

CREDIT REPAIR SERVICES

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The importance of obtaining and maintaining good credit has increased in recent years. More and more consumers are faced with the challenge of taking steps to maintain or improve their credit rating. Though consumers are free to undertake credit repair on their own, several organizations now offer services in this area. This guide provides general information on state and federal laws governing credit repair services. In addition to financial advisors, other types of credit service companies have surfaced offering credit repair services, credit-counseling services, and debt management or debt repayment plans. Regardless of the services offered, both state and federal law provide certain protections for consumers using those services.

CALIFORNIA LAW

A. The Credit Services Act of 1984 (Civ. Code §§ 1789.10 et seq.)

Credit services organizations (also known as "CSOs" or "credit repair services") do not provide credit. Rather, CSOs offer to obtain loans or extensions of credit for consumers who have experienced credit problems, or to correct or improve such consumers' credit records. As defined by the Credit Services Act of 1984 ("the Act"), CSOs can sell, provide, or perform (or promise) any of the following services for a fee:

1. To improve a buyer's credit record, history, or rating;
2. To obtain a loan or other extension of credit for a buyer;
3. To provide advice or assistance to a buyer with regard to either of the above. (Civ. Code § 1789.12(a).)

The buyer of a CSO's services can cancel the contract, without penalty or obligation, within five (5) days after signing it. (See discussion below.) (Civ. Code § 1789.16(a),(b).)

B. Statutory Exemptions (Civ. Code §§ 1789.12(a), (b), 1789.19(b).)

The following individuals and institutions are excluded from the requirements set out in the Act:

1. Lenders or creditors who are (a) licensed to make loans or extensions of credit under California or federal law, (b) regulated and supervised by a state or federal official or agency as to those loans or extensions of credit, and (c) whose business is the making of those loans or extensions of credit.
2. Banks and savings institutions whose deposits or accounts are insurable by the FDIC.
3. Non-profit organizations under § 501(c)(3) of the Internal Revenue Code that have received a final ruling or determination from the Internal Revenue Service that they are not private foundations and are exempt from taxation under § 501(a) of the Code. (Section 501(a) contains a laundry list of corporations that are exempt from tax, such as charitable corporations and religious organizations.)
4. Licensed proraters, acting within the course and scope of their licenses.
5. Licensed real estate brokers performing an act for which a license is required under the Real Estate Law (Bus. & Prof. Code §§ 1000 et seq.) and who are acting within the course and scope of that license.
6. Attorneys licensed in California rendering services within the course and scope of the practice of law. (The exemption does not apply to an attorney who is an employee of, or who is otherwise directly affiliated with, a credit repair agency.)
7. Broker-dealers who are registered with the Securities Exchange Commission or the Commodities Futures Trading Commission, acting within the course and scope of applicable regulations. (Civ. Code §§ 1789.12(a)(1), (b).)

C. Statutory Purpose and Construction (Civ. Code § 1789.11(b),(c).)

While some CSOs provide consumers legitimate services, others have been known to accept payment and not provide any service; to provide inaccurate or misleading advice (e.g., referring consumers to potential creditors who would have granted them credit in any event); and/or to engage in questionable credit repair practices (e.g., disputing every entry on a consumer's credit report).

It is important to remember that most of the services performed by CSOs can be performed by consumers acting on their own behalf, exercising rights under the credit reporting laws and other laws.

The purpose of the Act is to provide prospective buyers of credit repair services with the information necessary to make an intelligent decision regarding the purchase of those services, and to protect the public from unfair or deceptive advertising and business practices. (Civ. Code § 1789.11(b).) A court will interpret the provisions of the Act liberally to achieve these purposes. (Civ. Code § 1789.11(c).)

D. What must every CSO do?

1. File a registration application with, and receive a certificate of registration from, the Department of Justice (Attorney General's Office) before doing business in California. (Civ. Code § 1789.25.)
2. Obtain a \$100,000 surety bond from an admitted surety in favor of the State of California for the benefit of any person damaged by any violation of the Act. (Civ. Code § 1789.18.) (The bond must be maintained for two years after the CSO stops doing business in California.)
3. Give the buyer, before the contract for services is signed, an information statement that complies with Civil Code Section 1789.15 (described below). The CSO must also maintain for 2 years a copy of the statement signed by the buyer and the acknowledgment of receipt of that statement. (Civ. Code §§ 1789.14, 1789.15.)
4. Not provide any service to a buyer except pursuant to a written contract that complies with Civil Code Section 1789.16 (described below). (Civ. Code § 1789.16.)
5. Complete the agreed services within six months after the date the buyer signs the contract for services. (Civ. Code § 1789.13(b); see Civ. Code § 1789.16 (a)(3).)
6. Maintain an agent for service of process in this state. (Civ. Code § 1789.13(j).)

E. What are CSOs not allowed to do? (Civ. Code §§ 1789.13, 1789.17, 1789.19(a).)

A CSO (or a salesperson, representative, or independent contractor) cannot:

1. Charge or receive any money or other consideration until it has fully performed the agreed services. (Civ. Code § 1789.13(a).)
2. Charge or receive any money or other consideration solely for referring a buyer to a retail seller or other credit grantor for an extension of credit, if the credit is, or will be, based on substantially the same terms as those available to the general public, or on substantially the same terms as the buyer could have obtained without the CSO's assistance. (Civ. Code § 1789.13(c).)
3. Make, or advise the buyer to make, any untrue or misleading statement to a consumer credit reporting agency, or to any present or potential creditor, such as untrue statements about the buyer's identification, home address, credit worthiness, credit standing, or credit capacity. (Civ. Code § 1789.13(d).)
4. Remove, or assist or advise the buyer to remove, accurate and non-obsolete adverse information from the buyer's credit record. (Civ. Code § 1789.13(e).)

5. Create, or assist or advise the buyer to create, a new credit record by using a new name, address, social security number, or employee identification number. (Civ. Code § 1789.13(f).)
6. Make any untrue or misleading representation, or engage in any fraudulent or deceptive act or practice, in the offer or sale of its services. (Civ. Code §§ 1789.13(g), (h).)
7. Advertise its services without being registered with the Department of Justice (Attorney General's Office). (Civ. Code § 1789.13(I).)
8. Transfer or assign its certificate of registration. (Civ. Code § 1789.13(k).)
9. Submit a buyer's dispute to a credit reporting agency without the buyer's knowledge. (Civ. Code § 1789.13(l).)
10. Call a credit reporting agency or use its toll free number and represent the CSO as the buyer without the buyer's prior authorization. (Civ. Code § 1789.13(m).)
11. Attempt to have a buyer waive any rights under the Act. (Any such attempt is a violation of the Act, and any such waiver is void and unenforceable.) (Civ. Code § 1789.19(a).)
12. Breach the contract or any contractual obligation the CSO has with the buyer. (Any such breach constitutes a violation of the Act.) (Civ. Code § 1789.17.)

F. Requirements Relating to the Information Statement and the Contract (Civ. Code §§ 1789.14, 1789.15, 1789.16.)

1. Information Statement Requirements:

A CSO must give the buyer an information statement which contains all of the following before the buyer signs a contract for the CSO's service. (Civ. Code § 1789.14.)

- a. A complete and detailed description of the services to be provided by the CSO, and the total cost or obligation to the buyer. (Civ. Code § 1789.15(a).)
- b. Notice of the buyer's right to proceed against the CSO's bond as set forth in Civil Code section 1789.18, and the name and address of the surety which issued the bond. (Civ. Code §§ 1789.15(b), (c).)
- c. A complete and accurate statement of the availability of nonprofit credit counseling services. (Civ. Code § 1789.14(d).)

- d. A statutorily prescribed statement of consumers' rights under the state and federal credit reporting laws to obtain their credit reports and to dispute inaccurate information in them. (Civ. Code § 1789.15.)

2. Contract Requirements:

The contract for services between a buyer and a CSO must be in writing, must be signed and dated by the buyer, and must contain all the following. (Civ. Code § 1789.16.)

- a. The terms and conditions of payment, including the total of all payments to be made by the buyer. (Civ. Code § 1789.16(a)(2).)
- b. A complete and detailed description of the services to be performed by the CSO, and the estimated date, or length of time, for completion of the services. The estimated length of time for performing services cannot exceed six months (or a shorter period if so prescribed by the Department of Justice). Any guarantees or promises of any refund also must be completely described. (Civ. Code § 1789.16(a)(3).)
- c. The CSO's principal business address and the name and address of its agent authorized to receive service of process (other than the Secretary of State). (Civ. Code § 1789.16(a)(4).)
- d. A conspicuous, statutorily prescribed statement of the buyer's right to cancel the contract by midnight of the fifth day after the contract is signed. The notice must be in at least 10-point bold type, and be near the buyer's signature line. (Civ. Code § 1789.16(a)(1).)

The CSO must give the buyer a fully completed contract, and all other documents that it has required the buyer to sign, at the time they are signed. Duplicate, completed "Notice of Cancellation" forms, in the same language as the contract, must be attached to the contract, and must be easily detachable from it. (Civ. Code § 1789.16(b).) Section 1789.16(b) prescribes the type size of this notice and its content, including the date on which the cancellation period expires, and requires that the seller return any payment within 15 days after receipt of notice of cancellation (which may be any written notice of cancellation).

G. Sanctions and Remedies (Civ. Code §§ 1789.18, 1789.20, 1789.21, 1789.22, 1789.24.)

The Act's provisions are not exclusive, and its remedies are in addition to other remedies or procedures prescribed by law. (Civ. Code § 1789.22.)

1. Criminal Sanctions

Any violation of any provision of the Act is a misdemeanor. The Attorney General, district attorneys, and city attorneys may prosecute such violations, and may also seek injunctive relief. (Civ. Code § 1789.20.)

2. Civil Remedies

- a. A buyer who is injured by a CSO's violation of the Act or breach of contract may recover actual damages at least equal to the amount paid to the CSO, plus costs and reasonable attorneys fees. The buyer also may obtain injunctive relief. The court, in its discretion, may award punitive damages. (Civ. Code § 1789.21(a).)
- b. A person who claims against a CSO's bond for a violation of the Act may bring an action at law against the CSO and the surety. The surety is liable for actual, but not punitive, damages, and its aggregate liability to all claimants cannot exceed the amount of the bond. (Civ. Code § 1789.18(b).)
- c. Credit reporting agencies, users of credit reports, and suppliers of credit information may bring an action for damages, injunction, or both, for violation of the Act. A prevailing plaintiff is entitled to reasonable attorney's fees and costs. (Civ. Code § 1789.21(b).)

FEDERAL LAW

A. The Credit Repair Organizations Act (“federal law”) (15 U.S.C.A. §1679 et seq.)

1. The purpose of this law is to ensure that prospective buyers of a credit repair organization’s (“CSO”)¹ services are provided with the information necessary to make an informed decision regarding the purchase of such services; and
2. To protect the public from unfair or deceptive advertising and business practices by CSOs.

B. Definition

Under section 1697a of the federal law, a CSO means any person who uses interstate commerce or the mails to sell, provide, or perform (or represent that he or she can or will sell, provide or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of:

1. improving any consumer’s credit record, credit history, or credit rating; or
2. providing advice or assistance to any consumer with regard to any activity or service described in (1) above.

¹ The federal law references credit repair organizations. For consistency in this document, we will call them CSOs.

C. Excluded Organizations and Individuals

The following are excluded from the definition in B above:

1. any nonprofit organization exempt from taxation under section 501 (c)(3) of the Internal Revenue code;
2. any creditor (defined in 15 U.S.C.A. section 1602), with respect to any consumer, to the extent the creditor is assisting the consumer in restructuring any debt owed by the consumer to the creditor; or
3. any depository institution (defined in 12 U.S.C.A. section 1813), federal or state credit union (defined in 12 U.S.C.A. section 1752), or any affiliate or subsidiary of one of those institutions.

D. CSOs may not:

1. make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading with respect to any consumer's credit worthiness, credit standing, or credit capacity to any CSO or any person who is extending credit to the consumer; or to whom the consumer has applied or is applying for an extension of credit. (15 U.S.C.A. sec 1679b.)
2. make a statement or counsel or advise any consumer to make any statement, intended to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to any consumer reporting agency, any person who is extending credit to the consumer, or to whom the consumer has applied for credit.
3. make or use any untrue or misleading representation of the services it provides; or
4. engage, directly or indirectly, in any act, practice, or course of business that would constitute fraud or deception on any person in connection with the offering or sale of services of the CSO.
5. charge or receive any money or other consideration before fully performing the services the CSO has agreed to perform.

E. Pre-Contract Disclosure Requirements (15 U.S.C.A. §1679c.)

Prior to entering into any contract or agreement with a consumer, the CSO must provide the consumer with the written statement prescribed by 15 U.S.C.A. section 1679c outlining the consumer's credit file rights under state and federal law. The written statement must be separate

from any written contract or other agreement between the CSO and the consumer, and the consumer must sign an acknowledgment of receipt of the statement, which the CSO must maintain for two years.

F. Contract Requirements (15 U.S.C.A. §1679d.)

The contract must be in writing, dated and signed by the consumer. Services may not begin, and the contract cannot be effective until three (3) business days after signing. The written contract must include the following:

1. the terms and conditions of payment, including the total amount of all payments to the CSO or to any other person;
2. a full and detailed description of the services the CSO is to perform for the consumer, including all guarantees or performance, and an estimate of the date by which the services will be completed; or the length of the period necessary to perform those services.
3. the CSO's name and principle business address; and
4. a conspicuous statement in bold face type, right next to the buyer's signature line on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right."

G. No Waiver of Rights (15 U.S.C.A. §1679f.)

A consumer cannot waive the protections provided under the federal law. Further, any attempt by the CSO to obtain a waiver voids the contract. Finally, any contract not in compliance with the federal law is void and rendered unenforceable in both federal and state court.

H. Civil Liability (15 U.S.C.A. §1679g.)

Any person who violates any provision of the federal law is liable for actual damages, punitive damages, and attorneys' fees.

I. Enforcement (15 U.S.C.A. §1679h.)

The Federal Trade Commission enforces the federal law. The laws additionally permits state action for violations.

J. Statute of limitation (15 U.S.C.A. section 1679i.)

Where a CSO violated the federal law, the consumer has 5 years to file suit. The 5 years begin to run either from the date of the violation or if the CSO misrepresents information, then 5 years from the date the consumer discovers the misrepresentation.

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statement of the law. Questions about the law's application to particular cases should be directed to a specialist. Customers who believe they have been victimized by a credit repair service company can file a complaint with the California Attorney General's Public Inquiry Unit at www.ag.ca.gov/consumers/general.php. For more information on Federal enforcement, visit the Federal Trade Commission Web site at www.ftc.gov.

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