

TITLE 12 TRADE, COMMERCE, AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 11 AUTOMATIC RENEWAL OF SERVICE CONTRACTS

12.2.11.1 ISSUING AGENCY: Office of the New Mexico Attorney General.
[12.2.11.1 NMAC - N, 9/15/09]

12.2.11.2 SCOPE: Service contracts which contain automatic renewal clauses.
[12.2.11.2 NMAC - N, 9/15/09]

12.2.11.3 STATUTORY AUTHORITY: The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1, et seq. (1967).
[12.2.11.3 NMAC - N, 9/15/09]

12.2.11.4 DURATION: Permanent.
[12.2.11.4 NMAC - N, 9/15/09]

12.2.11.5 EFFECTIVE DATE: September 15, 2009, unless a later date is cited at the end of a section.
[12.2.11.5 NMAC - N, 9/15/09]

12.2.11.6 OBJECTIVE: The purpose of this rule is to deter unfair and deceptive practices that result in economic harm to consumers in transactions involving service contracts which contain automatic renewal clauses.
[12.2.11.6 NMAC - N, 9/15/09]

12.2.11.7 DEFINITIONS:

A. “Automatic renewal provision” means a provision under which a service contract is renewed for a specified period if:
(1) the renewal causes the service contract to continue in effect more than two months after the end of the term of the original contract; and
(2) the renewal is effective unless the consumer gives notice to the seller of the consumer’s intention to terminate the service contract.

B. “Seller” means a person providing service, maintenance, or repair under a service contract.

C. “Service contract” means any contract for service, maintenance or repair.

[12.2.11.7 NMAC - N, 9/15/09]

12.2.11.8 AUTOMATIC CANCELLATION PROVISIONS:

A. It is an unfair or deceptive trade practice for any consumer service contract to contain an automatic renewal provision unless the contract provision is set forth in a clear and conspicuous manner in at least 10 point type and includes the notice requirements and specific procedure by which the consumer may cancel the contract at the end of the initial contract term and the terms of the automatic renewal in the event that notice of cancellation is not given at the end of the initial contract term;

B. It is an unfair or deceptive trade practice for any consumer service contract to contain an automatic renewal provision unless the seller provides the consumer written notice prior to the end of the initial term of the contract or prior to the end of any renewal term of the contract consistent with Subsection (C) of 12.2.11.8 NMAC herein.

C. It is an unfair and deceptive trade practice for any service contract that contains an automatic renewal provision to:

(1) fail to provide written notice to the consumer specifying the procedure by which the consumer may cancel the contract and set forth in a clear and conspicuous manner, in at least 10 point type, and served on the consumer either by certified mail or on the first page of a monthly statement at least 30 days before the last day on which the consumer may give notice of the consumer’s intention to terminate the contract, but not sooner than 60 days before the last day on which the consumer may give notice;

(2) fail to allow a minimum of thirty (30) calendar days after the receipt of the seller’s notice pursuant to Paragraph (1) of Subsection C of 12.2.11.8 NMAC herein for the consumer to give notice of the consumer’s intent to terminate the contract at the end of the initial term or at the end of any additional renewal term;

(3) fail to honor a written notice sent via fax, U.S. mail, email or any other means upon which a consumer can reasonably rely to deliver such notice and postmarked, time stamped or otherwise electronically date stamped within the 30 calendar days provided for the consumer to give notice;

(4) fail to honor a written notice timely sent, mailed, emailed or otherwise transmitted in a manner upon which the consumer can reasonably rely to deliver such notice but received by the seller after the expiration of the notice period;

(5) fail to allow termination of the contract at the end of the initial term or at the end of any additional renewal term without additional cost or penalty.

[12.2.11.8 NMAC - N, 9/15/09]

12.2.11.9 SEVERABILITY: If any portion of this rule is held invalid, the remainder of the rule and application thereof shall remain unaffected.

[12.2.11.9 NMAC - N, 9/15/09]

HISTORY OF 12.2.11 NMAC: [RESERVED]