

NOTICE & RESPONSE WORKSHEET FOR DEMANDS PURSUANT TO TEXAS DTPA AND INSURANCE CODE

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No.	EVENT/ACTION	DEADLINE	DATE PERFORMED
Pre-Lawsuit	1. OCCURRENCE OF ACTIONABLE EVENT		
	2. DTPA/ARTICLE 21.21 NOTICE LETTER SENT <i>DEADLINE:</i> 60 days before filing suit. Exceptions to avoid statute of limitations of if asserted as counterclaim. <i>NOTICE:</i> must advise the Defendant in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. Date Performed = date notice given. TEX. BUS & COM. CODE ANN. § 17.505; TEX. INS. CODE ANN. § 541.154.		
	3. DEFENDANT RECEIVES NOTICE LETTER		
	4. INSPECTION OF GOODS IN QUESTION (applicable to DTPA only) During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer. Tex. Bus & Com. Code Ann. § 17.505		
	5. DEFENDANT CAN MAKE SETTLEMENT OFFER <i>DEADLINE:</i> Within 60 days after notice received in Step 3 above; except that in case of lawsuit filed with no pre-suit notice given, if no mediation is conducted, as specified in Step 12, then offer can be made within 90 days after answer is filed; if mediation is conducted offer can be made within 20 days after mediation ends. <i>REQUIREMENTS OF OFFER,</i> i.e., must include: 1) Money or other consideration, reduced to cash value, as settlement of consumer's claim for damages; 2) Money for consumer's reasonable and necessary attorney's fees, expenses. <i>COMPLETE DEFENSE:</i> Under DTPA, if offer is made within 30 days of receiving demand tendering the amount of economic and mental anguish damages claimed, and expenses including attorneys' fees incurred in asserting claim, then offer is complete defense. <i>REASON TO MAKE OFFER:</i> If court finds rejected offer is the same or substantially the same as or more than the damages found by trier of fact, the consumer may not recover any amount in excess of the lesser of: 1) the amount of the settlement offer, or 2) the amount of damages found by trier of fact; plus possibly limiting claimant's attorney's fees to those incurred as of time of rejected offer. TEX. BUS & COM. CODE ANN. § 17.5052; TEX. INS. CODE ANN. § 541.159.		
	6. OFFER OPEN FOR ACCEPTANCE <i>DEADLINE:</i> If offer not accepted within 30 days after made, offer considered rejected. TEX. BUS & COM. CODE ANN. § 17.5052(e); TEX. INS. CODE ANN. § 541.158.		
Lawsuit	7. SUIT IS FILED NO EARLIER THAN 60 DAYS FOLLOWING STEP 2, unless giving of notice is rendered impracticable because of necessity of filing suit before expiration of limitations period. <i>DEADLINE:</i> NO LATER THAN 2 years after false, misleading or deceptive act occurred, or within 2 years of when consumer discovered or in exercise of reasonable diligence should have discovered the occurrence. Consumer gets 180 day grace period to file suit if can show that failure to timely commence action was caused by Defendant's knowingly engaging in conduct solely calculated to induce plaintiff to refrain or delay from commencing action. TEX. BUS & COM. CODE ANN. § 17.565; TEX. INS. CODE ANN. § 541.162		
	8. DEFENDANT FILES ANSWER TO LAWSUIT		
	9. DEFENDANT CAN FILE PLEA IN ABATEMENT - IF NO NOTICE PROVIDED PURSUANT TO STEP 2. <i>DEADLINE:</i> 30 days following date Defendant files answer, as shown in Step 8. <i>AUTOMATIC ABATEMENT OF SUIT:</i> 11 days after Plea filed if: A. Plea is verified and states Defendant did not receive written notice as required in step 2; and B. Plea is not controverted by an affidavit filed by Plaintiff consumer before 11th day after day Plea is filed. TEX. BUS & COM. CODE ANN. § 17.505(c); TEX. INS. CODE ANN. § 541.155.		
	10. PLAINTIFF RESPONDS TO PLEA IN ABATEMENT <i>DEADLINE:</i> To avoid automatic abatement Plaintiff's Response must include controverting affidavit filed within 11 days after Plea in Abatement in Step 9 is filed. TEX. BUS & COM. CODE ANN. § 17.505; TEX. INS. CODE ANN. § 541.155.		
	11. AUTOMATIC ABATEMENT PERIOD If suit is abated, either automatically or by court order, abatement lasts until 60 days after the date the written notice is received in compliance with Step 2 above. Date Performed = date notice given; Deadline = 60 days after notice given. <i>NOTE:</i> Once notice is given, Defendant has opportunity to make settlement offer consistent with Step 5 above. Complete steps 2 - 6 above.		
	12. MEDIATION CAN BE REQUESTED <i>DEADLINE</i> for Request: 90 days after receipt of pleading making DTPA claim COURT shall sign order setting time and place of mediation not later than 30 days after motion filed. Mediation to take place within 30 days of order except by agreement of parties; parties to share costs of mediation.. Does not apply to actions where claimed damages are less than 15,000, unless party asking for mediation agrees to pay costs of mediation. TEX. BUS & COM. CODE ANN. § 17.5051; TEX. INS. CODE ANN. § 541.161.		