

A Magistrate's Guide to GS Ch. 25A:

The Retail Installment Sales Act

This guide is intended to assist a magistrate in navigating GS Ch. 25A; it is not intended as a substitute for the statute or as a stand-alone resource.

Part 1: §§ 25A-1 to 25A-13

The first sections of the RISA address what sorts of contracts the statute does and does not cover, and provides important definitions for terms used throughout the Act. Essentially, RISA regulates consumer purchases of goods or services which are financed by the seller.

RISA does not apply to

- Direct loans
- Purchases made with a major credit card
- Installment purchases financed by a seller outside of the regular course of business
- Purchases by business entities not a natural person
- Contracts involving 4 or fewer installment payments and no finance charge
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RISA does apply to

- Some rent-to-own” contracts, provided the requirements of GS 25A-2(b) are satisfied
- Service contracts, including funeral services, education, and hospital accommodations. GS 25A-5(a).

A *finance charge* includes loan fees, fees for credit reports, carrying charges, and other charges related to the seller's provision of credit, in addition to charges denominated as interest. GS 25A-8.

The Act distinguishes between a *revolving charge account contract* (GS 25A-11) and a *consumer credit installment sale contract* (GS 25A-12).

Part 2: §§ 25A-14 to 25A-23

These sections relate to the terms of an agreement subject to RISA: some terms are required, while others are prohibited. The most important sections are:

- Limitations on finance charges, depending on the kind of contract and the amount of money financed. GS 25A-14, -15.
- Authorization of higher charges for motor vehicles, depending on the age of the vehicle. GS 25A-15.
- Specific rules about credit life insurance and similar insurance coverage; GS 25A-17, -36
- Prohibition of confessions of judgment and warranty disclaimers. GS 25A-18, -20
- Restrictions on the seller's right to accelerate the debt. GS 25A-19
- Requirements for attorneys' fees. GS 25A-21
- Restrictions on types of collateral in which seller may take security interest. GS 25A-23.

Part 3: §§ 25A-27 to 25A-37.

These sections regulate business practices that have sometimes historically been used to exploit unwary or unsophisticated purchasers.

- FIFO rule applies to application of payments in multiple-sale situation. GS 25A-27
- Requirement that contracts be written, dated, and signed by buyer. GS 25A-28.
- Restrictions on fees for late payment and deferral of payment date, GS 25A-29, -30.
- Requirements related to buyer's early payment. GS 25A-32, 32.1.
- Establishing maximum term of agreement, depending on amount financed. GS 25A-33.
- Prohibiting balloon payments. GS 25A-34.
- Requiring seller to provide statements of account. GS 25A-35.
- Prohibiting referral sales (in which price is reduced if buyer procures other customers) in all consumer contracts. GS 25A-37.

Part 4: §§ 25A-38 to 25A-42.

These sections of the Act contain specific rules and regulations pertaining to home solicitation sales, with particular emphasis on "honeymoon period" in which buyer has the right to cancel.

Part 5: §§ 25A-43 to 25A-44.

The last part of the Act addresses the consequences of RISA violations and gives a court substantial discretion in determining whether to enforce an agreement which is extremely unfair.

- If a court determines that a portion of a consumer credit sale is "totally unreasonable under all of the circumstances" after giving all parties an opportunity to present relevant evidence on the point, the court may refuse to enforce the entire agreement or that portion of the agreement, or may rewrite the clause to avoid an unconscionable result. GS 25A-43.
- Finance charge too high (but less than twice the maximum), but seller was acting in good faith, charge reduced to allowable amount. GS 25A-44(1).
- Finance charge too high (but less than twice the maximum), and seller was not acting in good faith, no charge allowed, and seller may be required to pay double amount of finance charged paid by buyer plus attorney fees. GS 25A-44(1).
- Finance charge more than twice allowable maximum, contract is void, and buyer can retain goods. GS 25A-44(2).
- Failure to provide pre-payment rebate or charging unauthorized fees allows buyer to demand amount from seller. Ten days after seller receives demand, buyer entitled to recover three times amount not refunded within ten day period. GS 25A-44(3)
- Knowing violation of RISA is unfair practice under GS 75-1.1, allowing treble damages and attorney fees. GS 25A-44(4).