



## ***Legal Guide S-11***

# **FAQs AND TIPS ON GIFT CERTIFICATES AND GIFT CARDS**

*December 2010*

You want to give a friend a gift, but your friend “has everything” or you don’t know what to give.

By giving a gift certificate or a gift card, you make it possible for your friend to purchase the particular item or product that he or she wants. You may also want to purchase a gift card for yourself from a business that you patronize regularly.

This legal guide answers common questions about gift certificates and gift cards sold after January 1, 2004, with respect to California law. Since most of the answers also have exceptions, be sure to read the entire answer. Please be aware that the federal government has also recently enacted regulations on the topic of gift certificates and gift cards, effective August 22, 2010.<sup>1</sup> Federal law may pre-empt California law where the terms are inconsistent and federal law is more protective of consumers. Because the federal regulation is so new, specific issues of pre-emption have not been decided by the Board of Governors of the Federal Reserve system, nor have they been litigated. It is the opinion of this office that, where the laws are inconsistent, the law that is most protective of consumers should be followed. For an overview and comparison of federal and California gift card law, please see [Tables A and B, attached](#).

Gift certificates and gift cards are covered by statutes setting these basic rules:<sup>2</sup>

- Most gift certificates and gift cards sold by retail sellers for use with the seller and its affiliates cannot contain an expiration date or a service fee, including a fee for dormancy.<sup>3</sup>
- Any gift certificate sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.<sup>4</sup> Effective January 1, 2008, any gift certificate with a cash value of less than \$10 is redeemable in cash, which includes currency or check, for its cash value.
- California laws governing gift cards and gift certificates cannot be waived.<sup>5</sup>

## **FREQUENTLY ASKED QUESTIONS ABOUT GIFT CERTIFICATES AND GIFT CARDS**

**Q.1. Are a “gift certificate” and a “gift card” the same thing?**

**A.** Yes. However, the terms exclude a gift card that can be used with multiple unaffiliated sellers of goods or services (for example, a card that can be used at all or some of the stores at a particular mall)<sup>6</sup> provided the expiration date, if any, is printed on the card.<sup>7</sup> Also, the rules described in this Legal Guide do not apply to prepaid calling cards issued solely to provide an access number and authorization code for prepaid calling services.<sup>8</sup>

**Q.2. Can a gift certificate or gift card contain an expiration date?**

**A.** No. However, this general rule is subject to the following exceptions:

A gift card that can be used with multiple unaffiliated sellers of goods or services may contain an expiration date.<sup>9</sup> If so, the expiration date must be printed on the card.

An issuer may accept funds toward the purchase of a gift certificate from one or more contributors as a gift for another person (the “recipient”), and may require a date by which the recipient must redeem the funds. This exception is applicable only provided that each contributor is given a full refund of the amount paid where: the funds are contributed for the purpose of being redeemed by the recipient by purchasing a gift certificate; the time in which the recipient may redeem the funds is clearly disclosed in writing to the contributors and the recipient; and the recipient does not redeem the funds within the time disclosed.<sup>10</sup> The distinction here is that the contributor(s) do not purchase the gift card themselves, they contribute money to be held with the seller until the recipient uses the funds to purchase a gift certificate.

Certain gift certificates or gift cards<sup>11</sup> sold after January 1, 1998, are not subject to any of the rules discussed here. To be exempt, these gift certificates or gift cards must contain an expiration date, if any, in capital letters<sup>12</sup> in at least 10-point type on the front of the card and must be either:

- Distributed by the issuer to a consumer without charge under an awards, loyalty or promotional program;<sup>13</sup> or
- Donated or sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes, if the expiration date is 30 days or less after the date of sale;<sup>14</sup> or
- Issued for perishable food products.<sup>15</sup>

**Q.3. Can a gift certificate or gift card contain a service fee?**

**A.** No. A gift certificate or gift card cannot contain a service fee, including a fee for dormancy (non-use).<sup>16</sup>

However, there is an exception from this general rule for a gift card where:

- The value remaining on the gift card is \$5.00 or less each time the fee is assessed; and
- The dormancy fee is \$1.00 per month or less; and

- The card has been inactive for 24 consecutive months (for example, no purchases, “reloading,” or balance inquiries); and
- The holder may reload or add value to the card; and
- The card has printed on it a statement in at least 10-point type stating the amount and frequency of the fee, that the fee is triggered by inactivity, and at what point the fee will be charged. This statement may be on the front or back of the card, but must be visible to the purchaser prior to purchase.<sup>17</sup>

A seller of unaffiliated, multiple seller cards without an expiration date -- many of which are sold by banks like pre-paid debit cards -- may take the position that such cards are not included in the definition of “gift certificate,” and therefore service fees or dormancy fees can be imposed without being disclosed. Buyers should beware when purchasing “unaffiliated, multiple seller” cards that not all questions about the terms of these cards have been answered and ask carefully about their terms before purchase.

**Q.4. Can the holder of a gift certificate or gift card redeem it for cash?**

**A.** This depends on the policy of the seller. The gift certificate law states that a seller must either redeem a gift certificate or gift card sold after January 1, 1997, for its cash value, or replace it with a new certificate or card at no cost.<sup>18</sup> However, California’s Legislative Counsel has concluded that a seller is not required to redeem a gift certificate in cash when requested by a consumer.<sup>19</sup> Thus, some gift certificate sellers redeem the gift certificate for cash or a combination of merchandise and cash, while some issue a new certificate for any balance remaining after the original certificate is redeemed. A gift certificate or gift card without an expiration date is valid until it is redeemed or replaced.<sup>20</sup>

Notwithstanding any policy of the seller, effective January 1, 2008, a gift certificate with a cash value of less than ten dollars (\$10) is redeemable in cash (not a new certificate or merchandise) for its cash value.<sup>21</sup> Cash for purposes of this section includes currency or check.<sup>22</sup> Where a seller accepts funds toward a gift certificate from one or more contributors as a gift for another person (the “recipient”), the seller must give each contributor a full refund of the amount paid toward the certificate if the time in which the recipient may redeem the funds by purchasing a gift certificate is clearly disclosed in writing to contributors and recipient and the recipient does not redeem the funds by the time disclosed.<sup>23</sup>

**Q.5. Can the holder of a gift card that is subject to a service fee use it to purchase a gift card that is not subject to a service fee?**

**A.** It appears to be a possibility, although the holder may not demand it. The gift certificate law requires the issuer of a gift certificate or gift card to honor it, but also limits that obligation to either redeeming the certificate or card in cash or replacing it with a new one. Since California’s Legislative Counsel has concluded that the issuer (not the holder) may choose between these two methods,<sup>24</sup> the likely answer is that the issuer may set its own policy.

**Q.6. What happens if the seller of the gift certificate or gift card files bankruptcy?**

**A.** A gift certificate or gift card sold by a seller that seeks bankruptcy protection may have no value. However, the holder of the certificate or card may have a claim against the bankruptcy estate.

Sellers that file “Chapter 11” (reorganization) bankruptcy intend to stay in business, so they typically will ask the bankruptcy court for permission to honor gift certificates in an effort to maintain good customer relations.

If the bankruptcy court does not allow gift certificates or gift cards to be honored, or if the seller files “Chapter 7” (liquidation) bankruptcy, holders of gift certificates or gift cards are creditors in the bankruptcy case. They have relatively high priority among unsecured creditors in a Chapter 7 case, and may receive some percentage of the certificate’s or card’s value, but only if the bankruptcy estate has enough assets to pay claims. For information on filing a claim, and other basic information on bankruptcy, see “Consumer Tips on Retail Store Bankruptcies,” under the “Publications” tab at [www.dca.ca.gov](http://www.dca.ca.gov), and then go to the “Consumer Publications” section, for the list of consumer publications.

A recently adopted California law is intended to help gift certificate and gift card holders when the seller declares bankruptcy. It requires a seller in bankruptcy to honor gift certificates issued before the date of the bankruptcy filing.<sup>25</sup> No court has ruled on the effectiveness of this law.

**Q.7. Does an unredeemed gift certificate escheat to the state?**

**A.** Not if it does not contain an expiration date. Specified tangible and intangible personal property that is held or owing in the ordinary course of business and remains unclaimed by the owner for more than three years escheats (reverts) to the state. The escheat laws do not apply to gift certificates subject to the rules discussed above. They do, however, apply to any gift certificate that lawfully contains an expiration date.<sup>26</sup>

**Q.8. Where can I get a copy of the gift certificate law?**

**A.** The gift certificate law is California Civil Code Sections 1749.45-1749.6. The California Civil Code is available at county law libraries and law school libraries. Look in the “County Government” and business listings of the telephone book’s white pages. The Civil Code also is available on the Internet at [www.leginfo.ca.gov](http://www.leginfo.ca.gov) under the “California Law” button.

**TIPS FOR PURCHASERS  
OF GIFT CERTIFICATES OR GIFT CARDS**

Ask about the seller’s redemption policy. If the recipient can only redeem the gift certificate or gift card for merchandise, or for a particular kind or class of merchandise, does this affect your decision to purchase or give the certificate or card?

In the case of a gift card usable with multiple, unaffiliated sellers, ask about expiration dates and any applicable fees. In addition, ask about the locations where the unspent portion of the value can be redeemed, and the manner in which that amount can be redeemed. This is important even for “single seller” cards, many of which can be purchased at an unaffiliated location.<sup>27</sup>

In the case of a gift card, ask the seller if the recipient can add value or “reload” the card.

Ask the seller about its policies on returning merchandise. A recipient who redeems a gift certificate or gift card for merchandise will be subject to those policies.

Consider purchasing a gift certificate or gift card from a retailer for use with it and its affiliates. These gift certificates and gift cards are subject to the protections of the gift certificate law. On the other hand, gift certificates and gift cards that can be used with multiple sellers that are not affiliated are not entirely covered by the gift certificate law.<sup>28</sup>

### **TIPS FOR RECIPIENTS OF GIFT CERTIFICATES OR GIFT CARDS**

Ask about the seller’s redemption policy. Some merchants may redeem the gift certificate for cash or a combination of merchandise and cash, while some may issue a new certificate for any balance remaining after the original certificate is redeemed.

In the case of a gift card, ask the seller if value can be added to the card or if it can be “reloaded.” Also, ask about any service or dormancy fee.

Use any remaining value on a gift certificate or gift card. If a gift certificate or gift card has a low balance, make a purchase with it and pay the difference out-of-pocket.

Ask the seller about its policies on returning merchandise.

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**NOTICE: We attempt to make our Legal Guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law’s application to particular cases should be directed to a specialist.**

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### **ENDNOTES**

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<sup>1</sup> 12 Code of Federal Regulations, Section 205.20.

<sup>2</sup> California Civil Code Sections 1749.45-1749.6.

<sup>3</sup> California Civil Code Section 1749.5(a).

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<sup>4</sup> California Civil Code Section 1749.5(b).

<sup>5</sup> California Civil Code Section 1749.51.

<sup>6</sup> California Civil Code Section 1749.45(a).

<sup>7</sup> California Civil Code Section 1749.45(a).

<sup>8</sup> California Civil Code Section 1749.45(b). California Business and Professions Code Section 17538.9 permits certain fees and practices with respect to prepaid calling cards. This exception was modified effective January 1, 2005, to clarify that a redemption date was not another name for an expiration date. (Stats. 2004 ch 319 (AB656) [Assembly Floor analysis August 11, 2004].)

<sup>9</sup> One argument has been made that sellers in a single mall are actually “affiliated” under the law because they have each agreed to honor the cards. This argument has not been tested, and it is doubtful that it would be successful. In addition, many “multiple seller” cards are issued by banks, usable similar to pre-paid debit cards. A seller of these unaffiliated, multiple seller cards may take the position that such cards without an expiration date are exempt from the definition of “gift certificate” under Civil Code section 1749.45(a), and therefore service fees or dormancy fees can be imposed and do not have to be disclosed. This argument has not been tested to our knowledge. While such an argument could be made on the face of Civil Code section 1749.45(a), such fees could in fact use up the value of the card, violating the spirit of the law. Buyers should be aware when purchasing “unaffiliated, multiple seller” cards that not all questions about the terms of these cards have been answered by the Legislature or the courts.

<sup>10</sup> California Civil Code Sections 1749.5(a)(1), (f).

<sup>11</sup> Civil Code § 1749.5(d).

<sup>12</sup> While the term “capital letters” is found in the statute, we deduce that this requirement would not apply if the expiration date listed consists of only numbers.

<sup>13</sup> California Civil Code Section 1749.5(d)(1).

<sup>14</sup> California Civil Code Section 1749.5(d)(2).

<sup>15</sup> California Civil Code Section 1749.5(d)(3); 83 Ops. Cal. Atty. Gen. 243 (2000). The Attorney General’s Opinion concluded that a gift certificate for a meal sold by a restaurant may not contain an expiration date. In our opinion, the 2008 amendment to this section clarified and affirmed the Attorney General’s position by limiting the exemption to “perishable food products,” not just “food.”

<sup>16</sup> California Civil Code Section 1749.5(a)(2).

<sup>17</sup> California Civil Code Section 1749.5(e). These rules have no effect on service fees imposed before January 1, 2004. (Statutes 2003, chapter 116, Section 4 (AB 1092).) Moreover, they would have no effect if a seller of a card usable with unaffiliated, multiple sellers successfully take the position that these prohibitions do not apply to the card because it does not contain an expiration date, and therefore is exempt from the definition of gift certificate under section 1749.45(a).

<sup>18</sup> California Civil Code Section 1749.5(b)(1).

<sup>19</sup> California Legislative Counsel, Opinion No. 1488 (February 11, 1997) Gift Certificates; see also California Civil Code Section 1749.5(b)(1), regarding gift certificates sold after January 1, 1997.

<sup>20</sup> California Civil Code Section 1749.5(c). Stats 2004 ch 319 (AB656) closed a “loophole” by allowing an expiration date to be called a redemption date. See Assembly Floor analysis dated August 11, 2004.

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<sup>21</sup> California Civil Code section 1749.5(b)(2). Statutes 2007, chapter 640 (SB 250).

<sup>22</sup> California Civil Code section 1749.5(b). For the same reasons asserted in the Legislative Counsel opinion referenced in endnote 16, in our opinion, whether the value of the gift certificate is redeemed in cash or by check would be dependant upon the policy of the seller. In our opinion, any seller that accepts the card should be able to redeem the unspent portion.

<sup>23</sup> California Civil Code Section 1749.5(f).

<sup>24</sup> California Legislative Counsel, Opinion No. 1488 (February 11, 1997) Gift Certificates.

<sup>25</sup> California Civil Code Section 1749.6(b) (Statutes 2002, chapter 997 (AB 2473)).

<sup>26</sup> California Code of Civil Procedure Sections 1520-1520.5.

<sup>27</sup> For example, a supermarket such as Safeway may sell Borders gift cards usable only for merchandise at Borders stores. While those cards could not contain any expiration date or fees, there may be a question about where any unspent portion can be redeemed.

<sup>28</sup> California Civil Code Section 1749.45(a).