

*LAW OFFICE OF
ROSEANN E. WEISBLATT*

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LEGAL NEWS AFFECTING YOU

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Your Right to Equal Credit

The Equal Credit Opportunity Act (ECOA) prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because you get public assistance. This means that although this information is requested by a creditor when you apply for a loan, it may not be used by the potential lender when deciding whether to grant you credit or when setting the terms of the credit transaction.

The Federal Trade Commission (FTC) enforces this law. Not everyone who applies for credit gets it or gets the same terms: Factors like income, expenses, debts, and credit history are

among the considerations lenders use to determine your creditworthiness. Entities who regularly extend credit are subject to the ECOA. These include banks, retail and department stores, mortgage companies, finance and credit card companies as well as credit unions. This can also include real estate brokers who arrange financing.

In being subject to this law, when you apply for credit, the potential lender/creditor may not reject your application on the basis of race, color, religion, national origin, sex, marital status, age or because you are on public assistance. You cannot be asked whether you are widowed or divorced; however, if you live in a “community property” state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas,

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Washington, and Wisconsin) it is permissible to ask you this question. A lender may not ask about your spouse, unless your spouse is applying for credit with you, or if he or she will be allowed to use the account, or if you are relying on your spouse's income or on alimony or child support income from a former spouse.

When it is time to consider your application and grant you credit and set the terms of the loan, the creditor may *not* take into consideration your age, *unless* you are under 18 (too young to make a contract) or at least 62 years old (and a valid scoring system will favor you because you are 62 or older). Creditors may not consider whether you have a phone account in your name, although they can ask you if you have a phone. Potential lenders may not consider the racial composition of the neighborhood where you want to buy, refinance or improve a house with money you are borrowing.

Finally, under the ECOA, you have the right to, apply for and have credit in your birth name (Mary Smith), your first and your spouse's last name (Mary Jones), or your first name and a combined last name (Mary Smith Jones). You must also be told whether your application was accepted or rejected within 30 days of filing a complete application and to know the reason why your application was rejected. The creditor must tell you the specific reason for the rejection or that you are entitled to learn the reason if you ask within 60 days. An acceptable reason might be: "your income was too low" or "you haven't been employed long enough." An unacceptable reason might be "you didn't meet our minimum standards" because that is not specific enough. If you were not rejected outright, but instead were offered less favorable terms than you applied for, you have the right to know why these less favorable terms were offered, but only if you reject these terms. A common example would be

if the lender offers you a smaller loan or a higher interest rate, and you don't accept the offer, you have the right to know why those terms were offered.

President Obama Outlaws Credit Card Issuer's Ability to Charge Higher Fees and Interest Rates

On May 22, 2009, President Obama signed into law sweeping regulations designed to protect consumers against unscrupulous practices of credit card companies. The new credit card rules, which go into effect in nine months, prohibit companies from giving cards to people under 21 unless they can prove they have the means to pay the debt or a parent or guardian co-signs. A customer also will have to be more than 60 days behind on a payment before seeing a rate increase on an existing balance. Even then, the lender will be required to restore the previous, lower rate if the cardholder pays the minimum balance on time for six months. In addition, consumers also will have to receive 45 days' notice and an explanation before their interest rates increase.

Other key highlights of the bill include the requirement that fees and penalties be reasonable— for example penalty fees (late fee, over-the-limit fee, etc.) must be reasonable and proportional to the omission or violation. The Federal Reserve Board must issue rules to set standards to decide what fee levels are reasonable. Hopefully this will mean no more \$29 or \$39 late fees on a balance of only \$15. Over-the-limit fees are curtailed and can only be imposed only once per billing cycle if the balance is above the limit on the last day of the cycle.

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Moreover, no over-the-limit fees may be charged unless the consumer has asked for the account to be set up to allow transactions that will exceed the credit limit. The “universal default” provision of most credit card agreements will be limited by the new law in that a cardholder would have to be 60 days late on a payment before this provision kicks in. ‘Universal default’ permits the credit card company to sharply increase the interest rate on your bill if you are late paying some other unrelated bill, say for instance, your mortgage. Now, you would have to be 60 days late on your mortgage payment for your credit card rate to bounce to the higher rate.

Despite being touted as a victory for consumers, financial experts said the bill could have unintended consequences as credit card companies look for ways to make up for potential lost revenue. Those measures could include more cards with annual fees and the loss of a grace period before interest accrues, which would affect even those consumers who pay off their balance each month. Nonetheless, this is a good thing for those consumers who are struggling with unanticipated financial problems due to the downturn in the economy and joblessness. Obama made it clear that this bill was not intended to protect spendthrift card users who cannot control their spending.

Firm Settles Securities Fraud Case Against Merrill Lynch

The firm recently settled a securities fraud case against Merrill Lynch Pierce Fenner & Smith and one of its brokers for unscrupulous trading practices. The claim involved churning the account and also trading in highly speculative stocks which were unsuitable for the investor.

“Churning” is a practice whereby a broker, in an attempt to make himself commissions, excessively trades a customer’s portfolio and typically this also results in the customer being sold investments which are unsuitable given the customer’s stated investment objectives, income bracket and other factors. To avoid being the victim of an unscrupulous broker, make sure when you open a brokerage account, that you sign all documents which state your investment goals and objectives clearly. Many firms will send you forms to sign first, and then fill them out later, after the fact. This happened to another client of mine where the broker took his information over the telephone, mailed him a blank form to sign, and then later fraudulently marked off the “aggressive and high risk” boxes on the application. Unbeknownst to the customer, the broker proceeded to trade in penny stocks, losing \$80,000.00 from the account. The lesson here is *“do not sign a blank form which will be completed by the broker after the fact.”* In all cases, make sure you get a copy of everything you signed– the account agreement, the investor profile which contains your stated goals, etc. Keep these with your account statements in a safe place. Be sure to check your statements each month to make sure that your account is not being traded excessively and keeps within your investment goals. If you have any questions concerning losses to your account, I am available for a free consultation.

Realize that most firms will not return your money just by lodging a complaint with their compliance department. Even a demand letter written by an attorney does little to refund losses. Most firms will not address the problem without a formal Statement of Claim lodged with the Financial Industry Regulatory Authority (“FINRA”), formerly, the NASD. Most account agreements contain an arbitration provision wherein the customer forfeits his right to file a

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lawsuit in a state or federal court, and instead agrees to arbitrate a dispute regarding the account.

Quote for the Day:

“Even if you're on the right track, you'll get run over if you just sit there.”

-Will Rogers

2008 Chancellor Award Recipient

This year, I was named a 2008 Chancellor's Award recipient by Philadelphia VIP (Philadelphia Volunteers for the Indigent Program). The award recognizes outstanding volunteers who take on three or more cases in addition to their own regular work load. It is a privilege to work with this organization to assist individuals who would be unable to afford an attorney but for the efforts of VIP.

In other news

On May 1, 2009, the FDA announced a recall of 14 different Hydroxycut products in the wake of at least 23 reports of liver problems, including the death of a 19 year old. At least one patient required a liver transplant. Hydroxycut products are sold under both the “Iovate” and “MuscleTech” brands. Hydroxycut is sold as a “dietary supplement” and as such, is not subject to the same level of scrutiny and testing by the FDA as prescription medicines, and does not require FDA approval to be sold. It is estimated that 9 million packages of Hydroxycut products were sold in 2008 through pharmacies, grocery stores, and supplement stores.

For more news items and information about the firm, or to view this publication online, please visit www.roseweisblatt.com.

If you have a question about the articles appearing here or any other legal issue, please call (267-241-2475), or email us for a free consultation. Email: rose@roseweisblatt.com.

About Ms. Weisblatt:

Roseann E. Weisblatt earned her law degree at the Temple University School of Law in 1994. Ms. Weisblatt is admitted to the state bars of PA, NJ, the Eastern District of PA and the Third Circuit Court of Appeals. She has been admitted *pro hac vice* in the state and federal courts of CA, FL, MI, and NY. She is a member of the Philadelphia Bar Association, and has served as adjunct faculty in the Paralegal Studies Program at Manor Junior College teaching Tort Law and Legal Research.

Ms. Weisblatt has practiced for the past fifteen years as a litigator, participating in a number of successful class actions and individual lawsuits. She has also successfully litigated a number of medical malpractice cases on behalf of injured patients. Additionally, she is well versed in intellectual property matters involving trademarks and copyrights, particularly in the music industry. In addition to this experience, Ms. Weisblatt offers her clients representation in real estate and other general practice matters.

