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Focus Article

Know your Lay-By Rights!

We don't always have enough cash in our pockets yet we become impulsive buyers. So what we do?

Well, some of us opt for **lay-by** while others go for hire purchase or outright purchase based on their finances.

A lay-by sale is when you pay a deposit on goods and the shop puts the goods aside till you pay the full cost of the product within a specified time.

When you lay-by goods you agree to pay for the goods over a period of time specified by the retailer, and only receive the goods when you have finished paying the full amount.

The lay-by sale falls under the ambit of the Sale of Goods Act (Cap 230), whereby both, the buyer and the seller have certain rights and responsibilities.

Under this arrangement, a buyer is required to pay a deposit and pay the rest of the purchase price either in installments which is to be paid over a fixed or ascertainable period or whole purchase price is paid before the expiration of the time frame after which the item is taken by the buyer.

The law, however, is silent on a specific timeframe so the buyer and the trader are at liberty to fix a duration within which the full payment must be made to take the item away. They enter into an agreement after sorting out a time frame.

In the meantime, the trader remains the owner of the goods until such time that the buyer has paid off the purchase price in full and the items is delivered or collected by him/her.

Consumers engaged in a lay-by sale can request for a monthly **statement (written note)** from the trader on the purchase price, total amount paid plus any other amount paid in respect of the lay-by sale. This can help the buyer keep a tab on how much is owed.

A crucial point to note is that **lay-by sale can also be cancelled** if the buyer decides to do so. By the virtue of Section 67 (1) of Sale of Goods Act), the buyer may, at any time before the purchase price has been paid, cancel the lay-by sale by giving to the trader an oral or written notice of his desire to cancel the sale.

But the buyer will not be entitled for a full refund of the amount paid to the trader. According to Section 68 of Sale of Goods Act, the shop can deduct certain amount of the money for administering the lay-by or for any loss of value. However, you don't have to pay for loss of value if you cancel the lay-buy **within a month of sale**.

Meanwhile, a trader can also cancel the lay-by sale.

As per section 68 (3), when a lay-by sale is cancelled by the seller/trader, other than by reason of a breach by the buyer which entitles the seller to cancel the sale, the buyer is entitled to a refund (total deposit plus any amount paid as instalment).

Furthermore, in cases when the trader/business house with whom the lay-by is done goes into liquidation or a receiver is appointed then the buyer can contact the receiver. He/she may make a claim for refund as an unsecured creditor.

Tips:

- Obtain a lay-by statement with clear information on price of the goods, how much is paid and how much is owed with the timeframe within which you have to close the deal;
- Look out for exclusionary notices – some unscrupulous traders place exclusionary notices such as “*Once, on Lay-by, no change of mind and no refund*”. Note that exclusionary clauses are illegal under the Fiji Commerce Commission Decree 2010; and,
- Get your refund upon cancellation - by virtue of the Sale of Goods Act, a buyer is entitled to a refund of the amount paid on a lay-by sale subject to reasonable deductions made by the seller for costs incurred in handling the lay-by sale (both, administration cost and loss of value).

Consumers also have a responsibility to be **prompt** in advising the trader on their intentions to cancel the lay-by sale in order to obtain a refund. This will avoid any further deductions from the deposits paid by the consumers.