



DEFENDING YOURSELF IN MAGISTERIAL DISTRICT JUDGE COURT SELF-HELP KIT

REMEMBER

The Law often changes. Each case is different. This self-help kit is meant to give you general information, not specific legal advice.

CHECKLIST WITH ATTACHED WORKSHEETS FOR
DEFENDING YOURSELF IN MAGISTERIAL DISTRICT JUDGE COURT

(THESE INSTRUCTIONS HAVE BEEN PREPARED FOR THE BENEFIT OF THE PUBLIC BY NORTH PENN LEGAL SERVICES TO HELP MEET THE OVERWHELMING DEMAND FOR SERVICES. THEY ARE NOT INTENDED AS A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. NEITHER NORTH PENN LEGAL SERVICES NOR THE PROTHONOTARIES OF THE COUNTY COURTS ASSUME RESPONSIBILITY FOR (1) THE CORRECTNESS OF THE INFORMATION CONTAINED HEREIN FOR APPLICATION TO ALL CIRCUMSTANCES, (2) THE USE OF THE INFORMATION CONTAINED HEREIN OR ITS CONSEQUENCES).

INSTRUCTIONS: Check off each item completed as you proceed through this packet.

- (X) I received a written Complaint against me in Magisterial District Judge Court (Sample attached: See Appendix 1). For landlord/tenant matters refer to materials on "Representing Yourself in an Eviction Case".
- () I filled in the Intent to Defend form (Appendix 2) and mailed the completed form to the Magisterial District Judge Court OR I took it to the Magisterial District Judge Court and gave it to them OR I called the Magisterial District Judge Court and told them I will come to the hearing to defend. (Specific instructions vary from one magisterial district court to the next – see notice on civil complaint you received for what is required in that particular court.)
- () I checked off the boxes listing my defense(s). (P-2).
- () I completed an explanation page for each defense I checked off. (P-3 through P-7).
- () If Defense #5 was checked off - I filed my Counterclaim. (Appendix 3 and Appendix 4).
- () I checked off the boxes listing my evidence. (P-8).
- () I subpoenaed my witness and/or arranged for them to come to the hearing. (P-8).
- () I gathered up all my other evidence (Boxes A, B, and C on P-8) and will take it with this packet to the hearing.

AT THE HEARING, FOLLOW INSTRUCTIONS ON THE "HEARING" WORKSHEET.

PLEASE NOTE: THIS PACKET IS A WORKBOOK FOR YOUR USE AND REFERENCE. The only things you hand in to the Magistrate Court are the Notice of Intent (Appendix 2), and - if you check Defense #5 - a Counterclaim (forms for these are available from the Magistrate Court).

LIST OF DEFENSES

I DISAGREE WITH THE CLAIM OF THE PLAINTIFF (PERSON WHO FILED THE COMPLAINT) BECAUSE:

CHECK ALL THAT ARE TRUE:

- () (1) **THE PLAINTIFF'S EXPLANATION FOR THE MONEY CLAIMED IS NOT TRUE OR ONLY PARTLY TRUE; OR I DON'T OWE AS MUCH AS THE PLAINTIFF IS CLAIMING. (P-3)**
- () (2) **THE PLAINTIFF IS NOT THE COMPANY FROM WHICH I BORROWED THE MONEY. (P-4)**
- () (3) **THERE ARE REASONS THAT MAKE IT UNFAIR FOR PLAINTIFF TO COLLECT ON THEIR CLAIM. (P-5)**
- () (4) **STATUTE OF LIMITATIONS/THE CLAIM IS TOO OLD. (P-6)**
- () (5) **THERE ARE REASONS WHY THE PLAINTIFF SHOULD PAY ME/OR OWES ME MONEY. (P-7)**

(IF YOU CHECKED BOX (5), YOU **MUST** FILE A COUNTERCLAIM IMMEDIATELY: SEE APPENDIX 4 – RULE 315 and APPENDIX 5 – INSTRUCTIONS FOR FILING COUNTERCLAIM)

THE BOXES YOU CHECKED ARE YOUR DEFENSES.
YOU MAY HAVE ALL, TWO OR THREE, ONLY ONE OR NO DEFENSES.

EXPLANATION OF DEFENSE

() **Defense 1:**

The statements on Plaintiff's Complaint form are not true or only partly true. What really happened is:

The evidence of my defense is:

EXAMPLES:

The loan was for \$300 without interest, not \$500.

I already Paid Plaintiff \$200

EXAMPLES:

1. Testimony of John Doe who was there when Plaintiff admitted it later.
2. Written agreement signed by Plaintiff
3. Receipts.
4. My testimony.

EXPLANATION OF DEFENSE

() **Defense 2:**

The Plaintiff is not the company from which I borrowed the money.

(Often, loans or credit card debts are sold by the original company to another company. The company which bought your debt can bring an action to collect it, but they must prove that they own the debt. This requires them to produce copies of the bill of sale for the debt.)

I borrowed money/opened a credit card account with (name of company):

but the Plaintiff in this case is (name of company):

EXAMPLE:

I opened a credit card account with Credit One Bank but the Plaintiff is LVNV Funding. LVNV must produce the documents showing that they bought your account from Credit One Bank.

EXPLANATION OF DEFENSE

() **Defense 3:**

It would be unfair for me to have to pay Plaintiff money because:

EXAMPLE:

Plaintiff misrepresented important facts about our agreement.

The evidence of my defense is:

Evidence:

Testimony and/or documents showing what Plaintiff told you.
Your testimony, other documents, etc. regarding what the true facts were.

EXPLANATION OF DEFENSE

() **Defense 4:**

Plaintiff's claim is too old. **THE STATUTE OF LIMITATIONS HAS EXPIRED.**

Plaintiff's **CLAIM IS FOR:** _____
(Type of Claim)

AND IS MORE THAN _____ **YEARS OLD.**
(Time limit imposed by statute)

SEE APPENDIX 3 - SOME COMMON TIME LIMITATIONS.

Generally, **A TWO YEAR STATUTE OF LIMITATIONS** applies to claims regarding **INJURIES TO PEOPLE OR DAMAGES TO PROPERTY.**

Generally, **A FOUR YEAR STATUTE OF LIMITATIONS** applies to claims regarding **LOANS AND OTHER CONTRACTS OR AGREEMENTS.**

For more information, see Title 42 of Pennsylvania's Consolidated Statutes, Chapter 55.

EXPLANATION OF DEFENSE

() **Defense 5:**

Plaintiff owes me/should pay me \$_____ (amount of money) because:

(for example - Unfair Trade Practices Act: see Appendix 6).

IF YOU COMPLETED THIS PAGE AND WANT THE COURT TO CONSIDER THIS AS YOUR DEFENSE, YOU MUST FILE A COUNTERCLAIM. (SEE APPENDIX 4 – RULE 315 and APPENDIX 5 – INSTRUCTIONS FOR FILING A COUNTERCLAIM).

EVIDENCE

(X) **I WILL NEED TO PROVE THE FACTS OF EACH OF MY DEFENSES. MY EVIDENCE IS (be sure to list evidence of all facts listed on explanation of defense forms):**

- A. () Bills, estimates, receipts or statements of account made in the regular course of business.
- B. () Contracts, written agreements, notices, or other written material.
- C. () Physical evidence or photographs of physical evidence.
- D. () Testimony of other witnesses and/or my own testimony.

BUT BEWARE OF HEARSAY:

WITNESSES CANNOT GENERALLY TESTIFY ABOUT RUMORS (STATEMENTS MADE BY ANOTHER PERSON), EVEN IF THE WITNESS IS SURE THE RUMOR IS TRUE. YOU MUST GET THE PERSON WHO KNOWS (SAW OR HEARD DIRECTLY). EXCEPTION: A WITNESS CAN TELL THE COURT WHAT SOMEONE (ESPECIALLY THE PLAINTIFF) ADMITTED.

LIST NAMES AND ADDRESSES OF EACH WITNESS

Witness 1: _____

Witness 2: _____

Witness 3: _____

Witness 4: _____

() **I ARRANGED FOR EACH WITNESS TO COME TO THE HEARING (SUBPOENAS ARE AVAILABLE FROM THE DISTRICT MAGISTRATE, IF NECESSARY).**

() **I GATHERED UP ALL OF MY EVIDENCE LISTED IN BOXES, A, B AND C.**

() **I CAN TESTIFY OR I HAVE ANOTHER WITNESS TO TESTIFY THAT THE EVIDENCE IS REALLY WHAT I CLAIM IT TO BE (THAT IS, THE CONTRACT BETWEEN THE PARTIES, A PHOTO OF THE DAMAGE OF THE CAR, ETC.)**

HEARING

The hearing usually starts with brief opening statements from each side. Plaintiff goes first; then you as the Defendant. Each side then presents their evidence; again, the Plaintiff goes first; then you as the Defendant. **(EACH TIME THE PLAINTIFF PRESENTS MORE EVIDENCE, YOU SHOULD HAVE A CHANCE, IF NECESSARY, TO PRESENT EVIDENCE AGAINST THE PLAINTIFF'S EVIDENCE.)**

STEPS OF HEARING:

A. PLAINTIFF'S OPENING STATEMENT

B. MY OPENING STATEMENT

I SHOULD: **READ MY EXPLANATION OF DEFENSE FOR EACH OF MY DEFENSES (P-3 THRU 7) OR TELL IT TO THE MAGISTRATE.**

C. PRESENTATION OF EVIDENCE BY PLAINTIFF

PLAINTIFF'S WITNESSES:

I SHOULD: **IF THE WITNESS IS NOT TELLING THE WHOLE STORY, OR LIES, I SHOULD ASK QUESTIONS WHEN IT'S MY TURN.**

D. PRESENTATION OF EVIDENCE BY DEFENDANT (YOU)

MY WITNESSES:

I SHOULD: **ASK EACH WITNESS TO TELL THE COURT:**

- 1. WHO THEY ARE**
- 2. WHERE THEY LIVE**
- 3. HOW THEY KNOW THE FACTS OF THE CASE**

THEN ASK THE WITNESS TO TELL THE COURT THE FACTS

IF A WITNESS KNOWS ABOUT YOUR OTHER EVIDENCE (BOXES A, B and C on P-8, PAPERS, PICTURES, ETC.), ASK THE WITNESS TO IDENTIFY THAT EVIDENCE AND THEN SHOW THE EVIDENCE TO THE COURT AND ASK THAT THE EVIDENCE BE ADMITTED.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: _____

CIVIL COMPLAINT

Magisterial District Number: _____

MDJ Name: Hon. _____

Address: _____

Telephone: () _____

PLAINTIFF: _____

NAME and ADDRESS

VS.

DEFENDANT: _____

NAME and ADDRESS

Docket No.: _____

Date Filed: _____



	AMOUNT	DATE PAID
FILING COSTS	\$ _____	_____
POSTAGE	\$ _____	_____
SERVICE COSTS	\$ _____	_____
CONSTABLE ED.	\$ _____	_____
TOTAL	\$ 0.00	_____

Social security numbers and financial information (e.g. PINS) should not be listed. If the identity of an account number must be established, list only the last four digits. 204 Pa.Code §§ 213.1 - 213.7.

Pa.R.C.P.M.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ _____ together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

I, _____ verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

(Signature of Plaintiff or Authorized Agent)

The plaintiff's attorney shall file an entry of appearance with the magisterial district court pursuant to Pa.R.C.P.M.D.J. 207.1.

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within the magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

"INTENT TO DEFEND" FORM

(Fill in today's date)

TO: **Magisterial District Judge:** _____
(Name of Magistrate)

I AM PLANNING TO ATTEND THE HEARING ON

_____ AT _____
(Fill in date of hearing) (Fill in time of hearing)

TO DEFEND AGAINST THE CLAIM(S) OF CASE NUMBER

C.V. _____
(Fill in case number/docket number)

FILED BY _____
(Fill in name of person who filed Complaint – Plaintiff)

Signed: _____
(Sign your name)

(PRINT your name)

APPENDIX 2

§ 5523. One year limitation

The following actions and proceedings must be commenced within one year:

- (1) An action for libel, slander or invasion of privacy.
 - (2) An action upon a bond given as security by a party in any matter, except a bond given by a condemnor in an eminent domain proceeding.
 - (3) An action upon any payment or performance bond.
- 1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978. Amended 1982, Dec. 20, P.L. 1409, No. 326, art. II, § 201, effective in 60 days.

§ 5524. Two year limitation

The following actions and proceedings must be commenced within two years:

- (1) An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.
- (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.
- (3) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof.
- (4) An action for waste or trespass of real property.
- (5) An action upon a statute for a civil penalty or forfeiture.
- (6) An action against any officer of any government unit for the nonpayment of money or the nondelivery of property collected upon on execution or otherwise in his possession.
- (7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.

(8) An action to recover damages for injury to a person or for the death of a person caused by exposure to asbestos shall be commenced within two years from the date on which the person is informed by a licensed physician that the person has been injured by such exposure or upon the date on which the person knew or in the exercise of reasonable diligence should have known that the person had an injury which was caused by such exposure, whichever date occurs first.

1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978. Amended 1982, Dec. 20, P.L. 1409, No. 326, art. II, § 201, effective in 60 days; 2001, Dec. 17, P.L. 904, No. 101, § 2, effective in 60 days; 2004, Nov. 24, P.L. 1243, No. 152, § 3, ind. effective.

§ 5525. Four year limitation

(a) General rule. Except as provided for in subsection (b), the following actions and proceedings must be commenced within four years:

- (1) An action upon a contract, under seal or otherwise, for the sale, construction or furnishing of tangible personal property or fixtures.
- (2) Any action subject to 13 Pa.C.S. § 2725 (relating to statute of limitations in contracts for sale).
- (3) An action upon an express contract not founded upon an instrument in writing.
- (4) An action upon a contract implied in law, except an action subject to another limitation specified in this subchapter.
- (5) An action upon a judgment or decree of any court of the United States or of any state.
- (6) An action upon any official bond of a public official, officer or employee.
- (7) An action upon a negotiable or nonnegotiable bond, note or other similar instrument in writing. Where such an instrument is payable upon demand, the time within which an action on it must be commenced shall be computed from the later of either demand or any payment of principal of or interest on the instrument.
- (8) An action upon a contract, obligation or liability founded upon a writing not specified in paragraph (7), under seal or otherwise, except an action subject to another limitation specified in this subchapter.

(b) Special provisions. An action subject to section 8315 (relating to damages in actions for identity theft) must be commenced within four years of the date of the offense or four years from the date of the discovery of the identity theft by the plaintiff.

1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978. Amended 1980, Oct. 5, P.L. 693, No. 142, § 501(a), effective in 60 days; 1982, Dec. 20, P.L. 1409, No. 326, art. II, § 201, effective in 60 days; 2002, June 19, P.L. 430, No. 62, § 2, effective in 60 days.

Rule 315. Claim by Defendant

A. The defendant, by filing a complaint at least five days before the date set for the hearing, may assert in the case any claim against the plaintiff that is within the jurisdiction of a magisterial district judge. Such a claim need not arise from the same transaction or occurrence from which the plaintiff's claim arose, nor need it be the same type of claim.

B. The rules governing the form, processing, and service of a plaintiff's complaint shall apply also to the defendant's complaint. The magisterial district judge shall set a date and time for the consolidated hearing of both complaints that shall not be less than 12 or more than 30 days from the filing of the defendant's complaint. The magisterial district court shall promptly notify the parties of the date and time set for the consolidated hearing of both complaints.

C. A money judgment for the plaintiff or for the defendant, but not for both, shall be entered with respect to such cross complaints, any lesser amount found due on the claim asserted in one being deducted from the greater amount found due on the claim asserted in the other.

D. Rescinded.

Note: Paragraph A of this rule permits the defendant to file a cross-complaint against the plaintiff at least five days before the date originally set for the hearing, if it is for a claim cognizable by a magisterial district judge. See Section 1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), as to waiver of jurisdictional limits, a defendant filing a cross-complaint being considered a "plaintiff" as to the cross-complaint within the meaning of this statute. The requirement that a cross-complaint be filed at least five days before the hearing is intended to give the magisterial district judge time to notify the parties of any new hearing date and time. Notice under paragraph B is not a substitute for proper service. If the defendant does not file an action at least five days before the hearing, the defendant may still file a complaint against the plaintiff, but it will not be processed as a cross-complaint.

No provision has been made for a stay of the magisterial district judge proceedings upon notice by the defendant of intention to commence an action in the court of common pleas on a claim against the plaintiff not within magisterial district judge jurisdiction. It was thought that no such provision was necessary, for if the plaintiff prevails in the magisterial district judge action the defendant may appeal, the appeal operates as an automatic supersedeas of the money judgment, the case is heard de novo, and the defendant may assert a claim in the court of common pleas, possibly as a counterclaim. See Rules 1002, 1007, and 1008.

Since a cross-complaint is in the nature of a responsive pleading, there is no fee for filing it.

No cross-complaint may be filed in a supplementary action filed under Rule 342. See Rule 342 and Note.

Adopted Oct. 15, 1969, effective Jan. 1, 1970. Amended Oct. 17, 1975, effective in 90 days; Jan. 29, 1976, effective in 30 days; April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; Dec. 15, 2000, effective Jan. 1, 2001; April 5, 2002, effective Jan. 1, 2003; Jan. 6, 2005, effective Jan. 29, 2005; June 1, 2006, effective Oct. 1, 2006.

INSTRUCTIONS FOR FILING A COUNTERCLAIM

If you checked Defense #4 claiming that the Plaintiff should pay you money, you must file a counterclaim. If you do not file the counterclaim, the Magisterial District Judge Court will not consider it.

If you want the Magisterial District Judge Court to consider your counterclaim:

- AT LEAST FIVE DAYS BEFORE THE HEARING DATE
- Take your copy of the Plaintiff's Complaint,
- Your written explanation of your Defense #4, and
- \$1.50 for each person you are filing a counterclaim against (for service by mail)
- To the Magisterial District Judge Court and tell them you want to file a counterclaim.

THE HEARING WILL BE RESCHEDULED TO A LATER DATE.

NOTIFY YOUR WITNESSES OF THE NEW TIME AND DATE.

APPENDIX 5

§ 201-2. Definitions

As used in this act.

(1) **"Documentary material"** means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.

(1.1) **"Internet service provider"** means a person who furnishes a service that enables users to access content, information, electronic mail or other services offered over the Internet, and access to proprietary content, information and other services as part of a package of services offered to consumers.

(2) **"Person"** means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities.

(3) **"Trade"** and **"commerce"** mean the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth.

(4) **"Unfair methods of competition"** and **"unfair or deceptive acts or practices"** mean any one or more of the following:

(i) Passing off goods or services as those of another;

(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

(iv) Using deceptive representations or designations of geographic origin in connection with goods or services;

(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(vi) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

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

(viii) Disparaging the goods, services or business of another by false or misleading representation of fact;

(ix) Advertising goods or services with intent not to sell them as advertised;

(x) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(xi) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(xii) Promising or offering prior to time of sale to pay, credit or allow to any buyer, any compensation or reward for the procurement of a contract for purchase of goods or services with another or others, or for the referral of the name or names of another or others for the purpose of attempting to procure or procuring such a contract of purchase with such other person or persons when such payment, credit, compensation or reward is contingent upon the occurrence of an event subsequent to the time of the signing of a contract to purchase;

(xiii) Promoting or engaging in any plan by which goods or services are sold to a person for a consideration and upon the further consideration that the purchaser secure or attempt to secure one or more persons likewise to join the said plan; each purchaser to be given the right to secure money, goods or services depending upon the number of persons joining the plan. In addition, promoting or engaging in any plan, commonly known as or similar to the so-called "Chain-Letter Plan" or "Pyramid Club." The terms "Chain-Letter Plan" or "Pyramid Club" mean any scheme for the disposal or distribution of property, services or anything of value whereby a participant pays valuable consideration, in whole or in part, for an opportunity to receive compensation for introducing or attempting to introduce one or more additional persons to participate in the scheme or for the opportunity to receive compensation when a person introduced by the participant introduces a new participant. As used in this subclause the term "consideration" means an investment of cash or the purchase of goods, other property, training or services, but does not include payments made for sales demonstration equipment and materials for use in making sales and not for resale furnished at no profit to any person in the program or to the company or corporation, nor does the term apply to a minimal initial payment of twenty-five dollars (\$25) or less;

(xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;

(xv) Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed;

(xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;

(xvii) Making solicitations for sales of goods or services over the telephone without first clearly, affirmatively and expressly stating:

(A) the identity of the seller;

(B) that the purpose of the call is to sell goods or services;

(C) the nature of the goods or services; and

(D) that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion;

(xviii) Using a contract, form or any other document related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;

(xix) Soliciting any order for the sale of goods to be ordered by the buyer through the mails or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

(A) within that time clearly and conspicuously stated in any such solicitation; or

(B) if no time is clearly and conspicuously stated, within thirty days after receipt of a properly completed order from the buyer, provided, however, where, at the time the merchandise is ordered, the buyer applies to the seller for credit to pay for the merchandise in whole or in part, the seller shall have fifty days, rather than thirty days, to perform the actions required by this subclause;

(xx) Failing to inform the purchaser of a new motor vehicle offered for sale at retail by a motor vehicle dealer of the following:

(A) that any rustproofing of the new motor vehicle offered by the motor vehicle dealer is optional;

(B) that the new motor vehicle has been rustproofed by the manufacturer and the nature and extent, if any, of the manufacturer's warranty which is applicable to that rustproofing;

The requirements of this subclause shall not be applicable and a motor vehicle dealer shall have no duty to inform if the motor vehicle dealer rustproofed a new motor vehicle before offering it for sale to that purchaser, provided that the dealer shall inform the purchaser whenever dealer rustproofing has an effect on any manufacturer's warranty applicable to the vehicle. This subclause shall not apply to any new motor vehicle which has been rustproofed by a motor vehicle dealer prior to the effective date of this subclause.

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

1968, Dec. 17, P.L. 1224, No. 387, § 2. Reenacted and amended 1976, Nov. 24, P.L. 1166, No. 260, § 1, imd. effective. Amended 1996, Dec. 4, P.L. 906, No. 146, § 1, effective in 60 days; 2006, Nov. 29, P.L. 1624, No. 185, § 1, effective in 60 days [Jan. 29, 2007].

§ 201-7. Contracts; effect of rescission

(a) Where goods or services having a sale price of twenty-five dollars (\$25) or more are sold or contracted to be sold to a buyer, as a result of, or in connection with, a contact with or call on the buyer or resident at his residence either in person or by telephone, that consumer may avoid the contract or sale by notifying, in writing, the seller within three full business days following the day on which the contract or sale was made and by returning or holding available for return to the seller, in its original condition, any merchandise received under the contract or sale. Such notice of rescission shall be effective upon depositing the same in the United States mail or upon other service which gives the seller notice of rescission.

(b) At the time of the sale or contract the buyer shall be provided with:

(1) A fully completed receipt or copy of any contract pertaining to such sale, which is in the same language (Spanish, English, etc.) as that principally used in the oral sales presentation, and also in English, and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) A completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten-point bold face type the following information and statements in the same language (Spanish, English, etc.) as that used in the contract:

Notice of Cancellation

(Enter Date of Transaction)

73 P.S. § 201-7

TRADE AND COMMERCE

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction.

.....
(Date)

.....
Buyer's Signature

(c) Before furnishing copies of the "Notice of Cancellation" to the buyer, both copies shall be completed by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Each buyer shall be informed at the time he signs the contract or purchases the goods or services, of his right to cancel.

(e) The cancellation period provided for in this section shall not begin to run until buyer has been informed of his right to cancel and has been provided with copies of the "Notice of Cancellation."

(f) Seller shall not misrepresent in any manner the buyer's right to cancel.

FAIR TRADE & BUSINESS PRACTICES 73 P.S. § 201-7

(g) Any valid notice of cancellation by a buyer shall be honored and within ten business days after the receipt of such notice, seller shall (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) No note or other evidence of indebtedness shall be negotiated, transferred, sold or assigned by the seller to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Seller shall, within ten business days of receipt of the buyer's notice of cancellation, notify him whether the seller intends to repossess or to abandon any shipped or delivered goods. If seller elects to repossess, he must do so within twenty days of the date of buyer's notice of cancellation or forfeit all rights to the delivered goods.

(j) Deleted by 2004, Nov. 30, P.L. 1553, No. 196, § 1, effective in 60 days [Jan. 31, 2005].

(j.1) (1) Rights afforded under this section may be waived only through the execution of an emergency authorization form:

(i) where goods or services have a sale price of twenty-five dollars (\$25) or more;

(ii) are contracted to be sold to a buyer as a result of or in connection with a contract made by the buyer to the seller; and

(iii) the goods or services contracted for are needed to remedy a bona fide emergency on the buyer's residential real property. Nothing in this subsection shall prohibit a seller contacted by a buyer as a result of a bona fide emergency from taking any immediate preliminary steps necessary to remedy a clear and immediate danger that may cause death or serious bodily injury to the buyer, the seller or other persons without having to obtain the emergency authorization form.

(2) To obtain a waiver under this section, the seller must furnish the buyer with an emergency work authorization form as well as a written estimate of the goods or the performance of services. This authorization will allow the seller to immediately proceed with the delivery of the goods or the performance of the services necessary to remedy the bona fide emergency.

(3) The emergency work authorization form provided for in this section shall be:

(i) on a preprinted card at least four inches by six inches in size; and

(ii) the writing thereon must be in at least ten-point bold face type in the following form:

Emergency Work Authorization

(Enter Date of Transaction)

You, the buyer, having initiated the contract for the goods and services of (enter the name of the seller), the seller, for the remediation of a bona fide emergency hereby authorize the seller to immediately proceed with the delivery of goods or the performance of services necessary to remedy the bona fide emergency. By providing the seller with this authorization, you agree to make full payment for the goods or services provided. You agree not to exercise the rights afforded you by the Unfair Trade Practices and Consumer Protection Law to cancel the contract within three business days from the above date.

You, the buyer, attest that the attached estimate is an accurate description of the goods and services which will be provided by the seller for the correction of the bona fide emergency:

.....
(Date)

.....
(Buyer's Signature)

(j.2) Prior to the buyer signing the emergency authorization form, the seller shall provide the buyer with a written estimate of the total cost of the goods or services, including any fee for the service call. The estimate shall be provided prior to the delivery of the goods or the performance of the services necessary to remedy a bona fide emergency. If the cost of the goods or services actually provided exceeds the estimate provided, the seller must obtain further written authorization from the buyer to perform the additional work or service. Nothing in this subsection shall be construed to prohibit the seller from charging the buyer a fee for a service call for the purpose of determining the cause of and the appropriate remedy of the bona fide emergency, regardless of whether further goods or services are provided. The seller shall immediately disclose to the buyer whether a service call fee shall be charged upon initiation by the buyer of a contract for goods or services for the remediation of a bona fide emergency. The seller may also charge a fee for immediate prelimi-

FAIR TRADE & BUSINESS PRACTICES 73 P.S. § 201-7

nary steps without having to obtain a written emergency authorization.

(k) As used in this section, merchandise shall not be construed to mean real property.

(l) The provisions of this section shall not apply to the sale or contract for the sale of goods or services having a sale price of less than twenty-five dollars (\$25).

(l.1) This section shall not apply, however, to the sale of precious metals, bonds or foreign currency when the value of the items can fluctuate daily.

(m) A "Notice of Cancellation" which contains the form and content required by rule or regulation of the Federal Trade Commission shall be deemed to be in compliance with the requirements of this section.

(n) As used in this section, "bona fide emergency" means any condition existing on the buyer's residential real property which renders or has the capability to render the residential real property uninhabitable. The term includes, but shall not be limited to, conditions significantly affecting the heating system, electrical system, plumbing system, ventilation system, roof or outer walls of the residential real property.

(o) As used in this section, "immediate preliminary steps" means only those steps necessary to eliminate a clear and immediate danger that may cause death or serious bodily injury to the buyer, the seller or other persons. The term includes, but shall not be limited to, termination of the carrying of gas, oil or oil product, sewage or water through an underground pipe or the carrying of electric or communication service through an underground conductor, pipe or structure. The term shall not be construed as including any other steps necessary to repair and remedy the bona fide emergency.

1968, Dec. 17, P.L. 1224, No. 387, § 7. Reenacted and amended 1976, Nov. 24, P.L. 1166, No. 260, § 1, imd. effective. Amended 1996, Dec. 4, P.L. 906, No. 146, § 2, effective in 60 days; 2004, Nov. 30, P.L. 1553, No. 196, § 1, effective in 60 days [Jan. 31, 2005].

§ 201-9.2. Private actions

(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3¹ of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

(b) Any permanent injunction, judgment or order of the court made under section 4² of this act shall be prima facie evidence in an action brought under section 9.2³ of this act that the defendant used or employed acts or practices declared unlawful by section 3 of this act.

1968, Dec. 17, P.L. 1224, No. 387, § 9.2, added 1976, Nov. 24, P.L. 1166, No. 260, § 1, imd. effective. Affected 1978, April 28, P.L. 202, No. 53, § 2(a)[1433], effective June 27, 1978. Amended 1996, Dec. 4, P.L. 906, No. 146, § 4, effective in 60 days.

¹ 73 P.S. § 201-3.

² 73 P.S. § 201-4.

³ This section.

§ 2270.2. Scope of act

This act establishes what shall be considered unfair methods of competition and unfair or deceptive acts or practices with regard to the collection of debts.

2000, March 28, P.L. 23, No. 7, § 2, effective in 90 days.

§ 2270.3. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Communication." The conveying of information regarding a debt directly or indirectly to any person through any medium.

"Consumer." A natural person residing in this Commonwealth who owes or is alleged to owe a debt or one who has incurred or is alleged to have incurred liability for the debt within this Commonwealth, including, but not limited to, a comaker, guarantor, surety or parent if the consumer is under 18 years of age. The term includes the consumer's guardian, executor or administrator.

"Creditor." A person, including agents, servants or employees conducting business under the name of a creditor and within this Commonwealth, to whom a debt is owed or alleged to be owed.

"Debt." An actual or alleged past due obligation, claim, demand, note or other similar liability of a consumer to pay money, arising out of a single account as a result of a purchase, lease or loan of goods, services or real or personal property for personal, family or household purposes or as a result of a loan of money or extension of credit which is obtained primarily for personal, family or household purposes, provided, however, that money which is owed or alleged to be owed as a result of a loan secured by a purchase money mortgage on real estate shall not be included within the definition of debt. The term also includes any amount owed as a tax to any political subdivision of this Commonwealth. Tax includes an assessment, any interest, penalty, fee or other amount permitted by law to be collected. Debt does not include any such amount owed to the United States or the Commonwealth.

"Debt collector."

(1) A person not a creditor conducting business within this Commonwealth, acting on behalf of a creditor, engaging or aiding directly or indirectly in collecting a debt owed or alleged to be owed a creditor or assignee of a creditor.

(2) The term does not include:

(i) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor.

(ii) A person while attempting to collect a debt on behalf of a creditor, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for creditors to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(iii) A person while collecting or attempting to collect any debt owed or due or asserted to be owed or due to another to the extent such activity:

(A) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) concerns a debt which was originated by such person;

(C) concerns a debt which was not in default at the time it was obtained by such person; or

(D) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

Persons included within this subparagraph shall be considered creditors and not debt collectors for purposes of this act.

(iv) A person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt.

(v) A person who is an elected or appointed official of any political subdivision of this Commonwealth, who collects or attempts to collect a tax or assessment owed to the political subdivision which employs the person, while that person is acting within the scope of his elected or appointed position or employment.

(3) The term does include:

(i) A creditor who, in the process of collecting his or her own debt, uses a name other than his or her own which would indicate that a third person is collecting or attempting to collect the debt.

(ii) An attorney, whenever such attorney attempts to collect a debt, as herein defined, except in connection with the filing or service of pleadings or discovery or the prosecution of a lawsuit to reduce a debt to judgment.

(iii) A person who sells or offers to sell forms represented to be a collection system, device or scheme which is intended or designed to collect debts.

(iv) A person, other than an elected or appointed official of any political subdivision of this Commonwealth, who collects or attempts to collect a tax or assessment owed to any political subdivision of this Commonwealth.

"Location information." A consumer's place of abode and his telephone number at such place or his place of employment.

"State." Any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any political subdivision of any of the above.

2000, March 28, P.L. 23, No. 7, § 3, effective in 90 days.

§ 2270.4. Unfair or deceptive acts or practices

(a) **By debt collectors.**—It shall constitute an unfair or deceptive debt collection act or practice under this act if a debt collector violates any of the provisions of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.).

(b) **By creditors.**—With respect to debt collection activities of creditors in this Commonwealth, it shall constitute an unfair or deceptive debt collection act or practice under this act if a creditor violates any of the following provisions:

(1) Any creditor communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(i) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(ii) not state that such consumer owes any debt;

(iii) not communicate with any such person more than once unless requested to do so by such person or unless the creditor reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(iv) not communicate by postcard;

(v) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the communication relates to the collection of a debt; and

(vi) after the creditor knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney unless the attorney fails to respond within a reasonable period of time to communication from the creditor.

(2) Without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction, a creditor may not communicate with a consumer in connection with the collection of any debt:

(i) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a creditor shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location;

(ii) if the creditor knows the consumer is represented by an attorney with respect to such debt and has knowledge of or can readily ascertain such attorney's name and address unless the attorney fails to respond within a reasonable period of time to a communication from the creditor or unless the attorney consents to direct communication with the consumer; or

(iii) at the consumer's place of employment if the creditor knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(3) Except as provided in paragraph (1), without the prior consent of the consumer given directly to the creditor or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a creditor may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, a debt collector, the attorney of the debt collector or the attorney of the creditor.

(4) A creditor may not engage in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.

(ii) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(iii) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(a)(3) of the Fair Credit Reporting Act (Public Law 91-508, 15 U.S.C. § 1681 et seq.).

(iv) The advertisement for sale of any debt to coerce payment of the debt.

(v) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.

(vi) Except as provided in paragraph (1), the placement of telephone calls without meaningful disclosure of the caller's identity.

(5) A creditor may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The false representation or implication that the creditor is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform or facsimile thereof.

(ii) The false representation of the character, amount or legal status of any debt.

(iii) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(iv) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, attachment or sale of any property of any person unless such action is lawful and the creditor intends to take such action.

(v) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(vi) The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to lose any claim or defense to payment of the debt or become subject to any practice prohibited by this act.

(vii) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(viii) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a debt is disputed.

(ix) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any state or which creates a false impression as to its source, authorization or approval.

(x) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(xi) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(xii) The false representation or implication that documents are legal process.

(xiii) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(6) A creditor may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this paragraph:

(i) The collection of any amount, including any interest, fee, charge or expense incidental to the principal obligation, unless

such amount is expressly authorized by the agreement creating the debt or permitted by law.

(ii) The acceptance by a creditor from any person of a check or other payment instrument postdated by more than five days unless such person will be notified in writing of the creditor's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(iii) The solicitation by a creditor of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(iv) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(v) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(vi) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(vii) Communicating with a consumer regarding a debt by postcard.

(viii) Using any language or symbol, other than the creditor's address, on any envelope when communicating with a consumer by use of the mails or by telegram, provided that a creditor may use its business name.

(c) Definition.—For the purpose of subsection (b)(2) and (3), the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor or administrator.

2000, March 28, P.L. 23, No. 7, § 4, effective in 90 days.

§ 2270.5. Enforcement and penalties

(a) **Unfair trade practices.**—If a debt collector or creditor engages in an unfair or deceptive debt collection act or practice under this act, it shall constitute a violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law.¹

(b) **Jurisdiction.**—An action to enforce any liability created by this act may be brought in any court of competent jurisdiction in this Commonwealth within two years from the date on which the violation occurs.

(c) **Remedies.**—Remedies available for violation of this act and the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. § 1692 et seq.) shall not be cumulative, and debt collectors who violate this act and the Fair Debt Collection Practices Act shall not incur cumulative penalties.

(d) **Defenses.**—A debt collector or creditor may not be held liable in any action for a violation of this act if the debt collector or creditor shows by a preponderance of the evidence that the violation was both not intentional and:

(1) resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error; or

(2) resulted from good faith reliance upon incorrect information offered by any person other than an agent, servant or employee of the debt collector or creditor.

2000, March 28, P.L. 23, No. 7, § 5, effective in 90 days.

¹ 73 P.S. § 201-1 et seq.