

# CONTENTS

Preface	xi
---------	----

## ▼ CHAPTER 1

Consumer Provisions in the Uniform Commercial Code	<b>1</b>
A. In General	1
1. Introduction	1
2. Applying the UCC to Consumer Transactions	2
a. Scope	2
b. Exclusion of Consumer Transactions	4
c. Non-uniform Amendments to the UCC	4
d. Different Rules for Consumers	5
B. Articles 2, 2A, 3, 4, and 9	7
1. Article 2	7
2. Article 2A	12
3. Articles 3 and 4	15
4. Article 9	19

## ▼ CHAPTER 2

The Consumer Credit Protection Act	<b>27</b>
A. Introduction	27
B. Truth in Lending	30
1. Purpose and Scope	30
a. Purpose	30
b. Scope	31
2. Disclosure	34
a. Closed-End Transactions	35
(1) Timing	35
(2) Form	36
(3) Content	36
b. Open-End Transactions	39
(1) Timing	39
(2) Form	40
(3) Content	41

3.	Substantive Rules	49
a.	Right of Rescission	49
b.	Limitations on Terms	50
c.	Limitations on Liability for Consumers Using Credit Cards	50
4.	Enforcement	51
C.	Fair Credit Billing	52
1.	Resolution of Billing Errors	52
2.	Payments, Credits, and Termination of the Plan	53
3.	Holder-In-Due-Course Rule	54
D.	Consumer Leasing	54
1.	Purpose and Scope	54
a.	Purpose	54
b.	Scope	54
2.	Disclosure	55
a.	Form and Timing	55
b.	Content	55
3.	Substantive Rules	60
4.	Enforcement	60
E.	Fair Credit Reporting	61
1.	Scope, Purpose, and Substantive Rules	61
a.	Scope	61
b.	Purpose and Substantive Rules	61
(1)	Confidentiality	62
(2)	Relevance	62
(3)	Accuracy	63
(4)	Prevention of Identity Theft	64
2.	Enforcement	65
3.	Preemption	66
F.	Equal Credit Opportunity	66
1.	Purpose	66
2.	Scope	67
3.	Substantive Rules	68
a.	Anti-discrimination	68
b.	Key Definitions	68
c.	Establishment of a Prima Facie Case	69
d.	Additional Anti-discrimination Provisions	70

G. Fair Debt Collection Practices	72
1. Purpose	72
2. Scope	73
3. Other Law	74
4. Substantive Rules	75
5. Enforcement	78
H. Electronic Fund Transfers	79
1. Purpose	79
2. Scope	79
3. Required Disclosures	81
4. Substantive Rules	83
5. Special Requirements	86
6. Enforcement	88
I. Garnishment Restrictions	88
1. Purpose and Scope	88
2. Substantive Rules	89
3. Relationship to State Law	90
4. Enforcement	91
J. Credit Repair Organizations	91
1. Purpose	91
2. Scope	92
3. Disclosure Requirements	93
4. Substantive Rules	93
5. Enforcement	94
6. Relationship to State Law	94

### ▼ CHAPTER 3

Other Federal Legislation	<b>95</b>
A. Truth in Savings Act	95
1. Purpose	95
2. Scope	96
3. Disclosure Requirements	97
a. Timing of Disclosures	97
b. Content of Disclosures	98
4. Substantive Rules	101
5. Enforcement	101

B. Regulation CC	102
1. Introduction	102
2. Expedited Funds Availability Act	102
a. Purpose	102
b. Scope	103
c. Disclosure	103
d. Substantive Rules	103
(1) Availability of Funds	103
(2) Expeditious Return of Checks and Indorsement by Banks	107
e. Enforcement	109
3. Check 21	109
C. Real Estate Settlement Procedures	110
1. Introduction	110
2. Purpose	111
3. Scope	111
4. Disclosure	112
5. Substantive Rules	115
a. Escrow Accounts	115
b. Referrals, Kickbacks, and Unearned Fees	116
6. Enforcement	119
D. Interstate Land Sales Full Disclosure Act	121
1. Purpose and Scope	121
a. Purpose	121
b. Scope	122
2. Disclosure	123
3. Enforcement and Remedies	127
E. Magnuson-Moss Warranty Act	127
1. Introduction	127
2. Disclosure	130
3. Warranties	131
4. Tie-Ins	132
5. Liability	133
F. Bankruptcy Code Provisions	134
1. Introduction	134
a. Insolvency and Petitions (Voluntary and Involuntary)	134
b. Chapters of the Code for Consumer Filing	134

c.	Limitations on Employing the Remedy of Bankruptcy	135
d.	Pre-commencement Notice to the Debtor	135
2.	Exempted Property	136
3.	Chapter 7	137
a.	Purpose of Chapter 7	137
b.	The Bankruptcy Trustee and the United States Trustee	138
c.	Involuntary Proceedings	138
d.	The Estate	139
e.	Initial Proceedings and the Order for Relief	139
f.	Notices, Creditors' Meetings, and other Proceedings Following the Order for Relief	140
g.	Role of the Bankruptcy Trustee	141
h.	Preferential Transfers	142
i.	Automatic Stay	142
j.	Reaffirmation of Debts	143
k.	Priority of Distribution	144
l.	Discharge	144
4.	Chapter 13	144
a.	Purpose of Chapter 13	144
b.	Initiating Proceedings under Chapter 13	145
c.	The Estate	145
d.	The Plan	146
e.	Creditors' Meetings and other Proceedings Following the Order for Relief	147
f.	Discharge	147
<b>▼ CHAPTER 4</b>		
	<b>Regulation of Credit Charges</b>	<b>149</b>
A.	Introduction	149
B.	Defining Interest	151
1.	Federal Definitions	151
2.	State Definitions	153
C.	Federal Regulation of Interest	155
1.	The National Bank Act, the Home Owners' Loan Act, and the National Credit Union Administration	156

2. The National Housing Act	158
3. The Equal Credit Opportunity Act	158
4. The Fair Credit Billing Act	158
5. The Depository Institutions Deregulation and Monetary Control Act of 1980	159
D. State Regulation of Interest	159
E. Remedies for Usury	166
1. Penalties That Do Not Render the Obligation Void	166
2. Penalties That May Render the Obligation Void	167
3. Punitive Damages	168
4. Bona Fide Error	168
5. Reformation	169
6. Injunctive Relief	170
F. Sale Exceptions	170
G. Investment Exceptions	175

## ▼ CHAPTER 5

Regulation of Agreements and Practices	<b>181</b>
A. Misrepresentation and Deceptive Practices Acts	181
1. Fraud and Misrepresentation	181
2. State Deceptive Practices Acts	182
3. Federal Trade Commission Act and Dodd-Frank Wall Street Reform and Consumer Protection Act	184
a. FTC Interpretive Guidelines and Trade Rule Regulations	189
b. Jurisdictional Prerequisites	191
(1) In or Affecting Commerce	191
(2) In the Public Interest	192
(3) Unfair Methods of Competition and Unfair or Deceptive Acts	192
(4) Remedy	194
4. Consumer Financial Protection Bureau	198
B. Home Solicitation Transactions	200
1. State Acts	200
2. Federal Law	201
C. Referral Plans and Pyramid Schemes	202
D. Consumer Credit Insurance	204
E. Balloon Payments	208

F. Wage Assignments	209
G. Unconscionability and Unfairness	210
H. Unsolicited Goods	213
I. Rent-to-Own Transactions	214
J. Pawnbrokers	216
K. Credit Repair	216
L. Loan and Mortgage Brokers	217
M. Discrimination	218
N. Debt Collection	219
O. Defective Goods	222
P. Consumer Claims and Defenses	224
<b>▼ CHAPTER 6</b>	
Enforcement Mechanisms	<b>229</b>
A. Introduction	229
B. Civil Actions	232
1. Individual Actions	232
2. Class Actions	236
C. Administrative Enforcement	238
D. Criminal Enforcement	240
<b>▼ CHAPTER 7</b>	
Conclusion	<b>241</b>
About the Authors	<b>247</b>