The Timeshare Inquiry
Over the past four months the NCC and its inquiry panel heard over two hundred oral testimonies from consumers about their experiences with the vacation ownership or timeshare industry.

Consumers and the price of medicine
Many a times we get a prescription from a doctor to take to the pharmacy to get medicine.
FROM THE EDITORIAL TEAM

Very quickly the year has ended and the festive season is upon us. In this edition, we highlight largely the consumers’ right to fair, just and reasonable terms and conditions. The intention is to assist consumers to be informed, know their rights before making purchasing decisions. As much as the Consumer Protection Act (CPA) protects consumers with regards to the goods and services that they have purchased, the related contracts may be unfair and often waive any responsibility on the part of the supplier.

Consumers often fall into a trap when they have entered into contracts without fully understanding the terms and conditions. The most difficult part is when debt needs to be paid while the goods or services cannot be enjoyed. The article titled “Understand your contract T’s and C’s” will help you to be more vigilant in this area.

In addition to the article, we are showing you an example of a contract that had gone awry and the consumer was rescued through an investigation conducted and the matter referred to the Consumer Tribunal for adjudication. Here, a second hand motor dealer was found to have contravened several sections of the Consumer Protection Act (CPA). The dealer had refused to amicably resolve a consumer dispute when it was afforded an opportunity to do so through an ombud scheme and the case had to be referred to the Consumer Tribunal.

Still riding on the problematic contracts wave, we are sharing with you insights of the time share inquiry. Over the past four months, the NCC and its inquiry panel heard over two hundred oral testimonies from consumers about their experiences with the contracts that they had signed with the vacation ownership or timeshare industry.

We included a festive season alert with consumer protection tips that may come handy while transacting during the festive season. We also share some enlightenment to exercise your rights when you purchase medicines.

We then wrap up with a comical, highlighting consumers right to disclosures and information. Consumers must be heard and given accurate information so they can make informed decisions.

“Spend wisely and have a joyful festive season!”

Enjoy and feel free to share.
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The Timeshare Inquiry

Since the public inquiry got underway in July this year, the NCC hosted public hearings in all nine provinces, having started in Gauteng province. Earlier this year the NCC launched a public inquiry into the vacation ownership industry, and appointed a three-member panel of consumer, property and contract law experts to lead the processes thereof.

The public engagement phase of the NCC's vacation ownership or timeshare public inquiry ended in Pretoria on 10 October 2017, with mostly pensioners attending hearings over the allocated two days. This was the second leg of the hearings in Gauteng following numerous consumer requests for an additional hearing, and opportunity to make oral submissions.

Public hearings in the Western Cape Province had the highest consumer attendance, followed by Gauteng, and KwaZulu-Natal respectively. The level of attendance confirmed the NCC's complaint statistics about provinces that had the most complaints against holiday clubs.

The two most common issues complained about from consumers across provinces have been the inability to cancel holiday club membership and payment of exorbitant levies.

Over the past four months, the NCC and its inquiry panel, heard over two hundred oral submissions from consumers about their experiences with the vacation ownership or timeshare industry. Some consumers opted to make written submissions and the number of these testimonies are increasing by the day.

Although public hearings have closed, the NCC will allow consumers to submit written submissions until the final report is released.

The consumer testimonies and evidence of consumers collected during the public engagement phase of the inquiry, is helping the NCC to better understand the challenges that are experienced by consumers.

The NCC is mindful in this regard that consumer challenges with the vacation ownership industry are currently ongoing. A key reason for the many consumer challenges is that the industry is not well regulated. Majority of the laws that currently regulate the vacation ownership or timeshare industry are outdated pieces of legislation which include the Property Timesharing Control Act (Act 75 of 1983), the Share Blocks Control Act (Act 59 of 1980), and the Sectional Titles Act (Act 95 of 1986). A lot has changed in society and in the vacation ownership or timeshare industry since these laws came into operation. Ordinarily, laws are amended to respond to changes in society. The Consumer Protection Act and the National Credit Act are the two most recent laws in the regulatory framework of the industry.

In the next phase of the public inquiry the Panel will separately meet with holiday clubs and regulatory organizations of government. Meetings for holiday clubs have been scheduled for November and will take place in Pretoria.

The inquiry panel will also meet with regulators, including the Department of Tourism, Competition Commission, South African Revenue Services, as well as the Consumer Goods and Services Ombudsman. The NCC hopes to conclude the inquiry before the end of this year.
As the timeshare inquiry unfolded …
Consumers are afforded many rights, amongst those are the right to choose, and the right to information and disclosure. The price of the medicine therefore becomes key in making a decision whether or not to get a prescription filled at one pharmacy as opposed to another. How does one then exercise these rights as they go about buying medicines? What should medicine cost?

The price of medicine in South Africa is regulated through a mechanism of the Pharmaceutical Economic Evaluation Unit of the Department of Health (DoH) called the Single Exit Price (SEP). This is a maximum price that is prescribed for medicines to assist consumer to know what prices to expect. It does not end there, DoH also prescribes the amount to be charged by pharmacies for dispensing medicine. Empowered with this knowledge, consumers can almost predict how much they can expect to pay and choose to go to another pharmacy if the prices charged in one pharmacy are exorbitantly higher than the prescribed prices. Consumers can access this price list from a database that is maintained by DoH @ [www.mpr.gov.za](http://www.mpr.gov.za) to inform themselves.

Did you know?

- Your prescription script is your property and the pharmacy does not have a right to keep it for repeat dispensing unless with your permission.
- You reserve the right to ask for your prescription script back and go somewhere else.
- You have a right to ask the pharmacy to order for you the cheapest generic or the medicine your medical aid scheme is willing to pay for.

Consumers are most vulnerable when not well. Many times, we get a prescription from a doctor to take to the pharmacy to get medicine. When we present this prescription to the pharmacy, we are satisfied to be asked if we would like to have an original brand or a generic of the medicine as prescribed. Further, we always assume that the generic on offer is the cheapest generic available and this is not always the case. Consumers may remember an instance where a pharmacy advised that a specific medicine as prescribed is not paid for by the medical aid scheme they belong to. This kind of statement may not necessarily be true. In fact, it is highly likely that the specific pharmacy does not have the medicine that the medical aid scheme is willing to pay for in stock.

Did you know?

- Price of Medicine = Single Exit Price + Dispensing Fee

What do I do as a consumer?

- Arm yourself with information by knowing the medication (its active ingredients) as prescribed by the doctor and its alternative names. The doctor can come in handy as you can ask him/her during the consultation itself.
- Access the database of medicines to check the SEP and Dispensing Fee to establish how much you can expect to pay.
- Ask the pharmacist if the generic on offer is the cheapest generic available in the market.
A JUDGEMENT AGAINST DELINQUENT SECOND HAND MOTOR DEALER PASSED.

The National Consumer Commission (NCC) has welcomed the National Consumer Tribunal (NCT) judgment against Western Motors CC. Western Motors was found to have contravened several sections of the Consumer Protection Act (CPA). The motor dealer had refused to amicably resolve a consumer dispute when it was afforded an opportunity to do so through an ombud scheme that is accredited in terms of the CPA.

The motor dealer sold Ms Hanlie Van Lill of Kuilsriver in the Western Cape, a second hand VW Passat which broke down within five days of her taking delivery of it. The dealer then denied the consumer her right to opt for repair, replacement or a refund, which is afforded in terms of the provisions of the CPA. He claimed that the motor vehicle was bought as is with no warranty.

“The findings of our investigation showed a blatant disregard of the law. We had no option but to prosecute,” added Mohamed.

On 14 September 2017, the NCT confirmed a contravention of the CPA by the motor dealer, and ordered it to refund the consumer the vehicle’s full purchase of R61 450. In addition, the tribunal slapped the motor dealer with an administrative fine of R100 000 (One Hundred Thousand Rand).

“We advise motor dealers and suppliers of goods and services in general to make use of opportunities to settle consumer disputes through accredited ombud schemes. These schemes play a critical role in a system that was designed to amicably resolve disputes between consumers and suppliers. If a supplier or business fail to give effect to, or ignore a recommendation from an accredited ombud scheme, then invariably a complaint will be lodged with the NCC, and then we will have no option but to investigate and prosecute, if we find non-compliance with the CPA,” advised Mohamed.

Consumers are also urged to be vigilant especially when purchasing second hand motor vehicles. Ensure that the vehicle is certified to be road worthy and understand the warranty terms and the actual condition of the car fully, before making the purchasing decision and signing on the dotted line. Consumers are also urged to report cases where they think that their consumers’ rights are being disregarded.

The NCC hopes that this judgment and particularly the fine will serve as a deterrent to motor dealers and other businesses out there who are still not complying with the provisions of the CPA.

The full tribunal judgment of this case can be downloaded from [link](http://www.saflii.org/za/cases/ZANCT/2017/102.html)
Understand your contract T’s and C’s... please?

Contracts entered into in writing or verbally via telephonic direct marketing or electronically via internet when purchasing goods or services have terms and conditions that may be valid and binding to consumers. Contract terms and conditions often stipulate rights and obligations of parties, consumers and the suppliers in relation to the supply of the goods or services. Consumers often attract unintended obligations to themselves when they have signed contracts without fully understanding the terms and conditions.

The Consumer Protection Act provides guidance and protection so that consumers do not receive the short end of the stick when concluding contracts. It also provides that a contract that is found to be grossly biased against the consumer could be nullified.

Consumers are advised to not feel obliged to sign in a rush. It is important to take time to read the contract and ask the supplier to fully explain it in an understandable manner. Consumers are advised to insist delivery of written or recorded version of a verbally entered into contract, before they surrender their bank details or provide debit order authorizations.

The following are key:

- A valid contract does not have to be only in writing, contracts entered into verbally or by conduct may in certain circumstances be valid in law. It will have a date or signed and state the term (from when until when, some contracts have been found to be perpetual with no actual ending time) of an agreement as well as financial obligations (How much to pay and for what – enquire about any other possible payments that will not be in the contract).
- A contract must be in plain and understandable language, clearly disclose terms and conditions as well as the price of goods and services to be rendered.
- A consumer is entitled to a free copy of the contract. A supplier must keep records of transactions and also provide a free electronic copy if the contract was concluded electronically.
- A consumer may cancel or renew the agreement before or after expiry.
- A consumer may cancel a contact from any direct marketing (i.e. when a consumer is approached either in person, by mail or via electronic communication to purchase goods or services) without a reason or penalty within a five day cooling off period of entering into the contract or delivery of the goods. On cancellation, the supplier must pay back the consumer any monies that may be due, alternatively penalties may be levied against the consumer for monies due to the supplier.
- Unfair terms and conditions are prohibited e.g. those that are excessively one sided and where a consumer loses his/her rights against the supplier.
- A supplier has an obligation to make a consumer aware if there is a requirement or an assumption of risk by consumer. e.g. when a condition of a used motor vehicle sold is not reasonably suitable for the purpose it is generally intended to perform, is defective, and not in good working order. The supplier will only be able to escape liability for implied warranty if he/she has expressly pointed out all the defects and explained condition(s) not reasonably suitable for intended purpose. Despite disclosures stated above a supplier is still liable under implied warranty to ensure that a defective used vehicle will be useable and durable for at least six months. Customers need to demand a full explanation and an understanding of the terms and conditions before signing a contract. Buying needs not be in a rush but shopping around for the best deal before the final decision, is very important.

Consumers need to take full advantage of their rights to examine goods, price disclosures and Ts and Cs before the final decision to purchase.
The festive season tips

The festive season is upon us, a jovial and fun time for many. It is generally a time that bonuses are earned and a time when retailing becomes abuzz. Because of the shopping sprees and related eagerness to purchase this and that or even go on a holiday, some retailers and service providers may be tempted to grab opportunities to abuse their bargaining powers. Equally, consumers may not be vigilant enough for the possible traps and eventual loss of money.

A few tips from the Consumer Protection Act 68 of 2008 (CPA) to assist as you spend wisely …

When joining holiday clubs

Given that it is a holiday season, holiday accommodation service providers resurface in their multitude, and who knows which one of them is only there for a quick cash. Do not easily give your credit cards or personal details unless you are sure that you are giving the details to a legitimate business. During this season, holiday resorts and beaches are frequented by time share sales agents who may use overzealous and at times predatory marketing practices to attract unsuspecting holiday makers into subscribing into costly time share contracts. The usual pitfalls are that consumers are trapped into “ever green contracts” contracts in infinity devoid of escape clauses to cancel, undisclosed property maintenance levies and devalued market value of time share points when consumers chose to sell time shares.

When signing a holiday (time Share) club contact, ensure that you understand the terms and conditions of the contract. Especially, know and understand all the benefits and related costs, know exactly how long the contract will be, know when and how to communicate with the service provider.

Cancellation of pre-paid bookings

Should you wish to cancel your pre-booked accommodation, the CPA says that a fair cancellation penalty may be charged. An amount charged should have taken into account the following:

- the nature of the goods or services that were reserved or booked and the length of notice of cancellation provided by the consumer;
- the possibility of service provider finding an alternative consumer between the time of receiving the cancellation notice and the time to use the reservation; and
- the general practice of the relevant industry.

Note that a cancellation fee will not be applicable if the booking was not honoured due to death or hospitalisation of the person for whose benefit reservation was made, coinciding with schedule date of the booking.

Buying second hand cars

One obviously would not want to have car issues while travelling for a holiday or simply heading home to present a newly purchased car. The CPA specifically identifies the consumer’s rights to good quality products, in good working order, free of any substantial defects, and fit for their purpose.

It is a second hand car dealer’s responsibility to let the consumer know/disclose, all defects in the second hand car, both obvious and hidden. A consumer needs to expressly agree to buy the car with all the disclosed defects.
Price display

Remember to ‘pay the price you see. See the price to pay’. Suppliers are required to always and clearly display prices for goods they are selling, including clothing items, for consumers to see. Prices must always be expressed in Rands.

Always keep your contracts/till slips / receipts

Receipts and contracts contain information about the terms and conditions of the agreement, where and when the transaction took place. Always keep them safe as they will assist in the event of a dispute.

Warranties

The “No Returns and No Refunds” notices often found displayed in stores are illegal. As a consumer, you are entitled to an exchange, have the goods repaired or get your money back (refund) if the goods bought are faulty or malfunction within six months of buying them. Always exercise care and use the products according to the instructions provided.

Keep the product packaging and do not attempt to fix the product yourself as this will affect the validity of the warranty.

Buying on layby

A layby is when a supplier agrees to sell goods to a consumer, keep the goods but accepts a portion of the payment from the consumer until the goods are paid in full. The money paid by the consumer in a layby transaction remains the property of the consumer until the goods are claimed by the consumer in good order. If the supplier is not able to provide the goods when they have been paid in full, the supplier must either supply goods of the same or superior value. The supplier may also have to refund the consumer with interest if the breach of contract was as a result of circumstances outside the supplier’s control or pay double the amount for breach was within the supplier’s control.

The supplier on the other hand however, can terminate the layby contract if the buyer fails to pay for the goods within 60 days after the anticipated date of completion. The supplier is entitled to charge a penalty (not more than 1% of the full purchase price) and refund the consumer the balance of the amount already paid by the consumer.
The consumer’s right to be heard is paramount, it gives the supplier an opportunity to solve the dispute amicably before it gets escalated. Suppliers of new and second hand goods have an obligation to provide consumers with accurate information about the nature and quality of the product, to allow the consumers to make informed decisions.

Hau! Why is it so quiet?

Dad, you're home! The new TV you bought yesterday won't work.

I didn't break it, I promise.

Yep, it won't even switch on.

Bathong!

Call the number on the receipt. Tell them there's something wrong with the TV. I know it's a second hand television but don't they check their items before selling them?
Hi, may I speak to the manager?

May I ask who’s calling?

My name is Vusi Ntabane.

The manager is too busy, take TV for repairs.

I bought a plasma TV yesterday from you for R2000. Now it won’t even switch on.

We don’t fix TV’s here.

I demand to speak to the manager now.

Call repairs?

What?

HANGS UP

Mpho, he hung up. He says I must take the TV for repairs.

That can’t be right.

They don’t even want to listen to you!

I heard people from the NCC on the radio, say that consumers have a right to complain and must be listened to.

Visit their store in person again tomorrow if they still do not want to assist you, we must lodge a complaint with the NCC.

That’s a good advice honey, that’s why I married you.

The CFA is there to protect the rights of consumers. Consumers have the right to be heard, given accurate information, get value for money and be supplied with good quality goods.

NATIONAL CONSUMER COMMISSION
NCC NEWS

together in consumer protection

FREE ONLINE
www.thencc.gov.za

FOR COMPLAINTS CONTACT US:

TEL: (012) 428 7000
EMAIL: complaints@thencc.org.za

WORKING HOURS: 08H30 - 17H00

LOG ONTO www.thencc.gov.za
Provincial offices of the consumer protector

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<td>0860 007255</td>
<td><a href="http://www.dedea.gov.za">www.dedea.gov.za</a></td>
<td><a href="mailto:Consumer.protector@dedea.gov.za">Consumer.protector@dedea.gov.za</a></td>
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<td>Gauteng</td>
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<td>013 766 4802</td>
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<td>Free State</td>
<td>051 400 9611 / 0861 102 185</td>
<td><a href="http://www.detea.fs.gov.za">www.detea.fs.gov.za</a></td>
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<td>KwaZulu-Natal</td>
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Dispute resolution agents/ accredited ombud bodies

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<tr>
<td>Ombud</td>
<td>Telephone</td>
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<tr>
<td>Motor Industry Ombud of South Africa (MIOSA)</td>
<td>0861 164 672 0861MIOSA</td>
<td>0866 630 141</td>
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</tr>
<tr>
<td>Consumer Goods and Services Ombudsman (CGSO)</td>
<td>0860 000 272</td>
<td>0862 061 999</td>
<td><a href="mailto:info@cgso.org.za">info@cgso.org.za</a></td>
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