



Unfair Practices: The Fair Trading Act

This publication is intended to provide general information only and is not a substitute for legal advice.

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The *Fair Trading Act* (FTA) protects consumers from unfair business practices before, during or after a consumer transaction. The legislation applies if

- the consumer or supplier lives in Alberta
- the offer or acceptance is made in or sent from Alberta
- the unfair practice is made or received in Alberta and involves a supplier's representative.

An unfair practice may occur even if a consumer transaction was not entered into or concluded.

DEFINITIONS

A consumer transaction is defined as any sale, lease or other transfer of goods or services for payment. This includes a contest prize and goods or services given to someone else.

A consumer is an individual who pays for those goods or services.

Goods generally refers to:

- Material items used primarily for personal, family or household purposes
- A new residential dwelling whether or not it is attached to land
- A voucher which promises goods or services in the future.

Services can include any of the following when they are used primarily for personal, family or household purposes:

- Maintenance, improvement or repairs to goods or private homes
- Membership in a club or organization if the club or organization is in business to make a profit for its owners
- The right to use property under a time-share contract

A supplier is a person who receives money from a consumer transaction. This includes a salesperson or a representative or agent who manufactures, produces, distributes, advertises or sells goods or services.

The FTA does not allow you to waive your rights under the legislation or restrict any rights under other legislation. If a consumer contract is vague, the terms of the contract are interpreted in favour of the consumer

EXAMPLES OF UNFAIR PRACTICES

- Subjecting a consumer to undue pressure or influence to buy. Example: A salesperson spends four hours in a consumer's home trying to sell a vacuum cleaner.
- Taking advantage of a consumer's inability to understand a consumer transaction. Example: A seller convinces a consumer who can't speak or read English to sign a multi-page contract.
- Charging a price that grossly exceeds the price of similar goods that are readily available without informing the consumer of the difference and the reason for the difference. Example: A contractor doesn't tell a homeowner that the repairs to his roof that cost \$7,500 could have been done by a competitor for \$2,500.
- Charging a price for goods or services that is more than 10 per cent – to a maximum of \$100 – higher than the estimate given for those goods or services unless the consumer has specifically agreed to the increase. Example: A repair shop says it will cost \$150 to fix an item, but the final bill is \$400.
- Representing that goods or services are of a particular standard, quality, grade, style or model if that representation is untrue. Example: A furniture dealer says a coffee table is solid wood when it is really particleboard.
- Representing that goods have or have not been used to an extent that is different from the fact. Example: The seller tells a consumer that a car has 100,000 kilometers on it and the true mileage is 200,000 kilometers.
- Representing that goods are new when they are used, deteriorated, altered or reconditioned. Example: A computer is sold as new, but the seller has reconditioned it.
- Making an untrue statement about a good's prior history or use. Example: The seller tells the consumer that a car was only driven by the owner of a dealership when it was a lease-back from a rental company.
- Representing that goods or services are available in accordance with a prior representation when they are not. Example: The seller says the goods were seized from Canada Customs when they were actually purchased as regular inventory.
- Representing that a voucher from one supplier can be used for goods or services at regular or discount price if the first supplier knows (or ought to know) that the second supplier will not honour the voucher. Example: A company sells a coupon book knowing that some of the businesses will not honour the coupons.
- Representing that goods are available in a particular quantity if they are not. Example: A store advertises it has 35 stereos for sale when in fact it has one stereo in stock.
- Representing that goods or services will be supplied within a stated time if the supplier knows (or ought to know) the goods will not be available. Example: A hot tub company promises a tub will be installed on Christmas Eve when it knows the installation staff will not be available.
- Representing that a specific price benefit exists if it does not. Example: A business advertises that an item is on sale or the price is '20 per cent off' if the item has never been sold at the regular price.
- Representing that a part, replacement, repair or adjustment is needed or desirable if it is not. Example: A shop replaces a dryer motor when only the belt needed replacing.

- Representing that the supplier is asking for information, conducting a survey or making a solicitation when that is not true. Example: A door-to-door salesperson asks a consumer to fill out a home-environment survey when he or she actually wants to do a product demonstration.
- Giving an estimated price for goods or services if they cannot be provided for that price. Example: A renovation company tells a homeowner that it can replace the garage door for \$500 when it knows the price for parts alone is \$700.
- Representing the price of goods or services in a manner that a consumer might reasonably believe the price refers to a larger package of goods or services. Example: A company advertises it will build a complete fence for a home for \$2,000 when the fence project is for the rear of the house only. Adding two more sides would cost \$1,500 more.
- Representing that a consumer will obtain a benefit for finding other customers if it is unlikely that the consumer will obtain such a benefit. Example: A multi-level marketer agrees to give you a reduced price on your next order when you refer a friend to the company, but it never gives you a reduction
- Representing that a product will perform, has capability or length of life of goods or services unless adequate and proper independent tests are done before the representation is made.
- Testing substantiates the claim.
- The representation is accurate and fairly reflects the results of testing.

It is an offence for a supplier to engage in an unfair practice.

Make sure you understand what is being offered in any advertising and what a salesperson tells you about a product or service.

PREVENTING PROBLEMS

- Make sure you understand what is being offered in any advertising and what a salesperson tells you about a product or service.
- Get answers to your questions before you buy.
- Never sign a contract unless you have read it to make sure it includes all the terms and conditions you agreed to. All verbal claims that a salesperson made about the goods or services should be listed in the contract. Never sign a blank contract that a salesperson says will be filled in later.
- If a supplier makes a statement about an item that encourages you to buy it, ask that the statement be written into the sales agreement, e.g. the car has never been in an accident.)
- Always keep your bills of sale, contracts, warranties, instructions and cancelled cheques.

RESOLVING PROBLEMS

Talk to the business or supplier. This is the first step to resolving a problem. The tipsheet Negotiating a Consumer Complaint is available from Service Alberta. See last page for contact information.

If you are not successful in resolving the problem and have lost money because of an unfair practice, you can start an action against the supplier in the Court of Queen's Bench. If the claim is less than \$25,000, it can be heard before the Provincial Court of Alberta, Civil Division. This level of court can only award damages for losses suffered.

MOTOR VEHICLE COMPLAINTS

The Alberta Motor Vehicle Industry Council (AMVIC) is responsible for investigating unfair practices when motor vehicles are repaired, leased or sold (including consignment sales) to consumers.

Alberta Motor Vehicle Industry Council

Box 11, Suite 303
9945 - 50 St.
Edmonton, Alberta T6A 0L4
In Edmonton: (780) 466-1140
Toll-free in Alberta 1-877-313-3833
Fax: (780) 462-0633
www.amvic.org

FOR MORE INFORMATION

For more information about unfair practices contact

Consumer Contact Centre

In Edmonton (780) 427-4088
Toll-free in Alberta 1-877-427-4088
www.servicealberta.ca

A current version of this and other consumer tipsheets are available at the Service Alberta website www.servicealberta.gov.ab.ca. Most public libraries have Internet access if you don't have access at home.