

THE **RESPONSIBLE** TRADER

A reference guide to the laws that govern how you conduct business with consumers.



CONSUMER AFFAIRS

BERMUDA

Promoting Confident Consumers and Responsible Traders

MISSION STATEMENT

The Department of Consumer Affairs will strive for excellence by carrying out our mandate with the highest standard of integrity, efficiency and service to individuals, commercial, professional and government organizations. We will ensure the rights of consumers to fair trade practices, product safety and redress by maintaining an international viewpoint, a spirit of partnership through collaboration, information sharing and, where necessary, enforcement.

INTRODUCTION

One of Consumer Affairs' responsibilities is to make the marketplace more efficient and user friendly for consumers by ensuring fair trade practices.

There are certain laws that exist to make sure that traders deal fairly with consumers. They exist to protect the consumer, but businesses also benefit because these laws:

- outlaw disreputable business practices and
- encourage fair competition between businesses
- offer businesses better protection from anti-competitive practices

If a business does not abide by these laws, awards of damages can be made against it, hefty fines can be levied and/or key personnel can face imprisonment.

This is a quick reference guide to the three most relevant laws that affect how you conduct business with consumers.

THE SALE OF GOODS ACT 1978 (as amended 2002)

To whom does the Act apply?

Businesses of all types are affected.

What does the Act do?

Primarily, the Act sets out the law on sales of goods in Bermuda. It governs whether the goods conform to the contract. The contract for the sale of goods is between the seller and the consumer and provides that:

- goods should be of satisfactory quality, i.e., they should meet the standards that a reasonable person would regard as satisfactory.
- goods should be as described.
- the quality of the goods includes their state and condition and certain aspects of the quality:
 - a) fit for all purposes for which goods of the kind are supplied
 - b) appearance and finish
 - c) freedom from minor defects
 - d) safety and durability
- goods should be reasonably fit for any particular purpose that was made known to the retailer at the time of purchase.

Goods would not conform to the contract if they failed to work (were faulty) immediately from the time of sale. Also goods might not conform to contract if they failed to work later or even after a number of years due to an inherent fault (one that could be said to exist at the time of contract).

How does the Act affect my business?

The Act may affect your business:

- if you are in breach of the contract and you do not compensate the consumer.

- if the consumer is in breach of the contract and does not compensate you.

If a product that was faulty at the time of sale is returned to the retailer, the consumer is legally entitled to:

- a full refund if this is within a reasonable time of the sale or
- a reasonable amount of compensation (or “damages”) for up to six years from the date of sale.

This does not mean that all goods have to last six years. It is simply the limit for making a claim in respect of a fault that was present at the time of sale. It may be the case that a full refund is not the reasonable option because the consumer will have enjoyed some benefit from the product before the problem appeared. It is important to remember that as the contract was made between the seller and the consumer, it is the seller and NOT the manufacturer that the consumer can sue for breach of contract.

Key Facts

- whenever goods are bought they must conform to contract i.e., they must be of satisfactory quality, as described and fit for purpose.
- aspects of quality include fitness for purpose, freedom from minor defects, appearance and finish and durability and safety.
- it is the seller, not the manufacturer, who is responsible if goods do not conform to contract.
- if goods do not conform to contract at the time of sale (are faulty), purchasers can request their money back ‘within a reasonable time’. (This is not defined and will depend on circumstances).
- if part of the goods do not conform to contract, then the consumer can reject those goods that do not conform and keep those that do, and thus be entitled to compensation for those goods that don’t.

SUPPLY OF SERVICES ACT 2003

To whom does the Act apply?

All businesses and traders who provide services are affected.

What does the Act do?

The Supply of Services Act 2003 defines a contract for the supply of a service, as a contract between a consumer and a supplier for an agreed service to be carried out i.e., a contract between a consumer and a tradesperson, for example a plumber, contractor or service repair person. A contract for the supply of services also includes the purchase of spare parts in order for the job to be completed.

The Act requires a supplier of a service, acting in the course of business, to provide services to a proper standard of workmanship. Furthermore, if a definite completion date or price has not been fixed, then the work must be completed within a reasonable time and for a reasonable charge.

How does the Act affect my business?

The law treats failure to meet these obligations as breach of contract, and consumers would be entitled to seek redress if necessary through the civil courts.

Key Facts

- a supplier of a service must carry out that service with the same reasonable care and skill that is set by a person trained and practiced in that discipline.
- if no definite date has been set for time of completion then the work must be completed within a reasonable time.
- if no price has been set, then the charge must be reasonable. A reasonable price would be judged by the standard costing for that particular service.
- if a supplier of a service breaches the conditions of the contract (e.g., fails to carry out the work ordered), the consumer has a choice of continuing

with the contract and claiming compensation from the trader for his failure to carry out what was agreed, or the consumer can treat the contract as cancelled.

- any goods (spare parts) supplied in the course of the service must be of satisfactory quality and fit for their purpose. If they are not, the consumer is entitled to a repair, replacement or compensation. Again, it should be remembered that as the contract is between the consumer and the supplier of services, it is the supplier against whom the consumer has an action should the goods supplied be of unsatisfactory quality.
- a supplier of a service who has broken a contract may also be liable for any consequential loss which is suffered by the consumer. Ultimately, it is for the courts to decide whether or not a breach of contract has occurred and the remedy to which the consumer might be entitled.

THE CONSUMER PROTECTION ACT 1999

To whom does the Act apply?

All businesses and service providers are affected.

What does the Act do?

The Act protects consumers from unfair business practices, unconscionable acts and unsafe consumer goods.

Most of the prohibited representations that are laid out in section 11 of the Act are a matter of common sense and deal with unfair business practices. For example, you cannot tell untruths about your product or the consumer's need for it. It also outlaws 'a representation that the goods are of a particular standard, quality, grade, style or model', if they are not.

Section 11 (9) forbids 'a representation that a service, part, replacement or repair is needed,' if it is not.

Section 11 (18) deals with sale items and prohibits 'a representation that goods or services are offered at a discounted or sale price, unless they have been offered at the full or undiscounted price for a period of at least twenty-eight days preceding the sale.' It is therefore an offence under the Act to give a false and misleading reason why goods or services are offered at a discounted or sale price. An example of this is a going out of business or liquidation sale, unless of course the goods are being sold at a discounted rate because the business is ceasing or going into liquidation.

Section 11 also deals with unconscionable consumer representation. An example of this would be a trader making a representation while knowing that the consumer lacks the capacity in some way to understand the contract or that it is excessively one-sided.

How does the Act Affect my Business?

Where there are grounds to believe a business or trader is in violation of safety provisions or any other provisions of the Act, the inspector at Consumer Affairs, as authorized by the Act, may issue the offending party a prohibition order, a prohibition notice, a warning or a suspension.

If the inspector has reasonable cause to believe that an offense has been committed, he/she has the power to review any relevant documents, enter premises, seize goods or make a test purchase of the goods.

If your business is found by a court of summary jurisdiction to be in violation of the Act, then you will be subject to a fine of up to \$10,000 and/or imprisonment for up to 6 months. Failure to comply with a notice served under the Act or providing false information can lead to a fine of \$15,000 and/or imprisonment for 12 months.

Key Facts

- the Consumer Protection Act 1999 protects consumers from unfair business practices, unconscionable acts and unsafe consumer goods.
- unfair business practices are covered under section 11 of the Act and include false or misleading representations to consumers about products and services.

- unconscionable acts can be just as damaging and include excessively one-sided contracts that benefit only the trader, grossly overpriced products and entering into a contract with a consumer who you know lacks the capacity to understand it.
- the inspector has the power to enter premises, seize products and documents and make test purchases of the goods.
- violation of the Act subjects you to a maximum of \$15,000 fine and/or imprisonment for up to 12 months.

HANDLING CUSTOMER COMPLAINTS AND TURNING THEM INTO COMPLIMENTS

Customer complaints can provide an opportunity for a business to show its commitment to customers by identifying and responding quickly to complaints. Having a Customer Complaint Handling System gives your business guidelines to follow when dealing with a customer with a complaint, rather than just focusing on the specific problem.

The following are some tips on how to handle and resolve a complaint.

- make it easy for customers to raise their problems and thank them for bringing it to your attention.
- treat the customer with genuine empathy, courtesy, patience, honesty and fairness.
- respond to the problem quickly.
- speak to the customer in person. Do not rely solely on written complaints or records of conversation.
- listen and do not jump to conclusions or become defensive.
- keep detailed records of telephone conversations, meetings and any written correspondence.
- keep the customer informed of the progress during the solution focused process.
- ensure all promised action is completed fully and promptly.

- always work within the legislation to ensure that customers' rights are protected.
- clearly advise the customer of the outcome of his or her problem verbally and in writing.
- inform the customer of any action that has been taken to prevent the problem from happening again.
- follow up, ideally within one week, to check that everything has been resolved to the customer's satisfaction.

The potential for complaint management to go wrong tends to increase with the size of a business as there are more management layers that are likely to be involved. To combat this, ensure that all team members dealing with complaints have full authority to organize solutions acceptable to the customer.

“Customers are satisfied when *their* expectations are met, not yours.”

The information in this booklet is to be used as a guideline.

CONSUMER AFFAIRS

Ingham & Wilkinson Building

129 Front Street

Hamilton HM 12

Tel: 441-297-7627 | Fax: 441-295-6892

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