



STEPS TO TAKE WHEN A COMPANY GOES OUT OF BUSINESS

by Texas Attorney General Greg Abbott

WHEN A COMPANY CLOSES DOWN unexpectedly, its customers often turn to the Office of the Attorney General (OAG) for help recovering up-front layaway payments and merchandise that was never delivered. In addition to filing a complaint with the OAG, Texans should take independent steps to protect themselves when a retailer suddenly goes out of business.

The most important step is simple. Customers should always maintain meticulous records of every transaction. Invoices, sales receipts, credit card slips, sales representatives' names, and other documentation are vitally important to recovering refunds or merchandise.

Whenever possible, customers should pay for goods only after the products are delivered. If a vendor requires an up-front payment, customers should try to negotiate the deposit down to the lowest possible amount.

Customers contemplating a large purchase should avoid paying with cash and instead use credit cards to make large deposits or payments. Under the Fair Credit Billing Act and certain

credit card companies' chargeback rules, financial institutions can usually provide refunds to customers whose purchases are not delivered.

Before disputing a credit card purchase, customers should attempt to resolve the problem with the actual retailer. Customers should outline their complaint in a certified letter to the merchant and save copies of all correspondence.

If the retailer fails to respond, customers should contact their credit card company, formally dispute the charge and provide the issuer with a copy of the dispute letter. To be eligible for protection under the Fair Credit Billing Act, customers must dispute a credit card charge within 60 days. The credit card issuer likely will attempt to contact the merchant to determine whether the customer is owed a refund.

In the event a company declares bankruptcy, customers become creditors who may be paid after the business liquidates its assets. The bankruptcy court is charged with overseeing which creditors get paid first based upon the order of priority in the bankruptcy code. Bankrupt companies typically pay their debts first

to "secured" creditors, and only later to ordinary creditors (such as customers).

To protect their rights in a bankruptcy proceeding, customers must complete a Proof of Claim form and file it with the bankruptcy court. Customers should ask whether the court has appointed a trustee. Bankruptcy trustees are responsible for attempting to pay the bankrupt company's creditors – including customers.

Unfortunately, there are few guarantees that customers who are owed money by a suddenly-shuttered company will receive a refund. Customers who are owed large amounts of money should consider contacting a private attorney regarding their individual legal rights.

Customers may also file a complaint against the company with the Office of the Attorney General's Consumer Protection Division. While the OAG cannot take legal action on behalf of private individuals, the agency is empowered to enforce state law, and some enforcement actions do produce restitution for individuals.

– August 2014

POINTS TO REMEMBER



WHAT TO DO WHEN A COMPANY GOES OUT OF BUSINESS

- Maintain careful records of all transactions.
- Make a good-faith effort to resolve the dispute with the merchant.
- Dispute charges for undelivered merchandise in writing.
- Contact the credit card company to dispute charges.
- File a Proof of Claim if the company declares bankruptcy.

The Federal Trade Commission enforces the Fair Credit Billing Act for most creditors. To file a complaint or receive free information on consumer issues, contact:

Federal Trade Commission
(877) FTC-HELP
www.ftc.gov

The Office of the Attorney General takes legal action to enforce state consumer protection laws.

To file a complaint, contact:

Office of the Attorney General
(800) 252-8011
www.texasattorneygeneral.gov

