



Legal Guide CR-7

HOW TO WITHHOLD PAYMENT ON A CREDIT CARD

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A federal "withholding law" may be of help to you if you used your credit card to purchase home appliances, a home study course, or some other consumer product or service, and things don't turn out as you had a right to expect. Assume --

Example 1: Your new appliance arrives with scratches and dents. You try to return it; but the seller won't take it back or replace it.

Example 2: You ordered a book or CD by telephone, mail, or over the Internet, but after 30 days, it hasn't arrived. You ask the seller to send it or refund your money. The seller ignores your phone calls and letters.

Example 3: You were called by a telemarketer, and you decided not to purchase anything, but you made the mistake of giving the caller your credit card number. A week later, a package arrives at your home. The person who called you insists that you ordered it. Despite your calls and letters, the telemarketer won't take it back or reverse the charges to your credit card account.

Example 4: You purchased a week's vacation on a cruise ship, but the company went out of business and has refused to return your advance payment.

In all of these situations, you may have a right to withhold payment from the issuer of your credit card. Federal law gives credit card holders a right to withhold payment in each of these situations and others.

But to use this right you must act quickly.

Here's How To Withhold Payment:

First: Under the "withholding law," you must first attempt to resolve the dispute directly with the seller. A good faith settlement effort must be made. If you telephone the seller, follow up with a letter. (You need not contact a manufacturer.)

Second: Don't pay the amount in dispute. Once you have paid it, you will lose your right to withhold it in some situations.

Third: If you and the seller are not able to resolve the problem quickly, then write the issuer of your credit card, whether a bank, the retailer or some other company, and *inform it that you desire to withhold payment.*

You can do most of this by telephone. But if you telephone the card issuer, it's important to follow up with a letter, and to also send a copy of your letter to the seller. A letter will prove that you notified the credit card issuer as well as the seller, and it will also prove what you said to the credit card issuer and the seller.

When you contact the credit card issuer, be sure to provide all of the following information: (1) your name (as it appears on your credit card); (2) the card number; (3) the name of the seller (as it appears on the credit card receipt, or on the card issuer's monthly statement); (4) the date of your purchase; (5) the amount that you paid by credit card; and (6) a brief explanation of why you are withholding payment. In your letter, you should also include (7) the address or addresses to which you are mailing the letter, and (8) the date of mailing or delivery.

There are several additional reasons, many of the reasons that caused you to withhold payment may also constitute a billing error under the federal "billing-error law." The card issuer *cannot lawfully ignore your billing-error letter*, but must (1) acknowledge it in writing within 30 days, (2) conduct a reasonable investigation of your complaint, (3) correct any "billing error," and (4) mail or deliver a correction notice to you, telling you what it has done. Second, sending a copy of the letter to the seller will demonstrate to the seller that you intend to follow through with your complaint, and that will increase the chance that the seller will resolve the problem voluntarily. The "billing-error law" is discussed in detail in Legal Guide CR-8, How to Correct a Credit Card Billing Error. In some situations either the "billing-error" or the "withholding law" may apply, but not both.

Your Rights if You Withhold Payment:

The federal "withholding law" provides credit card holders with the following rights:

1. *You may assert against the card issuer any claim or defense arising out of a transaction in which you have purchased property or services using your credit card.*

The right to withhold payment exists once you have made a good faith attempt to resolve the dispute with the retailer or other business that honored your credit card, and the retailer or other business has then failed to satisfactorily resolved the dispute.

2. *The card issuer cannot report that you are delinquent for simply exercising your right to withhold payment.*

If you withhold payment in accordance with these guidelines, the card issuer is not allowed to report the withheld amount as delinquent to any credit reporting agency until the dispute is actually settled. However, this rule does not apply if you withhold any more than the portion of the disputed credit that was unpaid at the time you first gave notice. But while the card issuer cannot report your failure to pay as "delinquent," it always can report it as "disputed." (Since the dispute probably will end up on your credit record, the right to withhold should never be used frivolously. In general, you should use the right to withhold only as a "last resort" in a situation in which you have attempted to resolve the problem with the seller and know that you are "in the right.")

3. *You can also withhold payment of finance charges on the amount properly withheld.*

You are also permitted to withhold any finance charges and other charges that the card issuer has imposed on the amount of credit whose payment is properly withheld. You can withhold all finance charges and other charges that were imposed on that amount beginning on the date that you first gave notice of the problem to the seller or card issuer.

Limits on Your Right to Withhold Payment:

You can only withhold payment if you used your credit card in a "consumer" transaction. That is, the "withholding law" applies only when a credit card is used to purchase property or services used for personal, family or household purposes. If you used the card for business purposes, for instance, this law will not help you.

You can only withhold payment from the issuer of your credit card *if you have a valid claim or legal defense against the seller.* For instance, you would have a right to withhold payment in each of the four examples described on page one of this Legal Guide. That's because you probably don't owe anything to the seller, and also because each situation has resulted in a "billing error." In general, your right to withhold payment must be based on a claim or defense of substantial merit which is asserted in good faith against the seller or other party to whom you made payment by credit card. (The complaint must be something important and real.)

You can only withhold payment for the credit that you actually used to make a purchase. The right to withhold payment only applies to the extent that your credit card was used to obtain credit to pay the purchase price. If you used your credit card only for identification purposes, and you did not incur an obligation to the issuer of your credit card, there is no right to withhold anything from the card issuer. Also, if you made a cash down payment, you cannot withhold anything for the down payment.

You can only withhold payment if you used your credit card as a "credit" card. This means that there is no right to withhold payment if your credit card was used as a "debit card" -- that is, where no credit was extended, but payment came from funds on deposit in your checking account, or where you used a credit card's cash advance or overdraft feature, or as a check-guarantee card. Using the "debit card" feature of a card plan (if you have that option) is just like paying by cash.

You can only withhold payment of an amount that is still unpaid. In situations in which you have a legal claim or defense against the seller, the amount that you can withhold under the federal "withholding law" is limited to *the amount of the credit card's unpaid balance that was still unpaid on the particular purchase at the time that you first notified the seller OR the card issuer of the problem.* It is therefore important to inform both card issuer and seller as early as possible of your decision to withhold payment. To establish the exact date, it's best to notify them in writing, and to write the date of actual mailing or delivery on your copy of what you send. (As discussed below, your rights under the "billing-error law" are not limited in this way.)

You cannot withhold for "tort" losses. In general, only "breach of contract" or "breach of warranty" claims can be asserted. For instance, you cannot withhold because of damages for personal injuries caused by the seller's carelessness.

You may not be able to withhold payment when you travel. You can withhold payment under the "withholding law" only if the sale (1) was for more than \$50, and (2) took place in your home state or within 100 miles of your home address. If you used a bank credit card for a small purchase (\$50 or under) or on a visit to another state (100 miles or more from your home), the purchase is like a cash transaction, and you cannot normally withhold payment.

However, there are three exceptions to this rule:

- (1) If your credit card was issued by the seller or a related company, your right to withhold payment is not limited to purchases over \$50, or to locations within 100 miles of your home.
- (2) Your right to assert a "billing error" is not affected by either the amount of the sale or the location of the seller. ("Billing error" rights are summarized below, and covered in greater detail in Legal Guide CR-8.)
- (3) If the seller or anyone else charges your account without your consent (the third example above - fraudulent telemarketer), you are not liable for anything, because you really didn't use your credit card.

Telemarketing and electronic commerce. The right to withhold payment applies both to purchases made at the seller's place of business, and to purchases you've made by telephone, mail, or over the Internet. If the telephone-or mail-order seller is located out-of-state, the law is unclear about whether the 100-mile limit applies to a credit card purchase from that seller. If you reside in California, and the seller first contacted you, a court might conclude that the seller's offer to you was communicated to you in California, and that you therefore purchased the item in California. In that event, the 100-mile limit would not apply. On the other hand, if you initiated the contact with an out-of-state seller who does not regularly solicit and sell to California residents by using the telephone, mail, or the Internet, a court might decide that it was you who communicated the offer to the seller, and that the sale therefore took place at the seller's out-of-state place of business. In that event, the 100-mile limit might apply, and you would not have the right to withhold payment under the federal "withholding law." In no case, however, would the 100-mile limit apply where you were the victim of a credit card fraud (the third example above).

Your legal obligation to make payment is determined by state law. A right to withhold payment from a card issuer does not give you an automatic right to decide that you do not owe the amount that you are withholding. That means that if you withhold payment without a legal justification under state law, a card issuer can begin its normal collection activities, once it has conducted a reasonable investigation of your claim.

Asserting Your Right to Withhold Payment

If the employee of the card issuer tells you that you do not have a right to withhold payment, the employee may or may not be right. It's therefore important that you make sure that you have the right to exercise this remedy. If you and the card issuer disagree, you may need to consult a lawyer or other expert to advise you, or arrange for an independent third party to mediate the dispute.

To Play it Safe:

To play it safe, follow the procedure recommended under the heading, "Here's How To Withhold Payment," on the page one of this Legal Guide. In that way, you will be doing what is needed under both laws. If your card issuer tells you that you do not have a right to withhold payment, ask the card issuer to explain exactly why. Then compare the card issuer's explanation with the information given in this Legal Guide. If you are "in the right," then you can continue to withhold payment. If you are not "in the right," then you should pay your card issuer. If you are uncertain about what to do, consult a lawyer or other legal expert regarding your rights and responsibilities. In addition, even if you do not come under the "withholding law," you still may have time to assert a claim under the "billing-error" law.

What Laws Apply:

Both California and federal laws apply. The federal law is the federal Fair Credit Billing Act, 15 United States Code sections 1666 and 1666i, and Federal Reserve Regulation Z, 12 Code of Federal Regulations sections 226.12(c) ("withholding law") and 226.13 ("billing-error law"). The California law is the Song-Beverly Credit Card Act, at California Civil Code sections 1747 et seq. Other California laws also affect the operation of the federal law.

Whether you have a "claim" or "defense" against the seller is determined by California law, and whether you have "accepted" an item you have purchased is also determined by California law. For further information about how these laws apply to the facts of your case, consult a lawyer or other legal expert and share with that person a copy of this flyer.

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