

In the survey, respondents spoke of what they want to see in future issues. They wrote that they would like "more charts, graphs and pictures." Some said they want longer articles, more topics covered, and more referral phone numbers.

On specific issues, readers expressed an interest in more articles on Medicare and Medicaid, and on Social Security issues. In the delivery systems area, many readers want more on model programs. One quarter of respondents want more practical tips.

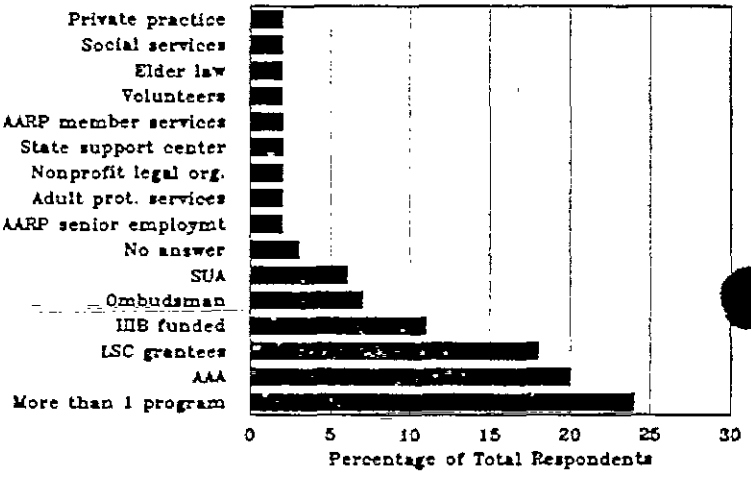
ELF thanks those who answered the survey. We will try to be responsive to your concerns.

Readership by Occupation



** Includes assistant director, AAA senior advocates, benefit specialists, office manager, AARP board of directors, program specialists, no answer.*

Readership by Program/Practice



Helping Clients with Medicaid Planning

Advocates specializing in large estate planning are proposing the use of special powers of appointment (SPAs) to help clients in Medicaid planning. A primary goal in Medicaid planning is to put property beyond the reach of the state either during a client's life or after a client's death.

SPAs are a way to make such a transfer more acceptable to clients. A special power of appointment allows a client to change the disposition of assets or income under an original instrument of conveyance, such as a deed or trust. Reserved in the original instrument by the client, it can permit disposition during the client's lifetime, or through the client's will.

An SPA allows a client to maintain considerable control over an asset, despite the deed or trust. When reserved in a deed, the client can change who will inherit the property. When reserved in an irrevocable trust, the client can change who will inherit and also make gifts out of the trust.

Though SPAs are of most value for clients with considerable assets, hotline attorneys might want to advise clients that the use of SPAs could complicate the Medicaid process.

The use of an SPA could lead application processors to question a client's eligibility for Medicaid. This in turn could lead to an administrative hearing on the question of eligibility which would slow down the Medicaid application process.

Resources

Barreira, Brian. *"Using Reserved Special Powers of Appointment in Medicaid Planning."* The ElderLaw Report 2(3) October 1990.

A New Improved Representative Payee System?

The Social Security Act provides that payment of Social Security and Supplemental Security Income benefits may be made to a representative payee, if the Social Security Administration (SSA) determines the beneficiary is unable to manage benefits.

SSA can certify payment of an individual's benefit to another person or organization, regardless of the legal competency, or incompetency, of the beneficiary. While many advocates see this as an alternative to guardianship for some incompetent persons, they also believe the system has substantial problems. For example:

- Claims representatives rarely investigate prospective representative payees. This results in the appointment of inappropriate persons as well as the misuse and misappropriation of beneficiaries' funds.
- There is a shortage of persons available and willing to be representative payees. This can lead to withholding benefits until a payee is found.
- Monitoring representative payees is minimal, at best.

Congressional Changes

To correct some problems, Congress enacted changes to the Social Security and Supplemental Security Income representative payee system in the Omnibus Budget Reconciliation Act of 1990. The changes are geared to improve the representative payee selection and recruitment process. They include:

1. Selection Process

If SSA determines that a representative payee is needed, it must conduct an investigation of the candidate prior to certification of payment. Where practicable, the investigation shall include face-to-face interviews, documented proof of identity, and verification of Social Security or employer identification number.

SSA also must determine whether the candidate has been convicted of a felony or previously discharged as a representative payee for misusing benefits. SS prohibits persons convicted of a felony from being payees.

However, a person whose appointment as payee was terminated because of benefits misuse may be granted an exemption at a later date — if the exemption is in beneficiary's best interest.

In an effort to correct some problems, Congress enacted changes to the Social Security and Supplemental Security Income representative payee system in the 1990 Omnibus Budget Reconciliation Act.

A creditor who provides goods and services to the beneficiary cannot serve as payee unless the creditor is:

- a relative who resides with the beneficiary
- a legal guardian or legal representative of the beneficiary
- a licensed or certified care facility
- an administrator, owner, or employee of a licensed or certified care facility where the beneficiary resides
- a person determined by SSA to be acceptable to serve, based on written findings and following SSA regulations.

Creditors also must demonstrate that they pose no risk to the beneficiary and that there is no *substantial* conflict of interest.

If SSA cannot find a payee, it must continue to pay the benefit directly to the beneficiary. SSA no longer may suspend benefits for an indefinite period. SSA must determine that direct payment to the beneficiary would cause *substantial* harm to that individual; even then, suspension of benefits cannot exceed one month.

Although this is a definite improvement in the law, the other changes do not provide much improvement at a time when there may be a shortage of payees.

2. Appeal Rights

Prior to certification of payment to a representative payee, SSA must provide written notice of determination to appoint a representative payee. It must be sent to the beneficiary, or the beneficiary's legal guardian or legal representative and shall indicate clearly who the representative payee is. It also shall state that the beneficiary has the right to a hearing if dissatisfied with SSA's determination to appoint a payee and/or the person to serve as the payee.

3. Compensation

Perhaps in an effort to increase the number of available representative payees, SSA allows certain "qualified organizations" to collect a monthly fee for expenses incurred as representative payees. A qualified organization is any community-based nonprofit social service agency which is bonded or licensed in the state in which it serves.

In addition, the organization must regularly provide payee services to five or more individuals; demonstrate to SSA satisfaction that it is not a creditor of the beneficiary; and was in existence on October 1, 1988. The organization is entitled to a fee which is the lessor of:

1. 10 percent of the monthly benefit involved, or
2. $25 per month

4. Restitution

Beneficiaries whose benefits are misused by a representative payee are entitled to restitution directly from SSA *if* the misuse is the result of SSA's negligent failure to investigate or monitor the representative payee.

Obviously the ability of a person to benefit from this change in the law will depend on how precisely SSA defines its investigation and monitoring responsibility.

Changes in the law can be significant — if properly implemented.

DaCosta R. Mason



"Your Pension Rights at Divorce: What Women Need to Know," written by Anne E. Moss, offers up-to-the-date information on the topic to women and women's advocates. It is aimed at helping women protect their pension rights at divorce.

Case histories discussed in the book make it amply clear that too many women do not realize they have a right to share their husbands' pension in many cases, when they divorce.

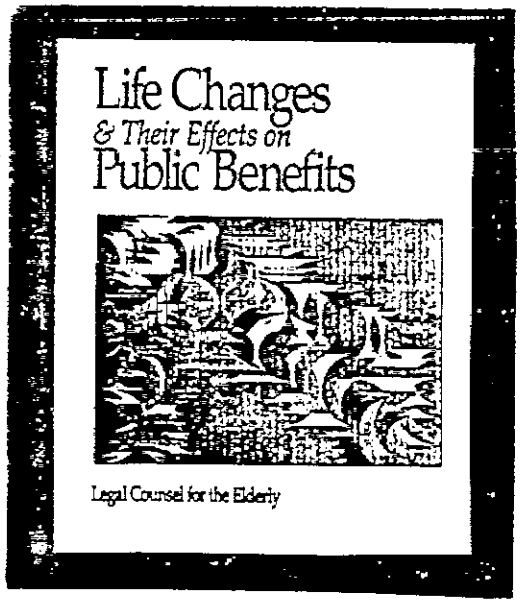
Published by the Pension Rights Center, the new 200-page paperback book provides easy-to-understand information that women need to consider when they go through a divorce. These include:

- information about six federally regulated retirement systems — Social Security, private pensions, Civil Service retirement, military retirement, railroad retirement, and Foreign Service retirement
- what a woman needs to know about pension rights at divorce

The book also includes a section on what legal remedies a woman might have if she is divorced already and did not protect her pension rights.

Readers may order the book from:

Pension Rights Center
918 16th Street, N.W.
Suite 704, Dept. A
Washington, DC 20006



Life Changes is a unique and comprehensive examination of 10 public benefits programs. It is designed for attorneys and other advocates whose clients receive or may be eligible for public benefits.

Life Changes offers a quick analysis of issues raised when your client faces an important life event—the birth of a child, moving, selling a home, or divorcing. The manual is organized by 13 life events rather than by benefits programs to enable you to spot issues confronting your clients—and to pinpoint possible solutions. *Life Changes* covers:

- *Social Security Disability*
- *Railroad Retirement*
- *Medicare*
- *Food Stamps*
- *AFDC/SSI*
- *Social Security Retirement*
- *Veterans benefits*
- *Medicaid*
- *LIHEAP*

At your fingertips are advocacy tips, resources, Application Procedures Charts, Appeals Charts, and charts summarizing state options. Chapters are organized by life events such as Changes in Living Arrangements, Marriage, Disability, Changes in Income, Receipt of Other Benefits, and Institutionalization. Softbound, 8-1/2 x 11, 728 pages. To order, send check or money order for $65 (nonprofit or individuals) or $80 (others) plus $3.00 shipping/handling to: **Legal Counsel for the Elderly, P.O. Box 19269-K, Washington, DC 20036**

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National Consumer Law Center
11 Beacon St #821
Boston, MA 02108

CONSUMERS LEAGUE OF NEW JERSEY NEWSLETTER

Volume 55, No. 1 | Founded in 1900 | March, 1992

The Shame of New Jersey:

FORECLOSURES TRIPLE IN 3 YEARS, HOMEOWNER PROTECTION NEEDED

New Jersey is the second worst state in the nation in the rate of mortgage foreclosures. In the three years from 1988 to 1991, foreclosures have *tripled*, from 8,182 to 23,575. Not since the Great Depression has the situation been as grim. The human tragedy is that hard-working homeowners are losing the fight to save their homes. During the Great Depression, some states enacted a moratorium on foreclosures during the period of emergency. Will New Jersey act to save its homeowners from the streets?

CLNJ and the NJ Public Advocate have called for laws to give homeowners a second chance to save their homes.

"Foreclosure" is how a lender takes away your home. In NJ these are the steps: 1) suit, 2) judgment, 3)sheriff sale, 4) 10 days to "redeem," 5) sheriff transfers deed. When *all* steps are complete, the homeowner is "foreclosed" from redeeming his home by paying off the entire mortgage. In NJ, the homeowner's only choices are to pay in full, or file a Bankruptcy Chapter 13 payment plan before judgment is entered.

NJ needs protection which already exists in Pennsylvania: homeowners should be allowed to pay their missed payments (only) to stop a foreclosure (NJ now requires payment of the full $70,000 mortgage!). NJ homeowners should also get a Notice telling them their rights; forbearance agreements should be encouraged; lenders should not send back partial payments; and NJ's time for redemption should be extended to include the time the homeowner is in Bankruptcy under a payment plan. Some federal judges have actually ruled that, after a deadline which is nowhere found in the Bankruptcy Law, the homeowner is *prohibited from paying the mortgage in full!* NJ homeowners simply say: We want to pay our mortgages!

NEW JERSEY RAPS RENT TO OWN

The **RENT TO OWN RAP** is a sixty second rap song which is a public service announcement. The Consumers League Education Fund uses the Rap song to spread the word that "Rent to Own" is an extremely costly way to buy appliances or furniture. The effective interest rate can reach 300%! Several radio stations have picked up the rap. CLEF brochures and posters have been distributed to social agencies and government offices where consumers might get the message. Besides speaking directly to the people on radio, the RTO RAP makes a great teaching aid for schools.

CLEF has been assisted in the RTO campaign by the NJ Division of Consumer Affairs and the NJ Public Advocate. Radio stations are encouraged to call for a copy of the RENT TO OWN RAP. The campaign is funded by AT&T through NCCE. (Cont'd on page 2)

RENT TO OWN DEVELOPMENTS

Rent to own sells appliances by "renting" them at weekly rates. $12/week may seem low, until you find that the $200 TV will cost $1044 to buy in 87 weeks. The difference between the cash price and the time price is *interest.* But rent to own operators deny this, and say its just "rent." A lawsuit in Passaic County may provide the answers to some of these legal questions. Passaic Legal Aid Society sues on behalf of two women, joined by the NJ Attorney General and CLNJ, which is represented by Crummy, Del Deo, Dolan, Griffinger & Vecchione. The RTO lobbyists are trying to get the NJ Legislature to pass a law which would *approve* RTO transactions, and let them charge unlimited rates. The theory seems to be that if the Legislature rules that RTO "rent" is not interest, then the courts will have to allow the practices.

Rachel Roat, RTO project director, asks that you help spread the word by distributing CLEF's pamphlets and posters. Do you know a school or radio station which would like to hear the **RENT to OWN RAP?.** The rap song, performed by an all New Jersey cast of: rapper TAC, Jerard Snell, Tim Shider, and Flo Powell, has lyrics by Mark Fogarty.

ASSEMBLY CUTS MINIMUM WAGE

In the middle of a recession, the NJ Assembly has actually voted to reduce the minimum wage! On April 1, NJ's minimum wage goes up to $5.05/hour. The Assembly bill would reduce the hourly wage. CLNJ thinks some legislators should try their hands at manual labor, to see whether $5/hour is adequate reward for hard work. Then try to support a family on $5/hour.

WHAT'S IN YOUR CREDIT REPORT?

Credit reporting agencies collect information about you then sell it to lenders. One problem is that the information may not be accurate. One town in Vermont found that every person who paid his taxes on time was listed as delinquent in a national credit computer. A twenty year old US law gives you some rights (see box below), but thousands of complaints are pushing Congress to tighten the law. Those who attend the NJ Consumer Conference on April 10 will hear Ed Mierzwinski from US Public Interest Research Group tell us proposals to strengthen the law.

Fair Credit Reporting Act:
You have the right to see your credit file, on payment of a reasonable fee, free if turned down for credit within 30 days. You may dispute items, which the agency must investigate and correct. You can insert a 100 word rebuttal. If the law is violated, you can sue and receive attorney's fees. No one is supposed to have access except for a permitted purpose, such as your loan or job application. After seven years, negative items must be removed (ten years for Bankruptcy).

FREE LOW-RATE CREDIT CARD LIST

Consumers League is again giving away a list of lower-interest credit cards. Where else can you find the banks which offer credit cards at less than 10%? You can save $100/year in interest expense. CLNJ will send this free list to persons who *send a stamped, self-addressed long envelope to Consumers League, 60 South Fullerton Avenue, Montclair NJ 07042.*

Preview of:

THIRD ANNUAL NJ CONSUMERS' CONFERENCE

Friday, April 10
NJ Law Center,
Ryders Lane, New Brunswick

8:30 Registration
9:00 Welcome
9:15 Morning Speaker:
NJ Public Advocate Wilfredo Caraballo

10:00 Workshops:

Bailouts, Bankruptcies, Financial Follies:
John Thurber, Trenton Office of Policy Studies
Ed Mierzwinski, USPIRG
Richard Cammarieri, Newark Coalition for Neighborhoods, Fair Lending Coalition
Assemblyman John S. Penn

Crisis in Health Care
H. Lee Gladstein, NJ Board of Pharmacy
Carlton Levine, NJ Citizen Action
Lucinda Sikes, USPIRG
Lillie Dortch-Wright, US FDA

Environmental Marketing/Purchasing
Paul Rosengren, NJ Division of Consumer Affairs
Dave Pringle, NJPIRG Buy Recycled Project

11:00 Workshops:

Auto Insurance Problems and Solutions
Jay Angoff, Office of Governor
Larry Bembry, NJ Department of Insurance
J. Robert Hunter, Natl Insurance Consumers Org.

Product unSafety
Jane Yates, NJ Division of Consumer Affairs
Lucinda Sikes, USPIRG
Bill Robinson, Consumer Product Safety Commission

Media and Consumer Issues: how to get noticed
Jennifer Kohn, NJPIRG
Al White, WWOR-TV Channel 9
Susan Loyer, Home News

12:00 Lunch
Presentation by Emma Byrne
Director, NJ Division of Consumer Affairs

of Consumer Protector Award to:

Governor Jim Florio

1:30 Workshops:

Caring for Future Consumers
Dave Harris, NJ Child Care Advisory Council
Edna Rank, NJ Child Care Advisory Council

Look Who's Looking: Credit Bureaus and the Crisis of Consumer Privacy
Pat Donahue, NJ Public Advocate
Ed Mierzwinski, USPIRG
Louise Roth

Lobbying and Organizing for Success
Rob Stuart, NJPIRG
Marie Curtis, NJ Environmental Lobby

2:30 Workshops:

Consumer Fraud and other Ripoffs
Donna Giovanetti, CAMCA
Neil Fogarty, Consumers League of New Jersey
Dave Sciarra, NJ Public Advocate
Bob Siconolffi, NJ Division of Consumer Affairs

Ballot Initiatives and the Consumer Movement
Jennifer Kohn, NJPIRG
Ed McCool, Common Cause

Students: Learning to Make a Difference
Lee Carpenter, Rutgers University
Stan Laikowski, Rutgers University
Lorenzo Grigoli, Rutgers University

3:30 Reception

TO REGISTER:

Send $20 to: NJPIRG, 11 North Willow St, Trenton, NJ. Contact: Jennifer Kohn, 609 394 8155.

Sponsored by:
New Jersey Public Interest Research Group, with support from the Consumer Federation of America.

Radio stations:



A musical public service message from The Consumers League Education Fund

Radio stations: the Consumers League Education Fund will send you a free copy of the soon to be hit single, the **RENT TO OWN RAP!** This one minute Rap song is a public service message which tells people about the high cost of buying TVs and appliances through "Rent to Own," in which the seemingly small $12/week payment grows to a total cost of $1,000 to buy that TV. Studies by the NJ Public Advocate and NJ Public Interest Research Group have confirmed that high RTO costs are a danger to your wallet!





CONSUMERS LEAGUE OF NEW JERSEY
60 South Fullerton Avenue
Montclair, N.J. 07042
201-744-6449
March 1992 Newsletter

RADIO STATIONS- CALL US TO GET A "RENT TO OWN RAP" TAPE

FIRST CLASS MAIL

Bob Hobbs
National Consumer Law Center
11 Beacon St
Boston MASS 02108

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF Consumer Affairs

1020 N STREET, SACRAMENTO, CALIFORNIA 95814
(916) 445-4465

April 19, 1989

Dear Colleague:

Rent-To-Own in California: Findings and Recommendations

The Department of Consumer Affairs recently has completed a study of rent-to-own (RTO) in California. The resulting report, a copy of which is enclosed, finds that RTO transactions and marketing practices raise significant consumer issues which I would like to bring to your attention.

In an RTO transaction, the renter acquires possession of personal property (e.g., a washer or a color television) without a downpayment or a formal credit check and pays a weekly or monthly rental fee. The seemingly low periodic fee really is very high in relation to the actual value of the property if the contract runs for an appreciable length of time, or if the purchase option is exercised. Each time the renter makes a periodic payment, the contract is renewed for the next period. If a periodic payment is missed, the contract ends automatically, and the renter must return the rented property. Once the renter has returned the property undamaged, he or she has no further liability under the contract, but also loses his or her "equity" (if any) in the property.

If the renter makes a specified number of periodic payments, he or she may exercise a purchase option and become the owner of the property. Although the customer does not have any ownership interest in the property until it is purchased, the customer does build "equity" in it because a portion of each periodic payment is applied to the purchase price when the option is exercised. The customer's equity in the rented property is jeopardized if he or she misses a periodic payment, and may be jeopardized if a periodic payment is made late.

The department's report contains some startling findings on the practices of California RTO businesses. For example:

o Fifty-seven percent of the RTO salespeople who were questioned presented the RTO transaction as primarily a means to purchase the rented item, and the overwhelming majority of salespeople who were questioned stated that RTO transactions typically result in the customer purchasing the item (estimates ranged from 50 percent to 68 percent).

o Twenty-nine percent of the RTO businesses surveyed did not disclose the total cost of the RTO transaction. Generally, salespeople only disclosed total cost upon specific request.

o Sixty-two percent of the RTO salespeople who were questioned stated that an RTO transaction did not include any interest charge.

o The averaged full term purchase cost under an RTO contract was more than twice the price of comparable items purchased by a high interest credit card with the same number of payments, and the averaged monthly RTO payments were more than twice the credit card monthly payments.

o The RTO advertisements obtained by the department were misleading.

The report also makes specific recommendations for dealing with the significant consumer issues posed by these transactions. For example, the report recommends treating RTO transactions as retail installment sales subject to the Unruh Act, defining RTO customers' reinstatement and purchase option rights much more clearly and completely, and requiring much greater disclosure of RTO transactions' terms and costs.

This report was prepared pursuant to my authority to investigate, research and analyze matters affecting the interests of California's consumers. (Business and Professions Code section 310(d).) The report is based on information obtained by our Division of Investigation in a statewide survey of RTO businesses and marketing practices in December, 1988, and an analysis of this information and legal authorities by my legal staff. We feel that the report is particularly significant because it documents the manner in which RTO salespeople actually present RTO transactions to an average consumer.

We would be interested in your comments on the report, and any specific case examples which you may have. Please direct any response to:

John C. Lamb, Staff Counsel
Department of Consumer Affairs
Legal Services Unit
1020 N Street, Room 585
Sacramento, CA 95814

I appreciate your interest in this issue.

Sincerely,

MICHAEL A. KELLEY
Director

Enclosure

cc: Mr. Edward L. Winn, III

STATE OF CALIFORNIA—STATE AND CONSUMER SERVICES AGENC GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF Consumer Affairs

DEPARTMEN OF CONSUMER AFFAIRS
AL SERVICES UNIT
1020 N STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 445-5126

RENT-TO-OWN IN CALIFORNIA: FINDINGS AND RECOMMENDATIONS

Background

The rent-to-own (RTO) industry presently claims to market at least 10 percent of the major appliances in the United States, and to be exempt from nearly every law which regulates other retailers and financers of consumer goods.1/ Other than the limitations which are applicable to any California business (e.g., the unfair business practices statutes), RTO transactions are not clearly regulated by state law. Although a persuasive argument can be made that RTO transactions are subject to California's Retail Installment Sales Act (the Unruh Act, Civil Code sections 1801 et seq.), the RTO industry disputes this conclusion vigorously and does not comply with the Act. RTO transactions are not clearly subject to the federal Truth in Lending Act,2/ and are not subject to the federal Consumer Leasing Act.3/

In an RTO transaction, the renter acquires possession of personal property (e.g., a washer or a color television) without a downpayment or a formal credit check and pays a weekly or monthly rental fee. The seemingly low periodic fee really is very high in relation to the actual value of the property if the contract runs for an appreciable length of time, or if the purchase option is exercised. Each time the renter makes a periodic payment, the contract is renewed for the next period. If a periodic payment is missed, the contract ends automatically, and the renter must return the rented property. Once the renter has returned the property undamaged, he or she has no further liability under the contract, but also loses his or her "equity" (if any) in the property.

If the renter makes a specified number of periodic payments, he or she may exercise a purchase option and become the owner of the property. Some RTO agreements allow exercise of the purchase option only after all the periodic payments have been made, while others allow exercise of the option upon payment of a percentage of the full term contract amount. Although the customer does not have any ownership interest in the property until it is purchased, the customer does build "equity" in it because a portion of each periodic payment is applied to the purchase price when the option is exercised. The customer's equity in the

rented property is jeopardized if he or she misses a periodic payment, and may be jeopardized if a periodic payment is made late. At some point in an RTO transaction, the amount of the periodic payments applied or applicable to the customer's purchase option price equals or exceeds the price the RTO business has paid for the property rented.

The portion of each periodic payment which is not applied or applicable to the purchase price when the option is exercised may be considered the RTO business' finance charge, or profit, or fee to the customer for use of the rented property.

While the RTO industry traditionally has focused on low income customers and customers who are unable to obtain credit from traditional sources, the industry is opening showrooms in affluent areas, and is beginning to move upscale agressively.4/

The RTO industry has indicated its intention to introduce legislation to regulate RTO transactions in California in the 1989 legislative session.5/

The Department's Interest in RTO

The department regularly receives a small but steady number of complaints about RTO transactions. In June 1988, the Sacramento Municipal Court requested the department's opinion on issues raised by RTO cases pending before it. As is typical of RTO contracts, the contracts in these cases terminated at the end of each period for which the renters had made a periodic payment, but were renewed if the renters timely made the next periodic payment. If the renters made 72 successive periodic payments, they could purchase the property. The court's inquiry questioned the propriety of the RTO business (Rent-A-Center, hereafter "RAC") suing the renters for one-half of all the future payments under the contracts when the rented property had "mysteriously disappeared."

This inquiry led to the department's legal analysis of the underlying RTO contracts used in California by RAC. (RAC is a major national RTO business). This analysis presented evidence of the following specific problems, among others: (1) the initial value placed on the rented property is known only to RAC and is not agreed to by the renter; (2) RAC therefore can effectively charge any interest rate it chooses; (3) the amounts in (1) and (2) are not disclosed in the contract, as would be required under the Truth in Lending Act or California's Unruh Act; (4) renters face forfeiture of amounts paid if they miss a single payment (becomes significant if renters attempt to exercise the option to purchase); (5) key contractual provisions are unclear, inconsistent, or deceptive; and (6) if the rented property is lost or stolen, RAC sues the renters for at least half of the remaining full term contract payments.6/

Based on the concerns raised by the foregoing legal analysis, the department's Division of Investigation (DOI) undertook a statewide study of RTO marketing practices. An investigator from the division posed as an RTO customer seeking to rent a portable color television and a VCR. He asked the same predetermined questions to RTO salespeople in 21 RTO businesses (including a furniture rental business) in northern and southern California. Among the findings of the investigation were that: (7) RTO transactions typically are presented as a means to purchase (not rent) the rented items and they do typically result in purchase; (8) salespeople provided inadequate disclosure of RTO costs and terms; and (9) the averaged full term purchase cost under an RTO contract was more than twice the price of comparable items purchased by a high interest credit card with the same number of payments, and the averaged monthly RTO payments were more than twice the credit card monthly payments. (The DOI's Summary Report is attached as Exhibit 1).

Findings and Recommendations

1. Finding: RTO transactions are indistinguishable from retail installment sales.

California's Unruh Act (Civil Code sections 1801 et seq.) governs retail installment sales contracts. Substantively, an RTO transaction which concludes with the customer's purchase of the rented property is indistinguishable from a retail installment sale governed by the Unruh Act.

The RTO industry concedes that 40-45 percent of RTO transactions in California result in the customer's purchase of the rented property.7/ In the department's investigation, more than half the salespeople interviewed presented the RTO transaction primarily as a means to purchase the rented item, and the overwhelming majority of salespeople stated that RTO transactions typically result in the customer purchasing the item (estimates ranged from 50 percent to 68 percent).8/

The Unruh Act defines "retail installment sale" as follows:

> "'Retail installment sale' or 'sale' means the sale of goods... by a retail seller to a retail buyer for a deferred payment price payable in installments." (Civil Code sec. 1802.5.)

Clearly, an RTO transaction which concludes with the purchase of the rented item is indistinguishable from a retail installment sale under this definition.

The Unruh Act also defines "retail installment contract" to include contracts for the sale of consumer goods and services that provide for payment in more than four installments. (Civil

Code section 1802.6.) Retail installment contracts are further defined to include bailment or lease agreements by which the bailee or lessee contracts to pay an amount substantially equal to or greater than the value of the goods and has the option of becoming the owner for no other or nominal consideration upon compliance with the contract. (Id.)

The RTO agreement is a bailment with a purchase option. The customer typically makes at least 12 installment payments,9/ pays an amount greater than the value of the item (see Finding 3, below), and actually becomes the owner of the item. The large percentage of RTO transactions that result in purchases establishes that RTO customers typically intend to purchase the rented items (and to make more than four payments). The large percentage of salespeople who present RTO transactions as a means of purchasing an item confirms that all parties to RTO transactions contemplate payment of more than four installments at inception.

Hence, the facts that an RTO contract is called a "rental" agreement and is cast in the form of a series of renewable periodic agreements do not take the RTO contract outside the scope of the Unruh Act.

Like a defaulting purchaser under a retail installment contract, an RTO customer faces liability when he or she stops making payments under an RTO contract. Some RTO businesses seek judgment based on the remaining contract balance following a customer's default, a remedy which the Unruh Act provides to holders of retail installment contracts upon the buyer's default (Civil Code section 1812.2). An RTO customer is liable for the payment of rent after termination of the agreement until the rented property is returned or reclaimed by the RTO business, and also may be liable to the business for its cost in recovering the property. The customer is liable for the rented property's loss or damage in an amount which may equal the market value of the property (see Finding 3, below). Also, the customer faces loss of his or her "equity" in the rented property when he or she stops making payments, or makes a payment late (see Finding 2, below).

Perhaps seeking to avoid coverage by the Unruh Act, at least one major California RTO business' RTO contract allows it to charge the customer a substantial balloon payment before the customer may exercise the purchase option.10/ Such a balloon payment would prevent the RTO contract from being considered a retail installment contract because, pursuant to Civil Code section 1802.6 (above), the bailee must have the option of becoming the owner of the goods for no other or nominal consideration upon compliance with the contract. According to the National Consumer Law Center, some RTO businesses require a substantial balloon payment so as to avoid coverage by states' retail installment sales acts. (National Consumer Law Center,

Unfair and Deceptive Acts and Practices, "Rent-to-Own Sales," section 4.9.23.4 (1987 Suppl.) (hereafter, "NCLC").)

Although no California appellate court has considered whether the Unruh Act applies to RTO contracts, reported cases from other jurisdictions have found that RTO transactions in which customers had not purchased the rented property were "credit sales" subject either to the state's retail installment sales act or to the Truth in Lending Act. (E.g., Davis v. Colonial Securities (E.D. Pa. 1982) 541 7.Supp. 302; Palacios v. ABC T.V. & Stereo Rental of Milwaukee, Inc. (Wisc. App. 1985) 365 NW2d 882; Waldron v. Best T.V. and Stereo Rentals, Inc. (D.Md. 1979) 485 F.Supp. 718.) Other less analytical reported decisions have reached the opposite conclusion. (E.g., Smith v. ABC Rental Systems of New Orleans, Inc. (E.D. La. 1978) 491 F.Supp. 127; Dodson v. Remco Enterprises, Inc. (E.D. Va. 1980) 504 F.Supp. 540; Lemay v. Stromans, Inc. (E.D. Ark. 1981) 510 F.Supp. 921.)

Six states treat RTO transactions as retail installment sales (four by statute, two by court decision).11/

Given the typical function and nature of RTO transactions as found by the department's investigation, and the Unruh Act's definition of retail installment sales contract, it seems clear that RTO transactions are subject to the Unruh Act. The large percentages of actual customer purchases, and of salespeople who present RTO transactions as a means of purchase, both suggest that RTO transactions should be subject to the Unruh Act from their inception.

These large percentages also refute the typical arguments against applying the Unruh Act to all RTO transactions. Those arguments assert that RTO transactions are unique because they do not all result in the customer purchasing the rented property, and because the customer can terminate the contract without obligation at the end of each period for which payment has been made. (The later argument also is refuted by the discussion of customer's liability upon ceasing to make payments, above.) A related argument asserts that an RTO lessor cannot determine what Unruh disclosures to make until it knows whether the customer will exercise the purchase option. Such an argument has been answered effectively by the Pennsylvania RTO statute, which states that the required disclosures are to be calculated on the assumptions that the customer will make all periodic and other payments specified in the RTO agreement and will become the owner of the rented property. 12/ (Similarly, Unruh Act disclosures are based on the assumptions that the consumer will make the scheduled payments, and will neither prepay nor default.)

Common sense also dictates against creating an entirely new category of consumer transaction which is outside the existing comprehensive and carefully structured framework of California consumer protection laws. For example, a separately defined

rental-purchase transaction would be neither a sale nor a lease, and would not be subject to the protections and remedies provided by the Consumers Legal Remedies Act (Civil Code sections 1750 et seq.).

Recommendations: While it is submitted that the Unruh Act already applies to RTO transactions, any doubt should be resolved by amending the Unruh Act's definition of retail installment contract to specifically include RTO contracts, and to prohibit balloon payments as a prerequisite to the customer's exercise of the purchase option. A new section might be added to the Act to define and govern reinstatement and purchase option rights in RTO transactions (see Recommendation 2, below).

Amending the Unruh Act as recommended would largely eliminate the need for Recommendations 3 and 4. Recommendations 3f., 5a., b. and c., however, would require further serious consideration.

2. Finding: Customers' reinstatement rights and purchase option rights are not adequately defined or protected.

The emphasis on purchase in RTO transactions (Finding 1, above), makes the customer's rights to reinstate the RTO contract and to exercise the purchase option very important. According to the National Consumer Law Center, customer misunderstanding of the purchase option provision is a substantial problem in RTO transactions.13/

Typically in an RTO transaction, a portion of each periodic payment made by a customer is applied to the purchase price of the rented item when the customer exercises the purchase option. As more periodic payments are made, the customer builds increasing "equity" in the rented item. The customer jeopardizes this equity if he or she makes a payment late because the RTO business may consider the contract to be terminated. Thus, fair reinstatement rights, and clear statements of those rights and the purchase option, are essential.

The department's investigation found that some RTO businesses charge a late fee or reinstatement fee of $5-10, and that others charge much more -- as much as $1-2 per day.14/ This contrasts with a maximum statutory reinstatement flat fee of $5 in six states and $4 in another.15/ Other states' statutes typically allow the customer 2-5 days or longer to reinstate (depending on whether periodic payments are weekly or monthly), and as long as 60 days upon voluntary surrender of the rented property.16/ Seven states' statutes specify that the customer may reinstate the original RTO contract, and 13 specify that the customer maintains all rights previously acquired upon reinstatement.17/

The RTO contract reviewed by the department for the Sacramento Municipal Court causes some concern in each of the two latter areas. That contract, which is used in California by a major RTO chain, states that if the customer does not renew "this agreement" by making timely periodic payments, he or she may reinstate "the agreement" by making delinquent payments plus the reinstatement fee. This contract's purchase option requires the customer to make "successive" renewals in order to exercise the option. Under these terms, a customer making a late payment could lose rights acquired under the original RTO contract, and could be denied the right to exercise the purchase option by having failed to make "successive" periodic payments.

While the department's investigation found no evidence of such practices in any RTO business visited,18/ the potential for abuse remains under such widely used provisions.

Some of the RTO contracts obtained by the department in its investigation did not contain any explanation of reinstatement rights, and some either did not explain, or explained inadequately, the provisions of the purchase option.19/ None disclosed the percentage of periodic payments which is applicable to the purchase option. With respect to the RAC contracts, the department learned that RAC routinely allows the customer to purchase the rented property at any time while the contract is in effect by paying one-half of the remaining full term payments. This "early purchase" option was not disclosed in the RAC contracts reviewed by the department.

Statutes in seven states require that RTO agreements disclose either a percentage or formula for determining the amount required to exercise the purchase option, and two states' statutes state the percent of periodic payments required to be applied to the purchase price if the option is exercised.20/

Recommendations: Statutory language might address or accomplish all the following:

a. It might set a maximum late payment fee of $5 where periodic payments are made monthly, and allow at least five days for reinstatement, or 60-90 days if the rented property is voluntarily surrendered or if the RTO business waives surrender of the property. It might prohibit charging the customer a "reinstatement fee."

b. It might state that the customer does not lose the right to reinstate during the reinstatement period even if the rented property is repossessed.

c. It might set reasonable dollar limits on any amounts other than the late fee and delinquent periodic payments which may be required in order to reinstate (e.g., a redelivery fee), and require that any such amounts be stated with specificity in the RTO agreement.

d. It might specify that the customer may reinstate his or her original RTO contract without losing any rights or options previously conferred under it, including all credit for amounts applied or applicable to the purchase option.

e. It might require that every RTO agreement contain a purchase option, and require that the percent of periodic payments which is applicable to the purchase option must be disclosed in the RTO agreement. It also might require that if a transaction offers an "early purchase" option, that option and a clear explanation of it must be disclosed.

f. It might require that RTO agreements explain clearly and conspicuously all aspects of reinstatement rights and the purchase option.

g. It might require that upon reinstatement, the same property be returned to the customer, if it is available, and that any replacement property be the same brand and model, and of comparable age and condition, as the original property.

3. Finding: RTO customers do not receive adequate disclosure of costs and terms.

The department's investigation and review of RTO contracts reveals that RTO customers receive disturbingly inadequate disclosures of the costs and terms of RTO transactions. This discourages consumers' informed use of credit and their ability to compare credit terms, and is at odds with modern, market-oriented consumer protection philosophy.21/

The department first became aware of the issue of inadequate disclosures in its review of RTO contracts for the Sacramento Municipal Court. Those contracts did not disclose the initial value or cash price of the rented property. The department's legal analysis of those contracts concluded that the initial value or cash price was essential to determining the amount the RTO business could properly recover in its actions against the customers who had lost the rented items.22/

Subsequently, the department learned that the value assigned to the rented property typically is known only by the RTO business, and typically is significantly higher that the normal retail price.23/ The value of the property itself cannot be determined from the full contract price, since that amount may be from 1½ to 12 times the amount a cash customer would pay at retail, and may include an applied interest rate of 60 percent or more.24/

The department's investigation revealed that in California, the averaged full term purchase cost under an RTO contract is more than twice the price of comparable items purchased by a high

interest credit card with the same number of payments.25/ At least one court has found that an RTO contract which required the customer to pay two and a half times the retail sales price of the rented property constituted an unfair trade practice. The court also found that the agreement, in the context of the case, was unconscionable. (Murphy v. McNamara (Conn.Sup.Ct. 1979) 416 A.2d 170.)

In the department's investigation, the initial value of the rented property was not disclosed by 71 percent of the RTO businesses. Nonetheless, at least one major RTO chain in California presently discloses in its RTO agreement the cash selling price of the property at the time of rental, and limits the customer's liability to that amount if the property is lost, stolen or destroyed.26/ Eight states require that the initial value of the rented property be disclosed.27/

Twenty-nine percent of the businesses surveyed did not disclose the total cost of the RTO transaction (the equivalent of the "deferred payment price" or "time sale price" in a credit sale).28/ The investigator found generally that the salesperson would only disclose the total cost and initial value (to the extent it was ever disclosed) upon specific request.29/ An astonishing 62 percent of the salespeople interviewed stated that the RTO transaction did not include any interest charge.30/

Disclosure of other information necessary to the informed use of credit and effective comparison of terms was haphazard. While all of the salespeople interviewed stated that a conventional purchase would be cheaper than purchasing through an RTO transaction, these statements were made only after the investigator raised the question.31/ Price tags were attached to merchandise in only 10 percent of RTO businesses surveyed (two Rent-A-Center stores), and these generally disclosed only the amount of the monthly payments.32/ Forty-three percent of the salespeople interviewed claimed not to know whether the customer would be responsible for the value of the rented property if it were lost or stolen.33/ In at least two instances, rental figures quoted by salespeople were significantly understated.34/

In sum, the disclosures made in RTO transactions are inadequate to permit the informed use of credit or effective comparison of credit terms by sophisticated consumers, let alone by the unsophisticated clientele which the RTO industry traditionally has served.35/ More importantly, the disclosures are insufficient to enable standard market forces to operate to constrain prices and limit other abuses.

Finally, other states' RTO statutes suggest additional disclosures which should be required in RTO transactions. Ten states require the disclosure that the RTO customer does not obtain any ownership interest in the rented property until it is purchased.36/ Six states require that the amount of other

charges (e.g., a delivery fee) be disclosed, and three of them set the maximum amount of such charges.37/ Thirteen states require disclosure whether the rented property is new or used.38/

Recommendations: Statutory language might require disclosures in RTO transactions which will promote the informed use of credit and effective comparison of credit terms by all customer groups. Specifically, statutory language might require that all the following disclosures be made clearly and conspicuously:

a. The initial value or cash price of the property at the inception of the RTO agreement (i.e., the price at which the RTO business would sell the property to the customer if the customer were to purchase it outright).39/

b. The effective annual percentage rate if the customer were to purchase the rented property at the end of the RTO agreement.

c. The amount of periodic payments, the number of such payments, and the total amount which the customer must pay in order to purchase the property.

d. If the transaction provides an "early purchase" option, the amount which the customer must pay to exercise that option or the manner in which the early purchase price will be determined.

e. The amount and purpose of any other payment, charge or fee, and the maximum amount thereof, which may be required in addition to the periodic payments.

f. Other disclosures:

(1) That a conventional purchase may be less expensive than purchasing through an RTO transaction.

(2) Whether the rented property is new or used.

(3) Whether the customer is liable for the value of the rented property if it is lost, stolen, or destroyed, and the maximum amount of the customer's liability. This liability should not exceed the lesser of (a) the disclosed initial value or cash price of the property, less the value of the percentage of the periodic payments applicable to the purchase option, or (b) the amount necessary to exercise the purchase option or early purchase option (if any) at the time the property is lost, stolen, or destroyed. The customer should have no such liability if the initial value or cash price has not been disclosed. Nor should the customer have any such liability if the RTO business cannot establish that the customer's negligence or complicity resulted in the property's loss, theft, or destruction.

(4) That the customer does not obtain any ownership interest in the rented property until it is purchased.

Statutory language might require that all the foregoing be disclosed clearly and conspicuously in the RTO agreement, and that items (a), (b), (c) and (f)(2) and (4) be disclosed in addition on a price tag attached to any property offered for rent by an RTO business. In addition, statutory language might require the RTO business to give the customer, upon request, a copy of an RTO contract with amounts relating to a proposed RTO transaction filled in.

4. Finding: The RTO advertisements obtained by the department's investigator are misleading.

California's Business and Professions Code section 17500 prohibits false and misleading advertising. The statute has been interpreted very liberally by the courts.

An advertisement needs only to have a tendency or capacity to deceive in order to violate section 17500.40/ Interpreting section 17500, the California Supreme Court has stated:

> "...a statement is false or misleading if members of the public are likely to be deceived. Intent of the disseminator and knowledge of the consumer are both irrelevant. 'The statute affords protection against the probability as well as the actuality of deception or confusion...'."41/

An advertisement may violate section 17500 even if it has the tendency or capacity to deceive only some people.42/ As one court has stated:

> "The law is not made to protect experts but to protect the public -- that vast multitude which includes the ignorant, the unthinking and the credulous, who ... too often are governed by appearances and general impressions."43/

An advertisement is judged by the total impression left by the entire advertisement.44/ Even if an advertisement states only truths, it will be deemed to be deceptive if such truths are combined in a way that is deceptive.45/ Also, an advertisement can be deceptive where it fails to disclose material facts.46/

The advertisements obtained by the department's investigator are deceptive under these criteria. These advertisements were obtained from RTO businesses in which 50-80 percent of the RTO transactions result in customer purchases.47/ The advertisements emphasize the low weekly rate, and do not state the total amount

and number of payments necessary for the customer to acquire ownership, or that the customer will not own the property until he or she has paid the total amount necessary to acquire ownership. (See Donaldson v. Read Magazine (1948) 333 U.S. 178 (it is misleading to omit what should be said or to give undue attention to one aspect of the matter advertised and to hide another important aspect).)

For example, a four page flyer obtained by the investigator highlights on pages 1-3 a $.99 delivery fee and low weekly payments for desirable consumer electronic equipment and furniture. The flyer does not use the word "rent" in connection with a weekly payment until the bottom of page 4. It does not make any disclosures such as stated in the preceding paragraph, and mentions "rent to purchase" and rent-to-own only superficially. (This advertisement is attached as Exhibit 5.)

Another flyer obtained by the department's investigator states:

> "New, name brand TV's, stereos, appliances and furniture - you can rent-to-own. There's no credit check, low payments and we deliver your merchandise to your home fast!" (Emphasis added.)48/

This same RTO business requires customers to complete a lengthy credit form which contains questions about employment, income, other credit accounts, other rental transactions, and home ownership.49/ This form is literally a credit check, and therefore the flyer is misleading under the foregoing authorities.

Other RTO businesses' advertising material obtained by the investigator promises "no credit references required" or "no credit hassle."50/ Nonetheless, each of these businesses requires its customers to complete credit forms similar to that described in the preceding paragraph.

Recommendations: Statutory language might require that any advertisement for an RTO transaction which states a dollar amount or which uses the phrase "rent-to-own" or words of similar import must disclose all of the following:

a. The transaction is a rent-to-own transaction.

b. The total amount and number of payments necessary to acquire ownership.

c. The customer will not own the rented property until the total amount necessary to acquire ownership has been paid in full.

If the advertisement does not contain a dollar amount, only disclosures a. and c. would need to be given.

In addition, statutory language might prohibit use of the phrase "no credit check" or words of similar import in any advertisement by an RTO business if the business requires customers to complete a credit form of any kind.

5. Other findings and recommendations.

The following additional issues might also be addressed:

a. Recovery of future rental payments: In the Sacramento Municipal Court cases giving rise to the department's review of the RAC contracts, RAC sought judgment for one half of the remaining full term contract payments when the rented property was lost or stolen. The department's analysis of the contracts concluded under the legal principles which were most clearly applicable that RAC should be allowed to recover only the amount remaining unpaid on the reasonable value of the property. Statutory language might prohibit RTO businesses from recovering any future rental payments when rented property is lost, stolen or destroyed. (See also Recommendation 3.f.(3), above.)

b. Warranties: The department's investigation revealed that some RTO businesses pass unexpired warranties on to customers who purchase rented property, while others do not. Statutes in five states require that unexpired warranties be passed on to the purchasing customer, if permitted by the terms of the warranty.51/ Statutory language might require that RTO businesses pass any unexpired warranties on to the customers who purchase rented property, if permitted by the terms of the warranty.

c. Theft/loss insurance: In the department's investigation, 62 percent of the RTO businesses surveyed offered theft/loss insurance to customers at extra cost, and nine percent included the cost of such insurance in the RTO agreement.52/ RTO businesses might be prohibited from requiring RTO customers to purchase theft/loss insurance from any source.

d. Penalties: Five states' statutes provide misdemeanor penalties for wilful violation of their provisions.53/ California consumer protection statutes typically provide misdemeanor penalties for wilful violation of their provisions (e.g., the Unruh Act (Civil Code sec. 1812.6). Statutory language might provide misdemeanor penalties for wilful violations of its terms.

e. Prohibited provisions: The Unruh Act is typical of other California consumer protection statutes in that it prohibits certain contractual terms. Civil Code section 1804.1 prohibits all the following contractual provisions: (a) the

buyer agrees not to assert claims or defenses arising out of the sale; (b) the seller or holder may accelerate maturity of any amount owing in the absence of the buyer's default; (c) the buyer gives a power of attorney to confess judgment, or gives a prohibited assignment of wages; (d) the buyer authorizes the seller or any agent to enter the buyer's premises unlawfully or to breach the peace in repossessing goods; (e) the buyer waives any right of action against the seller or agent for any illegal act committed in collecting payments or in repossessing goods; (f) the buyer executes a power of attorney appointing the seller, holder or other person the buyer's agent in collecting under the contract or in repossessing the goods; (g) the buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract; (h) the buyer agrees to pay any charge in order to exercise the right to rescind or void the contract; and, (i) the buyer agrees to improper venue for an action on the contract. Statutory language might prohibit the same contractual provisions in RTO transactions as does Civil Code section 1804.1 in credit sales.

Prepared by: John C. Lamb, Staff Counsel
March, 1989

Exhibits attached:

1. RTO Market Survey Report (Summary), California Department of Consumer Affairs, Division of Investigation (December, 1988).
2. "Rent-to-Own Heads Into Mainstream," New York Times, June 8, 1988.
3. "Summary of Other States' Rent-to-Own Provisions," California Department of Consumer Affairs, Legal Services Unit (December, 1988).
4. "Analysis of Applied Interest Rates in Typical RTO Contracts," National Consumer Law Center (1987).
5. Econ-O-Rent Fall Extravaganza flyer.

FOOTNOTES

1/ National Consumer Law Center, Unfair and Deceptive Acts and Practices, "Rent-to-Own Sales," § 4.9.23.1 ((1987 Supp.) (hereafter, "NCLC").

2/ 15 USC §§ 1601 et seq. Compare Davis v. Colonial Securities Corp. (E.D.Pa. 1982) 541 F.Supp 302 with Smith v. ABC Rental Systems of New Orleans, Inc. (E.D. La. 1978) 491 F.Supp. 127.

3/ 15 USC §§ 1667 et seq. See, e.g., Smith v. ABC Rental Systems of New Orleans, Inc. (E.D.La.1978) 491 F.Supp. 127.

4/ "Rent-to-own heads into mainstream," New York Times, June 8, 1988. (Attached as Exhibit 2.); RTO Market Survey Report (Summary), California Department of Consumer Affairs, Division of Investigation (December, 1988) (hereafter, "DOI Report") (Attached as Exhibit 1).

5/ Letter dated November 1, 1988 from Ross Sargent, Consultant, Assembly Committee on Finance and Insurance, to Michael Vader, Deputy Director, Department of Consumer Affairs.

6/ An industry representative disputes that this is a typical industry practice. Oral statement of Edward L. Winn, III, California Association of Rental Dealers, February 23, 1989.

7/ Assembly Committee on Finance and Insurance, Interim Study Conference: Rent-to-Own Contracts: disclosures, November 22, 1988.

8/ DOI Report, II. 1., 3.

9/ DOI Report, III.

10/ For example, a 1987 Rent-a-Center contract provides for 60 weeks of successive payments of $13.99, followed by a "purchase price [which] will not exceed $121.71" in order to exercise the purchase option.

11/ "Summary of other States' Rent-to-Own Provisions," California Department of Consumer Affairs, Legal Services Unit (December, 1988) (hereafter, "Summary of RTO Provisions") (attached as Exhibit 3).

12/ Pa. Stat. Ann. tit. 69, § 1201(6) (Purdon). An industry representative states that, due to the manner in which the provision was enacted, the Pennsylvania Supreme Court has declared the provision to be unconstitutional. Oral statement of Edward L. Winn, III, California Association of Rental Dealers, February 23, 1989.

13/ NCLC, § 4.9.23.1.

14/ DOI Report, II. 8.

15/ Summary of RTO Provisions.

16/ Summary of RTO Provisions.

17/ Summary of RTO Provisions.

18/ DOI Report, II. 8.

19/ DOI Report.

20/ Summary of RTO Provisions.

21/ For example, in enacting the Truth in Lending Act (15 U.S.C. §§ 1600 et seq.), Congress stated: "The informed use of credit results from awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit...." (15 USC §1601.)

At least one court reviewing an RTO contract has noted that the lack of disclosures prevents consumers from making an informed decision:

> "Yet, without the disclosures contemplated by the [Truth in Lending] Act, plaintiff faces a difficult problem in calculating the rate of interest being charged; practically, she is unable to shop for credit, and the purpose of the statute is frustrated" [footnote omitted]. (Waldron v. Best T.V. and Stereo Rentals, Inc. (D.Md. 1979) 485 F.Supp. 718,720.)

22/ This conclusion is based on analysis of traditional bailment principles, contract principles (unconscionability, adhesion, and liquidated damages), and leasing cases such as Puritan Leasing v. August (1976) 16 Cal.3d 451 [128 Cal.Rptr. 175] and Newco Leasing, Inc. v. Hull (1985) 167 Cal.App.3d Supp. 1 [213 Cal.Rptr. 202].

23/ Telephone conversation, September 28, 1988, between John C. Lamb, Staff Counsel, Department of Consumer Affairs, and Carol Shaffer, Staff Attorney, National Consumer Law Center.

24/ NCLC, §§ 4.9.23.1., 4.9.23.4; NCLC's "Analysis of Applied Interest Rates in Typical RTO Contracts" shows annual percentage rates ranging from 60 percent to 462 percent (attached as Exhibit 4).

25/ DOI Report, III. At least one court has found that an RTO contract which required the customer to pay two and a half times the retail sales price of the rented property constituted an unfair trade practice.

26/ County of Los Angeles, Department of Consumer Affairs, Case Number 87003050.

27/ Summary of RTO Provisions.

28/ DOI Report, II. 7.

29/ DOI Report, II. 7.

30/ DOI Report, II. 7.

31/ DOI Report, II. 2.

32/ DOI Report, II. 7.

33/ DOI Report, II. 5.

34/ DOI Report, II. 7.

35/ DOI Report, II. 1; NCLC, § 4.9.23.1.

36/ Summary of RTO Provisions.

37/ Summary of RTO Provisions.

38/ Summary of RTO Provisions.

39/ County of Los Angeles, Department of Consumer Affairs, Case Number 87003050.

40/ Chern v. Bank of America (1979) 15 Cal.3d 866.

41/ Chern v. Bank of America (1979) 15 Cal.3d 876.

42/ Firestone Tire and Rubber Co. v. FTC (1973) 481 F.2d 246.

43/ Aronberg v. FTC (7th Cir. 1942) 132 F.2d 165, 167.

44/ Aronberg v. FTC (7th Cir. 1942) 132 F.2d 165.

45/ Chrysler Corp. v. FTC (D.C. Cir. 1977) 561 F.2d 357.

46/ P. Lorillard v. FTC (4th Cir. 1950) 186 F.2d 52.

47/ DOI Report.

48/ DOI Report.

49/ DOI Report.

50/ DOI Report.

51/ Summary of RTO Provisions.

52/ DOI Report, II. 5.

53/ Summary of RTO Provisions.

State of California

Department of Consumer Affairs

Memorandum

To : JOHN LAMB
Staff Counsel
Legal Services Unit

Date : December 6, 1988

Subject: RTO Market Survey Report

From: Division of Investigation

The Division of Investigation has completed its rent-to-own industry market survey, which was initiated pursuant to your request.

A total of 21 businesses in Sacramento, the Bay Area, and the greater Los Angeles area were surveyed. Individual reports for each of these businesses are attached, in addition to a summary report. Included within the individual reports are related materials, such as store advertising, price quotes, customer application forms, etc. Major findings of interest include:

- In a majority of the stores visited, the salesperson presented the RTO transaction as primarily a means to purchase the item(s).
- Approximately two-thirds of RTO transactions conclude with the customer purchasing the item, based upon estimates by store staff.
- In the majority of stores visited, sales personnel did not provide cost information beyond the amount and number of monthly payments.
- Total rent-to-own cost for a portable color TV set and VCR ranged up to $2520, or about $1700 more than a conventional credit-card purchase.

JON MELTZER
Project Leader

Attachments

EXHIBIT 1

ATTACHMENT LIST:
RENT-TO-OWN MARKET SURVEY REPORT

- Summary Report

- Individual Reports

1.	Rent-A-Center	(Sacramento)
2.	Econ-O-Rent	(No. Highlands)
3.	EZ Rent	(Rancho Cordova)
4.	Remco	(Citrus Heights)
5.	Budget Rents	(Fremont)
6.	Remco	(San Jose)
7.	Econ-O-Rent	(Redwood City)
8.	Universal Rentals	(San Jose)
9.	Crown Rentals	(San Francisco)
10.	Econ-O-Rent	(Vallejo)
11.	Tele Hi Fi Rental	(Pomona)
12.	Crown Rentals	(Covina)
13.	Rent-A-Center	" "
14.	Rental World	(Santa Ana)
15.	Crown Rentals	" "
16.	Colortyme	" "
17.	Mrs T's Rentals	(Montclair)
18.	Americans' RTO	(San Bernardino)
19.	The Rental Store	(Montclair)
20.	Crown Rentals	(Pomona)
21.	Remco	" "

- Rent-a-Center Rental Agreement & Advertising

RENT-TO-OWN MARKET SURVEY REPORT

I. SUBJECT DATA

NAME OF BUSINESS: SUMMARY REPORT

ADDRESS: _____

CITY: _____

TELEPHONE NUMBER: _____

SALESPERSON(s): _____ _____

_____ _____

(name) (position)

DATE OF VISIT: _____ TIME: _____

II. SURVEY QUESTIONS

1) **Did the salesperson's description of the RTO transaction lead you to believe that it was a short-term obligation or a means to purchase the rented item(s)? Was the transaction presented to be more advantageous one way or the other? Explain.**

Of the 21 businesses surveyed, the majority of salespeople (57%) described the RTO transaction as primarily a means to purchase the rented item. 4 salespeople (19%) presented the transaction as primarily a short-term obligation, while the remainder (24%) did not present it to be more advantageous one way or another.

In several instances, the salesperson stated that the rent-to-own concept was really aimed at those with little money and poor or non-existent credit ratings, i.e., those people unable to make a conventional purchase.

2) **What claims were made, if any, regarding the cost of renting the merchandise as compared to the cost of a conventional purchase? Did the salesperson volunteer this information, or did you raise the question?**

The salespeople unanimously stated that a conventional purchase would be less expensive. However, in all cases, this statement was made after the question was raised.

3) **What were you told, if anything, regarding the percentage or frequency of RTO transactions that conclude with the customer purchasing the item versus returning it? Did the salesperson volunteer this information, or did you raise the question?**

86% of the salespeople stated that the majority of rental transactions concluded with the customer purchasing the rental item(s). The average percentage who end up purchasing is 68%, or approximately two-thirds, according to estimates by seven salespeople.

4) **Did the RTO contract contain a security agreement? What disclosures and terms did the contract contain? (If possible, obtain and attach any copies)**

Unable to see or obtain a copy of the lease agreement except in two stores. Both of these do include security agreements and are attached to individual reports #5 and #8. In addition, a copy of an actual lease agreement entered into locally in 1987 is attached .

Several of the customer application forms also required the customer to indicate race and sex. Additionally, many of the applications required the customer to indicate whether receiving AFDC or other welfare assistance.

5. **What representations did the salesperson make regarding service of rented items? Did the salesperson attempt to sell a service contract? If so, for what period? Also, was any type of theft or loss insurance offered? Ask how much you would be responsible for if the set was stolen or lost and you didn't have insurance?**

Service: Provided free in 100% of the stores visited, based upon salespersons' statements.

Theft/loss insurance:

Available at additional cost by customer:	13 stores	(62%)
Included within the lease agreement:	2 " "	(9%)
Not available at all	5 " "	(24%)
Not known	1 " "	(5%)

Responsibility (based upon verbal statements)

Customer is responsible for market value if lost/stolen:	11 stores	(52%)
Customer not responsible:	1 " "	(5%)
Not known	9 " "	(43%)

6. **Were returned appliances available and/or offered for rental? If so, were they represented as used or new? How many times is a typical set rented?**

Returned items were available for rental in 19 (90%) of the stores visited, according to statements made by salespeople and/or visual observations. In two stores (10%), the salesperson stated that only new merchandise was offered, with returns being sold through a separate retail outlet. The market researcher did not observe any instances where used merchandise was misrepresented as new. Salespeople interviewed were unable to provide any estimates as to how many times a typical set would be rented.

7. **What disclosures did the salesperson make concerning the actual initial value, total RTO cost, number of payments, warranties, APR, etc, of the items to be rented? Did the salesperson volunteer this information, or did you raise the question? At what stage in the transaction were these disclosures made, e.g., price tag disclosures, during initial sales presentation, or contract disclosure?**

In general, information beyond the amount and number of monthly payments was disclosed inconsistently, and only when the question was raised. Price tags, if they were displayed at all, generally disclosed monthly payment information only. Specific findings follow:

Payments & Cost	Disclosures*
o Initial Value:	6 (29%)
o Total Cost:	15 (71%)
o Amount of monthly payments:	21 (100%)
o Total number of payments:	21 (100%)

Warranties: 16 salespeople (76%) stated that the customer retains any remaining warranties at time of purchase. Three salespeople (14%) stated that warranties were not transferrable, while two (10%) did not respond or indicated that they did not know.

APR: 13 salespeople (62%) stated that the lease agreement did not include any interest charges, while the remaining eight (38%) did not respond or indicated that they did not know.

* In at least two instances, rental figures quoted by the salesperson were understated. In one store, the salesperson underadded the total payments by several hundred dollars. In another store, the salesperson stated that the lease term was six months shorter than it actually was.

8. How did the salesperson explain the purchase option, and how the purchase price is set at any given point? What were the terms? If one or more payments were missed, could the customer reinstate the contract and not lose credit for the payments already made?

Purchase option:

In general, salespeople stated that the customer has the option to purchase, usually after a one to three month initial period, with a certain percentage of each monthly payment being credited towards the purchase. This percentage ranged from 10% to the most common credit of 50% (12 stores). In four of the stores (19%), the salesperson either did not know or did not disclose the specific percentage to be credited. Also, one store did not have an early buy-out option, according to the salesperson. Three of the stores also required the customer to exercise the purchase option within six to twelve months of initiating the lease.

Also, the majority of salespeople were vague or did not know how the purchase price is initially set.

Late payments: In 14 of the stores (67%), the salesperson stated that if a payment is missed, the customer may reinstate with a $5.00 or $10.00 late fee. In at least two instances, this contradicts copies of the lease agreements or written store policy which were obtained and which reflect a per day late charge rate. The salesperson in two other stores (10%) stated that there was a late fee of $1.00 to $2.00 per day. In five stores (24%), the saleperson either did not know or no information was obtained.

Each salesperson also stated that there would no loss of credit for payments already made when asked.

9. Based upon factors such as the location of the store, your observation of other customers, the sales presentation and store advertising, what income group(s) does the merchant appear to be focusing upon?

Based upon the above subjective factors, income group focus appears to be as follows:

- Lower-income: 3 stores (14%)
- Lower and middle-income groups: 7 " " (33%)
- Middle-income and above: 11 " " (53%)

III. COST OF SELECTED APPLIANCES

	Medium Portable Color TV w/ Remote Control		Videocassette Recorder	
Make & Model:	(COMBINED PRICE RANGE & AVERAGES FOR BOTH)			
Actual/Initial Value:*		RANGE: Low		$ 460.00**
		High		1,198.00
		AVERAGE:		864.84
Weekly/Monthly Rental Fee:		RANGE: Low		$ 63.96
		High		126.00
		AVERAGE:		98.85
Total # of payments to purchase:		RANGE: Low		12
		High		21
		AVERAGE:		18
TOTAL COST:		RANGE: Low		$1,151.28
		High		2,520.00
		AVERAGE:		1,749.92

The above cost figures include both new and used rental merchandise. In comparision, a new 19" name-brand color portable television and two-head VCR typically retails for around $700.00, or even less at a discount house. The total cost of a conventional credit card purchase over an 18 month period, even with a high-end interest rate of 22%, would be approximately $815.00. Monthly payments would be about $45.00.

Thus, those rental customers who purchase over the entire life of the lease agreement end up paying, for merchandise that may not even be new, $300 to $1700 more than a customer with a high-interest credit card would pay at a retail store.

* As set by the rental store
** Used

Rent-to-own heads into mainstream

By Michael deCourcy Hinds
New York Times

ONCE SEEN ONLY in poor neighborhoods, stores that rent appliances, furniture, televisions, video-cassette recorders and stereo equipment with the prospect of ownership are springing up in suburban shopping centers.

These rent-to-own stores are apparently finding a ready market, for in the last five years their sales have doubled, to over $2 billion. Nationwide, there are now some 3,000 rental companies with 6,000 outlets. The largest company is the 500-store Rent-a-Center chain, based in Wichita, Kan., and owned by the British conglomerate Thorn EMI.

Rent-to-own plans usually require no down payment and no credit check. Most apply a portion f the weekly or monthly rental 'ee to the purchase price, so that y the end of 18 months, the rent- owns the merchandise.

Under lease agreements, the merchandise can be returned without penalty anytime, and this appeals to many short-term renters: people whose household goods are in transit, for example, or those who want a video-cassette recorder to entertain a sick child.

But this is a convenience people pay for dearly: two to five times the normal retail value if the merchandise is rented for 18 months.

Spokesmen for attorneys general in a half-dozen states say that most customers don't realize how much rent-to-buy plans really cost because many companies fail to disclose the products' retail value and their total cost under terms of the lease. They note that only 25 percent of all renters ultimately buy the merchandise. Dealers assert that the small number of buyers indicates only that people prefer renting to owning.

A nationwide effort to regulate the industry has begun; on July 1, Illinois will become the 20th state to impose some restraints. The Illinois law, along with those recently enacted in Alabama, Georgia, Indiana, Maryland and Texas, requires the disclosure of costs and contract provisions in plain English. Some laws also provide ways for late-paying renters to reinstate lapsed purchase options, curtail late fees or limit rental charges by increasing the part applied to the purchase option.

Despite the new laws, the charges they permit are still very high, which is why the industry is so profitable, consumer advocates say. They contend that the rental portion of each payment is nothing more than a disguised finance charge.

In Pennsylvania, legislators agreed, and three months ago they limited the payments of such interest to 18 percent.

Robert J. Hobbs, the deputy director of the National Consumer Law Center, a non-profit Boston group that assists Legal Aid lawyers, gave examples of how much a consumer who rents a $500 appliance for 18 months might pay in some states: under Michigan law, $1,267, or the equivalent of about 150 percent simple interest; under New York's year-old law, $1,125, or the equivalent of 125 percent simple interest, and in South Carolina, $1,011, or just over 100 percent simple interest.

J. Samuel Choate, who represents the Association of Progressive Rental Organizations in Washington, contends that such high rental fees reflect a reasonable "risk-reward ratio" because each year customers steal or damage 5 percent of the merchandise they rent.

Choate said he supports regulation. "My office wrote most of it," he said. "There are people in the rent-to-own business doing bad things, but no more in this industry than in others. As the industry gets regulated in a balanced way, it will tend to get the bad apples out."

Floyd Draghon Jr., collection manager at Rental World in Jersey City, is candid about the rent-to-own business. "Most people know there is a gimmick in there somewhere, but they don't quite understand it," he said. "People focus on the low weekly rate."

"I personally don't allow anybody I know to come into my store," Draghon said. "That's just the way I feel."

NEW YORK TIMES — June 3, 1986

EXHIBIT 2

SUMMARY OF OTHER STATES' RENT-TO-OWN PROVISIONS

State	Credit Sale	Where	New or Used	Amount/No. of pmts	Specific other charges	No ownership int	Expl of liability for loss	Expl of purch opt/ rt to reinstate	Initial value	Price tag discls	Warranty passed to lessee
	Disclosures Required										
Alabama	N	K or Sep. Form	Y	Y/Y	N	Y	Y	N/N	N	–	–
Arkansas	N	K	Y	Y/Y	N	Y	Y	N/Y	N	–	–
Connecticut	Y	–	–	–	–	–	–	–	–	–	–
Florida	N	K or Sep. Form	Y	Y/Y	N	–	Y	Y (Formula)/Y	Y	–	Y
Georgia	N	K	Y	Y/Y	N	–	Y	Y (Formula)/Y	Y	–	Y
Indiana	–	K or Sep. Form	Y	Y/Y	N	Y	Y	Y (Formula)/Y	N	–	–
Iowa	N	K	Y	Y/Y	Y	Y	Y	Y (Max%Stated)/Y	Y	–	–
Maine	Y	–	–	–	–	–	–	–	–	–	–
Michigan	N	K or Sep. Form	Y	Y/Y	Y	–	Y	Y(Formula)*/Y	Y	Y	Y
Minnesota	Y	–	–	–	–	–	–	–	–	–	–
Missouri	N	K	Y	Y/Y	N	Y	Y	–/Y	Y	–	[Y]
New York	N	K	Y	Y/Y	Y	Y	Y	[Y] */Y	Y	Y	–
North Carolina	Y	–	–	–	–	–	–	–	–	–	–
Oklahoma	N	K	Y	Y/Y	Y	Y	Y	–/Y	N	–	–
Pennsylvania	Y	–	–	–	–	–	–	–	–	–	–
South Carolina	N	K	Y	Y/Y	Y	Y	Y	Y (% Stated)/N	N	–	–
Tennessee	N	K or Sep. Form	Y	Y/Y	N	Y	Y	Y/Y	Y	–	Y
Texas	–	K	Y	Y/Y	Y	Y	Y	N/Y	Y	–	–
Wisconsin	Y	–	–	–	–	–	–	–	–	–	–

* Statute specifies percentage of periodic payments to be applied to purchase price if purchase option exercised.

Y = Yes; N = No; – = No mention or applicability cannot be determined; [] = Probably Y or N.

EXHIBIT 3

State	Reinstatement Rights: Time allowed to (wkly pmts/Monthly pmts/ Upon return)	Limit on rt to exercise	Reinstate orig contract	Maintain all rts	Same/ equiv merch	Reinstatement fee	Sec int allowed	Balloon pmt prohibited	Limit on lessor's damages	"Bona Fide" error exemption	Misd penalty provision
Alabama	(2dys/5dys/30dys)	3X	-	Y	Y	Y	-	-	Y	N	-
Arkansas	(2dys/5dys/30dys)	3X	-	Y	Y	Y	N	-	Y	N	-
Connecticut	- - -	-	-	-	-	-	-	-	-	-	-
Florida	Within 60 dys of last timely pmt. Return req. if requested by lessor	-	Y	Y	Y	$5 + $5 delinquency charge + redelivery if req.	-	-	Y	N	Y
Georgia	Within 3 periodic pmts. Return req. if requested by lessor	Up to 3 pmts missed	Y	Y	Y	$5 + redelivery if req.	-	-	Y	N	Y
Indiana	60 dys. Return req. if requested by lessor	-	Y	Y	Y	$5 + delinquency charges: $3 if wkly pmt, $5 if monthly pmt, + redelivery if req.	[N]	-	Y	Y	Y
Iowa	60 dys. Return req. if requested by lessor	-	Y	Y	Y	$5 + redelivery if req.	[N]	Y	Y	Y	Y
Maine	- - -	-	-	-	-	-	-	-	-	-	-
Michigan	Within 3 periodic pmts & return req.	Up to 3 pmts missed	Y	Y	Y	$5 + redelivery if req.	-	Y	Y	Y	-
Minnesota	- - -	-	-	-	-	-	-	-	-	-	-
Missouri	Within 3 rental "terms." Return req. if requested by lessor	-	Y	Y	Y	$5 + $5 delinquency charge + redelivery if req.	[N]	Y	-	N	-
New York	(3dys/7dys/30dys or longer)	-	-	Y	Y	$3 if wkly pmt, $5 if monthly pmt	[N]	Y	Y	Y	-
... Carolina	- - -	-	-	-	-	-	-	-	-	-	-
Oklahoma	(2dys/2dys/30dys) Return req. if requested by lessor	-	-	Y	Y	$5 + redelivery if req.	-	Y	Y	Y	-
Pennsylvania	- - -	-	-	-	-	-	-	-	-	-	-
S. Carolina	Within 60 dys of last timely pmt. Return req. if requested by lessor	-	Y	Y	Y	$2 if less than monthly pmt, $4 if monthly pmt, + redelivery if req.	-	-	Y	N	-

APPLIED INTEREST RATES IN TYPICAL RTO CONTRACTS

The finance charge and interest rate or annual percentage rate (APR) of an RTO contract depends on the retail cash value of the appliance (especially whether new or used) and the timing, amount, and number of payments. The following chart illustrates the APR computations.

		52 Weeks		78 Weeks		104 Weeks	
Amount Financed	Weekly Payment	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR
200	$16	$632	408%	$1048	415%	$1464	416%
	$18	$736	462%	$1204	467%	$1672	468%
300	$16	$532	254%	$ 948	272%	$1364	276%
	$18	$636	294%	$1104	309%	$1572	311%
400	$16	$432	168%	$ 848	197%	$1264	204%
	$18	$536	201%	$1004	226%	$1472	231%
500	$16	$332	111%	$ 748	148%	$1164	159%
	$18	$436	140%	$ 904	173%	$1372	182%
	$20	$540	168%	$1060	197%	$1580	204%
600	$16	$232	68%	$ 648	113%	$1064	128%
	$18	$336	95%	$ 804	135%	$1272	147%
	$20	$440	121%	$ 960	156%	$1480	167%
700	$18	$236	60%	$ 704	106%	$1172	122%
	$20	$340	84%	$ 860	125%	$1380	139%
	$22	$444	107%	$1016	144%	$1588	156%

For example, in the Boston area, a 19" brand name, new color TV with standard features may sell for less than $300. A 25" table model, color television may sell for less than $500 and a 25" console television may sell for less than $600. Remote control and other options may add $60 to $70 to the price. Therefore, if an RTO customer leases a new 19" color TV (worth $300) for $16.00 per week for 52 weeks, the APR would be about 254%. However, if the customer leased a *used* 19" color TV (worth about $200 or less) for the same payment terms, the APR could be 408% or more.

National Consumer Law Center, Unfair and Deceptive Acts and Practices, "Rent-to-Own Sales," §4.9.23.4 (1987 Suppl.)

EXHIBIT 4

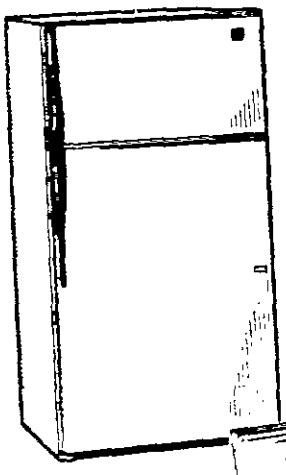
State	Reinstatement Rights: Time allowed to Act: (Wkly pmts/Monthly pmts/ Upon return)	Limit on rt to exercise	Reinstate orig contract	Maintain all rts	[illegible] or equiv merch	Reinstatement fee	Sec int allowed	Balloon pmt prohibited	Limit on lessor's damages	"Bona Fide" error exemption	Misd penalty provision
Tennesse	(2dys/5dys/30dys) or longer, if return requested by lessor	-	[Y]	Y	-	-	[N]	-	Y	Y	Y
Texas	Up to ½ of payment period/30dys or longer	-	-	Y	Y	$2-$5	-	Y	Y	N	-
Wisconsin	- - -	-	-	-	-	-	-	-	-	-	-

Y = Yes; N = No; - = No mention or applicability cannot be determined; [ ] = Probably Y or N.

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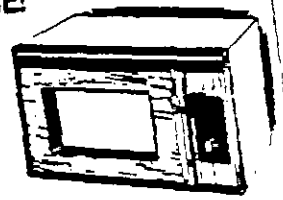
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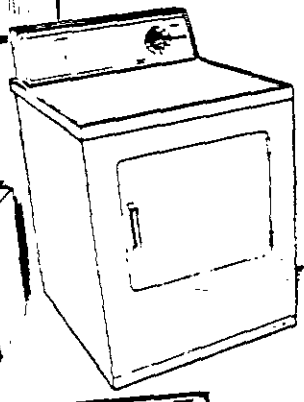


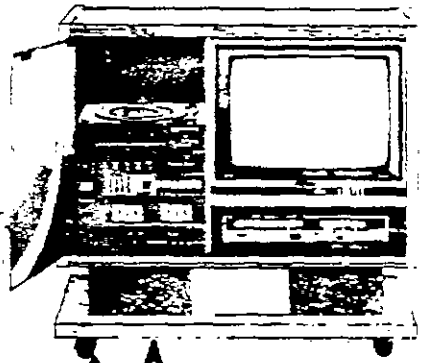
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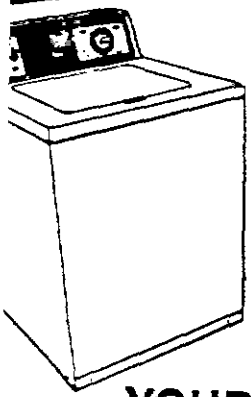
NO CREDIT HASSLE FREE DELIVERY & SERVICE!

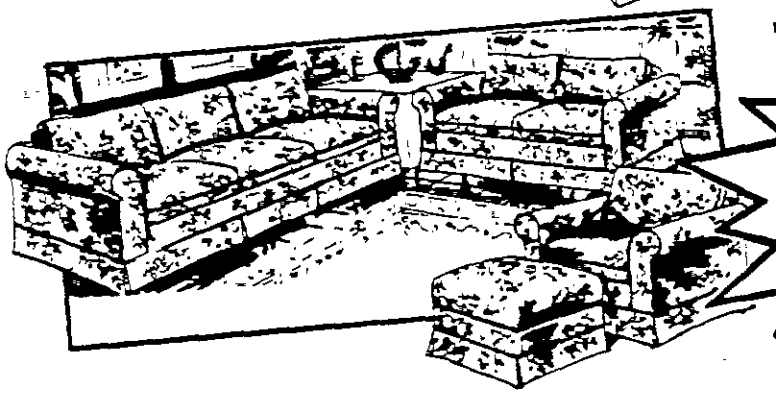






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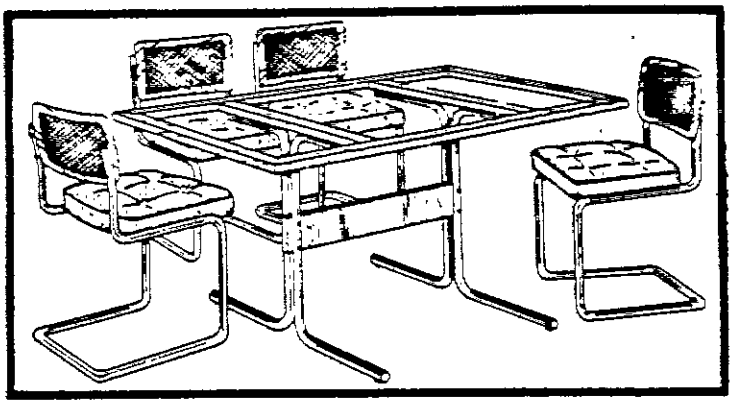
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EXHIBIT 5

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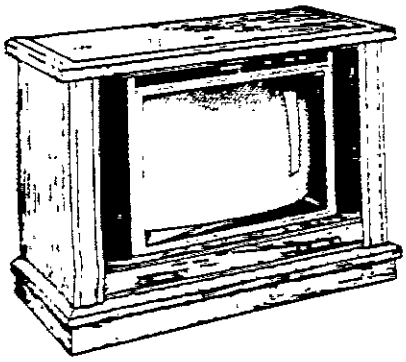


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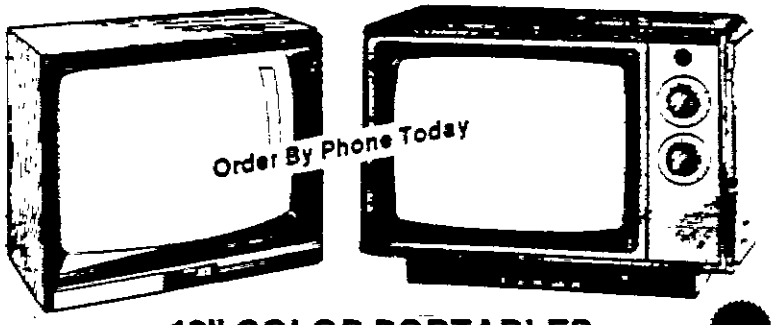
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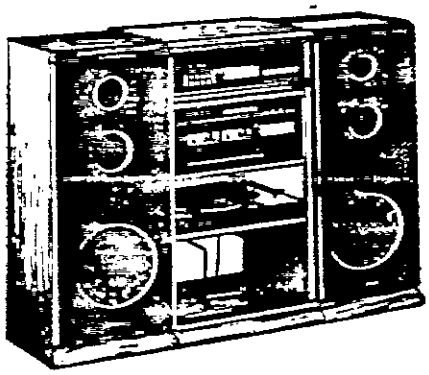


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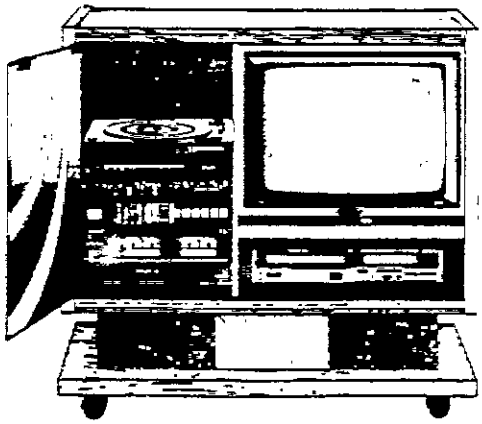
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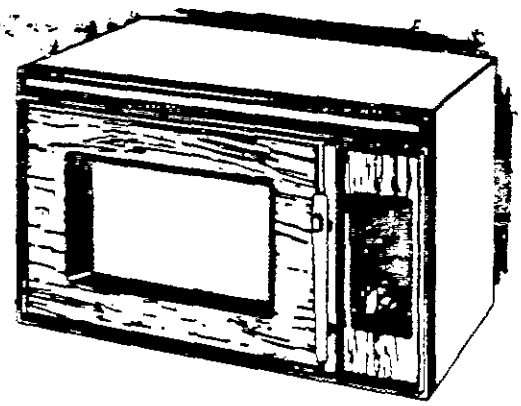
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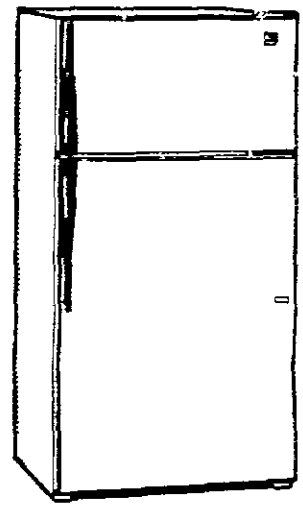
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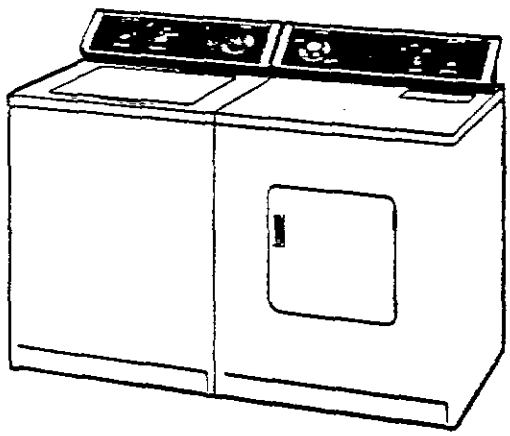
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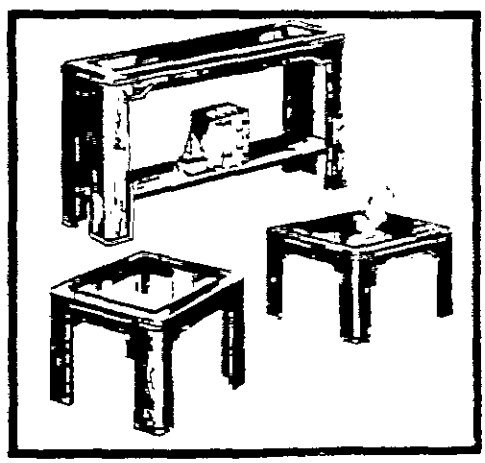


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5. Contest is open to all recipients except employees and their families of any Trib member store or Hillman Publishing.
6. Contest is void where prohibited by law.
7. For name of winners, send a stamped self-addressed envelope to Trib National Sweepstakes c/o Hillman Publishing, 58 School Street, Glen Cove, NY 11542.
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MEDIA ADVISORY - 3950F

INDIANAPOLIS--If you are considering buying a television, stereo or household appliance through a rent-to-own business, make certain you determine the total cost before signing a contract.

Attorney General Linley Pearson says many consumers are enticed into renting televisions, stereos and household appliances when they see low weekly or monthly rates advertised by the rent-to-own businesses.

Before agreeing to sign a rent-to-own contract consumers should investigate the many ways items can be purchased.

"Rent-to-own agreements allow the renter to own the item after a series of payments are made," Pearson explains. "If you sign an 18-month contract with a rent-to-own business, you could actually pay three times the retail price of the item."

Pearson says his office surveyed three Indianapolis rent-to-own businesses, checking the rental price of a 19-inch television set. The business was asked to give a monthly quote for a certain brand-name television set. The business was also asked the length of time necessary to purchase the item, and in each instance the time period quoted was 18 months.

In the first call, the business stated it would cost $40 a month to rent the television set. After 18 months, the consumer would own the television set. The total cost of the set over 18 months would be $720.

The second business offered to rent a television set for $54.95 a month. Over an 18-month period a consumer would spend $990 to own the set. The third business quoted a monthly rental price of $43. The cost of the set over 18 months would be $774.

Pearson says a similar 19-inch television set was advertised at an appliance store for about $290. Financed at 21 percent, the usual finance charge on credit purchases, the monthly payment would have been less than $20 and the total cost of the television would have been under $350.

"Don't be fooled by low weekly or monthly rental rates," Pearson explains. "Because the laws governing credit purchases and limits on annual percentage rates do not apply to rent-to-own businesses, consumers can end up paying finance charges two or three times the retail price of the item."

Pearson says consumers instead should investigate purchasing items from a retail store which offers a credit plan or seek a small loan from a lending institution or credit union. If the item was purchased with a credit card which charged 21 percent interest the final cost would be less than that of a rent-to-own agreement.

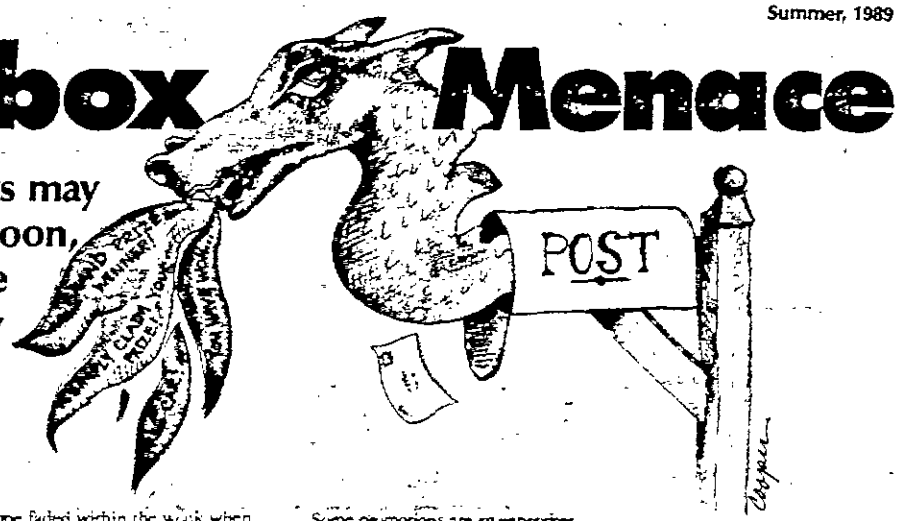
Pearson says rent-to-own agreements can allow the business to take back the item if a payment is missed. If a consumer is renting the item with the hope of ownership after a certain period, payments up to the time the company took back the item could be forfeited. Rent-to-own businesses can charge a fee to reinstate a rental agreement if a consumer wants to continue renting the item.

Office of the Attorney General Consumer Protection Division J. Joseph Curran, Jr., Attorney General

MARYLAND Consumer Courier

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Mailbox Menace



Junk mail giveaways may promise you the moon, but underneath the glitz, they're simply sales gimmicks.

The letter marked "urgent" in their mailbox read, "Congratulations! You have been selected to win one of the following prizes: A round trip to Bermuda, a 1989 Chevy Blazer, a 35 millimeter camera, a microwave oven, a 5-foot grandfather clock, or a 2-carat diamond and emerald ring. To collect your prize, you must appear in person with your spouse, so call the Have-We-Got-A-Deal-For-You Company today (long-distance) to set up an appointment to collect your gift. No information will be given over the phone."

Like many consumers, Maryland resident Jim and his wife Susan lost no time in making the 100 mile trip to this Virginia land promotion company to claim their gift. Upon arrival, they were taken on a three-hour tour of the property for sale before they were allowed to claim their prize.

At first, Jim and Susan thought it was well worth sitting through the three-hour sales pitch because they had won the 5- foot grandfather clock. However, their minds began to change when they were handed a large carton containing several pieces of pressed wood, a clock face, and a one inch metal box with the clockworks—a set of clockworks you could wear on your wrist.

Their dismay increased as they calculated the time and expense of making the trip and assembling the clock. The extent of their folly became evident the next day when the clock stopped working, and all hope faded within the week when the hands dropped off. The clock now stands in Jim's office as a monument to the adage that if something sounds too good to be true, it usually is!

Is This Really Your Lucky Day?

Just like Jim and Susan, many Marylanders are finding announcements in their mailboxes that they are lucky winners of sweepstakes and sales promotions. However, it is highly unlikely that they have won anything of real value.



Some promotions are sweepstakes in which there is an element of chance; others are giveaways in which everyone receives a prize. A promotion can involve your traveling long distances to claim a prize, or the obligation can be as little as filling out a simple form and buying a postage stamp.

Maryland law requires promoters to make disclosures about the prizes they offer so that consumers are protected from inflated and unrealistic expectations. Read all the disclosures so that you can make an informed decision about whether you want to participate in a particular promotion or sweepstakes. These disclosures are supposed to be on the front page of the prize notification.

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MARYLAND CONSUMER COURIER
Office of the Attorney General
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The "Rent-To-Own" Alternative

Although Ads Tout Easy Terms And No Security Deposit, Customers Pay Premium Prices to "Own"



If you need a television, refrigerator, or other "big ticket" item, you probably buy it from a retail store and pay cash or use credit. If you buy on credit, Maryland law protects you by limiting the amount of interest retail merchants can charge to no more than 24%. Merchants are also required to tell you up front how much interest you will have to pay.

Some consumers are attracted to an arrangement commonly called "rent-to-own." Rent-to-own dealers advertise that— without a credit check or down payment— a consumer can own a product after paying a weekly or monthly "rental" payment for a certain period of time. The consumer is obligated to pay the weekly or monthly rental for the period that he has the item, and can end the arrangement by returning the rented item to the merchant. If the consumer returns the item and is paid up in back rent, he will have no further obligation to the rent-to-own merchant.

Rent-To-Own vs. Installment

Rent-to-own consumers who ultimately buy the product by making the required amount of rental payments end up paying substantially more than the amount it would have cost to buy the product for cash or on an installment plan. For example, if a consumer buys a new $400 television on an 18-month installment plan at the maximum allowable interest, the total cost is $480. Under an 18-month rent-to-own plan, the consumer typically pays $1000 or more for the same television, even though it might be used.

Under both the installment plan and the rent-to-own plan, the consumer pays some amount above the cash price of the product as a charge for the opportunity to pay for the product over time. This cost can be measured as an annual percentage rate (APR) above the cash price. In the example given above, the APR in the rent-to-own plan was 145%—far above the 24% legal limit for credit sales. Rent-to-own dealers often charge APRs as high as 120%-150%. Maryland law does not place any limits on the APR which a rent-to-own dealer can charge.

Rent-to-own consumers end up paying substantially more than it would have cost to buy the product for cash or on an installment plan.

Rent-to-own dealers are also not required to disclose to consumers the APR that the consumer ends up paying to own the product. In addition, the APR is very difficult to calculate because of compounded inter-

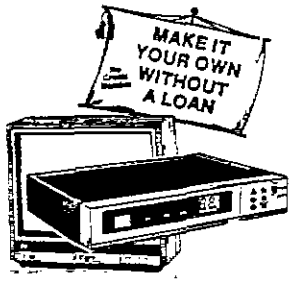
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est. This makes it hard for a consumer to compare the cost of a purchase on a rent-to-own plan with the cost of a purchase on a credit installment plan.

However, consumers can estimate the APR themselves before entering into a rent-to-own transaction. Figure A is a chart which can help you estimate the APR for a particular transaction, such as renting to own a television or refrigerator. Once you have determined the APR, you should carefully compare the rent-to-own deal with whatever other options are available to you for purchasing the product you want. Figure B describes some of these options. With this information, you can make an informed decision about which deal is the best for you.

Another important factor to keep in mind is that an appliance obtained under a rental purchase contract might be several years old and may previously have been in many other homes. Ask the dealer about the appliance's age and history. In order to choose your best deal, you need to know.

An appliance obtained under a rental purchase contract might be several years old and may previously have been in many other homes.



New Laws Help Consumers

Although there is no regulation of the APR charged by rent- to-own dealers, this year the Maryland General Assembly did pass a law that provides some new protections for rent-to-own consumers. Starting this September, rent-to-own dealers will be required to disclose the following important terms in their contracts:

- How much the item would have cost if the consumer bought it for cash;
- How many rental payments the consumer must make to own the item;

Continued next page

FIGURE A

Is the Convenience Worth the Cost?

How to Compute Rent-to-Own Implicit Interest

CASH PRICE OF PRODUCT	TOTAL OF PAYMENTS OVER 18 MONTHS											
	$400 ($22.22 a month)	$600 ($33.33 a month)	$800 ($44.44 a month)	$1000 ($55.55 a month)	$1200 ($66.66 a month)	$1400 $77.77 a month)	$1600 ($88.88 a month)	$1800 ($100.00 a month)	$2000 ($111.11 a month)	$2200 ($122.22 a month)	$2400 ($133.33 a month)	$2600 $144.44 a month)
$200	103%	185%	258%									
$300	58%	103%	158%	210%	258%							
$400	9	56%	103%	145%	185%	222%	258%					
$500		24%	66%	103%	137%	169%	200%	229%				
$600		0	39%	72%	103%	132%	159%	185%	210%			
$700			17%	48%	77%	103%	127%	151%	174%	196%	217%	
$800			0	29%	56%	80%	103%	126%	145%	165%	185%	204%
$900				13%	38%	61%	83%	103%	122%	140%	158%	176%
$1000				0	24%	46%	66%	85%	103%	120%	137%	153%
$1100					11%	32%	51%	69%	86%	103%	119%	134%
$1200					0	20%	38%	56%	72%	88%	103%	118%

How To Use This Chart

By using this chart, you can estimate the implicit interest which you will be charged if you make enough rental payments to own the product. Along the left side of the chart is the "cash price," or the amount which you would pay to buy the product with one payment. Along the top of the chart are the total amounts which you would be paying to buy the product under a rent-to-own plan. In parentheses under each total amount is the cost of each monthly payment. All three of these amounts should appear on the rent-to-own contract.

To figure out the implicit interest, you should first find the cash price of the product you are buying. Then follow across the chart to the column that corresponds to the total amount you must pay to own the product. For example, if the cash price is $400 and the total amount which you must pay to own is $1000, the implicit interest would be 145%.

If your cash price or total payment amount falls between the numbers on the chart, you can use the chart to estimate the implicit interest. For example, if the cash price is between $400 and $500 and the total payment amount is $1000, your implicit interest will be between 103% and 145%. If the cash price is between $400 and $500, and the total amount to be paid is between $1000 and $1200, then the implicit interest would be between 103% and 184%.

This chart is based upon your paying the total amount needed to own the product in 18 months. If your agreement permits you a longer time to pay that amount, your implicit interest would be less than shown on the chart. If your agreement gives you less time to pay that amount, your implicit interest would be higher than shown on the chart. ■

FIGURE B

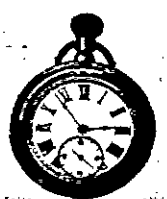
WHAT ARE YOUR OPTIONS?

Payment Option	Cost To Consumer	Ownership And Possession	Consumer's Liability	Service	Need Credit Check?	Down Payment
Pay Cash	Cash price of item.	Must have full price available in cash; immediate ownership.	None.	Covered by manufacturer's warranty and by implied warranty under Maryland law.	Not with cash; check payment might require credit card for identification.	N/A
Delay purchase until money saved in bank.	For $400 TV, cost is cash price minus interest earned in bank.	No possession until full price is saved. Can usually save enough to purchase the product in a third to a half of the term of a rent-to-own if amount of rent-to-own payments banked each month.	N/A	Same as if you pay cash.	No.	Some banks may have minimum balance requirement.
Layaway	For $400 TV, cost is cash price plus small handling charge.	No ownership or possession of goods until full price paid; can pay in installments over time.	If default or cancellation, 10% of purchase price or amount already paid, whichever is less, may be retained by merchant.	Same as if you pay cash.	Usually not.	Some payment is required at time of layaway.
Installment Sale	Cash price of item plus finance charges (maximum 24% interest rate); property insurance might be required. For $400 TV, cost is $480 assuming 24% interest over 18 months.	Ownership and possession once installment contract signed; periodic installment payments thereafter.	Owe full contract price except in limited circumstances. If repossessed, no further obligation unless cash price is more than $2000.	Covered by manufacturer's warranty and implied warranty under Maryland law.	Yes.	Usually some down payment required upon signing of contract.
Rent-to-Own	Cash price of item plus implicit finance charges (unlimited interest rate, often as high as 120%-150%). For $400 TV, cost is $1000 assuming 145% implicit interest and 18-month payment schedule.	Possession at time contract is signed and initial rental payment made. No ownership until total of required rental payment made. Goods offered for rent-to-own contract are often used.	No liability for future rental payments if property is returned. Liability for damage, theft, or loss up to value of property.	Lessor must service and maintain while payments being made. Often, no warranty after ownership acquired.	No, but verification of income and residence might be required.	At least one rental payment is usually required.

- How much each rental payment will be;
- How much the consumer will have to pay in total to own the item;
- How the consumer can buy the item early;
- Whether the item is new or used;
- That the merchant is responsible for repairing the item; and
- How the consumer can reinstate the agreement if he misses a payment.

The new law will also protect consumers who are late in making a rental payment. Today, a rent-to-own merchant may repossess an item as soon as a consumer misses a rent-to-own payment. This repossession usually has the effect of ending the rent-to-own arrangement, and the consumer loses the benefit of all the payments made toward owning the item.

But beginning September 1, a consumer who misses a payment will have at least fifteen days after the merchant repossesses the item to make the late payment and regain his or her rights under the agreement. If the consumer who has missed a payment voluntarily permits the rental merchant to pick up the property, the consumer will then have from 21 to 45 days to make the late payment and reinstate the agreement, depending on how many payments the consumer had already made toward owning the property. These new requirements will protect consumers who have made a substantial investment toward owning the item. ■



It's Not Too Late To Change

The difference between the rent-to-own cost and the installment sale cost is so great that a rent-to-own consumer can make a substantial amount of rental payments, return the product, buy the same product on the installment plan, and still save money. In the example of the $400 TV, the consumer could make up to nine monthly rental payments, return the television, buy the same television on an 18 month installment plan at maximum allowable interest, and still end up paying less for the television than if he or she had continued on the rent-to-own plan.