

What Smart Shoppers Know About **Prizes and Gifts**

Prizes

Business and Professions
Code sections 17537(a), (c);
Civil Code section 1584.5

It is unlawful for a salesperson or an advertiser, as part of an advertising plan or program, to tell you that you have won a prize, and that in order to receive it you must pay money, buy or rent a product or service, or make a donation.

It is unlawful for a business to send you a product or service that you did not order or request, if it is sent with the intention of selling it or another product or service to you. If a seller violates this law, you do not have to pay for the item or items that were sent. In this situation, you may consider the product or service to be an unconditional gift.

If you receive unsolicited merchandise, it is probably a good idea to send a letter to the business informing it that “under California Civil Code section 1584.5, an unsolicited item is treated as a gift” and that you are not required to pay for it. (This rule does not apply where you have agreed with a business in advance to receive merchandise on a periodic basis, and it also does not apply to a good faith error on the part of the business.)

If the business that has sent something to you for the purpose of selling it to you continues to bill you even after you send this letter, you can sue to stop the continued billing. The district attorney in your county can also sue the business and recover up to \$2,500 for each violation.

Gifts

Business and Professions
Code sections 17537(a), (c)

Since gifts can be legitimate promotional devices, the rules that apply to gifts are more complicated. In general, a business cannot tell you that you will receive a gift, but that in order to receive it, you must pay money or buy a product or service. (So that legitimate gifts are not made unlawful, there are certain narrow exceptions to that rule.)

In every situation, some basic protections apply. If the advertising statement is either false or misleading, for instance, the Attorney General or any district attorney can maintain a civil court action against the violator and recover civil penalties of up to \$2,500 for each violation as well as restitution of any ill-gotten gains.

Sales Presentations or Seminars

Business and Professions
Code sections 17533.8(a), 17537.1
and 17537.2

It is unlawful to offer a prize or gift with the intent to offer a sales presentation without clearly and unequivocally describing the advertiser's selling intent. The prohibition applies to all kinds of offers, whether made by mail, by telephone, via the Internet, in person, or in any other way.

Sometimes, an advertisement may offer you a prize or gift if you will allow a salesperson to come to your home to make a sales presentation, or if you will visit some other location to receive a sales presentation. (These are called "promotional giveaways.") In these situations, the advertisement must clearly disclose all of the following in writing:

- The purpose of the requested visit, sales presentation, or other proposed contact with a salesperson. This must include a general description of the property, product, or service that will be offered for sale.
- An estimate of the duration of the visit and presentation.
- Any deadlines or conditions that you must meet to qualify for the gift or prize.
- The statistical odds of your receiving each item offered if you are not assured of receiving any particular item.
- Whether you can receive a rain check or a substitute item.
- The name and street address of the owner of the property or the provider of services being offered, and a general description of the owner's or provider's business.
- All other rules, terms, and conditions of the offer, plan, or program.

Other restrictions also apply if you have to pay money, purchase something, or make a deposit in order to receive a gift. For example, California law limits the amount of the shipping and handling charges that may be imposed. Generally, **you cannot be required to pay any money for any purpose in order to receive or "utilize" the prize or gift.**

Once you have responded to the offer in the manner specified, and have met all of the requirements and qualifications, the business must give you the offered item. There is an exception if the item is not reasonably available, and the written offer has reserved the right to provide a rain check or a substitute item.

Before You Sign a Contract

Civil Code sections 1689.5, 1689.6, 1689.7, and 1689.21

You may be offered a contract after you have listened to the sales presentation or seminar. **Never sign the contract or give the sales person a deposit or your credit card number right away.** Tell the salesperson that you will need a few days to consider your decision. Be wary of offers that claim to be for a “limited time” only, and of efforts to make you buy “on the spot.”

Then, get some additional information. Check the business’ reputation with the Better Business Bureau. However, if the Better Business Bureau has not received any complaints about the business, this does not mean there have not been any; they may have been made to the Attorney General or a District Attorney. Therefore, you may also wish to check with the Office of the Attorney General and your county’s District Attorney. Most importantly, decide whether you really want to purchase the property or service that is being offered, and also whether the price is fair or higher than it should be. Remember that **you have no obligation to do anything.**

Although state law may require a business to provide a period of time in which to cancel the contract, you should not count on being able to cancel and get your money back **unless** your right to do so is clearly spelled out in the contract, and unless you can locate the company at a later time. Even then, getting back any money you have paid may be difficult.

Where to Go for Help

Your county District Attorney (look in the white pages of your phone book under County Government).

Write a letter of complaint to the California Department of Justice, Office of the Attorney General, Public Inquiry Unit, Post Office Box 944255, Sacramento, CA 94244-2550, or call 1-800-952-5225, or visit www.oag.ca.gov.

For Information on Other Consumer Topics

Visit the Web site of the Department of Consumer Affairs at www.dca.ca.gov or call 1-800-952-5210.



1625 N. Market Blvd., Sacramento, CA 95834
1-800-952-5210 • TDD (916) 322-1700
www.dca.ca.gov



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