

SUBJECT: CONSUMER PROTECTION — DISTRESS SALES
ATTORNEY GENERAL — PUBLIC PROTECTION UNIT
ADOPTED PURSUANT TO 9 V.S.A. SECTION 2453(c)

RULE CP 114

Effective Date: 7/1/94

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CP 114.01 Definition

A “distress sale” is an offer to sell to consumers, or the sale to consumers of, goods which the seller states or implies has been occasioned by termination or discontinuance of all or part of the seller’s business, termination of the seller’s lease, fire or other disaster, bankruptcy, the seller’s financial hardship, or any similar cause. A “distress sale” does not include a sale conducted by a licensed auctioneer or by public official selling goods under the direction or authority of any court.

CP 114.02 Prohibited Representations

The misrepresentation, expressly or by implication, of any fact relating to a distress sale, including, but not limited to, the following constitutes an unfair and deceptive act or practice in commerce:

- (a) The cause or basis of the sale.
- (b) The former price, savings, quality or ownership of the goods to be sold at the sale.
- (c) The identity of the person or entity conducting the sale.

CP 114.03 Other Prohibited Conduct

The following conduct in connection with a distress sale constitutes an unfair and deceptive act or practice in commerce:

- (a) Advertising the sale with the words “going out of business,” “closing out,” “shutting doors forever,” “bankruptcy sale,” “foreclosure,” or similar words unless the seller is closing all of its operations in this state.
- (b) Selling an item at a distress sale which the seller ordered with the intention of selling the item at the sale. For the purpose of this provision, it is presumed that any item ordered after a distress sale has begun, or less than 60 days prior to the start of the sale, has been ordered with the intention of selling the item at the sale.

(c) Continuing a distress sale more than 45 days from the beginning date of the sale unless the fact that the sale has continued more than 45 days is expressly disclosed to the public in any advertisement or other promotional material.

(d) Within one year of advertising or conducting a distress sale, reopening or resuming the same business in this state under the same or any new name if the ownership and/or control of the business remains substantially the same, unless the seller establishes that there has been a change in circumstances from the time of the distress sale justifying reopening or resuming the business.

CP 114.04 Required disclosures

The failure to include in any advertisement for a distress sale the following disclosures in a clear and conspicuous fashion constitutes an unfair and deceptive act or practice in commerce:

(a) The beginning and ending dates of the sale.

(b) If the seller has employed an agent to conduct the sale, the name and business address of the agent.