

KENTUCKY

Rental-Purchase Agreements

KY Rev Stat § 367.976 et seq.

Section 367.976 Definitions

As used in KRS 367.976 to 367.985, unless the context otherwise requires:

- (1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists directly or indirectly a rental-purchase agreement, excluding in-store merchandising aids.
- (2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement.
- (3) "Consumer" means a natural person who rents personal property under a rental-purchase agreement.
- (4) "Consummation" means the time a consumer becomes contractually obligated on a rental-purchase agreement.
- (5) "Division" means the Division of Consumer Protection in the Office of the Attorney General.
- (6) "Lessor" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental-purchase agreement.
- (7) "Rental-purchase 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 four (4) months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the consumer to become the owner of the property. The term rental-purchase agreement shall not be construed to be, nor be governed by, any of the following:
 - (a) A lease or agreement which constitutes a credit sale as defined in 12 C.F.R. part 226.2(a)(16) and Section 1602(g) of the Truth in Lending Act, 15 U.S.C. secs. 1601 et seq.;
 - (b) A lease which constitutes a consumer lease as defined in 12 C.F.R. part 213.2(a)(6);
 - (c) Any lease for agricultural, business, or commercial purposes;
 - (d) Any lease made to an organization;
 - (e) A lease or agreement which constitutes a retail installment transaction or retail installment contract as defined in KRS 371.210;

(f) A security interest as defined in KRS 355.1-201(37); or

(g) A home solicitation sale as that term is defined in KRS 367.410.

Section 367.977 Necessary disclosures for rental-purchase agreement.

(1) For each rental-purchase agreement, the lessor shall disclose the following items as applicable:

(a) A brief description of the leased property, sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

(c) The maximum amount of all initial and periodic payments and other charges to acquire ownership of the property pursuant to the ownership provision of the rental-purchase agreement;

(d) A statement that the consumer will not own the property until the consumer has made the number of payments and the total of payments necessary to acquire ownership;

(e) A statement that the total of payments does not include other charges such as late payment, default, pickup, and reinstatement fees, and that the consumer should see the contract for an explanation of these charges;

(f) If applicable, a statement that the consumer is 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; however, a statement that indicates new property is used is not a violation of KRS 367.976 to 367.985;

(h) A statement of the cash price of the property. If the agreement involves a lease for five (5) or more items, a statement of the aggregate cash price of all items shall satisfy this requirement;

(i) The total of initial payments required to be paid before consummation of the agreement or delivery of the property, whichever is later;

(j) A statement clearly summarizing the terms of the consumer's options to purchase;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with the description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the leased property at the time the consumer acquires ownership of the property, it will be transferred to the consumer, if allowed by the terms of the warranty; and

- (1) The date of the transaction and the identities of the lessor and consumer.
- (2) With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with that act shall satisfy the requirements of this section.
- (3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of Section 182 of the Federal Consumer Credit Protection Act, 15 U.S.C.A. 1667a, 90 Stat. 250, with respect to a rental-purchase agreement entered into with a consumer.

Section 367.978 Form of disclosures -- Receipts for payments made by cash or money order.

- (1) The lessor shall disclose to the consumer the information required by KRS 367.976 to 367.985. In a transaction involving more than one (1) consumer, a lessor shall disclose only to one (1) of the consumers who are primarily obligated. In a transaction involving more than one (1) lessor, only one (1) lessor need make the required disclosures.
- (2) The disclosures required under KRS 367.976 to 367.985 shall be made no later than the time the lessor delivers the merchandise to the consumer, or upon consummation of the rental-purchase agreement, whichever is earlier.
- (3) The disclosures shall be made using words and phrases of common meaning in a form that the consumer may keep. The disclosures required under KRS 367.977 shall be made a part of the rental-purchase agreement or provided on a separate form. The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together, on the front side of the rental-purchase agreement or on a separate form. The form setting forth the required disclosures shall contain spaces for the consumer's signature and the date immediately below the disclosures. The requirements of this subsection shall not have been complied with unless the consumer signs the statement and receives at the time disclosures are made a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt thereof.
- (4) Information required to be disclosed may be given in the form of estimates and shall be identified as such when the lessor does not know the exact information.
- (5) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of KRS 367.976 to 367.985.
- (6) At the lessor's option, information in addition to that required by KRS 367.977 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or distract attention from the required information.
- (7) A lessor shall make available a written receipt for each payment made by cash or money order.

Section 367.979 Prohibited provisions.

A rental-purchase agreement shall not contain a provision:

- (1) Requiring a confession of judgment;
- (2) Requiring a garnishment of wages;
- (3) Granting authorization to the lessor of a person acting on the lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of goods;
- (4) Requiring the consumer to waive any defense, counterclaim or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the lease or in the repossession of goods; or
- (5) Requiring purchase of insurance from the lessor to cover the merchandise.

Section 367.980 Required provisions.

- (1) Each rental-purchase agreement shall:
 - (a) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the merchandise upon expiration of any lease term; and
 - (b) Contain a provision for reinstatement which, at a minimum permits a consumer who fails to make a timely rental 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, the reasonable costs of pickup, redelivery, any refurbishing and any applicable late fee within five (5) days of the renewal date if the consumer pays monthly, or within two (2) days of the renewal date if the consumer pays more frequently than monthly.
- (2) If a lessee returns the property to the lessor during the times stated in subsection (1) of this section, the reinstatement period shall be extended for an additional thirty (30) days from the date of return.
- (3) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but that repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Section 367.981 Renegotiation of rental-purchase agreement.

(1) A renegotiation shall occur when an existing rental-purchase agreement is satisfied and replaced by a new lease agreement undertaken by the same consumer. A renegotiation shall be a new agreement covered by KRS 367.976 to 367.985. However, events such as the following shall not be treated as a renegotiation:

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

(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;

(d) An agreement involving a court proceeding; or

(e) Any other event described in administrative regulations prescribed by the division.

(2) No disclosures shall be required for any extension of a rental-purchase agreement.

Section 367.982 Advertisement for rental-purchase agreement.

(1) If an advertisement for a rental-purchase agreement refers to or states the amount of any payment or the right to acquire ownership for any specific item, the advertisement also shall state clearly and conspicuously the following items, as applicable:

(a) That the transaction advertised is a rental-purchase agreement;

(b) The total of payments necessary to acquire ownership; and

(c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) 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.(3)Subsection (1) of this section shall not apply to an advertisement:

(a) Which does not refer to a specific item of merchandise;

(b) Which does not refer to or state the amount of any payment; or

(c) Which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with that act shall satisfy the requirements of this section.

Section 367.983 Civil remedies for consumers injured by violations of KRS 367.976 to 367.985.

(1) A lessor who fails to comply with a requirement imposed in KRS 367.977, 367.978, 367.979, or 367.980 with respect to a consumer shall be liable to the consumer in an amount equal to the greater of:

(a) The actual damages sustained by the consumer as a result of the violation, plus the costs of the action and reasonable attorneys' fees;

(b) In the case of an individual action, twenty-five percent (25%) of the total of payments necessary to acquire ownership but not less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000), plus the costs of the action and reasonable attorneys' fees; or

(c) In the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member, plus the costs of the action and reasonable attorneys' fees. 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), plus the costs of the action and reasonable attorneys' fees or one percent (1%) of the net worth of the lessor, plus the costs of the action and reasonable attorneys' fees. In determining the amount of any award in a class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional.

(2) In the case of an advertisement, any lessor who fails to comply with the requirements of KRS 367.982 with regard to any person shall be liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorneys' fees.

(3) If there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. If no disclosures have been given, liability shall be imposed on all lessors.

(4) If there are multiple consumers in a rental-purchase agreement, there shall be only one (1) recovery of damages under subsection (1) of this section for a violation of KRS 367.976 to 367.985.

(5) Multiple violations in connection with a rental-purchase agreement shall entitle the consumer to a single recovery under this section.

(6) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection shall not bar a consumer then in default on the obligation from asserting a violation of KRS 367.976 to 367.985 as an original action, or as a defense or counterclaim to an action brought by lessor to collect amounts owed by the consumer.

(7) In connection with any transaction covered under KRS 367.976 to 367.985, the lessor shall preserve evidence of compliance with the provisions of KRS 367.976 to 367.985 for not less than two (2) years from the date of consummation of the agreement.

Section 367.984 Limitation of actions.

A civil action under KRS 367.976 to 367.985 may be brought in any court of competent jurisdiction within one (1) year of the date of the occurrence of any violation or within six (6) months of the time the rental-purchase agreement, together with any renewals or extensions thereof, ceases to be in effect, whichever is greater. Notwithstanding the above, a civil action under KRS 367.976 to 367.985 may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or its assignee.

Section 367.985 Effect of unintentional violation and timely adjustment of error.

(1) A lessor shall not be liable under KRS 367.983 for a violation of KRS 367.976 to 367.985 if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, such as a clerical miscalculation, computer malfunctions, programming error, or printing error, even though the lessor maintained procedures reasonably adapted to avoid such an error. An error of legal judgment with respect to requirements of this title shall not be considered a bona fide error.

(2) A lessor shall not be liable under KRS 367.983 for any act done or omitted in good faith in conformity with any administrative regulation or interpretation promulgated by the Attorney General or by the division or by an official duly authorized by the Attorney General or by the division. This rule shall apply even if, after the act or omission has occurred, the regulation or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(3) A lessor shall not be liable under KRS 367.983 for any error if, before the thirty-first day after the date the merchant discovers the error and before an action against the lessor has been filed or written notice of the error received by the lessor, the lessor gives the consumer written notice of the error and makes adjustments in the consumer's account as necessary to assure that the consumer will not be required to pay an amount in excess of the amount disclosed and that the agreement otherwise complies with KRS 367.976 to 367.985.