**CAN I RETURN THAT UGLY SWEATER?**

**BY: WILLIAM G. MORRIS, ESQ.**

Gifts are part of many holiday traditions. Unfortunately, gifts do not always work out. Wrong size, wrong color and in some cases just plain wrong. The gifter wants to make sure all is well and may want to return something purchased as a gift. Decision to return could even be simply because the gifter had a change of heart (or the intended recipient did).

The gifter heads back to the store only to find returns are not accepted, or that the store will only issue a store credit. How can that be? It is not fair! But there is nothing that requires a store to take back goods after sale just because a buyer decides to take it back.

Good news for consumers is most stores allow returns in an effort to generate customer goodwill. There is no federal law mandating stores allow returns, so the laws of each state control consumer rights therein. Florida does have statutes addressing this area, but they can be referred to as “bare bones.”

Florida statutes assign responsibility for enforcing the law in this area to the Florida Department of Agriculture. The Department has not promulgated any regulations that might expand a consumer’s right to return and likely would lack authority to do so. But, it can fine a retailer who fails to comply with Florida’s minimum requirements up to $100 per violation and issue a cease and desist order.

What are Florida’s minimum requirements on retailers concerning returns? Section 501.142 Florida Statutes requires notice be given to consumers when a retailer offers no cash refund, credit refund or merchandise exchange to post a “no refund” sign at the point of sale. The policy must also be presented to a consumer in writing if the consumer so requests.

If a store does not post a “no refund” notice, the store must grant a consumer, upon request and proof of purchase, a refund within 7 days of the date of purchase as long as the merchandise is unused and in the original carton, if one was furnished.

The statute requiring a 7-day refund if a store fails to post a “no refund” notice does not apply to sale of food, perishable goods, custom made goods, goods altered at request of the customer, or goods which cannot be resold by the merchant due to some law or government regulation.

Some stores offer store credit or vouchers in lieu of a cash refund. Those vouchers may not have an expiration date or impose any type of fee for later use such as a service charge or maintenance fee. Credit memos sold or issued by financial institutions or money services businesses are not subject to the ban on expiration date or fees.

Returns because one decides the item is not wanted are one thing, but defective items are another. Under the Uniform Commercial Code (UCC), the purchaser of a defective item has return rights. The UCC is a set of laws proposed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. It is intended to bring some uniformity to business dealings in all states so businesses can conduct business across state lines without too much worry that law would be different from state to state.

States have adopted various versions of the UCC so the laws are not uniform, but they are close. The UCC is directed primarily toward businesses dealing with businesses, but consumers fall within its definition of a buyer. The UCC provides a procedure for revoking acceptance when an item proves defective. The requirements of UCC can be technical, so consumers may be better off ignoring rights they may claim under it.

That leaves warranty claims when something is defective. A lot of manufacturers publish express warranties and make it clear the warranty is the consumer’s sole remedy. These are usually limited in scope and time and will require proof of date purchased.

There are also implied warranties of merchantability. These warranties are implied and mean the item sold will do what it is supposed to do and is not defective. Implied warranties may be disclaimed. The disclaimer must be in clear language and provided with the product. If not disclaimed, the implied warranty of merchantability applies to defects even if not discovered right away.

If the item is defective and was not sold “as is,” a store can be required to accept return. But a defect is not a wrong size or color. A defective item is one that does not work as intended or is otherwise broken.

Because retailers are not required to accept returns and refund purchase price, it behooves consumers to investigate the return policy of a store BEFORE buying. Nobody should buy something with the belief that it can always be returned.

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