CONSUMER PROTECTION AND DEBT MATTERS

Consumer Protection Act

The CPA applies to an agreement concluded between a consumer and supplier in the ordinary course of business. A consumer is someone who buys or uses goods, or receives services from a supplier. The supplier sells goods, renders services, and/or advertises his/her goods or services to the consumer.

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For all your Consumer Protection Act answers, simply follow our guide below.

1. What is the Consumer Protection Act about?
2. Does the Consumer Protection Act apply to all agreements?
3. What type of protection does a consumer get from the Consumer Protection Act?
4. What can a consumer do if a supplier fails to comply with the Consumer Protection Act?
5. How can LegalWise assist you?

1. What is the Consumer Protection Act about?

- In the past, people were not always protected against the suppliers of goods or services. Suppliers could have misled consumers about the quality of their goods or services, or offered goods or services on unreasonable terms and conditions, leaving the consumer with little or no remedy if a problem occurred.
- The Consumer Protection Act (“CPA”) provides protection to these consumers against such suppliers.
- The CPA applies to an agreement concluded between a consumer and supplier in the ordinary course of business. A consumer is someone who buys or uses goods, or receives services from a supplier. The supplier sells goods, renders services, and/or advertises his/her goods or services to the consumer.

- For example, John owns a store and Kathy visits John’s store to buy groceries. John is the supplier of groceries and Kathy the consumer. An agreement was entered into between John and Kathy in the ordinary course of John’s business, selling groceries. Kathy gave John money for these groceries. As a result, the CPA applies to their agreement.

2. Does the Consumer Protection Act apply to all agreements?

- The CPA does not apply to an agreement in the following circumstances:
    - if the consumer is the State;
    - if the consumer is a business, with an annual turnover of more than R2 million, or owning property worth more than R2 million, at time of concluding the agreement;
    - if the agreement relates to labour, for example, an employment contract or collective agreement;
    - if the agreement is a credit agreement, such as a loan;
    - if the agreement was entered outside of South Africa;
    - an agreement that is not in the ordinary course of the supplier’s business; or
    - if it is exempted by the CPA.

3. What type of protection does a consumer get from the Consumer Protection Act?

- The CPA provides a consumer with rights and the supplier with obligations, such as:
- A supplier may not discriminate against a consumer based on his/her race, gender and so on.
- A consumer may examine goods before s/he pays.
- A supplier must show the price, label and/or trade description of the goods on his/her packaging. The content may not be misleading.
- A consumer must receive a quote or breakdown of his/her financial obligations before entering into an agreement with a supplier, for example, before a supplier starts repairing his/her motor vehicle or before a supplier installs replacement parts. Do not sign a blank agreement consenting to any unknown repairs or replacements.
- The terms of an agreement to supply goods or services may not be unfair, unreasonable and unjust, for example, the terms may not only favour the supplier. Such a term or agreement will not be legally binding.

- A supplier may not use force or manipulate a consumer to enter into an agreement, or to pay for goods or services. A consumer has the right to a receipt after paying the supplier for goods or services.
- An agreement between a consumer and a supplier must be in plain language that is easy to understand. A consumer is entitled to a copy of the agreement.
- A supplier must inform a consumer of, or draw his/her attention to, any assumptions of risks, acknowledgment of facts or indemnities contained in an agreement. Always read an agreement before signing.
- An agreement between a consumer and supplier may not be longer than 24 months, unless the consumer agrees to a longer period and the agreement benefits him/her financially. A consumer must be notified in advance of the agreement reaching its termination date.
- A consumer may cancel an agreement with his/her supplier on 20 business days' notice.
- Advance bookings or reservations may be cancelled by a consumer. However, the supplier may require such a consumer to pay a reasonable cancellation fee.
- A supplier may not accept money from a consumer if s/he is not able to supply goods or services as a result of insufficient stock or incapacity to render a service. A consumer must be refunded any amount paid plus interest, and compensate the consumer for all costs incurred as a result of the supplier's overselling or overbooking.
- When a consumer buys goods or receives services from a supplier that approached him/her by mail, in person, e-mail or SMS, s/he has the right to a cooling-off period. This means that the consumer can return the goods bought or cancel his/her order within 5 days after the date s/he received it or ordered it, without penalty or reason. The supplier must inform the consumer of his/her right to a cooling-off period.
- A consumer may choose whether or not s/he wants to receive marketing material from a supplier, for example, a consumer may opt-out from receiving marketing SMSes or telephone calls; or put a notice in his/her post box to avoid pamphlets.
- A consumer may not be contacted by a supplier to market his/her goods or services during the week, before 08:00 in the morning and after 20:00 in the evening; or during the weekend, before 09:00 in the morning or after 13:00 in the afternoon.
- The representation or marketing of goods or services may not be misleading or false.
- If the goods bought from a supplier are defective (not suitable for its usual purpose or for the purpose it was bought, of poor quality and bad working order, or not useable or durable), a consumer has 6 months from the date of delivery to return the goods to the supplier, at the

supplier's risk and expense. At the consumer's choice, the supplier must fix, replace or refund the goods bought by the consumer. The *voetstoots* clause no longer applies; this means that a supplier may no longer sell goods "as they are", unless the consumer has been informed of the defects and accepts them.

- If the services rendered by the supplier are of poor quality or not completed in time, the consumer may request that the supplier correct his/her mistakes or request a refund. A refund will depend on the extent of the supplier's mistake.

4. What can a consumer do if a supplier fails to comply with the Consumer Protection Act?

- A consumer must lodge a complaint with the supplier, preferably in writing. If the complaint is lodged by telephone, ask for an e-mail address in order to confirm the conversation about the complaint in writing. Normally, a big business has a department that specifically deals with complaints, it is best to follow the procedure prescribed by that department.
- Keep records of the date of the complaint, name of the consultant complained to, the reference number of the complaint, and any other relevant details.
- If the complaint is not resolved by the supplier within a reasonable time period, the consumer may lodge a complaint, with the relevant ombud, industry ombud, Consumer Goods and Service Ombud, National Consumer Commission, National Consumer Tribunal, an alternative dispute resolution agent, consumer court or civil court; depending on the type of complaint.
- A complaint must be lodged within 3 years of it occurring or else a consumer's right to do so prescribes.

5. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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