

## WYOMING

### Consumer Rental Purchase Agreement Act

*WY Stat § 40-19-101 et seq.*

#### Section 40-19-101 - Short Title.

This act shall be known and may be cited as the "Wyoming Consumer Rental-Purchase Agreement Act."

#### Section 40-19-102 - Definitions.

(a) As used in this act:

(i) "Administrator" means the state banking commissioner;

(ii) "Advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

(iii) "Business day" means any day other than Sunday or a legal holiday;

(iv) "Cash sale price" means the price stated in a rental-purchase agreement for which the merchant would have sold and the consumer would have bought the property which is the subject matter of a rental-purchase agreement if the transaction had been a sale for cash. The cash sale price may include any applicable taxes to the extent imposed on the cash sale;

(v) "Consumer" means an individual who rents property under a rental-purchase agreement to be used primarily for personal, family or household purposes;

(vi) "Consummation" means the date on which a consumer enters a rental-purchase agreement;

(vii) "Fee" means any payment, charge, fee, cost or expense whether mandatory or optional that a consumer pays in addition to periodic payments in connection with a rental-purchase agreement;

(viii) "Merchant" means a person who regularly provides the use of property under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement;

(ix) "Periodic payment" means the rent a consumer pays weekly, monthly or otherwise for the use of property pursuant to a rental-purchase agreement;

(x) "Property" means personal property of which a consumer acquires use under a rental-purchase agreement;

(xi) "Rental-purchase agreement" means an agreement between a consumer and merchant for the use of property by the consumer primarily for personal, family or household purposes:

- (A) For an initial period of four (4) months or less;
- (B) That is automatically renewable with each payment after the initial period;
- (C) That does not obligate or require the consumer to continue renting or using the property beyond the initial period; and
- (D) That permits the consumer to become the owner of the property.

(xii) "This act" means W.S. 40-19-101 through 40-19-120.

### **Section 40-19-103 - Notices.**

Notices required by this act shall be given personally or sent by first class or registered mail to the known residential address of the consumer. Notice, if last by mail, is given when deposited in a mailbox properly addressed and postage prepaid.

### **Section 40-19-104 - Application.**

- (a) This act applies to rental-purchase agreements and acts, practices or conduct related to a rental-purchase agreement entered into in this state.
- (b) For the purposes of this act, the residence of the consumer is the address given by the consumer as the consumer's residence in writing signed by the consumer in connection with the rental-purchase agreement. Unless the consumer notifies the merchant of a new or different residence address, the given residence is presumed to be unchanged.

### **Section 40-19-105 - Inapplicability of Other Laws; Exempt Transactions.**

- (a) Rental-purchase agreements as defined in this act are not governed by laws relating to:
  - (i) Transactions governed under the Wyoming Uniform Consumer Credit Code; or
  - (ii) "Security interests" as defined by W.S. 34.1-1-201(a)(xxxvii).
- (b) This act does not apply to the following:
  - (i) Rental-purchase agreements primarily for business, commercial or agricultural purposes or those in which either party is a governmental agency or instrumentality;

(ii) A lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property.

#### **Section 40-19-106 - General Requirements of Rental-Purchase Agreements.**

(a) Each rental-purchase agreement shall be in writing, dated, signed by the consumer and merchant and completed as to all essential provisions as required by this act.

(b) The agreement shall be made clearly and conspicuously with disclosures required by W.S. 40-19-107(a)(i), (v), (vi), (vii) and (viii) grouped together, segregated from all other provisions and not containing any information not directly related to the disclosures. The agreement shall be designated "rental-purchase agreement."

(c) The merchant shall deliver to the consumer a completed copy of the agreement for the consumer to retain at consummation of the transaction.

(d) The rental-purchase agreement shall contain the names and addresses of the merchant and consumer.

(e) The merchant shall disclose to the consumer the information required by W.S. 40-19-107 on the face of the agreement above the line for the consumer's signature. If a disclosure becomes inaccurate as a result of any act, occurrence or agreement by the consumer after the delivery of the required disclosures, the resulting inaccuracy shall not be considered to be a violation of this act.

(f) A merchant who advertises rental-purchase agreements in any language other than English shall have rental-purchase agreements printed in each language as the merchant advertises and shall make those rental-purchase agreements available to consumers.

#### **Section 40-19-107 - Disclosures.**

(a) For each rental-purchase agreement, the merchant 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 paid the total amount 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 the liability will not exceed the fair market value of the property as of the time it is lost or damaged;

- (iv) A statement specifying any insurance required to be purchased by the consumer to satisfy any liability of the consumer to the merchant for loss or damage to the property;
- (v) A brief description of the property, sufficient to identify the property to the consumer and the merchant, including an identification number, if applicable, and a statement indicating whether the property is new or used;
- (vi) A statement of the cash sale price of the property. Where one (1) agreement involves a lease of two (2) or more items as a set, a statement of the aggregate cash sale price of all items shall satisfy this requirement;
- (vii) The total amount initially payable or required at or before consummation of the agreement or delivery of the property, whichever is later;
- (viii) A statement that the total amount of periodic payments necessary to acquire ownership does not include other fees. Any other fee shall be separately disclosed in the agreement along with a statement of the purpose for the fee and whether it is mandatory or optional;
- (ix) 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 purchased;
- (x) A statement identifying the merchant as 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 property at the time the consumer acquires ownership, the warranty shall be transferred to the consumer if allowed by its terms;
- (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, along with any past due rental payments upon expiration of any rental period;
- (xii) Notice of the right to reinstate an agreement as provided in this act;
- (xiii) The following notice printed or typed in a size equal to or greater than ten (10) point bold type:

#### NOTICE TO 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.

- (xiv) If the property is used, a description of any damage to the property beyond ordinary wear and tear that would reasonably be expected on property of similar age and condition; and
- (xv) A description of the conditions which constitute default by the consumer.

### **Section 40-19-108 - Prohibited Provisions.**

- (a) A rental-purchase agreement shall not contain a:
- (i) Confession of judgment;
  - (ii) Negotiable instrument;
  - (iii) Security interest or any other claim of a property interest in any property of the consumer;
  - (iv) Wage assignment;
  - (v) Waiver by the consumer of claims or defenses;
  - (vi) Provision authorizing the merchant or a person acting on the merchant's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of property;
  - (vii) Provision requiring the consumer to purchase insurance or a liability damage waiver from the merchant for the property. The merchant may require the consumer to insure the property so as to satisfy any liability of the consumer to the merchant for loss or damage to the property;
  - (viii) Provision that mere failure to return property constitutes probable cause for a criminal action;
  - (ix) Provision requiring the consumer to make a final periodic payment in an amount greater than regular periodic payments in order to acquire ownership of the property or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to W.S. 40-19-107;
  - (x) Provision requiring a reinstatement fee unless a periodic payment is late more than five (5) days on a monthly agreement or more than two (2) days on an agreement with periodic payments made more frequently than monthly;
  - (xi) Provision for a reinstatement fee or pickup and redelivery fee in excess of the maximum amount set by rule of the administrator for property subject to rental-purchase agreements; or
  - (xii) 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 merchant may use the term "late charge" or a similar term to refer to a reinstatement fee.

### **Section 40-19-109 - Default; Notice of Default and Right to Cure.**

- (a) In any rental-purchase agreement, after a consumer is in default for three (3) business days or more and does not voluntarily surrender possession of the rented property, a merchant may give

the consumer the notice provided in this section. Notice may be given to the consumer under this section by the merchant personally delivering the notice to the consumer or by mailing the notice to the consumer's last known residential address.

(b) The notice shall be in writing and conspicuously state the name, address and telephone number of the merchant to whom payment is made, a brief identification of the transaction, the consumer's right to cure any default, the amount of payment and the date the payment shall be made to cure the default. The notice shall be in substantially the form required by rule of the administrator.

(c) With respect to rental-purchase agreements with payments or options to renew more frequently than monthly, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until three (3) business days after notice of the consumer's right to cure is given. With respect to all other rental-purchase agreements, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until five (5) business days after notice of the consumer's right to cure is given.

(d) After notice is given and until expiration of the minimum applicable period, a consumer may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due and payment of a renewal payment.

(e) This section shall not prohibit a consumer from voluntarily surrendering possession of property that is rented or a merchant from requesting and accepting surrender of property at any time after default. In any enforcement proceeding, a merchant shall affirmatively plead and prove either that the notice to cure is not required or that the merchant has given the required notice. The failure to plead shall not invalidate any action taken by the merchant that is otherwise lawful and if the merchant had rightfully repossessed the property the repossession shall not constitute conversion.

#### **Section 40-19-110 - Reinstatement.**

(a) Any consumer whose default consists solely of a failure to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by paying the following charges within seven (7) days of the renewal date of the agreement:

(i) All past due rental charges;

(ii) If the property has been picked-up, the reasonable costs of pickup and redelivery as limited by W.S. 40-19-108(a)(xi); and

(iii) Any applicable reinstatement fee as limited by W.S. 40-19-108(a)(x) and (xi).

(b) In the case of a consumer who has paid less than two-thirds ( $\frac{2}{3}$ ) of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property within seven (7) days of the renewal date, other than through judicial process, the

consumer may reinstate the agreement during a period of not less than twenty-one (21) days after the date of the return of the property.

(c) In the case of a consumer who has paid two-thirds (2/3) or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property within seven (7) days of the renewal date, other than through judicial process, the consumer may reinstate the agreement during a period of not less than thirty (30) days after the date of the return of the property.

(d) Nothing in this section shall prevent a merchant from attempting to repossess the property. Repossession within seven (7) days of the renewal date shall not affect the consumer's right to reinstate. Upon reinstatement, the merchant shall provide the consumer with the same property, if available, or with substitute property of comparable quality and condition.

#### **Section 40-19-111 - Liability Damage Waivers; Fees.**

(a) A consumer and merchant may contract for a liability damage waiver. The selling or offering for sale of a liability damage waiver pursuant to this act shall be subject to the following prohibitions and requirements:

(i) A merchant may not sell or offer to sell a liability damage waiver unless all restrictions, conditions and exclusions are printed in an agreement separate from the rental-purchase agreement;

(ii) The liability damage waiver contract shall include a statement of the fee for the liability damage waiver and shall display the following notice printed or typed in a size equal to or greater than ten (10) point bold type:

**NOTICE: THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED. THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR HOMEOWNER'S OR CASUALTY INSURANCE, IF ANY, AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE.**

#### **Section 40-19-112 - Renegotiations and Extensions.**

(a) A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by W.S. 40-19-107 is changed by agreement between the merchant and consumer. A renegotiation is considered to be a new rental-purchase agreement requiring the merchant to give all the disclosures required by W.S. 40-19-107.

(b) The following acts shall not be considered to be a renegotiation:

- (i) Reinstatement of a rental-purchase agreement in accordance with W.S. 40-19-110;
- (ii) A merchant's waiver or failure to assert any claim against the consumer;
- (iii) A deferral, extension or waiver of a portion of a periodic payment or of one (1) or more periodic payments; or
- (iv) 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 40-19-113 - Advertising.**

(a) An advertisement for a rental-purchase agreement 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 the following:

- (i) The transaction advertised is a rental-purchase agreement;
  - (ii) The total number and total amount of periodic payments necessary to acquire ownership of the item; and
  - (iii) That the consumer acquires no ownership rights in the item unless the total amount necessary to acquire ownership 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 the requirements in this section.
- (c) The provisions of subsection (a) of this section shall not apply to any advertisement which does not refer to or state the amount of any payment.
- (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:
- (i) The cash sale price of the item;
  - (ii) The amount of the periodic payment; and
  - (iii) The total number and total amount of periodic payments necessary to acquire ownership.
- (e) An advertisement for a rental-purchase agreement in any language other than English shall contain disclosures as required by this section in that language.

#### **Section 40-19-114 - License Required; Application for License; Fee; Qualifications.**



(a) Any person acting as a merchant, as defined by W.S. 40-19-102(a)(viii), in this state shall be licensed to conduct such business under this section.

(b) The administrator shall receive and act on all applications for licenses required under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain the information the administrator requires by rule to make an investigation and evaluation of the financial responsibility, experience and business qualification of the applicant, and of the partners or members if the applicant is a partnership or association, and of the principal officers and directors if the applicant is a corporation, such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act.

(c) The application for one (1) or more licenses shall be accompanied by a processing fee not to exceed five hundred dollars (\$500.00) set by rule of the administrator. The fee shall be deposited by the administrator with the state treasurer and credited to the financial institutions administration account. Funds from the account shall be expended to carry out the duties of the administrator. If the expenses of the investigation and evaluation exceed the amount of the fee, the applicant shall reimburse the administrator the excess amount. If the expenses of the investigation and evaluation are less than the amount of the fee, the unexpended amount shall remain within the account. If an application is withdrawn by the applicant at any time prior to the completion of the investigation and evaluation, the unexpended amount shall remain within the account.

(d) Except as otherwise provided, fees collected by the administrator under this act shall be deposited by the administrator with the state treasurer and credited to the financial institutions administration account. Expenditures shall be made from the account by warrants drawn by the state auditor, upon vouchers issued and signed by the administrator. The funds deposited in the account under this act shall be expended only to carry out the duties of the administrator.

(e) The applicant shall be notified when the application is approved. Within twenty (20) days after notification, the applicant shall pay an initial license fee not to exceed five hundred dollars (\$500.00), as set by rule of the administrator.

(f) Each office or place of business shall be licensed separately.

(g) Each license shall state the address of the office from which the business is to be conducted and the name of the licensee. The license shall be prominently displayed at the place of business named in the license. The license shall not be transferable or assignable.

(h) If a licensee wishes to move his office to another location, the licensee shall:

(i) Give written notice to the administrator at least thirty (30) days prior to the move; and

(ii) Pay a license modification fee not to exceed one hundred dollars (\$100.00), as set by rule of the administrator.

(j) Each license issued under this section shall expire on July 1. The license shall be renewed annually not less than thirty (30) days before the expiration date. The renewal fee for each

license shall not exceed five hundred dollars (\$500.00), as set by rule of the administrator.

(k) Any fee charged and collected under this section shall be in accordance with W.S. 13-1-603(d) through (f).

#### **Section 40-19-115 - Revocation or Suspension of License.**

(a) The administrator may issue to a person licensed under this act an order to show cause why his license should not be revoked or suspended for a period not in excess of six (6) months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten (10) days from the date of the order. After the hearing the administrator shall revoke or suspend the license if he finds that:

(i) The licensee has repeatedly and willfully violated this act or any rule or order lawfully made pursuant to this act; or

(ii) Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(b) No revocation or suspension of a license is lawful unless prior to institution of proceedings by the administrator notice is given to the licensee of the facts or conduct which warrant the intended action and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the administrator finds that probable cause for revocation of a license exists and that enforcement of this act requires immediate suspension of a license pending investigation, he may, after a hearing upon five (5) days written notice, enter an order suspending the license for not more than thirty (30) days.

(d) Whenever the administrator revokes or suspends a license, he shall enter an order to that effect and immediately notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order he shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license under this act may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(f) No revocation, suspension or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(g) The administrator may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

### **Section 40-19-116 - Record Retention.**

Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the administrator to determine whether the licensee is complying with the provisions of this act. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available to the administrator. The records pertaining to any rental-purchase agreement need not be preserved for more than two (2) years after making the final entry relating to the agreement.

### **Section 40-19-117 - Examination and Investigation.**

(a) Upon complaint the administrator may examine and copy the records of a licensee. The investigation may be made for the purposes of discovering violations of this act or securing information lawfully required. For these purposes he shall have free and reasonable access during normal office hours to the offices, places of business and records of the licensee. Each licensee shall pay to the administrator an amount assessed by the administrator to cover the direct and indirect cost of an investigation under this subsection.

(b) For the purposes of this section, the administrator may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of person having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(c) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

### **Section 40-19-118 - Powers and Functions of the Administrator; Enforcement; Penalties.**

(a) Except as otherwise provided, the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, shall apply to and govern all administrative actions taken by the administrator pursuant to this act.

(b) The administrator may adopt rules and regulations to implement and administer this act.

(c) After notice and hearing, the administrator may order a merchant or a person acting on his behalf to cease and desist from engaging in violations of this act. Any person aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of his order in the district court.

(d) The administrator may bring a civil action to restrain a merchant from violating the

provisions of this act and for other appropriate relief.

(e) Any merchant refusing or obstructing access to the administrator or his representative to any account, books, records or papers, refusing to furnish any required information or hindering a full examination or investigation of the accounts, books, records or papers is guilty of a felony punishable by a fine of not less than one thousand dollars (\$1,000.00), imprisonment for a period of not less than one (1) year, or both.

(f) Any merchant who wrongfully fails or refuses to comply with an order of the administrator as may be provided under this act is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars (\$100.00) per day for each day the order is not obeyed.

### **Section 40-19-119 - Consumer Civil Actions.**

(a) A merchant who fails to comply with a requirement imposed in W.S. 40-19-106 through 40-19-112 or 40-12-104 shall be liable to the consumer damaged thereby in an amount equal to the greater of:

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

(ii) In the case of an individual action, twenty-five percent (25%) of the total payments necessary to acquire ownership but not less than one hundred dollars (\$100.00) nor greater than one thousand dollars (\$1,000.00), plus the costs of the action and reasonable attorney's fees; or

(iii) 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 attorney's 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 (\$500,000.00) plus the costs of the action and reasonable attorney's fees or one percent (1%) of the net worth of the merchant plus the costs of the action and reasonable attorney's 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 merchant's resources and the extent to which the merchant's violation was intentional.

(b) In the case of an advertisement, any merchant who fails to comply with the requirements of W.S. 40-19-113 with regard to any consumer shall be liable to that consumer for actual damages suffered from the violation, the costs of the action and reasonable attorney's fees.

(c) If there are multiple merchants, liability shall be imposed only on the merchant who made the disclosures. If no disclosures have been given, liability shall be imposed on all merchants.

(d) If there are multiple consumers in a rental-purchase agreement, there shall be only one (1) recovery of damages under subsection (a) of this section.

(e) Multiple violations in connection with a rental-purchase agreement shall entitle the consumer

to a single recovery under this section.

(f) An action under this section shall be brought in any court of competent jurisdiction within the greater of the following times:

(i) Within two (2) years after the date the consumer made his last rental payment; or

(ii) Within two (2) years after the date of the occurrence of the violation that is the subject of the suit.

#### **Section 40-19-120 - Merchant's Defense.**

(a) If a merchant establishes by a preponderance of the evidence that a violation of this act was unintentional, no penalty as specified in W.S. 40-19-118 shall be imposed and validity of the transaction shall not be affected.

(b) A merchant shall not be liable under this act for any failure to comply with any requirement imposed under this act if within sixty (60) days after the merchant discovers an error, and prior to the institution of an action under this act or the receipt of written notice of the error from the consumer, the merchant notifies the consumer of the error and within seven (7) days, makes adjustments in the appropriate account necessary to correct the error.