

DOOR-TO-DOOR SALES AGREEMENTS

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THE LEGISLATION

The legislation that governs door-to-door sales in Ontario is the *Consumer Protection Act*, 2002, S.O. 2002, Chapter 30.

Notable Definitions

“Direct Agreement” means a consumer agreement that is negotiated or concluded in person other than at the supplier’s place of business or at a market place, auction, fair or exhibition.

Definitions and Application

Interpretation

20 (1) In this Part,

“direct agreement” means a consumer agreement that is negotiated or concluded in person at a place other than,

- (a) at the supplier’s place of business, or
- (b) at a market place, an auction, trade fair, agricultural fair or exhibition;

Consumer Protection Act, 2002, ONTARIO REGULATION 17/05

AUTOMATIC RIGHT TO CANCEL THE AGREEMENT

Consumers have the right to cancel the contract without any reason within a ten day cooling off period, starting from the date of receipt of the written agreement.

UNFAIR PRACTICES

- a) False, misleading or deceptive representation
- b) Unconscionable representation

Examples

- consumer not able to protect his or her interest because of disability, ignorance, illiteracy, inability to understand the language of the agreement or similar factors;
- consumer being subjected to undue pressure

False, misleading or deceptive representation

14 (1) It is an unfair practice for a person to make a false, misleading or deceptive representation. 2002, c. 30, Sched. A, s. 14 (1).

Examples of false, misleading or deceptive representations

(2) Without limiting the generality of what constitutes a false, misleading or deceptive representation, the following are included as false, misleading or deceptive representations:

1. A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have.
2. A representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection the person does not have.
3. A representation that the goods or services are of a particular standard, quality, grade, style or model, if they are not.
4. A representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, but the reasonable use of goods to enable the person to service, prepare, test and deliver the goods does not result in the goods being deemed to be used for the purposes of this paragraph.
5. A representation that the goods have been used to an extent that is materially different from the fact.
6. A representation that the goods or services are available for a reason that does not exist.
7. A representation that the goods or services have been supplied in accordance with a previous representation, if they have not.
8. A representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.
9. A representation that the goods or services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time.
10. A representation that a service, part, replacement or repair is needed or advisable, if it is not.
11. A representation that a specific price advantage exists, if it does not.
12. A representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the agreement.
13. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.
14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.
15. A representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.
16. A representation that misrepresents the purpose of any charge or proposed charge.
17. A representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers. 2002, c. 30, Sched. A, s. 14 (2).

Unconscionable representation

15 (1) It is an unfair practice to make an unconscionable representation. 2002, c. 30, Sched. A, s. 15 (1).

Same

(2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,

- (a) that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
- (b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;
- (c) that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
- (d) that there is no reasonable probability of payment of the obligation in full by the consumer;
- (e) that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
- (f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- (g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
- (h) that the consumer is being subjected to undue pressure to enter into a consumer transaction. 2002, c. 30, Sched. A, s. 15 (2).

REMEDY WITHIN A YEAR OF SIGNING THE CONTRACT- RESCINDING AGREEMENT

Consumer gives notice within one year after entering the contract. Consumer may give notice in any way so long as it indicates the intention to rescind the agreement. Notice may be delivered by any means. If it is delivered other than by personal service, it shall be deemed to be given when sent (e.g. mail, fax, e-mail).

Rescission operates to cancel, as if they never existed, the agreement and all related agreements, any security agreement given, all credit agreements.

Consumer Protection Act, 2002
S.O. 2002, Chapter 30
Schedule A

Unfair practices prohibited

17 (1) No person shall engage in an unfair practice. 2002, c. 30, Sched. A, s. 17 (1).

One act deemed practice

(2) A person who performs one act referred to in section 14, 15 or 16 shall be deemed to be engaging in an unfair practice. 2002, c. 30, Sched. A, s. 17 (2).

Advertising excepted

(3) It is not an unfair practice for a person, on behalf of another person, to print, publish, distribute, broadcast or telecast a representation that the person accepted in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of business. 2002, c. 30, Sched. A, s. 17 (3).

Rescinding agreement

18 (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages. 2002, c. 30, Sched. A, s. 18 (1).

Remedy if rescission not possible

(2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible,

- (a) because the return or restitution of the goods or services is no longer possible; or
- (b) because rescission would deprive a third party of a right in the subject-matter of the agreement that the third party has acquired in good faith and for value. 2002, c. 30, Sched. A, s. 18 (2); 2004, c. 19, s. 7 (6).

Notice

(3) A consumer must give notice within one year after entering into the agreement if,

- (a) the consumer seeks to rescind an agreement under subsection (1); or
- (b) the consumer seeks recovery under subsection (2), if rescission is not possible. 2002, c. 30, Sched. A, s. 18 (3).

Form of notice

(4) The consumer may express notice in any way as long as it indicates the intention of the consumer to rescind the agreement or to seek recovery where rescission is not possible and the reasons for so doing and the notice meets any requirements that may be prescribed. 2002, c. 30, Sched. A, s. 18 (4).

Delivery of notice

(5) Notice may be delivered by any means. 2002, c. 30, Sched. A, s. 18 (5).

When notice given

(6) If notice is delivered other than by personal service, the notice shall be deemed to have been given when sent. 2002, c. 30, Sched. A, s. 18 (6).

Address

(7) The consumer may send or deliver the notice to the person with whom the consumer contracted at the address set out in the agreement or, if the consumer did not receive a written copy of the agreement or the address of the person was not set out in the agreement, the consumer may send or deliver the notice,

- (a) to any address of the person on record with the Government of Ontario or the Government of Canada; or
- (b) to an address of the person known by the consumer. 2002, c. 30, Sched. A, s. 18 (7).

Commencement of an action

(8) If a consumer has delivered notice and has not received a satisfactory response within the prescribed period, the consumer may commence an action. 2002, c. 30, Sched. A, s. 18 (8).

Same

(9) If a consumer has a right to commence an action under this section, the consumer may commence the action in the Superior Court of Justice. 2002, c. 30, Sched. A, s. 18 (9).

Evidence

(10) In the trial of an issue under this section, oral evidence respecting an unfair practice is admissible despite the existence of a written agreement and despite the fact that the

evidence pertains to a representation in respect of a term, condition or undertaking that is or is not provided for in the agreement. 2002, c. 30, Sched. A, s. 18 (10).

Exemplary damages

(11) A court may award exemplary or punitive damages in addition to any other remedy in an action commenced under this section. 2002, c. 30, Sched. A, s. 18 (11).

Liability

(12) Each person who engaged in an unfair practice is liable jointly and severally with the person who entered into the agreement with the consumer for any amount to which the consumer is entitled under this section. 2002, c. 30, Sched. A, s. 18 (12).

SECURITY INTEREST ON EQUIPMENT

A future performance agreement may contain a provision giving a security interest in the goods passing under the agreement, but not in any other goods of the consumer (e.g. the house, the land).

Consumer Protection Act, 2002
S.O. 2002, Chapter 30
Schedule A

Rights in other goods not enforceable

24 Any provision in any future performance agreement or in any security agreement incidental to such an agreement under which the supplier may acquire title to, possession of or any rights in any goods of the consumer, other than the goods passing to the consumer under the agreement, is not enforceable. 2002, c. 30, Sched. A, s. 24.

ENBRIDGE- CHARGES FROM OTHER COMPANIES

In all cases, if the charges are billed using the Enbridge "Charges from Other Companies" mechanism, the consumer may contact Enbridge to say that they are disputing the charges. The dispute will be registered and the supplier will be notified. The supplier may then contact the consumer to try to get the consumer to pay the charges. Enbridge has an Ombudsman that can also be contacted. This will not resolve the dispute, and the supplier may resort to other means to try to get the consumer to make payments.

FINANCE COMPANIES

In many cases, finance companies will purchase the original contract for a fixed sum, then take over the contract from the supplier. Because the term of the contract in many cases is for ten or fifteen years or "the useful life of the product" as determined by the provider, the contract may pass through several hands. It may be useful to contact the finance company or the supplier to try to negotiate a settlement.

POSSIBLE REMEDIES AFTER ONE YEAR

a) Was there fraudulent misrepresentation? At common law, if there was a fraudulent misrepresentation that induced a person to enter into a contract, that person could rescind the contract. This common law remedy is outside the legislation and can be argued even after one year has passed. Potential problem- notice of security interest in the equipment registered on title.

b) Contractual interpretation. If matter goes to Small Claims Court, argue interpretation of the contract against the interest of the door to door sales company (see the Small Claims Court Kunda case. Judge interpreted the contract to mean that one month's notice of termination of the contract would be reasonable.) Potential problem- notice of security interest in the equipment registered on title.

NOTICE OF SECURITY INTEREST IN EQUIPMENT REGISTERED ON TITLE

If a contract has been rescinded within a year of signing, then all collateral agreements, including a security interest agreement, are also rescinded. However, for other contracts, a notice of security interest may well be registered on title to the property. If you are planning on selling the property, speak to a real estate lawyer BEFORE listing the property and BEFORE signing an agreement of purchase and sale. A title search can be done to see if any liens are registered on title. The real estate lawyer may advise whether the agreement of purchase and sale should be drafted to take into consideration the notice of security interest registered on title.

COMPLAINT TO MINISTRY OF GOVERNMENT AND CONSUMER SERVICES

Complaints can be made to the Ministry for a variety of consumer complaints (see "Filing a consumer complaint")

GOODS AND SERVICES SOLICITATIONS PROHIBITED SINCE MARCH 1, 2018

The legislation was amended so that, as at March 1, 2018, the following goods and services may not be solicited at a consumer's dwelling unless the consumer initiated the contact and specifically requested that the supplier attend at the consumer's dwelling:

1. Furnaces.
2. Air conditioners.
3. Air cleaners.
4. Air purifiers.
5. Water heaters.

6. Water treatment devices.
7. Water purifiers.
8. Water filters.
9. Water softeners.
10. Duct cleaning services.
11. Any goods or services that are a combination of or that perform the functions of the goods or services listed above.

Consumer Protection Act, 2002

S.O. 2002, Chapter 30

Schedule A

43.1 (1) No supplier shall, while at a consumer's dwelling or at any other prescribed place, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services or enter into such an agreement unless the consumer has initiated contact with the supplier and has specifically requested that the supplier attend at the consumer's dwelling or the other prescribed place for the purpose of entering into such an agreement. 2017, c. 5, Sched. 2, s. 16.

Same

(2) The following activities do not constitute solicitation for the purpose of subsection (1):

1. Leaving marketing materials at a consumer's dwelling or any other place prescribed for the purpose of that subsection without attempting to contact the consumer with respect to any prescribed direct agreement.

2. Such other activities that are prescribed. 2017, c. 5, Sched. 2, s. 16.

Agreement void

(3) A direct agreement that the parties enter into in contravention of subsection (1) is void. 2017, c. 5, Sched. 2, s. 16.

Related agreements void

(4) Any agreement, including the following, that is related to the consumer's obligations under the direct agreement is void:

1. A guarantee or security given by a guarantor for the purpose of securing the performance of those obligations.

2. An agreement under which the consumer gives security for the purpose of securing the performance of those obligations.

3. A credit agreement within the meaning of Part VII that the consumer enters into as a borrower in respect of money that the consumer is required to pay under the direct agreement and any other payment instrument that the consumer enters into in that respect. 2017, c. 5, Sched. 2, s. 16.

Unsolicited goods or services

(5) If a supplier supplies goods or services to a consumer under a direct agreement that is void, the goods or services are deemed to be unsolicited and subsections 13 (1), (2), (3), (6), (7) and (8) apply to them. 2017, c. 5, Sched. 2, s. 16.

Third party charges

(6) If a supplier supplies goods or services to a consumer under a direct agreement that is void and the consumer incurs charges from a third party that are related to the agreement, including, but not limited to, charges in respect of the removal or return of any goods that

the consumer is liable to return to the third party, the supplier is liable to reimburse the consumer for the amount of all those charges. 2017, c. 5, Sched. 2, s. 16.

Recovery of amount

(7) The consumer may commence an action, in accordance with section 100, to recover the amount described in subsection (6) and may set off the amount against any amount owing to the supplier under any consumer agreement between the consumer and the supplier, other than the direct agreement described in subsection (1). 2017, c. 5, Sched. 2, s. 16.

Section Amendments with date in force (d/m/y)

2013, c. 13, Sched. 2, s. 5 - 01/04/2015

2017, c. 5, Sched. 2, s. 16 - 01/03/2018

Consumer Protection Act, 2002

ONTARIO REGULATION 17/05

General

Direct agreements subject to s. 43.1 of Act

35.1 (1) For the purpose of subsection 43.1 (1) of the Act, the following goods and services are prescribed:

1. Furnaces.
2. Air conditioners.
3. Air cleaners.
4. Air purifiers.
5. Water heaters.
6. Water treatment devices.
7. Water purifiers.
8. Water filters.
9. Water softeners.
10. Duct cleaning services.
11. Any goods or services that are a combination of or that perform the functions of the goods or services listed in any of paragraphs 1 to 10. O. Reg. 487/17, s. 2.

(2) For the purpose of subsection 43.1 (1) of the Act, a consumer has initiated contact with a supplier and has specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services if,

(a) the consumer has initiated communications with a supplier and has specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services,

(i) by mail, fax, phone or electronic communication, or

(ii) in person at the supplier's place of business or at a market place, auction, trade fair, agricultural fair or exhibition;

(b) the consumer has,

(i) responded to a communication initiated by the supplier, other than,

(A) a communication made in person at the consumer's dwelling, or

(B) a communication made during a supplier-initiated phone call, and

(ii) specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services; or

(c) the following conditions are met:

(i) a written consumer agreement between the consumer and the supplier for a prescribed good or service is in effect,

(ii) the consumer has initiated contact with the supplier for any purpose by any means of communication and has invited the supplier to attend at the consumer's dwelling, and

(iii) during the communication referred to in subsection (ii), the supplier asked the consumer if the supplier could, while at the consumer's dwelling, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services and the consumer agreed. O. Reg. 487/17, s. 2.

(3) For the purpose of subsection 43.1 (1) of the Act, a consumer has not initiated contact with a supplier and has not specifically requested that the supplier attend at the consumer's dwelling for the purpose of entering into a direct agreement for the supply of prescribed goods or services if the supplier has received data, whether directly or indirectly, from measuring or monitoring devices in the consumer's dwelling, unless subsection (2) or (4) applies. O. Reg. 487/17, s. 2.

(4) A supplier is exempt from subsection 43.1 (1) of the Act if,

(a) a written consumer agreement between the consumer and the supplier for a prescribed good or service is in effect;

(b) the supplier has initiated contact with the consumer for any purpose by any means of communication, other than communication in person at the consumer's dwelling, and the consumer has invited the supplier to attend at the consumer's dwelling; and

(c) during the communication referred to in clause (b), the supplier asked the consumer if the supplier could, while at the consumer's dwelling, solicit the consumer to enter into a direct agreement for the supply of prescribed goods or services and the consumer agreed. O. Reg. 487/17, s. 2.

Direct agreements subject to s. 43.1 of Act — records

35.2 (1) A supplier who enters into a direct agreement with a consumer for the supply of prescribed goods or services after the consumer has initiated contact with the supplier as described in subsection 35.1 (2) shall maintain records of that contact for three years from the date of entering into the agreement. O. Reg. 487/17, s. 2.

(2) A supplier to whom subsection 35.1 (4) applies and who enters into a direct agreement with a consumer for the supply of prescribed goods or services after initiating contact with the consumer shall maintain records of that contact for three years from the date of entering into the agreement. O. Reg. 487/17, s. 2.

Direct agreements subject to s. 43.1 of Act — misrepresentative marketing

35.3 Despite paragraph 1 of subsection 43.1 (2) of the Act, leaving marketing materials at a consumer's dwelling without attempting to contact the consumer with respect to any prescribed direct agreement constitutes solicitation if the materials contain a false, misleading, deceptive or unconscionable representation for the purposes of sections 14 and 15 of the Act. O. Reg. 487/17, s. 2.

35.4 Revoked: O. Reg. 487/17, s. 2.

However, it appears that door to door sales are continuing for other items, such as attic or home insulation and other goods and services. In addition, door-to-door representatives have been continuing to try to sell the prohibited goods, but are having consumers sign new documents in which the consumer acknowledges that the consumer initiated the contact. If any person appears at the door asking to look at an Enbridge bill or other billing information, refuse to show them this personal information. Do not sign ANY contracts that are presented at the door. You should not agree to rent any equipment without comparing the price of the equipment at reputable stores.

RESOURCES

- Government of Ontario & Consumer Protection Ontario Online Information: Door-to-door sales and home service contracts
<https://www.ontario.ca/page/door-door-sales-and-home-service-contracts>
- Government of Ontario & Consumer Protection Ontario Online Information: Filing a consumer complaint
<https://www.ontario.ca/page/filing-consumer-complaint>
- CLEO Brochure: Door-to-door Sales
https://www.cleo.on.ca/sites/default/files/book_pdfs/doorsales.pdf
- MDG Newmarket Inc (Ontario Energy Group) v Kunda, 2016 CanLII 51831 (ON SCSM)
www.canlii.org/en/on/onscsm/doc/2016/2016canlii51831/2016canlii51831.html?resultIndex=1
- Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A
<https://www.ontario.ca/laws/statute/02c>
- Consumer Protection Act, 2002, Ontario Regulation 17/05, S.O. 2002, c. 30, Sched. A
<https://www.ontario.ca/laws/regulation/050017>