THE UNRUH RETAIL INSTALLMENT SALES ACT

I. OVERVIEW

The California Retail Installment Sales Act, generally known as the "Unruh Act," is found at California Civil Code (the "Civil Code") §§1801 et seq. The Unruh Act regulates consumer contracts for the sale of personal goods and services on time and revolving charge accounts. The Unruh Act sets forth both disclosure requirements (i.e., information that must be disclosed to the buyer) and substantive requirements (i.e., permissible contract terms). It also regulates practices by creditors after an installment sales contract is signed: fees for late charges, prepayment refunds, and repossession practices, add-on sales, etc.

Many personal property installment sales contracts are sold to banks and other financial institutions, although the seller may not require the buyer to obtain financing from any particular source. (Civil Code §1812.20.) The Unruh Act spells out the legal consequences of the relationship between these assignees and the buyer. (Civil Code §1804.2.) The Unruh Act provides for the liability of sellers and assignees for violations of its provisions. (Civil Code §§1812.6-1812.9.)

II. COVERAGE

The Unruh Act regulates consumer installment contracts for the sale of personal goods or services and revolving charge accounts. (Civil Code §1802.1.) It does not apply to contracts for the construction or sale of any residence or commercial structure (either real or personal property) or for the purchase of any aircraft that must be federally registered or any undocumented vessel with a sale price (including accessories and equipment purchased together with the vessel) in excess of $25,000 (Civil Code §1801.4); motor vehicle and mobile home installment sales contracts (Civil Code §1802.1); or to commercial or business transactions (Civil Code §1802.1). It also does not cover contracts for services provided by a physician, dentist, or public utility. (Civil Code §1802.2.) Finally, the seller must be "engaged in the business of selling goods or furnishing services to retail buyers." (Civil Code §1802.3.) Any waiver by the buyer of the Unruh Act's protections is unenforceable. (Civil Code §1801.1.)

The Unruh Act governs all contracts, other than those excluded above, in which there is (1) a finance charge or some other economic detriment (i.e., higher price) to the buyer for deferred payment, or (2) provision for the payment of the purchase price in four or more installments. (Civil Code §1802.6.) It also applies to revolving installment credit accounts where a finance charge is calculated on the outstanding balance of the accounts, such as house brand credit cards. (Civil Code §§1810.1-1810.9.)
III. DISCLOSURES

A. Manner of Disclosure

The Unruh Act requires that the seller deliver to the buyer, at the time the contract is signed, copies of all documents signed during the contract negotiation. (Civil Code §1803.7.) Since the buyer is entitled to delivery of a completely filled-in copy of the contract (Civil Code §1803.2) at the time he or she signs it, the seller may not obtain the signature of the buyer to a contract containing blank spaces to be filled in thereafter. (Civil Code §1803.4.)

An assignee can remedy a non-willful violation of this section by sending a filled-in copy to the buyer within 30 days. (Civil Code §1812.8.) Note also the acknowledgment of delivery provisions of Civil Code §1803.7, which may create a rebuttable or conclusive presumption of compliance with various delivery and disclosure requirements.

One of the most important requirements of the Unruh Act is that every installment contract must be embodied in a single document which contains the entire agreement of the parties with respect to the cost and terms of payment. (Civil Code §1803.2.) This rule requires that all of the obligations that the buyer incurs with respect to a single transaction be physically incorporated in one single document so that the buyer is truly aware of the responsibilities he or she has undertaken. Any document which the buyer has signed during the contract negotiations must be delivered to the buyer along with the completely filled-in copy of the contract when it is signed. (Civil Code §1803.7.) The Unruh Act also contains numerous specific type size requirements. The entire contract must be in at least 8-point type; the words "retail installment contract" and "security agreement" must appear in at least 12-point bold type at the top of the contract; and a notice informing the buyer of certain of his or her rights under the Unruh Act must appear in at least 10-point bold type. (Civil Code §1803.2.)

B. Required Disclosures

The Unruh Act contains detailed requirements on written disclosures of contract terms in retail installment contracts (Civil Code §§1803.1-1803.3). These include all disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. An itemization of the amount financed, so labeled, is also required. It must disclose (1) the cash price; (2) sales taxes; (3) the total of items (1) and (2); (4) an itemization of amounts paid to public officials for official fees; (5) the insurance disclosures disclosed below; (6) a subtotal of items (1)-(5); (7) the amount of any administrative finance charge, labeled "prepaid finance charge;" (8) the amount of the down payment, which may not include item (7) and must show (a) the value of the trade-in, (b) the amount of any deferred downpayment (this can only be deferred until the second installment is due and may not be subject to a finance charge), (c) the amount of any manufacturer's rebate, and (d) the remaining amount to be paid by the buyer as a downpayment; and (8) the difference between items (6) and the sum of items (7) and (8),
labeled "amount financed." The contract must also include deferred downpayments in the Regulation Z payment schedule disclosure and describe property being traded in. It must also disclose the method of computing finance charges and disclose how unearned finance charges will be rebated if the finance charges are precomputed, or what the minimum finance charge is (or how it will be calculated) if finance charges are computed on a simple interest basis. (Civil Code §1803.3.)

C. Insurance Disclosures

If the cost of any insurance is included in the contract, a separate charge is made to the buyer for such insurance, and the insurance is to be procured by the seller or holder, then the seller or holder shall mail a copy of the policies or certificates of insurance to the buyer within 45 days after delivery of the goods or furnishing of services. (Civil Code §1803.5(c).)

In addition, the contract must itemize any insurance included in the amount financed. This disclosure must (1) identify the type of insurance; (2) disclose the premium charged; and (3) state the term if the insurance expires before the end of the term of the contract.

IV. SUBSTANTIVE REGULATION OF THE RETAIL INSTALLMENT CONTRACT

A. Permissible Security

The Unruh Act contains two simple rules: (1) no lien or security interest is permitted in personal property other than that sold by the seller and still not fully paid for unless the contract is for services (Civil Code §1804.3(a)); and (2) no lien or security interest is permitted on real property unless the contract is for goods or services to be affixed to the real property. (Civil Code §1804.3(b).)

B. Maximum Allowable Finance Charge

Between the Unruh Act's enactment in 1959 and January 1, 1988, various rate charge limitations existed under the Unruh Act. Different limitations applied to open-end and closed-end contracts, and the amounts of the restrictions fluctuated over the years. Finally, however, effective January 1, 1988, all interest rate restrictions for contracts and accounts regulated by the Unruh Act were removed. There have been no serious efforts to reinstate such rate limitations since 1988, and we are aware of no such efforts currently pending.

C. Payments

The Unruh Act allows payments in weekly, monthly, or semi-monthly installments. (Civil Code §1805.2.)
D. Prohibited Provisions

In an effort to correct past abuses, the Unruh Act expressly prohibits the inclusion of certain oppressive provisions in retail installment contracts. (Civil Code §§1804.1, 1810.7.) Note that while a prohibited provision is void, it does not affect the validity of the contract. (Civil Code §1804.4.) Among the more important provisions prohibited are waiver of defenses, waiver of affirmative claims, and waiver of the protective venue provisions (Civil Code §1804.1). Section 1804.1(b) prohibits acceleration by the holder in the absence of a default by the buyer's default, thus prohibiting general insecurity clauses. Section 1810.7 prohibits the execution of notes which, when separately negotiated, would cut off the claims or defenses against third parties which the buyer may have against the seller.

E. Late Payment Charges

Civil Code §1803.6 regulates the late payment charges that can be charged on past due installments. The contract may provide for a late payment charge of either (1) $10, after payment is ten days late, or (2) $15, after payment is 15 days late. In addition, only one such late charge may be collected on any late installment regardless of the length of time the installment remains in default. (Civil Code §1803.6.)

V. SUBSTANTIVE REGULATION OF THE TRANSACTION IN GENERAL

A. Rebates Prohibited

Civil Code §1803.10 prohibits rebates. In the past, sellers sold merchandise by promising to pay referral commissions for names of new customers. Substantial abuses occurred so the Unruh Act was amended to prohibit rebates, discounts, or commissions for referral sales.

B. Prepayment Refunds

Prepayment entitles the buyer to a refund of unearned finance charges (Civil Code §1806.3) and insurance premium payments (Insurance Code §§481-483, 779.14; 10 California Administration Code §2248.10). The statutes set a minimum threshold refund, calculated in accordance with the "sum of the digits methods" or the "Rule of 78s."

C. Refinancing and Consolidation

Holders of retail installment contracts may agree with buyers to extend a scheduled due date, to reschedule payment of any installment, or refinance the remaining amount owing under any retail installment contract. However, such extensions, deferments, or refinances must be in writing and are subject to certain limitations.
No charge may be made for any extension or deferment unless there is an agreement in writing signed by the parties to the contract. This charge is limited to 1% per month in simple interest on the amount of the installments deferred or extended if the contract includes a finance charge determined on a precomputed basis, and the lesser of (1) $25 or (2) 10% of the unpaid balance of the contract if the extension or deferment is for a contract in which the finance charge is determined by simple interest basis. The buyer may also be required to extend insurance coverage in effect under the contract, and pay for such extension. (Civil Code §1807.1.)

Similar rules apply to refinances. A refinance charge may be assessed, but only after the buyer has been credited the amount of any refund of finance charges and insurance costs calculated under Civil Code §1806.3 if the borrower had prepaid the contract. A written refinancing agreement is required, which must include (1) the amount of the existing outstanding balance to be refinanced, which is the remaining amount owing; (2) the amount of any refund credit; (3) the difference between items (1) and (2), which is the "net outstanding balance to be refinanced;" (4) any additional cost of insurance and of official fees that the buyer must pay; (5) the sum of items (3) and (4), which is the "amount financed;" (6) the finance charge that will be assessed in connection with the refinancing, expressed as both the "annual percentage rate" as defined by Regulation Z and in a dollar amount; and (7) the number, amount, and due dates or periods of the payments required under the refinancing agreement. Where two or more contracts are consolidated and refinanced, additional items may be included to explain the computations required to determine the above disclosures. Disclosures for contracts in which interest is calculated on the simple interest method must assume that all payments are received when due. (Civil Code §1807.2.)

Any payment (other than a deferred downpayment) in a retail installment sales contract which is more than twice the regularly scheduled payment must be identified by the term "balloon payment." A buyer who defaults in paying a balloon payment has an absolute right to obtain a new payment schedule, which may not be substantially greater than the average of the preceding installments. (Civil Code §1807.3.)

D. Add-On Sales

The Unruh Act recognizes a hybrid between closed-end and open-end credit: add-on sales. A closed-end installment contract may permit the seller to add subsequent purchase made by the buyer to the contract, with all of the contract terms and conditions applying to the add-on sales and all finance charges and installment payments increased proportionately. Add-on sales contracts may also permit goods purchased under the previous contract to secure subsequent purchases, but only until the total payments under the previous contract or contract is fully paid. (Civil Code §1808.1.)

The Unruh Act contains rules for allocation of payments to previous purchases where subsequent purchases are made. In brief, new payments are deemed to be allocated to all of the various deferred payment prices in the same proportion or ratio as the original cash sale prices of those purchases. Initial payments or downpayments on
subsequent purchases are allocated entirely to their respective purchases. When an add-on purchase is made, the seller must deliver to the buyer a memorandum disclosing the following, prior to the due date of the first installment. That memorandum must disclose (1) names of the buyer and seller, place of business of the seller, the residence or place of business of the buyer, and a general description of the goods and services purchased. The services or multiple items of goods may be described in general terms and described in detail in a separate writing; (2) the cash price of the add-on goods, services, and accessories; (3) the amount of the buyer's downpayment, itemizing the amounts paid in money and in goods and containing a brief description of any goods traded in; (4) the difference between items (3) and (4), which is the unpaid balance of the cash price; (5) the amount of the existing outstanding balance to be consolidated, which consists of the unpaid balance or balances of the prior contract or contracts to be consolidated; (6) the amount of any unearned finance charge, determined by deducting from the amount of item (5) any then unearned finance charge as required by Section 1806.1, excluding any minimum earned finance charge; (7) the difference between items (5) and (6), which is the net outstanding balance to be consolidated; (8) the amount, if any, included for insurance, specifying its coverage; (9) the amount of any official fees; (10) the unpaid balance, which is the sum of items (4), (7), (8), and (9); (11) the finance charge expressed both as an annual percentage rate as defined by Regulation Z and in dollars; (12) the number, amount, and due dates or periods of payment scheduled to repay the total new indebtedness; and (13) any balloon payments. (Civil Code §1808.2.) Until the memorandum is delivered to the buyer, the buyer is obligated to only pay the cash price of the subsequent purchase. (Civil Code §1808.4.)

VI. DEFAULT BY THE BUYER

If the buyer defaults in the performance of his obligations, the seller has two options: repossess the goods, or sue for the contract balance. (Civil Code §1812.2.) If the seller repossesses the goods, the buyer has ten days to redeem before the seller either sells the goods to cover the balance owing or retains the goods as full payment. (Civil Code §1812.2.) If the goods are repossessed, no deficiency judgment is allowed. (Civil Code §1812.5.)

A. Repossession of Goods

Although the Unruh Act is not always perfectly precise, it appears to use "repossession" to refer to the taking of goods or other security by the creditor without court process.

There are two important rules regarding repossession. The first is that the buyer must be in default on his contractual responsibilities, payment or otherwise, before the creditor is entitled to enforce his security interest by repossession. (Civil Code §1812.2.) Second, of course, any repossession must be effected without a breach of the peace. (Civil Code §1804.1(d.).)
B. Suit Against Buyer:

1. **Venue:**

   The Unruh Act contains provisions which limit venue to (1) the county in which the buyer signed the contract, (2) the county in which the buyer resided at the time the contract was entered into, (3) the county of the buyer's residence at the commencement of the action, or (4) if the goods have been so affixed to realty so as to become part of the realty, in the county in which they are so affixed. (Civil Code §1812.10.)

2. **Judgment:**

   If the seller has a judgment against the buyer, it may be executed against not only the goods sold (California Code of Civil Procedure §690.52) but on other real and personal property as permitted by California law.

**VII. PENALTIES FOR VIOLATION**

   Any person who fails to comply with the Unruh Act is barred from recovery of any finance charge or any charge for delinquency, collection, extension, deferral, or refinance. The buyer may recover from the violator an amount equal to any of such charges previously paid. (Civil Code §1812.7.) However, any non-willful failure to comply with the Unruh Act that is apparent on the face of the Contract may be corrected by the holder by delivering a corrected copy of the contract within 30 days of the execution of the original contract by the buyer. Any amount improperly collected by the seller must be credited against the indebtedness evidenced by the contract. (Civil Code §1812.8.)

   Any person who willfully violates the Unruh Act is guilty of a misdemeanor, which is punishable by a fine not to exceed $1,000 or imprisonment in the county jail not to exceed six months, or both. (Civil Code §1812.6; California Penal Code §19.) In addition, if any violation occurs in connection with the imposition, computation, or disclosures of or relating to a finance charge on a consolidated total of two or more contracts, the buyer may recover from the violator an amount equal to three times of the total of the finance charges and any delinquency, collection, extension, deferral, or refinance charges imposed, contracted for, or received on all contracts. In addition, the seller is barred from the recovery of any such charges. (Civil Code §§1812.6, 1812.9.)