

Chapter 5

Payday Lending and Rent-to-Own



A payday loan is a loan that consumers can get from a business that is not a bank but usually a loan store. It is called a payday loan because consumers generally borrow just enough to get through to their next payday, at which date the money is due. Payday loan businesses operate under a wide variety of titles and may take postdated checks as collateral.

Payday loan businesses cause consumers to become reliant on them because they charge large fees and expect quick repayment of the money. This can make it difficult for a consumer to pay off the loan and still be able to meet monthly expenses. Many borrowers have loans at several different payday loan businesses, which worsens the situation.

It is not uncommon to find a large number of payday lenders located near military bases. This is not by accident. Payday lenders target servicemembers for a variety of reasons. Servicemembers receive regular monthly paychecks in the form of allotments that are deposited directly into the servicemembers' bank accounts, making the money readily available to the payday lender. Because servicemembers may struggle with being paid on a monthly or bi-monthly basis, they often find themselves needing extra money between paychecks. Unfortunately, this “quick fix” could wind up costing the servicemember serious money. Finance charges and fees can often make the payday loan's annual percentage rate (APR) as high as 500%. These charges fluctuate from state-to-state due to differences in lending laws.

Under the Military Lending Act (MLA), payday lenders must cap the APR—which incorporates all fees and costs associated with the loan—at 36% when lending to servicemembers. In order for the MLA to apply, the payday loan must be closed-end credit with a term of 91 days or less in an amount of not more than \$2,000. The consumer must incur interest or be charged a fee and, at the same time, provide a payment instrument (a check) to the lender who promises not to deposit it for one or more days or to initiate a debit to the consumers deposit account after one or more days. In addition to capping the APR at 36%, the MLA prohibits payday lenders from “rolling over” the payday loan, unless the new transaction results in more favorable terms for the servicemember. Unfortunately, many servicemembers may not know about this specific

protection offered to them, and dishonest payday lending companies may employ strategies like extending the term of the loan to avoid being covered by the MLA. The MLA also bans lenders, including payday lenders, from requiring servicemembers to repay their loans by allotment. The servicemember may elect to do this but may not be required to do so. When servicemembers pay by allotment, they lose certain consumer protections as well as their flexibility to adjust their budget if a financial emergency comes up. The MLA prohibits lenders from making servicemembers waive their rights under the SCRA or other state or federal laws that provide critical consumer protections. The MLA also prohibits lenders from requiring servicemembers to waive their right to seek resolution of any legal claims in court.

Another form of borrowing often used by servicemembers is the bank account overdraft protection provided by their financial institutions. Servicemembers may choose to overdraft their account and be charged a flat fee rather than turn to a payday lender. While banks usually disclose the amount of the fee, some servicemembers are not aware that they may be charged the fee each time they draw from their account if it does not have sufficient funds. Usually, the same fee is charged regardless of the amount of the purchase or withdrawal. When the servicemember receives his or her paycheck or makes a deposit, the funds could be used to satisfy the amount overdrafted, including fees. Using overdraft protection as a way to borrow money may put the servicemember in a worse position.

When in debt, it is generally a bad idea to take on more debt to pay creditors, especially at a high rate of interest. Nevertheless, many financially stressed servicemembers fall prey to predatory lending practices in an effort to consolidate debt.

Rent-to-Own

Just like payday lenders, rent-to-own stores are often located near military bases. This is also no accident. Servicemembers are a very mobile population, who are called upon to endure long deployments and frequent relocations. Therefore, they need to travel light. This means that belongings are often left behind out of necessity. When moving to a new base or returning from a long deployment, servicemembers may find themselves without the basic furniture and appliances needed to furnish their new space. Although some base housing is considered furnished, those furnishings may have been worn out by many owners and need to be replaced.

The rent-to-own industry practice is to enter into an agreement with a consumer that allows the consumer to rent furniture, appliances, and other goods for a defined period of time. The consumer is only responsible for paying the periodic rental fee for that defined time, which can be as short as a week or month but may be continued if the consumer chooses to renew it. However, sometimes a condition in the rental agreement provides the consumer with an opportunity to buy the rented goods by continuing to pay the rental fee for a length of time or by paying a lump sum payment. Also, if the consumer decides they no longer want the particular item, they can return the item and walk away without penalty or damage to their credit score.

But sometimes that agreement comes with a very steep price tag. An example¹⁵ given by Consumer Reports is the following: A \$612 Toshiba laptop is bought at a rent-to-own store for \$38.99 per week for 48 weeks, for a total of \$1,872, excluding sales tax and other charges. That's the same as buying the laptop at the manufacturer's suggested retail price and financing it at an interest rate of 311%. A consumer could buy three of the same laptops for that total amount of \$1,872. It is important that servicemembers do the math in these transactions. Also, many times actual prices of items are not on display in the rent-to-own store, so it is difficult to do the math on the spot and make an informed decision. For servicemembers and all consumers alike, it is a better idea to take that same \$38.99 per week and put it aside until the item can be bought without having to finance it.

15 *Consumer Reports Investigation: Would you pay the equivalent of 311 percent interest to own a big-screen TV*, ConsumerReports.org, www.consumerreports.org/cro/money/shopping/rentacenter/overview/index.htm (last visited November 6, 2013).

Many states, including Tennessee, have laws regarding rent-to-own transactions. In Tennessee, the law is called the Tennessee Rental-Purchase Agreement Act (TRPA).¹⁶ It lays out the disclosures that rent-to-own stores must make to consumers when advertising and entering into a rental purchase agreement. Covered agreements must be for the use of personal property for personal, family, or household purposes for an initial period of four months or less that are automatically renewable with each payment and allow the consumer to own the property. For each agreement, the business must disclose:

- A brief description of the property;
- The number, amount, and timing of all lease payments necessary to own the property;
- The maximum amount of all initial and periodic payments and charges to own the property;
- A statement that the property is not owned until all payments have been made;
- A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, and that the consumer should review the contract;
- If applicable, a statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed;
- A statement indicating whether the property is new or used; however, a statement that indicates new property is used is not a violation of the TRPA;
- A statement of the cash price of the property. When the agreement involves a lease for five or more items, a statement of the total cash price of all items will satisfy this requirement;
- The total of initial payments required to be paid before completion of the agreement or delivery of the property, whichever is later;
- A statement clearly summarizing the terms of the consumer's options to purchase;
- A statement identifying the party responsible for maintaining or servicing the property while it is being leased, with the description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the leased property at the time the consumer receives ownership of the property, it will be transferred to the consumer, if allowed by the warranty; and
- The date of the transaction and the names of the consumer and business.

¹⁶ Tenn. Code. Ann. §§ 47-18-601 *et seq.*

If an advertisement for a rental-purchase agreement states the amount of any payments or the right to receive ownership of an item, the advertisements must clearly and conspicuously state:

- That the advertised transaction is a rental-purchase agreement;
- The total of payments necessary to receive ownership; and
- That the consumer does not have ownership of the property unless the total amount necessary to have ownership is received.

An action alleging violations of the TRPA must be brought within one year of the date of the violation or within six months of the time the rental-purchase agreement was no longer effective, including any renewals or extensions.

