

# The Law Abides

A quick tour through Kentucky and federal consumer protections

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**What is “consumer law”?**

“This is a very complicated case, Maude. Lotta ins, lotta outs, lotta what-have-yous.”

- Common law
  - Fraud, misrepresentation, equitable estoppel,
- State law
  - Kentucky Consumer Protection Act, URLTA, Unfair Claims Settlement Practices Act, Lemon Law, Usury
- Federal law
  - FDCPA, FCRA, TCPA, TILA, RESPA



**Why learn about  
consumer law?**

# “This affects all of us—our basic freedoms!”

- Help people
- Challenge yourself
- Protect the free market and scrupulous businesses
- The work is out there
- Try cases
- Evolve the law





# MIETRO

**WATCHDOG EARTH:** LOUISVILLE BICYCLIST STANDS GROUND

[COURIER-JOURNAL.COM/  
BLOG/WATCHDOGEARTH/](http://COURIER-JOURNAL.COM/BLOG/WATCHDOGEARTH/)



# Car deal verdict \$245K-plus

## Jury awards large amount because of mileage discrepancy

**By Andrew Wolfson**  
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The Courier-Journal.com

A Jefferson Circuit Court jury has ordered a Louisville used-car dealer to pay a customer \$245,000 in punitive damages — \$1 for each mile that should have been on the odometer of a 2006 Dodge Charger advertised as having only 21,420 miles.

The verdict was returned for a Shreveport, La., woman who bought the car for her son from Mak Cars Inc., which at the time of the sale in 2012 operated Unique Motorsports Inc., 5801 Bardstown Road.

After a three-day trial and three hours of deliberation, the jury Thursday also awarded Cherrylyn Renay Seals \$13,927 for the price of the car and an

extended warranty that wasn't honored when the third-party warranty provider learned how many miles were actually on the vehicle.

Seals, a law enforcement officer for the Department of Veterans Affairs in Shreveport who had never been to Louisville before she bought the car, also was awarded \$5,000 for embarrassment.

"Before the verdict, I told my lawyer, Ben Carter, that I would never come back here, but now I will," Seals, 56, said in an interview Wednesday. "There are really are good people here. It was an awesome feeling that they cared as much as they did."

The jury decided by an 11-1 vote that Mak, owned by Tariq Makhoulouf, his wife and son, had violated the Kentucky Consumer Protection Act.



Cherrylyn Renay Seals and her son Tommie Seals bought a 2006 car. COURTESY OF BEN CARTER

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**Kentucky Consumer  
Protection Act  
&  
Fraud**

# “FAIR?!? Who’s the nihilist around here?”

- “false, unfair, deceptive or misleading acts or practices”
- for purchases or leases of goods and services primarily for personal, family, or household purposes





“Yeah, well, that’s just like  
your opinion, man.”

- Fraud
- Fraudulent omission
- Fraud in the inducement
- “representations as to future intentions”



# “I know my rights, man.”

- Damages under the Kentucky Consumer Protection Act
  - actual (compensatory)
    - diminished value
    - higher repair costs
    - inconvenience
    - mental and emotional suffering
  - Equitable
    - Rescission
  - Punitive damages
  - Attorney’s fees and case costs



# **Kentucky Lemon Law**

# “The [gosh darn] plane has crashed into the mountain!”

- The Purposes of Kentucky's Lemon Law
  - protect consumers
  - limit repair attempts
  - require refund or replacement



# Foreclosure Defense

# “Okay, Dude, have it your way.”

- Common Defenses and Counterclaims in Foreclosures
  - Uniform Commercial Code
  - Breach of Contract
  - Violation of duties under loan modification programs
  - Violations of the Kentucky Consumer Protection Act
  - Fraud
  - Negligent misrepresentation
  - Equitable estoppel





# “Okay, Dude, have it your way.”

- Alternatives to Foreclosure
  - Bankruptcy
    - Chapter 7
    - Chapter 13
  - Loan Modification
  - Deed-in-Lieu of Foreclosure
  - Short Sale
  - Reinstatement, Refinance



# **The Fair Debt Collection Practices Act**

(FDCPA)

“Smokey, this is not ‘Nam.  
This is bowling. There are rules.”

- Prohibited by the FDCPA
  - False or misleading representations
  - Unfair Practices
  - Harassment or abuse



“Where is the money, Lebowski?  
We want the money, Lebowski!”

- Damages under the FDCPA
  - Actual Damages
  - Statutory Damages of up to \$1,000
  - Attorney’s fees



# **Fair Credit Reporting Act**

(FCRA)

“I’ve got information. Certain [stuff] has come to light.”

- How credit reporting works
  - Credit Reporting Agencies
  - Furnishers of credit information
- [annualcreditreport.com](http://annualcreditreport.com)





“I’ve got information. Certain [stuff] has come to light.”

- How to dispute inaccurate information
- Write a letter to the CRAs



# “I’ve got information. Certain [stuff] has come to light.”

- Damages under FCRA
  - Actual damages of any amount or
  - Statutory damages not to exceed \$1,000
  - Punitive damages
  - Reasonable attorney’s fees



# **Telephone Consumer Protection Act**

(TCPA)

# “We’ve been frantically trying to reach you, Dude.”

- Businesses cannot make calls or texts to cell phones or pagers:
  - using autodialers; or
  - using artificial or prerecorded voices in a call
  - Except: prior express consent
- Residential lines
  - Except: calls for commercial purposes that do not advertise or telemarket



# **Uniform Residential Landlord Tenant Act**

(URLTA)

“Tomorrow’s already the 10th.  
Just...slip the rent under my door.”

- URLTA
  - imposes obligation of good faith on all parties
  - prohibits certain lease provisions
  - provides specific notice requirements and opportunities to cure
  - provides a private right of action for enforcement





# **Unfair Claims Settlement Practices Act**

(UCSPA)

# “Just because we’re bereaved doesn’t make us saps!”

- Unfair Claims Settlement Practices Acts prohibits:
  - failing to acknowledge and act reasonably promptly on communications
  - failing to investigate claims
  - failing to affirm or deny coverage of claims within reasonable time after proof of loss statements have been completed
  - not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.



**Other Causes of Action to  
Keep in Mind**

# “This aggression will not stand.”

- Negligent Misrepresentation
- Breach of Contract
- Intentional Infliction of Emotional Distress
- Equitable Estoppel
- Truth-in-Lending Act
- Secured Transactions (Repossession)
- Usury



# **Additional Resources**

“Has the whole world gone **crazy**? Am I the only one around here who gives a [care] about the rules?”

- Kentucky Justice Association
- National Association of Consumer Advocates
- National Consumer Law Center
- Consumer Law and Policy Blog (Public Citizen):
  - <http://pubcit.typepad.com/>





# **Final Thoughts**

# “We’re talking about unchecked aggression.”

- Meaningful work
- Helping real people
- That not just anyone can do



“Maybe you and I can pool our resources.  
Share information.  
As a professional courtesy.”

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