

## 8.0 CONSUMER PROTECTION ISSUES

### 8.1 Overview

Disasters are breeding grounds for unscrupulous consumer practices. In the stress after a disaster, even the most sensible people can be taken in by a fraud. Disaster victims who are seniors, disabled, or limited in speaking or reading English are particularly vulnerable to scams. In addition, the financial stress of a disaster can push many people into financial instability and collections. Consumer information can help prevent victimization.

**IMPORTANT NOTE: The information contained in this section is designed to help volunteer attorneys provide preliminary guidance to victims of consumer fraud or those with debtor/creditor problems in Texas.**

It can also be helpful for a consumer to make a complaint to the Consumer Finance Protection Bureau, the Federal Trade Commission, Department of Motor Vehicles or the Texas Office of the Consumer Credit Commissioner. For issues with insurance companies or adjusters, including public adjusters, the Texas Department of Insurance (<https://www.tdi.texas.gov/consumer/get-help-with-an-insurance-complaint.html>) takes complaints. The Texas Attorney General also takes and compiles complaints against businesses although they make it clear that they do not help people get damages.

### 8.2 Most Common Issues

- Deceptive Trade Practices / Door-to-Door Sales
- Debt Collection / Credit Reporting
- Price Gouging
- Certain Commodities During a Disaster
- Home Equity Fraud
- Home Remodeling and/or Repair / Mold Remediation Fraud (see FAQs)

### 8.3 Summary of Relevant Laws

#### A. **Texas Deceptive Trade Practices Act**

The Texas Deceptive Trade Practices Act (DTPA), [Tex. Bus. & Com. Code § 17.41 et seq.](#), protects consumers against false, misleading, or deceptive trade practices, including unconscionability and breach of warranty. The DTPA provides that a consumer who is damaged by such unlawful practices has a private right of action and may recover economic damages, injunctive relief, other equitable orders, and attorney's fees. If the illegal acts are committed knowingly or intentionally, the aggrieved consumer may obtain mental anguish and additional damages not to exceed three times the economic damages.

**False Claims of COVID-19 Vaccines/Tests.** The COVID-19 pandemic has seen numerous scams relating to vaccines and tests kits. In order to avoid such scams, individuals should visit Texas’s Department of Health and Human Services COVID-19 vaccine page at <https://dshs.texas.gov/covidvaccine/> and COVID-19 testing page at <https://www.dshs.state.tx.us/coronavirus/testing.aspx> to find approved vaccine and testing sites. The FTC encourages all individuals aware of any COVID-19 vaccine or testing scams to report those instances to [ftc.gov/complaint](https://ftc.gov/complaint).

Another important note is that the COVID-19 vaccines in Texas are given without charge to the individual. While a person may be asked for their insurance information, lack of insurance should not result in a charge or the person being turned away. If a person is charged for the vaccine, they should report this to the Federal Trade Commission or Texas Department of Health and Human Services.

For further information regarding scams involving COVID-19 vaccines and test, please visit the Texas Attorney General’s website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/covid-19-consumer-issues> and the FTC’s website on the topic at <https://www.ftc.gov/coronavirus/scams-consumer-advice>.

## **B. Laws on Home Solicitation Contracts and “Buyer’s Remorse”**

**Texas Door-to-Door Sales Law.** In Texas, chapter 601 of the Texas Business & Commerce Code regulates the home solicitation industry and applies to a consumer transaction in which (1) a merchant engages in a personal solicitation of a sale to a consumer at a place other than the merchant’s place of business or (2) a consumer agrees or offers to make a purchase at a place other than the merchant’s place of business. Texas law requires specific language to be included in contracts and notices of cancellation. A buyer has the right to cancel a home solicitation contract until midnight of the third business day after the day on which the buyer signs the agreement.

If a seller fails to give a buyer two copies of the notice of the right to cancel the contract, the contract is void. The state door-to-door sales law does not apply to certain transactions, including an insurance sale regulated by the Texas Department of Insurance, sale of real property when (1) the purchaser is represented by a licensed attorney; (2) the transaction is negotiated by a licensed real estate broker; or (3) the transaction is negotiated at a place other than the consumer’s residence by the person who owns the property.

For further information regarding door-to-door sales, please visit the Texas Attorney General’s website on the topic at <https://www.texasattorneygeneral.gov/cpd/door-to-door-sales> and <https://www.texasattorneygeneral.gov/cpd/the-3-day-right-to-cancel-a-purchase>.

**FTC Cooling-Off Rule.** In addition to Texas state law, the Federal Trade Commission enforces federal requirements related to home solicitation sales pursuant to the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 C.F.R. pt. 429 (Cooling-Off Rule). The Cooling-Off Rule applies to sales at the buyer’s home, workplace, or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds, and restaurants. The Cooling-Off Rule applies even when a salesperson is invited to make a presentation in the home. Under the Cooling-Off Rule, the salesperson must tell the consumer about cancellation rights at the time of sale. The salesperson also must give the consumer two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated,

show the name and address of the seller, and explain the right to cancel. The contract or receipt must be in the same language that's used in the sales presentation. The Cooling-Off Rule does not cover sales that are made as part of a request for the seller to do repairs or maintenance on personal property (purchases made beyond the maintenance or repair request are covered) and sales of real estate.

For further information regarding the Cooling-Off Rule, please visit the FTC's website on the topic at <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>.

### **C. Debtor/Creditor**

Often disasters can trigger financial crises as victims fall behind in their bills. Missed or late payments can damage their credit ratings.

Disaster victims should not avoid dealing with their financial situations even though taking stock of their increased costs and decreased assets can be very stressful. Attorneys working with disaster victims need to be aware of the following:

- (1) Many people take great pride in paying off debt and having a good credit score. Despite the fact that the disaster was unavoidable and they are not at fault, they will feel embarrassment and reluctance to face their own circumstances.
- (2) Good credit is necessary for better interest on loans, and that is it. People should not dip into retirement or take out home equity loans in order to make minimum payments and "keep up their credit". Also, credit dips down, but will return. Credit scores are mostly impacted by the last 36 months of information even though more information stays on a credit report.
- (3) Some debts should be paid ahead of others. This may seem obvious but is something that people in stress often do not do. Housing – be it rent or a mortgage – should be paid. Car payments also need to be paid, although insurance may be even more necessary. Both car loans and mortgages will often have a bit of flexibility if a consumer is proactive and calls the lender, although this is not always the case. Any unsecured debts such as credit cards and personal loans and payday loans should be the last to be paid when a consumer is tight on funds.

Some creditors will agree to reduce, reschedule, or even postpone payments for certain periods of time, so when a consumer cannot make a payment, they should reach out to their lender. However, a lender can also become a bully and use the threat of "collections" to influence a disaster victim to make payments that are financially unwise for their situation. Any attorney giving advice in this scenario should take care not to feed into a disaster victim's fear of "bad credit" and missing payments. While credit has value, sometimes missed payments are unavoidable and credit should not be valued above immediate needs and common sense.

Debt relief companies, often now called debt repayment plans, should be very carefully researched and usually avoided. Often motivated by a goal of avoiding bankruptcy and paying off debts, disaster victims can be enticed into giving their few free dollars to these companies rather than their actual creditors. Texas and federal law have put requirements on these companies, but often a consumer is better off filing bankruptcy or settling loans on their own than dealing with these companies and their high fees. The Texas attorney general's website has good information on debt relief companies at <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief/debt-relief-and-debt-relief-scams>.

Credit reporting is governed by the federal Fair Credit Reporting Act, [15 U.S.C. § 1681 et seq.](#), which requires that credit reporting agencies furnish a free copy of a consumer's credit report on request within thirty days after the consumer is notified of an adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers' claims. Texas law governing credit reporting is found at chapter 20 of the Texas Business & Commerce Code.

***Debt Collection Protection.*** The Texas Fair Debt Collection Practice Act (chapter 392 of the Texas Finance Code) protects individuals from unfair debt collection practices, such as:

- Threats of violence or other criminal acts
- Using or profane language
- Falsely accusing the consumer of fraud or other crimes
- Failing to identify who holds the debt
- Using a false name or identification
- Misrepresentation the amount of the debt or its judicial status

For further information regarding unfair debt collection practices, please visit the Texas attorney general's website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/debt-collection-and-relief/your-debt-collection-rights>.

In addition, if the collector is not the original creditor, the Federal law—the Fair Debt Collection Practices Act—also has protections for a debtor. This includes a penalty for collecting a debt that is not owed.

***Collections after Judgments in Texas.*** Texas has no wage garnishment other than for child support and taxes. The federal government can also garnish wages for defaulted student loans and other federal debts, including federal taxes and medical bills from military hospitals.

In general, Texas is not an easy place for creditors to collect money or assets, especially from consumers. For example, a collector, even after judgment, cannot take a consumer's:

- (1) Homestead – home where consumer has lived over one year;
- (2) One vehicle per person of driving age in the home;
- (3) Personal possessions;
- (4) Tools of the trade.

However, creditors with a judgment can use a Writ of Garnishment or a Receivership to take all the money from a consumer's bank accounts. Because of this, a consumer with a judgment against them should be wary of having money in the bank, and may wish to consider bankruptcy or settling the judgment on their own terms to avoid having their bank account wiped clean.

Even with a judgment, a creditor cannot take a consumer's bank account funds if the money is from social security, social security disability, child support payments, unemployment, and several other forms of exempt funds.

A bankruptcy can wipe out many debts, and the presence of a judgment will not affect the dischargeability of the debt in bankruptcy. Many consumer bankruptcy attorneys offer a free initial consultation in which a consumer can find out if they are or are not a good candidate for bankruptcy. More information on this

can be found at the National Association of Consumer Bankruptcy Attorneys website at [https://nacba.org/page/consumer\\_assistance](https://nacba.org/page/consumer_assistance).

For further information regarding debt collection and credit repair, please visit the Federal Trade Commission's page on credit at <https://www.consumer.ftc.gov/articles/0155-free-credit-reports>.

## **COVID-19 Debtor Protections**

### **1. Mortgage Relief**

A new federal law, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, puts in place protections for homeowners with federally backed mortgages:

Individuals have a right to request a forbearance for up to 180 days. Individuals also have the right to request an extension for up to another 180 days. Individuals must contact their loan servicer to request this forbearance. There will be no additional fees, penalties or additional interest (beyond scheduled amounts) added to the requester's account. Individuals do not need to submit additional documentation to qualify other than their claim to have a pandemic-related financial hardship.

Mortgages that qualify for these protections include:

- Mortgages owned or securitized by Fannie Mae or Freddie Mac.
- Mortgages insured by the Federal Housing Administration ("FHA"). This includes standard mortgages and Home Equity Conversion Mortgages, which are also called "reverse mortgages."
- Mortgages guaranteed or insured by the Veterans Administration ("VA").
- Mortgages made, guaranteed, or insured by the Department of Agriculture/Rural Housing Service.
- "Section 184" and "Section 184A Mortgages". These are mortgages for Native Americans, Alaska Natives, and Native Hawaiians guaranteed by the Department of Housing and Urban Development's Office of Loan Guarantee.

For loans backed by the FHA, USDA, or VA, the deadline for requesting an initial forbearance was June 30, 2021. For loans backed by Fannie Mae or Freddie Mac, there is not currently a deadline for requesting an initial forbearance.

For further information regarding mortgage relief during the COVID-19 pandemic, please visit the Consumer Financial Protection Bureau's website on the topic at:

<https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>.

### **2. Student Loans**

CARES Act § 3513 provides relief for student loan borrowers with Direct Loans and also for FFEL loans, but only those FFEL loans currently owned by the U.S. Department of Education. Critically, not protected by the CARES Act are borrowers with Perkins Loans and borrowers whose FFEL loans are still held by banks or guaranty agencies. One estimate is that there are upward of 9 million student loan borrowers not covered by the Act.

Direct Loan and covered FFEL borrowers will have their payments suspended through September 30, 2021. See CARES Act § 3513(a). While student loan payments are suspended, the loans shall not accrue

any interest and the month of a suspended loan payment will be treated as if a loan had been made for purposes of loan forgiveness and loan rehabilitation. See CARES Act § 3513(b), (c). The suspension period should not result in negative credit reporting, and also involuntary collection of the loan will be suspended—no wage garnishments, tax intercepts, offset of federal benefits, or any other collection activity. See CARES Act § 3513(d), (e). Covered borrowers will be provided notices of all of these rights within fifteen days of the CARES Act’s March 27 enactment. See CARES Act § 3513(g).

The protections mentioned above do not extend to private student loans or to state student loans, such as Hinton-Hazelhurst.

#### **D. Fair Credit Billing Act**

Under the federal Fair Credit Billing Act (FCBA), [15 U.S.C. § 1666 et seq.](#), if a consumer paid for a purchase with a credit card and a billing dispute arises about the purchase (*e.g.*, the merchandise shipped was not what was ordered), the consumer can notify the credit card company that he wants to dispute the purchase. A sample dispute letter can be found at the following link, under the section titled “Exercise Your Rights”: <http://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>. The dispute letter must be addressed to the credit card company at the address provided for “billing inquiries,” which is typically specified on the billing statement. In addition, the letter must be received by the credit card company no later than sixty days after the first bill containing the disputed amount is mailed. The credit card company must acknowledge the dispute in writing within thirty days after receiving the dispute letter, unless the problem has been resolved. The credit card company must resolve the dispute within two billing cycles (but not more than ninety days) after receiving written notice from the consumer. The consumer may withhold payment of the amount in dispute until the dispute is resolved, but the consumer is still required to pay any part of the bill that is not in dispute.

Note: Disputes about the quality of goods and services are not “billing errors,” so the dispute procedure does not apply. However, if a consumer buys unsatisfactory goods or services with a credit card (or the sixty-day period for sending notice of a billing error has expired), a consumer may have other rights under the Act.

For further information about the FCBA, visit the FTC’s website on the topic at <https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>.

#### **E. Price Gouging**

Section 17.46(b)(27) of the Texas Business and Commerce Code makes it a deceptive trade practice to take advantage of a disaster by selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price or even demanding exorbitant or excessive prices for these items. This statute can be enforced privately, by the attorney general, or by district and county attorneys.

The Texas Attorney General has advised that charging excessive prices for necessities when an emergency has been declared by the governor can constitute price gouging. Examples of such necessities include toilet paper, sanitizer, and personal protective equipment. The Texas Attorney General encourages reporting of such price gouging at <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint>.

For further information about price gouging, please visit the Texas attorney general's website at <https://www.texasattorneygeneral.gov/cpd/price-gouging>.

#### **F. Disaster Scams and COVID-19 Scams**

Consumers should be aware of scams that have arisen or increased in prevalence during the COVID-19 pandemic:

- IRS scams, in which perpetrators pretend to be IRS employees to glean financial information from the victim.
- Stimulus check scams, in which perpetrators pretend to be government employees in order to glean financial information or extract payment with the promise of a stimulus check.
- Contact tracing scams, in which perpetrators pose as contract tracers to glean sensitive financial information from victims. Legitimate contact tracers need basic contact information, health information, and names of places and people individuals have visited. Legitimate contact tracers do not ask for financial information.
- Puppy scams, in which perpetrators extract payment from victims for nonexistent pets.
- Work-at-home scams, in which perpetrators extract financial information and payment from victims with the promise of a nonexistent work-at-home job.

Chapter 17 of the Texas Business and Commerce Code makes such scams illegal under state law.

The Texas Attorney General encourages any individuals affected by such scams to file a complaint at <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint>. The FTC also encourages individuals to report scams at [ftc.gov/complaint](https://www.ftc.gov/complaint).

For further information regarding scams involving COVID-19, please visit the Texas Attorney General's website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/covid-19-consumer-issues> and the FTC's website on the topic at <https://www.ftc.gov/coronavirus/scams-consumer-advice>.

#### **G. Home Equity Fraud**

Home equity is the market value of a home minus the mortgage and other liens on the home. For example, if a home's market value is \$100,000 and the mortgage and all liens are \$80,000, the equity is \$20,000 ( $\$100,000 - \$80,000 = \$20,000$ ).

Home equity fraud is the taking of a homeowner's equity by fraudulent means. Victims of home equity fraud are most often elderly persons, particularly widows over age seventy, minorities with limited English skills, or homeowners with fixed incomes below \$24,000.

There are numerous protections for consumers with home equity loans, most of which are in the Texas Constitution, Article 16 § 50(a), with important provisions at § 50(q).

In an area hit by a physical disaster, home equity fraud can be one way that untrustworthy contractors attempt to get homeowners to pay them for work done. While a home equity loan is a legitimate and common way of getting funds for home repair, the money should not be paid out all at once and especially not before work has commenced.

For further information regarding Home Equity Fraud, please visit the Texas Attorney General's website on the topic at <https://www.texasattorneygeneral.gov/consumer-protection/financial-and-insurance-scams/loan-and-mortgage-scams>.

## **H. Identity Theft**

The crime of identity theft includes obtaining, possessing, or using the identity of another individual—regardless of whether they are living or dead and regardless of their age (infant, minor, adult or elderly)—with the intent to harm or defraud someone. However, the fact is that most of the time when a person's credit has errors, it is either the credit reporting agency or a collector causing the error, or it is a family member or friend who used their identity. During a disaster, family members suffering from financial issues may move in together temporarily and sometimes it is then that identity theft or an identity mix-up occurs. Remember, no matter what a debt collector or creditor tells a consumer, even when it is a stranger who stole someone's identity, proof of a crime is NOT necessary to get help in clearing one's name.

If an individual suspects their identity has been stolen, that individual should take the following steps:

- Call or email the fraud departments of the companies, banks, or credit unions where accounts have been compromised. Explain that someone stole your identity. While a freeze on an account may help, the best practice is to open new accounts.
- Contact any of the three credit reporting agencies (Equifax, Experian, TransUnion) and ask that a free fraud alert be placed on their credit report. Individuals should also ask for a free credit report.
- Change the passwords, PIN numbers, and login information for all of their potentially affected accounts, including their email accounts, and any accounts that use the same password, PIN, or login information.
- Contact their police department, report the crime, and obtain a police report.
- Go to the webpage of the Federal Trade Commission, report the ID theft and create an identity theft recovery plan: <https://www.identitytheft.gov/#/assistant>.
- Decide whether they want to place a security freeze on their credit report.
- Review their credit report to correct any errors and identify any new accounts that were opened in their name, and then send a dispute letter to the credit reporting agencies such as Experian, Equifax and TransUnion. The business can be cc'd with the dispute letter, and it is good to include evidence if it exists (such as utility bills with a different address than that given in the false account) as well as a clear explanation. No specific legal language is required or even encouraged for a dispute letter, which should come directly from the affected individual.

- Review their other credit card and bank statements and take action to remove or dispute unauthorized charges or debits.
- If taxes or the CARES Stimulus payment are involved, then the IRS website has specific guidance: <https://www.irs.gov/newsroom/taxpayer-guide-to-identity-theft>.
- Consider other steps they may need to take to address specific problems such as reporting a misused Social Security number or clearing their name of criminal charges.

Under chapter 521 of the Texas Business and Commerce Code, a victim of identity theft has the option of seeking a court order declaring that he or she is a victim of identity theft. If an individual is granted this type of court order, he or she may submit it to private businesses and to governmental entities to help correct any records that contain inaccurate or false information which resulted from the identity theft. However, remember that this is not usually required and may not be the most efficient mechanism for clearing wrong information.

For further information regarding Identity Theft, the federal website [identitytheft.gov](http://identitytheft.gov) has information and forms.

#### **8.4 Regulatory Agency Directives / Announcements**

- Price gouging: <https://www.texasattorneygeneral.gov/cpd/price-gouging>
- Consumer protection – home solicitation: <https://www.texasattorneygeneral.gov/cpd/door-to-door-sales>; <https://www.texasattorneygeneral.gov/cpd/the-3-day-right-to-cancel-a-purchase>; and <https://www.consumer.ftc.gov/articles/0176-buyers-remorse-when-ftcs-cooling-rule-may-help>
- Fair credit billing: <https://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>
- Disaster scams: <https://www.texasattorneygeneral.gov/cpd/disaster-scams>
- Mortgage foreclosure “rescue”: <https://www.texasattorneygeneral.gov/cpd/mortgage-fraud>
- Debt collection: <https://www.texasattorneygeneral.gov/cpd/debt-collection>
- Key contacts:

**To report a complaint about any of the topics listed above, consumers should contact the Texas Attorney General at 1-800-621-0508 (consumer protection hotline), 1-800-252-8011 (general hotline), or <https://www.texasattorneygeneral.gov/cpd/file-a-consumer-complaint>.**

#### **Texas Attorney General: Consumer Division**

Website: <https://www.texasattorneygeneral.gov/cpd/consumer-protection>  
**Consumer Protection Hotline: 1-800-621-0508**

**General Hotline:** 1-800-252-8011

Houston Regional Office

Phone: (713) 223-5886

Fax: (713) 223-5821

808 Travis, Suite 1520

Houston, TX 77002-1702

Contact Information for Other Regional Offices:

[https://www.texasattorneygeneral.gov/cpd/cpd\\_regionals](https://www.texasattorneygeneral.gov/cpd/cpd_regionals)

### **Better Business Bureau**

BBB of Greater Houston and South Texas

Website: <https://www.bbb.org/houston>

E-mail: [info@bbbhouston.org](mailto:info@bbbhouston.org)

Phone: (713) 868-9500

Fax: (713) 867-4947

1333 W. Loop South, Ste. 1200

Houston, TX 77027

BBB of Southeast Texas

Website: <https://www.bbb.org/southeast-texas>

E-mail: [info@bbbsetexas.org](mailto:info@bbbsetexas.org)

Phone: (409) 835-5348

Fax: (409) 838-6858

550 Fannin Street, Suite 100

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## **8.5 FAQs**

### ***Q. 8-1 What can I do to protect myself from unscrupulous contractors?***

Before contracting for any services, the consumer should:

- **Verify licensing**, if applicable, with appropriate regulatory agencies. Keep in mind that general contractors for residences are not state licensed, although they may be in your area;
- **Verify company legitimacy** with local Better Business Bureaus and online reviews;
- **Obtain comparison bids** with lists of services provided and material costs;
- Obtain all **estimates in writing**;
- Speak with other customers to **verify satisfaction**;
- **Read all contracts** or service agreements **before signing**;
- **Get all amendments to contracts put in writing and signed by both parties**, and
- **File complaints** with appropriate regulatory agencies if confronted with potential fraud or abuse.

The telephone number for the Texas Office of the Attorney General's Consumer Protection Hotline is 1-800-621-0508 and general hotline is 1-800-252-8011. Urge consumers to contact the attorney general if someone calls with what the consumer feels is a scam; an early alert can prevent others from fraud. Urge them to contact consumer reporters of local media outlets to notify them of scams. The Houston Chronicle's newsroom contacts are available at <http://www.chron.com/about/newsroom/>. Local television affiliates' contact information is available at <http://abc13.com/contactus/> or <https://www.fox26houston.com/contact-us>.

[Tex. Bus. & Com. Code § 58.001 et seq.](#), regulates the actions of disaster remediation contractors who do not maintain offices within a county or adjacent county where a natural disaster occurred. Unless a disaster remediation contractor has an established office in the county or adjacent county where a property is located for at least one year prior to the contract, a disaster remediation contractor cannot require full or partial payment before beginning work and can only require partial payment reasonably proportionate to work performed.

For further information about home remodeling and selecting a contractor, please visit the Texas attorney general's website on the topic at <https://www.texasattorneygeneral.gov/cpd/home-remodeling-and-repair#besmart>.

**Q. 8-2      *Should I enter into a lien contract to pay for home repairs?***

After a disaster, a homeowner frequently needs major repairs for serious damage. These repairs may include roofing and siding, plumbing, electrical wiring, heating and cooling, replacement of damaged structures, interior living quarters, etc. The cost of these repairs is most likely greater than the insurance coverage and the ability of the homeowner to cover the cost. Frequently, a low-income homeowner has deferred maintenance which may make the damage ineligible for FEMA funding.

The homeowner may feel trapped between the high cost of the repairs and the limited funding for repairs. Unscrupulous contractors or salespeople will take advantage of the fears of the homeowner and agree to make the repairs at unrealistic prices or via financing schemes.

The salesperson or contractor then induces the homeowner to sign a lien-contract secured by the home. The loan repayment amounts are higher than what the consumer can afford to pay on a fixed income. Alternatively, the contractor provides inadequate repairs or services and the consumer refuses to pay the note to the finance company.

The consumer should be fully aware that the lien-contract functions like a promissory note. If the homeowner misses only one payment, the creditor may foreclose and sell the home without ever going to court. The most common result is that the homeowner not only fails to have necessary repair work done, but also loses his or her home through foreclosure.

**Q. 8-3      *Should I consider refinancing my home to pay for home repairs or other expenses?***

Because of the increased costs of confronting an emergency, consumers frequently fall behind in their credit payments or overextend themselves to the point that they must choose whether to pay creditors or obtain basic necessities such as food. Such consumers are often approached by finance companies promising to consolidate the homeowner's debt for existing mortgage, credit card debt, car loans, and

repair loans. These companies then pressure the homeowner to sign multiple agreements without providing the homeowner sufficient time to review them or consult with anyone.

The negative outcomes of such refinancing schemes include high processing fees, payments to bogus/phantom creditors, and default on the loan. The homeowner often cannot pay both the refinancing costs and basic living expenses, resulting in a situation far worse than before the refinancing.

Lower income and minority borrowers, as well as elderly homeowners, are often targeted by predatory lenders. They encourage borrowers to lie about their income in order to get a loan; knowingly lend the borrower more money than he or she can repay; charge unnecessary fees; pressure borrowers into high-risk loans and use high pressure tactics to sell home improvements; and then finance them at higher interest rates. These predators pounce on desperate situations. A few tips for consumers include:

- Beware of lenders who claim that they are the only hope for a loan or ask borrowers to sign a contract/loan agreement with missing information.
- Beware when lenders say refinancing your home can solve credit or money problems.
- Always interview several contractors and lenders. Check with friends or family for recommendations.
- Research lenders, contractors, appraisers, etc. with the attorney general's office or the Better Business Bureau and review their complaint history.
- Never make false statements on a loan application. Any lender who encourages this is fraudulent and possibly criminal.
- Do not let anyone convince you to borrow more money that you know you cannot afford.
- Attend homeownership education courses. They are available through the U.S. Department of Housing and Urban Development (HUD) or counseling agencies. You can find a list of HUD-approved housing counselors for Texas at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=TX>.

**Q. 8-4      *Can I trust my family member or close friend to help me with expenses?***

Isolated homeowners who need assistance to maintain their homes frequently are victimized by friends, relatives, or caretakers. They assist the homeowner with household chores, including shopping or taking them on medical visits. Children of elderly parents sometimes seek control of their parents' property for their own uses. Often, these persons use scare tactics to convince the elderly, disabled, or limited English or non-English speaking homeowner to transfer title of the property to them. Sometimes they obtain a power of attorney when a person is very sick. Unbeknownst to the homeowner, the power of attorney holder may convey or encumber the property and keep the proceeds for himself or herself.

If a power of attorney is needed, consider a limited power of attorney, whereby the agent has no authority to make any contracts regarding the home.

**Q. 8-5      *What do I need to know about foreclosure consultants?***

Some financial predators prey on persons during the foreclosure process. They claim to be foreclosure experts who offer to assist homeowners after they receive a notice of default. In Texas, once the finance company files a formal lien with the county clerk, the homeowner is deluged by these foreclosure consultants. These financial thieves further encumber the property with liens for fees and extravagant charges. They try to obtain title through a power of attorney or by direct transfer. They take advantage of the homeowner's distress and offer to purchase the home for below market value through misrepresentations on the value of the home and on encumbrances. They represent to the homeowners that they may stay in the property for the rest of their lives. In fact, after they obtain the property, they sell it and the new owner serves the tenants with eviction papers. Clients should be warned of such scams. Consumers should also be advised of the tips outlined above as ways to guard against fraudulent lenders.

HUD offers foreclosure counselors for free on their website via The Making Home Affordable Program (HAMP). All the information needed to begin the process is located on their website at: <https://www.makinghomeaffordable.gov/pages/default.aspx>. To speak with a housing counselor now, call 888-995-HOPE (4673).

If anybody attempts to charge a consumer money for a modification, the odds are that the consumer is dealing with somebody who is trying to scam him or her.

**Q. 8-6      *How do I decide which bills to pay first?***

Before deciding which bills to pay and which to ignore, consumers need to know the consequences. The types of debts listed below could have immediate, harmful consequences if unpaid:

- **Court-ordered payments**, such as alimony or child support, must be paid on time or jail time could be sought for contempt of court. If clients are unable to pay, do not simply ignore it. Ask the court to modify the payment order. A court will usually lower or eliminate your payments to meet your new financial condition. Additionally, if a client is on SSD, his or her children should be eligible for "dependents' benefits," which may cover the client's support obligations in their entirety. Check with the client's local Social Security office.
- **Ongoing services**, such as utilities, telephone service, or health insurance coverage, must be paid or consumers will lose future service or coverage.
- **Items purchased on credit or pledged as security on a loan** can usually be taken if payments cannot be made. However, a lender is unlikely to seek the return of any property unless a borrower misses several payments and is uncooperative. If the consumer needs extra time to make payments, he or she should contact the lender in advance.

Generally speaking, a consumer should pay his or her bills in the order of priority: home mortgage/rent, food/utilities/court ordered payments, and then everything else. Your credit card bill is the last bill that you pay, and you only pay it if you have paid for your necessities in full.

**Q. 8-7      *What should I do if I find myself unable to pay all of my bills?***

If the debtor can afford to make small monthly payments, he or she should contact the collector to ask if the payments are acceptable and reach an agreement on all of the following:

1. Total amount owed on a bill, including the interest to be added each year;
2. Amount of monthly payments
3. Due dates that payments must reach the collector
4. Address where payments must be mailed; and

It is important for debtors to keep a record of phone calls from the collector regarding the past due bill, including the full names of the individuals he or she speaks with and date, time, and details about the conversations. If the debtor arranges a payment agreement, he or she should send a brief letter confirming the terms of the payment plan. The debtor should always keep copies of any letters and payments sent to the collector. Letters to the collector should be sent via certified mail. Consumer Credit Counseling Services may negotiate with collectors on behalf of debtors for little or no fee. To locate a credit counselor, visit <https://www.consumer.ftc.gov/articles/0153-choosing-credit-counselor>.

Be careful about signing renewal and/or refinancing agreements with creditors, as you may be waiving rights that you may have against the creditor. Also, generally speaking, if you sign an agreement with a creditor for payment, you will have re-started the statute of limitations with regard to that debt.

**Q. 8-8      *What do I do if I have no ability to pay my creditors?***

Some debtors who have no employment income or prospects for such income might be considered “judgment proof.” Such people own no real estate, no personal property of significant value, no more than one car, and would probably not have bank accounts or other investments. Such debtors who are unable to arrange a workable payment plan should consider sending the collector a letter informing them of the inability to pay and requesting that the collector stop contacting the debtor about the debt. The debtor should include in the letter any special circumstances which help explain the inability to pay. Sending such a letter limits the collector’s right to contact the debtor.

Bankruptcy may become a last resort option for disaster victims who cannot satisfy their creditors. Filing bankruptcy will not necessarily cancel all debts. It is recommended that individuals wishing to pursue bankruptcy proceedings be referred to a State Bar–certified lawyer referral service where an experienced bankruptcy attorney can be identified. For information about lawyer referral call the State Bar of Texas at 800-252-9690 or visit the State Bar’s website at: [https://www.texasbar.com/AM/Template.cfm?Section=Lawyer\\_Referral\\_Service\\_LRIS](https://www.texasbar.com/AM/Template.cfm?Section=Lawyer_Referral_Service_LRIS).

**Q. 8-9      *What happens when debtors fail to pay?***

Debtors are not criminally liable for owing debts; however, a creditor may file a civil lawsuit against them to collect the debt, and a court judgment will give them the right to collect any nonexempt assets. Also, the creditor has the right to report the unpaid debt to a credit reporting agency.

Auto loan contracts usually permit the creditor to repossess a car without advance notice after a borrower’s failure to make payments or if the borrower fails to keep the vehicle insured. The debtor will have to pay the full balance of the loan plus all costs of repossession in order to regain possession. If the

debtor cannot pay, the creditor may sell the car and may sue the debtor for the amount the debtor owes over the sale price.

If a past due bill is for services a debtor continues to receive (e.g., utilities), the creditor may discontinue service or withhold reconnection, even if the debtor moves to another residence. The creditor may also sue to try to collect the unpaid balance.

Under federal and state laws there are certain types of income and property are exempt from collection, regardless of how much is owed and regardless of whether or not there is a bankruptcy. The most important of these are:

- In Texas, a person's homestead is protected from most collections;
- Social Security payments, annuity income (this should cover private disability insurance payments), pension income, worker's compensation and unemployment compensation (there are some exceptions for child support, alimony, and taxes);
- The proceeds and avails from a life insurance policy;
- Necessary household appliances and furnishings;
- Necessary personal items and clothing;
- Necessary medical equipment;
- If working, any tools needed for the job;
- A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person;
- Farming or ranching vehicles and implements;
- Personal property for a family that has an aggregate fair market value of not more than \$100,000 exclusive of any liens, security interests, or other charges encumbering the property; or
- Personal property owned by a single adult and has an aggregate fair market value of not more than \$50,000, exclusive of any liens, security interests, or other charges encumbering the property.

If all property and income is exempt, then the debtor should notify creditors.