

CONSUMER AFFAIRS

Lay-bys

Guidelines for Traders

This fact sheet provides advice to traders on their rights and responsibilities with regards to lay-bys. It covers issues such as store policies, cancellations, refunds record keeping and store signs.

Lay-by sales are contracts between a trader and a consumer where the trader agrees to hold goods until the total selling price is paid. Payments are made by regular instalments within a fixed period.

Lay-bys are offered by many traders as an incentive for consumers to purchase goods from their store but in the Northern Territory terms and conditions may vary from store to store. A lay-by is not a credit sale nor a sale by finance as no debt is created. Lay-by arrangements are also free of interest.

SALE OF GOODS ACT

Although lay-by sales in the Northern Territory are subject to the provisions of the *Sale of Goods Act*, there is no legislation that deals specifically with lay-bys. The sale is deemed to have occurred when the contract is entered into and property in the goods passes to the buyer.

Traders are responsible for the storage and condition of the lay-by items until the consumer completes the lay-by and collects the goods.

STORE POLICY

Traders should ensure they set clear store policies outlining the terms and conditions of the lay-by service offered to consumers. These conditions should also be printed on the lay-by docket given to the consumer.

Receipts should be issued every time a consumer makes a payment on the lay-by.

RECORD KEEPING

- When organising a lay-by you should provide your client with a copy of the lay-by docket that clearly sets out the conditions of the lay-by including:
- Description of the goods.
- Purchase price.
- Any cancellation fee that is applicable.
- Date of transaction.
- Lay-by number.
- The amount of the first payment and the outstanding balance.
- When the final payment is due and the goods are to be handed over.
- The period of time over which payments are to be made.
- What happens if the consumer fails to pay on time.
- The procedure you follow to cancel the contract.
- Signatures of the purchaser and trader.

CANCELLATIONS

Cancellation by the Trader

If the consumer breaches the lay-by contract you can cancel the contract.

To do this:

- you must write to the consumer and notifying them of your intention to cancel the lay-by; and
- allow the consumer at least 14 days within which to rectify the breach.

Cancellation by the Consumer

The consumer may cancel a lay-by before delivery of the goods for any reason.

REFUNDS

The store policy determines whether payments are not refunded, refunded in full or a percentage of the payments kept for administrative costs.

Where you have written lay-by policies the terms of this policy will govern the contract.

Under sections 40, 51(1) and 52(1) of the *Sale of Goods Act*, you may sue the consumer for the balance of money owed on the goods, damages for non-acceptance and any additional losses (including a storage fee).

If you do not use written terms and conditions, the *Sale of Goods Act* and common law will apply. You must justify keeping any monies paid by the consumer if they dispute the assessment of damage suffered by you, or if you breach the lay-by agreement. There is no automatic entitlement for you to keep all monies paid.

If the dispute cannot be settled, then either party may apply to have the matter settled by the Small Claims or Local Court. Resolution of such disputes involves an assessment of the facts on a case by case analysis.

Remember the consumer is still entitled to a refund if the goods are found to be faulty after collection.

MINORS

Contracts entered into by minors (people under 18 years of age) may be terminated at the option of the minor where the lay-by is for "unessential" items. Essential items are those without which an individual cannot reasonably exist.

STORE SIGNS

Signs indicating the store's lay-by policy, especially those in relation to the refund of monies if the agreement is cancelled should be placed on the lay-by counter in clear view of the consumer signing a lay-by contract.

You may need two signs: one relating to your lay-by policy; and one relating to your refund policy.

Printed Refund Policy Signs are available free of charge from Consumer Affairs or they can be downloaded from the Consumer Affairs web site.

For further information contact Consumer Affairs

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