

NEW HAMPSHIRE

Ch. 358-0--Rent-to-Own Agreement Act

*New Hampshire Revised Statutes Annotated, as amended.
As added by Laws 1994, Ch. 406, approved June 10, 1994, effective January 1, 1995*

Sec. 358-0:1. Short title.

This chapter is to be known as the "New Hampshire Rent-to-Own Agreement Act."

Sec. 358-0:2. Definitions.

In this chapter:

- I. "Advertisement" means a commercial message in any medium that solicits a consumer to enter a rent-to-own agreement.
- II. "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rent-to-own agreement.
- III. "Consumer" means a natural person who rents personal property under a rent-to-own agreement to be used primarily for personal, family or household purposes.
- IV. "Consummation" means the date on which a consumer enters into a rent-to-own agreement.
- V. "Rent-to-own agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of 4 months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue renting or using the property beyond the initial period, and that permits the consumer to become the owner of the property.
- VI. "Rent-to-own dealer" means a person who regularly provides the use of property through rent-to-own agreements and to whom rent payments are initially payable on the face of the rent-to-own agreement.

Sec. 358-0:3. General requirements of disclosure.

- I. The rent-to-own dealer shall disclose to the consumer the information required by RSA 358-0:4. In a transaction involving more than one rent-to-own dealer, only one such dealer shall be bound by such disclosures.
- II. The disclosures shall be made at or before consummation of the rent-to-own agreement.
- III. the disclosures shall be made clearly and conspicuously in writing and a copy of the rent-to-own agreement provided to the consumer. The disclosures required under RSA 358-0:4 shall be made on the face of the contract above the line for the consumer's signature.
- IV. If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this chapter.

Sec. 358-0:4. Disclosures.

For each rent-to-own agreement, the rent-to-own dealer shall disclose in the agreement the following items, as applicable:

- I. Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment, and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the property.
- II. A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership.
- III. A statement advising the consumer whether the consumer is liable for loss or damage to the property, and, if so, a statement that such liability will not exceed the fair market value of the property as of the time it is lost or damaged.
- IV. A brief description of the rented property, sufficient to identify the property to the consumer and the rent-to-own dealer, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter.
- V. A statement of the cash price of the property, however where one agreement involves the rent of 2 or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement. The statement shall also include the following disclosure:

"If you want to purchase this or similar property now, you should consider

cash or credit terms that might be available to you."

- VI. The total of initial payment paid or required at or before consummation of the agreement or delivery of the property, whichever is later.
- VII. A statement that the total of payments does not include other charges, such as late payments, default, pickup and reinstatement fees, which fees shall be separately disclosed in the contract.
 - VIII. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased.
- IX. A statement identifying the party responsible for maintaining or servicing the property while it is being rented, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the rental property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty.
- X. The date of the transaction and the identities of the rent-to-own dealer and consumer.
- XI. A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, reasonable wear and tear excepted, upon expiration of any rental term along with any past due rental payments.
- XII. Notice of the right to reinstate an agreement as provided in RSA 358-0:8.

Sec. 358-0:5. Advertising.

- I. If an advertisement for a rent-to-own agreement refers to or states the dollar amount of a periodic payment for a specific item and refers to or states the right to acquire ownership of the item, then for such item the advertisement shall also clearly and conspicuously state the following:
 - (a) That the transaction advertised in a rent-to-own agreement.
 - (b) The total number and total amount of periodic payments necessary to acquire ownership.
 - (c) That the consumer acquires no ownership rights unless the total amount

necessary to acquire ownership is paid.

- II. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.
- III. The Provisions of paragraph I of this section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.
- IV. Every item displayed or offered under a rent-to-own agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:
 - (a) The cash price of the item.
 - (b) The amount of the periodic payment.
 - (c) The total number and total dollar amount of periodic payments necessary to acquire ownership.

Sec. 358-0:6. Inapplicability of other laws--Exempted transactions.

- I. Rent-to-own agreements which comply with this chapter are not governed by the laws relating to:
 - (a) A "security interest" as defined in RSA 328-A:1-201(37).
 - (b) A "consumer credit transaction" as defined in RSA 358-C:1, II and RSA 358-K:1, V.
 - (c) "Credit" as defined in RSA 358-K:1, VII and RSA 399-B:1, I.
 - (d) A "home solicitation sale" as defined in RSA 361-B:1.
- II. Rent-to-own agreements are governed by laws relating to:
 - (a) "Trade" as defined in RSA 358-A:1, II; and
 - (b) A "consumer transaction" as defined in RSA 358-C:1, III.
- III. This chapter shall not apply to the following:
 - (a) Rent-to-own agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

- (b) Rental of a safe deposit box;
- (c) Rental or bailment of personal property which is incidental to the rental of real property, and which provides that the consumer has no option to purchase the rented property; or
- (d) The rental of an automobile.

Sec. 358-0:7. Prohibited practice.

I. A rent-to-own agreement shall not contain:

- (a) A confession to judgment.
- (b) A negotiable instrument.
- (c) A security interest or any other claim of a property interest in any property of the consumer.
- (d) A wage assignment.
- (e) A waiver by the consumer of claims of defenses.
- (f) A provision authorizing the rent-to-own dealer or a person acting on the rent-to-own dealer's behalf to enter upon the consumer's premises without permission or to commit any breach of the peace in the repossession of property.
- (g) A provision requiring the purchase of insurance or liability damage waiver for the property that is the subject of the rent-to-own agreement from the rent-to-own dealer or requiring such purchase from a particular vendor. The rent-to-own dealer may, however, require that the consumer purchase insurance or a liability damage waiver for the rental property from a vendor of the consumer's choosing.
- (h) A provision requiring the consumer to make a payment in addition to regular rental payments in order to acquire ownership of the rental property, or a provision requiring the consumer to make rental payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to RSA 358-0:4.
- (i) A provision requiring a late charge or reinstatement fee unless a periodic

payment is late more than 5 days on a monthly agreement or more than 2 days on an agreement with periodic payments made more frequently than monthly.

- (j) A provision for a late charge or reinstatement fee in excess of \$5.
 - (k) A provision for more than one late charge or reinstatement fee on any one periodic payment regardless of the period of time during which it remains unpaid.
- II. No rent-to-own dealer shall collect or attempt to collect a debt in an unfair, deceptive or unreasonable manner as defined in RSA 358-C.

Sec. 358-0:8. Reinstatement.

- I. A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or option which exist under the agreement, by the payment of:
- (a) All past due rental charges:
 - (b) If the property has been picked up, the reasonable costs of pick-up and redelivery; and
 - (c) Any applicable late fee, within 5 days of the renewal date if the consumer pays monthly, or within 2 days of the renewal date if the consumer pays more frequently than monthly.
- II. In the case of a consumer who has paid less than $\frac{2}{3}$ of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in paragraph I of this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of the property.
- III. In the case of a consumer who has paid $\frac{2}{3}$ or more of the total payments necessary to acquire ownership. and where the consumer had returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in paragraph I of this section, the consumer may reinstate the agreement during a period of not less than 30 days after the date of the return of the property.
- IV. Nothing in this section shall prevent the rent-to-own dealer from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the rent-to-own dealer shall provide the consumer with the same property or substitute property of comparable quality and condition.

Sec. 358-0:9. Receipts.

Upon request by the consumer, a rent-to-own dealer shall provide the consumer with a written receipt for each payment.

Sec. 358-0:10. Renegotiations and extensions.

- I. A renegotiation shall occur when an existing rent-to-own agreement is satisfied and replaced by a new agreement undertaken by the same rent-to-own dealer and consumer. A renegotiation shall be considered a new agreement requiring the disclosures. A renegotiation shall not include:
 - (a) The addition or return of property in a multiple-item agreement or the substitution of the rental property, if in either case the average payment allocable to a payment period is not changed by more than 10 percent.
 - (b) A deferral or extension of a portion of a periodic payment or of one or more periodic payments.
 - (c) A reduction in charges in the rent or agreement.
 - (d) a modification to a rent-to-own agreement as a result of a court proceeding.
- II. No disclosures are required for any extension of a rent-to-own agreement.

Sec. 358-0:11. Enforcement--Penalties.

- I. (a) A rent-to-own dealer who fails to comply with the requirements of this chapter is liable to the consumer damaged thereby in an amount equal to the greater of:
 - (1) The actual damages sustained by the consumer as a result of the rent-to-own dealer's failure to comply with this chapter; or
 - (2) 25 percent of the total of payments necessary to acquire ownership, but not less than \$100 nor more than \$1,000.
- (b) A rent-to-own dealer who fails to comply with this chapter is also liable to the consumer for the costs of the action and reasonable attorney's fees as determined by the court.
- II. A consumer may not take any action to offset the amount for which a rent-to-own

dealer is potentially liable under paragraph I against any amount owed by the consumer, unless the amount of the dealer's liability has been determined by judgment of a court of competent jurisdiction in an action in which the rent-to-own dealer was a party. This section shall not bar a consumer then in default on an obligation from asserting a violation of this chapter as an original action, or as a defense or counterclaim, to an action brought by a rent-to-own dealer against the consumer.

- III. The provisions of this section are in addition to any other rights or remedies available in this state.
- IV. No action under this section shall be brought in any court of competent jurisdiction more than one year after the date the consumer made the last payment of more than one year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

Sec. 358-0:12. Rent-to-own dealer's defenses.

- I. If a rent-to-own dealer establishes by a preponderance of evidence that a violation of this chapter was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, no penalty as specified in RSA 358-0:11 may be imposed and validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry, and printing errors, but do not include an error of legal judgment with respect to a rent-to-own dealer's obligations under this chapter.
- II. A rent-to-own dealer shall not be liable under this section for any failure to comply with any requirement imposed under this chapter if within 60 days after discovering an error, and prior to the institution of an action under this chapter or the receipt of written notice of the error from the consumer, the rent-to-own dealer notifies the consumer of the error and makes whatever adjustments in the appropriate account as are necessary to assure that the consumer is not required to pay an amount in excess of the lowest charge actually disclosed.
- III. No provision of this chapter imposing any penalty applies to any act done or omitted in good faith in conformity with some provision of this chapter, notwithstanding that after the act or omission has occurred the provision is amended, rescinded, or determined by judicial or other competent authority to be invalid for any reason.