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CH. 57 RENTAL PURCHASE AGREEMENTS

CHAPTER 57
RENTAL PURCHASE AGREEMENTS

SOURCE: This chapter was added by P.L. 24-186:3 as Chapter 56.

- § 57101. Definitions.
- § 57102. Exempted Transaction.
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§ 57101. Definitions.

For purposes of this Chapter:

(a) The term *advertisement* means a commercial message in any medium that aids, promotes or assists, directly or indirectly, a rental-purchase agreement.

(b) The term *agricultural purpose* includes:

(1) the production, harvest, exhibition, marketing transformation, processing or manufacture of agricultural products by a natural person who cultivates plants or propagates or nurtures agricultural products; and

(2) the acquisition of farmlands, real property with a farm residence, or personal property and services used primarily in farming.

(c) A term or clause is *clear and conspicuous* when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals is conspicuous. Language in the body of a form is conspicuous if it is in a larger or other contrasting

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type or color. Whether a term or clause is clear and conspicuous is for decision by the court.

(d) The term *consumer* means a natural person who leases or rents personal property pursuant to a rental purchase agreement.

(e) The term *date of consummation* means the date on which a consumer becomes contractually obligated under a rental-purchase agreement.

(f) The term *merchant* means a person who regularly provides the use of property through a rental-purchase agreement in the ordinary course of business and to whom a consumer's initial obligation under the agreement is payable.

(g) The term *personal property* means property that is not real property under the laws of the state where the property is located when it is offered or made available under a rental-purchase agreement, unless otherwise stated.

(h) The term *rental-purchase agreement* means:

(a) a contract between a consumer and a merchant:

(i) under which the merchant agrees to provide the consumer the use of the personal property for an initial period of four (4) months or less;

(ii) that is automatically renewable with each payment by the consumer; and

(iii) that permits, but does not obligate, the consumer to become the owner of the property.

§ 57102. Exempted Transaction.

(a) Rental-purchase agreements which comply with this Act are not governed by the laws relating to:

(1) a sale of a home under the Guam Homeowners' Warranties Act;

(2) a consumer credit sale under the Guam Uniform Commercial Credit Code in Title 14 of the Guam Code Annotated; and

(3) a security interest as defined in 13 GCA §1201(37) and governed by Article 9 of 13 GCA.

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(b) This Act does *not* apply to the following:

(1) rental purchase agreements primarily for business, commercial or agricultural purposes;

(2) a lease made to any governmental agencies or instrumentalities or organizations;

(3) a lease of a safe deposit box; money or intangible personal property;

(4) a lease of an automobile, motor home, mobile home or manufactured housing; or

(5) a lease or bailment of personal property which is incidental to the lease of real property, and which does not provide that the consumer has an option to purchase the leased property.

§ 57103. General Disclosure Requirements.

(a) In General. The merchant under a rental-purchase agreement shall disclose in a clear and conspicuous manner to the consumer the information required by §§ 57104, 57105 and 57106 of this Chapter. In an agreement involving more than one (1) merchant, only one (1) merchant is required to make the disclosures.

(b) Disclosure. The disclosures required under §§ 57104 and 57105 of this Chapter and the agreement provisions required to be included under § 57106 of this Chapter shall be made or included.

(1) at or before the date of consummation of the rental-purchase agreement;

(2) clearly and conspicuously in writing and in a form that the consumer may keep; and

(3) in a case of disclosures required under § 57104 of this Chapter, segregated from all other terms, data or information provided to the consumer.

(c) Inaccuracy. If a disclosure required to be made by a merchant to a consumer under § 57104 of this Chapter becomes inaccurate as the result of any mutual written agreement between the merchant and such consumer occurring after delivery of the required disclosure to such consumer under this Chapter, the resulting inaccuracy is *not* a violation of this Chapter.

§ 57104. Rental Purchase Disclosures.

For each rental-purchase agreement, the merchant shall disclose to the consumer, to the extent applicable, under the agreement the following:

(a) the total amount of the first periodic payment and the total amount of advance payments, delivery charges, trade-in allowances, fees, taxes or other charges which may be required at or before the date of consummation of the agreement.

(b) the amount and timing of rental payments;

(c) the total number and the total dollar amount of rental payments and other charges necessary to acquire ownership of the property;

(d) a statement that the consumer will not own the property until the consumer has paid the total dollar amount necessary to acquire ownership;

(e) a disclosure that the total dollar amount payments does not include certain other charges;

(f) a statement that the consumer may be responsible for the fair market value of the property if it is lost, stolen, damaged or destroyed;

(g) a statement indicating whether the property is new or used, except a statement indicating that new property is used property is not a violation of this Chapter;

(h) A statement of:

(1) the manufacturer's suggested retail price, where applicable, or

(2) the price for which the property is available from the merchant in a cash sale;

(i) a clear statement of the terms of the consumer's option to purchase;

(j) a statement:

(1) identifying the party responsible for maintaining or servicing the property while it is being rented;

(2) describing the responsibility for maintenance or service of the rental property; and

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(3) disclosing that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty;

(k) the date of consummation of the transaction and the identities of the merchant and consumer; and

(l) late fees for past due rental charges.

§ 57105. Point of Rental Disclosures.

Each item of property displayed or offered in connection with a rental-purchase agreement shall have stamped or affixed to the property a card, tag or label that clearly and conspicuously discloses only the following:

(a) whether the property is new or used;

(b) the price of the property in a cash sale;

(c) the amount of each rental payment;

(d) the total number of rental payments necessary to acquire ownership of the property; and

(e) the total dollar amount of rental payments necessary to acquire ownership of the property.

§ 57106. Agreement Provisions.

(a) In General. Each rental-purchase agreement shall:

(1) provide a brief description of the rented property sufficient to identify the rented property to the consumer and merchant. (If a rental is for multiple items of property, a description of each item may be provided in a separate statement incorporated by reference agreement.);

(2) state that the consumer is *not* required to purchase insurance or liability damage waiver for the property that is the subject of the agreement from the merchant or from any other party owned or controlled by the merchant;

(3) provide a statement of any obligation of the consumer and the merchant under the agreement to repair any defect or malfunction of the property covered by the agreement, and any limitation of those obligations;

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(4) provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property covered by the agreement upon expiration of any rental term; and

(5) contain a provision for reinstatement of the agreement, which at a minimum:

(A) permits a consumer who fails to make a timely rental renewal payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental charges and any late fee or other charge, within seven (7) business days after the renewal date if the consumer pays monthly, or within three (3) business days after the renewal date if the consumer pays more frequently than monthly;

(B) if the consumer returns or voluntarily surrenders the property covered by the agreement, other than through judicial process, during the applicable reinstatement period set forth in Subparagraph (A), permits the consumer to reinstate the agreement during a period of at least thirty (30) days after the date of the return or surrender of the property by the payment of all past due rental charges, and any applicable redelivery, repair or late fees; and

(C) if the consumer has paid sixty percent (60%) or more of the total dollar amount of payments necessary to acquire ownership of the property under the agreement and returns or voluntarily surrenders the property, other than through judicial process, during the applicable reinstatement set forth in Subparagraph (A), permits the consumer to reinstate the agreement during a period of at least ninety (90) days after the date of the return of the property by the payment of all past due rental charges and any applicable redelivery, repair or late fees.

(b) Construction. Subsection (a) shall *not* be construed to prevent a merchant from attempting to repossess property during the reinstatement period pursuant to Subsection (a)(5)(A), but such a repossession does not affect the consumer's right to reinstate. Upon reinstatement the merchant shall provide the consumer with the same property, if available; if it is not available the merchant shall substitute property of comparable quality and condition.

§ 57107. Prohibited Provisions of Rental-Purchase Agreement.

A rental-purchase agreement or any document that the merchant requests the consumer to execute may *not* contain:

- (a) a confession of judgment;
- (b) a negotiable instrument;
- (c) a security interest or any other claim of a property interest in any goods, except those goods the use of which is provided by the merchant pursuant to the agreement;
- (d) a wage assignment;
- (e) a waiver by the consumer of a claim, counterclaim or defense;

or

(f) require that the consumer purchase insurance or liability waiver against loss or damage to the rental property from the merchant. This paragraph shall not, however, be construed to prohibit a merchant from offering insurance or a liability waiver to a consumer, provided it is clearly disclosed that acceptance of the offer of insurance or a liability waiver is optional.

§ 57108. Receipts and Accounts.

A merchant shall provide the consumer a written receipt for each payment made by cash, check or money order, the date, the total number of rental payments made and the total number of payments necessary to acquire ownership of the property.

§ 57109. Renegotiations and Extensions.

A renegotiation of a rental-purchase agreement is deemed to be a new agreement for purposes of this Chapter, requiring new disclosures under §§ 57104 and 57106. A renegotiation shall be considered to occur when an existing rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same merchant. Events such as the following shall *not* be treated as renegotiations:

- (a) the addition or return of property in a multiple-item agreement or the substitution of property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent (25%);

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- (b) a deferral or extension of one (1) or more periodic payments, or portions of a periodic payment;
- (c) a reduction in charges in the agreement; or
- (d) an agreement involving a court proceeding.

§ 57110. Rental-Purchase Advertising.

(a) Advertisements. If an advertisement for a rental-purchase agreement refers to, or states, the amount of any payment or the right to acquire ownership, the merchant that makes the advertisement shall also clearly and conspicuously state in the advertisement the following items:

- (1) the transaction advertised is to occur under a rental-purchase agreement;
- (2) the total number and total dollar amount of rental payments necessary to acquire ownership under the agreement; and
- (3) the consumer acquires no ownership rights in the property if the total dollar amount of rental payments necessary to acquire ownership is not paid.

(b) Liability. The owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall *not* be liable for a violation of Subsection (a).

(c) Exemptions. Subsection (a) does not apply to an advertisement which:

- (1) is published in the yellow pages of a telephone directory or in any similar directory of businesses; or
- (2) is displayed in the merchant's place of business.

§ 57111. Civil Liability.

(a) Liability Amount. Except as otherwise provided in this Chapter, a merchant who willfully violates this Chapter with respect to a consumer is liable to the consumer in an amount equal to the following:

- (1) in an action by an individual consumer, the sum of:
 - (A) actual damages sustained by the consumer as a result of the violation; and
 - (B) not less than One Hundred Dollars (\$100.00).

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(2) In a class action, the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation shall not be more than the lesser of Five Hundred Thousand Dollars (\$500,000.00) or one percent (1%) of the net worth of the merchant.

(3) If a particular rental-purchase agreement has more than one (1) consumer, only one (1) recovery of damages is allowed for a violation of this Chapter. Multiple violations in connection with a single rental-purchase agreement entitle the consumer, or multiple consumers, to only one (1) recovery under this Chapter.

(b) Statute of Limitations.

(1) Actions to Enforce Act. An action under this Section may be brought in the Superior Court of Guam or other court of competent jurisdiction, but not later than one (1) year after the date of the occurrence of the violation.

(2) Defense. This Subsection does *not* bar a consumer from asserting a violation of this Chapter in an action to collect a debt brought more than one (1) year after the date of the occurrence of the violation as a matter of defense by recoupment or set off, except as otherwise provided by Guam law.

(c) Offset.

(1) Limitations. A consumer may *not* take any action to offset any amount for which a merchant is potentially liable under Subsection (a) against any amount owed by the consumer, unless the amount of the merchant's liability has been determined by judgment of a court of competent jurisdiction in an action in which the merchant was a party.

(2) Constructions. This Subsection does not bar a consumer who is in default on the obligation from asserting a violation of this Chapter as an original action, or as a defense or counterclaim to an action brought by the merchant to collect amounts owed by the consumer.

§ 57112. Defenses of Merchants.

A merchant is not liable:

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(a) for any violation of the requirements of this Chapter if within sixty (60) days after discovering the violation, and before an action is filed against a merchant or written notice of the violation is received from the consumer, the merchant notifies the consumer of the violation and makes whatever adjustments to the account of the consumer are necessary to assure that the consumer will not be required to pay an amount in excess of the amounts actually disclosed;

(b) under this Chapter for any act done or omitted in good faith conformity with any rule, regulation, interpretation, or approval promulgated by a government agency or instrumentality; or

(c) under this Chapter for a violation if the merchant establishes, and at the time of the violation is implementing, procedures reasonably calculated to prevent the violation.

§ 57112(b) applies even if, after the act or omission has occurred, and the rule, regulation, interpretation or approval is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

§ 57113. Liability of Assignees.

(a) Assignees. For purposes of §§ 57111 and 57112 and this Section, the term '*merchant*' includes an assignee of a merchant. However, an action under § 57111 for a violation of this Chapter may be brought against an assignee only if the violation is apparent on the face of the rental-purchase agreement to which it relates. A violation apparent in the face of a rental-purchase agreement includes a disclosure that can be determined to be incomplete or inaccurate from the face of the agreement. An assignee has no liability in a case in which the assignment is involuntary.

(b) Consumer Acknowledgment. In an action by or against a assignee, the consumer's written acknowledgment of receipt of a disclosure shall be conclusive proof that the disclosure was made, if the assignee had no knowledge that the disclosure had not been made when the assignee acquired the rental-purchase agreement to which it relates.

§ 57114. Effect on Government Agencies.

No civil liability or criminal penalty under this Chapter may be imposed on the United States or any of its departments or agencies, any territorial or political subdivision, or any agency of the territory or political subdivision.
