Consumers often purchase items or services through financing arrangements offered or arranged by sellers. Sometimes the item turns out to be defective, or it is never delivered. Other times, services are shoddy, incomplete, or not performed at all. For consumers who find themselves in this position, a federal regulation known as the Holder Rule may help.

If the Holder Rule applies, a consumer may be able to stop making payments on a loan and may even be able to get a refund of payments already made. Whether the Holder Rule applies requires a careful analysis of the relationship between the seller and the lender.

What Is the Holder Rule?

The Holder Rule is a federal regulation intended to help consumers when a defective or fraudulent product or service is purchased with credit extended directly by the seller or arranged by the seller. If the seller (1) provided your financing directly or (2) has a certain type of relationship with the provider of your financing, you may be able to stop paying on the loan and possibly obtain a refund of any payments you made on the loan if a product or service is defective or not provided.

When a credit agreement is entered into as part of the sale, it is supposed to include a statement like this:

**ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

(Absence of this language in your contract, however, does not necessarily mean the Holder Rule is unavailable to help you.)

Does the Holder Rule Apply to My Contract?

Several facts must exist for the Holder Rule to apply to your loan. Some of those factors include:

- The credit was granted in connection with the sale of the fraudulent/defective goods or services;
- The credit was extended to a consumer, not a business; and
- The seller of the fraudulent/defective goods or services (1) is the creditor, or (2) referred the customer to the creditor, or (3) is affiliated with the original creditor.

Examples of a referral may include the seller routinely sending customers to a specific lender, contacting lenders on behalf of buyers, or helping buyers to prepare the loan application. A referral may exist where the seller channels buyers to particular lenders, but does not exist if the seller makes an occasional referral or merely passes along information about where buyers may obtain credit.

- An affiliation may exist if the seller and the lender have some sort of common ownership—perhaps one is a subsidiary of the other, or they are owned by the same company or individuals. An agreement, contract, or other arrangement between the seller and the lender can also be an affiliation. Examples of such arrangements include:
What If the Holder Rule Language Does Not Appear in My Contract?

If the Holder Rule applies and the Holder Rule statement is not in the contract, the creditor has violated federal law. If your credit contract does not include the statement and you have reason to believe it should, you should consult an attorney to explore your legal options. You may still have legal rights under the Holder Rule even if the Holder Rule statement is not in your contract.

Where Can I Go for Help?

The Consumer Financial Protection Bureau (CFPB) is the federal agency that has authority to enforce the Holder Rule. If you believe the creditor has violated federal law, you may contact the CFPB as follows:

Consumer Financial Protection Bureau
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220
(855) 411-2372
www.consumerfinance.gov

You may also wish to contact the FTC to report the possible violation:

Federal Trade Commission
Consumer Response Center
600 Pennsylvania Avenue NW
Washington, DC 20580
(877) 382-4357
www.reportfraud.ftc.gov

Does the Holder Rule Apply to My Student Loans?

The FTC has stated that student loans are within the scope of the Holder Rule. The Department of Education also has regulations applying principles similar to the Holder Rule to many federal student loans. For private loans, the borrower may be able to cancel existing debt if a school fraudulently induced the student to enroll and had some relationship with the lender. For federal direct loans, the promissory notes include a statement about your rights and will tell you to contact your direct loan servicer if you believe you should not have to repay the loan.

This document is available in alternative formats to individuals with disabilities by calling (651) 296-3353 (Twin Cities Calling Area), (800) 657-3787 (Outside the Twin Cities), or through the Minnesota Relay Service at (800) 627-3529.

The Minnesota Attorney General's Office values diversity and is an equal opportunity employer.
For federal student loans, the “Borrower Defense to Repayment Rule” offers relief from debt based on fraudulent, misleading, or other illegal acts by the school and related to the enrollment. Different versions of the Rule, however, exist and may apply depending on the time in which the student was enrolled.

For more information about the Department of Education's most recently announced “borrower defense” rule, consumers should review the website for the Office of Federal Student Aid, which is part of the U.S. Department of Education, at https://studentaid.gov/.

Please note this Office has no authority over the Department of Education's review of the borrower defense claims it receives, the timeliness of its review of such claims, or its decision to grant or deny such claims.

More Information
Further information about the Holder Rule is published by the FTC at the following address: https://www.ftc.gov/legal-library/browse/rules/holder-due-course-rule. You may also contact the Attorney General's Office for more information:

Office of Minnesota Attorney General Keith Ellison
445 Minnesota Street, Suite 1400
St. Paul, MN 55101
(651) 296-3353 (Twin Cities Calling Area)
(800) 657-3787 (Outside the Twin Cities)
(800) 627-3529 (Minnesota Relay)
www.ag.state.mn.us