

# CONSUMER LAWYER HELP

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## HOLIDAY PLASTIC CARDS

### **Understanding gift cards:**

Consumers spent an estimated \$88 billion on gift cards last year, according to the research firm the Tower Group. It's no wonder, as gift cards can swiftly solve the nagging holiday question: What should I get?

By some estimates, 40% of gifts that go to teens are gift cards. The cards give recipients the freedom to choose their own gifts, but as their popularity grows so do the complexities.

If you buy a general bank-issued gift card, with a Visa, Mastercard, American Express, or Discover logo on it, you can use the card in any store that accepts those credit/debit cards. Store, or retail, gift cards generally can only be used at a store, although they may also be used to purchase items at stores owned by the same parent company. For example, Gap gift cards are also redeemable at Banana Republic and Old Navy as well as associated online merchants.

Gift cards can vary widely when comparing fees, expiration dates, and replacement cards. Before you start your holiday shopping this season, you'll want to know all card costs and conditions for you and the recipient.

#### Costs

You may not realize that fees can vary greatly, particularly on general purpose gift



cards issued by banks. In Maryland, the Montgomery County Office of Consumer Protection surveyed 20 gift cards in 2007 and found that all of them charged both a purchase/processing fee (from \$2 to \$10.90) and monthly maintenance fees (\$1.25 to \$4.95).

Bank-issued gift cards are versatile but can be very costly. When you purchase a gift card you may be surprised to learn how many different fees can be attached. Cards may carry purchase fees, activation fees, maintenance/monthly fees, reloading fees, transaction fee, balance inquiry fees, inactivity/dormancy fees and replacement card fees.

These extra charges can eat up your gift before you realize it. Even cards with no expiration dates will expire if fees eventually consume the card's value.

The bank that issues the gift card sets the fees. For instance, Chase sells a prepaid Visa debit card for \$3.50, plus a \$4.95 shipping fee if you buy it online (\$15.95 for rush orders). It also carries a \$2.50 monthly fee after the first year, and a \$12 cancellation fee if you'd like the balance returned to you. If registered, a lost card can be replaced for \$12.

Wells Fargo also charges \$2.50 per month after 12 months for its prepaid gift card,

and a \$15 “balance transfer fee” if the card expires and you want to cash out. Wells also warns customers that an extra 20% of the purchase price may be put on “hold” when used at gas stations, restaurants and hotels to cover routine blocks and extra charges like tips, etc. (These holds are placed on credit cards as well).

The Montgomery County survey found that the fee to replace expired cards (or receive a refund) ranged from \$5 to \$25. American Express, the only company in the survey that didn’t charge this fee, still replaces expired cards for free.

In September, American Express eliminated its monthly fees, which formerly applied after 12 months. It now charges only an upfront fee (\$2.95 to \$6.95 depending on denomination) to purchase its cards.

Fees are usually disclosed on the card wrappers or on websites that sell cards. But the information may be inconsistent or incomplete. Some cards don’t disclose when the card expires, while others claim there’s no expiration date yet carry a monthly maintenance fee that will ultimately render the card useless.

Retailers’ gift cards typically offer the simplest cost structure. Most charge nothing to buy the card and typically carry no monthly fees. Some stores have eliminated gift card inactivity fees and expiration dates (as is required in some states, such as California). But it is worth checking to be sure that there are no unanticipated charges or costly expiration dates.

In the Montgomery County survey, all surveyed bank-issued gift cards carried an expiration date. Some expired after 24 months, but several lasted only one year. As of August 2010, all gift cards will be required to last at least five years before expiring. As part of the new Credit CARD Act, gift card users were given some protections and new disclosures. The Federal Reserve will release rules related to the new gift card law by year’s end. (See “New gift card rules next year” )  
Use it or lose it?

Consumer Reports surveyed 1,000 gift cardholders in late 2007. About a quarter (27%) had not used a gift card they received the previous holiday season. The Tower Group estimates that consumers lost about \$8 billion in unused gift card balances in 2006. Some of those cards will have expired, others will have only small sums remaining. In some cases the unused money goes to states’ abandoned or unclaimed funds departments. The law may call the unclaimed funds “escheats.”

Contact the National Conference of State Legislatures to see if your state has a law that entitles you to collect unclaimed gift card funds. Visit National Conference of State Legislatures website and enter “gift cards” in the search box.  
Problems?

If the gift card you counted on turns up missing, some issuers will replace the card as long as you registered it before the card was lost or stolen. Some cards use a PIN system for security. If you can supply a gift card receipt and a PIN number, the card will be replaced—as long as the funds have not been spent already. So contact the issuer as soon as possible. Also be aware that Visa and Mastercard “zero liability” policies do not extend to all PIN transactions on gift cards. Gift card losses may mean you’re out of luck—and money.

If there’s a mistake with a card transaction or if you want to return the merchandise, your rights depend on store policy. You will have to take up your complaint with the merchant and/or gift card issuer. In some cases, stores will need the card in order to refund your money on returns, so don’t throw it away until you are sure it won’t be needed.

The Federal Reserve is considering whether gift cards will have any legal protections if a card is lost or stolen, or if there is a billing dispute. For now, any protections are purely at the card company’s discretion and can disappear at any time.

Even without full legal protection, if you have a gift card problem there is some help available:

\* For store gift cards, contact the Federal Trade Commission or 877-FTC-HELP.

\* For bank-issued gift cards, file a complaint with your state Attorney General's office and the Comptroller of the Currency (OCC) at [customer.assistance@occ.treas.gov](mailto:customer.assistance@occ.treas.gov) or call 800-613-6743.

#### **When giving gift cards:**

- \* Include the receipt and wrapper
- \* Consider fees associated with the card
- \* Does the card expire?
- \* Can it be replaced?
- \* Is it convenient for the recipient?

#### **New gift card rules next year:**

Gift cards can relieve gift givers of the dilemma of what to get, and allow recipients to buy something they really want. But gift cards' monthly maintenance fees and expiration dates have often caught users unaware. Recently, these practices prompted Congress to act on behalf of cardholders.

When Congress enacted the Credit CARD Act in early 2009, a portion of the law was devoted to providing consumers with stronger disclosures on gift cards. But gift cards purchased this holiday season will not be eligible for the new protections. Coming August 2010

The new law, which takes effect in August 2010, applies to both bank-issued and retail gift cards. It does not cover loyalty cards, phone cards, or reloadable general-purpose pre-paid cards. (That means a Walmart prepaid card is exempt from the law, while an American Express gift card is covered.). The new law will:

- \* Prohibit all gift cards from expiring before five years. Prohibit inactivity/dormancy fees for the first year.
- \* Limit inactivity/dormancy fees to one a month thereafter.
- \* Allow stronger state laws to continue to apply.

In addition, the new federal law gives the Federal Reserve the authority to write rules



that could cap gift card fees, provide fraud protection, and more. Proposed rules, expected by year's end, will explain what fees are allowed and when, and if gift cards will be eligible for billing error dispute rights and other

protections under the Electronic Funds Transfer Act. State consumer protections

More than 30 states have passed laws regulating gift cards. To learn if your state has protections that go beyond the new national law, check out Consumers Union's state-by-state summary of gift card laws. Find the document at Consumers Union website by searching for "gift card laws."

For example, California has a retail gift card law that bans expiration dates and fees, except when your balance falls below \$5 and the card has not been used for 24 months. At that point, a retailer can charge a \$1 monthly fee. The law also allows you to redeem up to a \$10 balance for cash.

Connecticut and Rhode Island also prohibit expiration dates and fees.

Like California, Florida, Maine, Montana, and New Mexico have bans on fees and expiration dates. However, these laws don't apply to bank-issued gift cards.

I hope this information has been helpful. Please email me at [amjrmail@aol.com](mailto:amjrmail@aol.com) to suggest legal topics you would like me to cover.

Have a wonderful holiday season!

Sincerely,

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