

NEW MEXICO

Rental-Purchase Agreement Act

NM Stat § 57-26-1

Section 57-26-1 - Short title.

Sections 1 through 12 [57-26-1 to 57-26-12 NMSA 1978] of this act may be cited as the "Rental-Purchase Agreement Act".

Section 57-26-2 - Definitions.

As used in the Rental-Purchase Agreement Act:

A. "advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. "cash sale price" means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. "consumer" means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. "consummation" means the date on which a consumer enters a rental-purchase agreement;

E. "goods" means personal property of which a consumer acquires use under a rental-purchase agreement;

F. "lessor" means a person who regularly provides the use of goods under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. "rental-purchase agreement" means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

Section 57-26-3 - Exempted transactions; relationship to other laws.

A. The Rental-Purchase Agreement Act does not apply to the following:

- (1) rental-purchase agreements made primarily for business, commercial or agricultural purposes;
- (2) a lease of a safe deposit box;
- (3) a lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;
- (4) a lease of a "motor vehicle", as defined in Subsection C of Section 56-1-1 NMSA 1978; or
- (5) a lease of a "mobile home", as defined in Subsection D of Section 56-1-1 NMSA 1978.

B. Rental-purchase agreements are not governed by the provisions of:

- (1) the Uniform Commercial Code [Chapter 55 NMSA 1978];
- (2) Chapter 56, Articles 1 and 8 NMSA 1978; or
- (3) Chapter 58, Article 15 NMSA 1978.

Section 57-26-4 - General requirements of rental-purchase agreements.

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least eight-point type. The rental-purchase agreement shall be designated "rental-purchase agreement".

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-purchase agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer's signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor's business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by Section 5 [57-26-5 NMSA 1978] of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer's signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor,

only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English language of the advertisement and shall make those rental-purchase agreements available to consumers.

Section 57-26-5 - Disclosures.

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

- (1) 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 goods;
- (2) a statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;
- (3) a statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;
- (4) a brief description of the goods, sufficient to identify the goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;
- (5) a statement of the cash sale price of the goods, but if one rental-purchase agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;
- (6) the total of initial payments paid or required at or before consummation of the rental-purchase agreement or delivery of the goods, whichever is later;
- (7) a statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;
- (8) 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 early purchase price;
- (9) a statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any

part of a manufacturer's express warranty covers the goods at the time the consumer acquires ownership of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(10) a statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period;

(11) notice of the right to reinstate a rental-purchase agreement, as provided in the Rental-Purchase Agreement Act; and

(12) the following notice printed or typed in a size equal to at least ten-point bold type:

"NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

B. With respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 et seq., compliance with that act satisfies the requirements of this section.

Section 57-26-6 - Prohibited provisions.

A rental-purchase agreement shall 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 property of the consumer;

D. a wage assignment;

E. a waiver by the consumer of claims or defenses;

F. a provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

G. a provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;

H. a provision that mere failure to return goods constitutes probable cause for a criminal action;

I. a provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make

periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to Section 5 [57-26-5 NMSA 1978] of the Rental-Purchase Agreement Act;

J. a provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or

K. a provision for a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee.

Section 57-26-7 - Reinstatement.

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five days of the renewal date of an agreement with monthly periodic payments or within two days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

(1) all past due rental charges;

(2) if the goods have been picked up, the reasonable costs of pickup and redelivery; and

(3) any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than twenty-one days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than thirty days after the date of the return of the goods.

D. Nothing in this section shall prevent a lessor 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 lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

Section 57-26-8 - Receipts.

Upon request by the consumer, a lessor shall provide the consumer with a written receipt for each payment made.

Section 57-26-9 - Renegotiations and extensions.

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by Section 5 [57-26-5 NMSA 1978] of the Rental-Purchase Agreement Act is changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by Section 5 of the Rental-Purchase Agreement Act.

B. A renegotiation shall not include:

(1) reinstatement of a rental-purchase agreement in accordance with Section 7 [57-26-7 NMSA 1978] of the Rental-Purchase Agreement Act;

(2) a lessor's waiver or failure to assert any claim against the consumer;

(3) a deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

(4) a change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

Section 57-26-10 - Advertising.

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state:

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

(2) the total number and total amount of periodic payments necessary to acquire ownership of the item; and

(3) that the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this section.

C. The provisions of Subsection A of this section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

- (1) the cash price of the item;
- (2) the amount of the periodic payment; and
- (3) the total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this section in the non-English language.

Section 57-26-11 - Enforcement; remedies; limitations.

A. A lessor who fails to comply with the requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:

- (1) the greater of the actual damages sustained by the consumer as a result of the lessor's failure to comply or twenty-five percent of the total of payments necessary to acquire ownership, but not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000); and
- (2) the costs of the action and reasonable attorneys' fees as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection A 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 does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. The remedies of a consumer, pursuant to the provisions of this section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

D. No action under this section may be brought in any court of competent jurisdiction more than one year after the date the consumer made his last rental payment or more than one year after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

Section 57-26-12 - Lessor's defenses.

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental-Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of Section 11 [57-26-11 NMSA 1978] of the Rental-Purchase Agreement Act and the 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 errors of legal judgment with respect to a lessor's obligations under the Rental-Purchase Agreement Act.

B. A lessor is not subject to the provisions of Section 11 of the Rental-Purchase Agreement Act if, within sixty days after discovering a failure to comply with a requirement of the Rental-Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of Section 11 of the Rental-Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.