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Fighting for Consumer Rights in Costa Rica

For decades the relations between consumers and merchants in Costa Rica were fundamentally regulated by both the Code of Commerce and the Civil Code by applying generic commercial trade rules. It worked this way until 1996 when Constitutional status was granted to the protection of consumers' rights by introducing an amendment to article 46 of the Constitution, which basically says "All consumers have the right to the protection of their health, environment, security and economic interests; to receive adequate and truthful information; to the freedom of choice, and equal treatment."

Said amendment was complemented by law number 7472, known as Consumer Protection Law, which brought specific rules in order to protect the rights and interests of the consumers. The main principle it contains is the *in dubio pro consumer* meaning that in the case a conflict arises and the facts are not clear it is mandatory to rule in favor of the buyer. Article 34 of this new law establishes a number of obligations for traders such as: provide accurate information, grant a minimum of thirty business days warranty, sell quality products and inform if any sold assets are brand new or refurbished.

The law defines a merchant as "any physical or legal person, public or private, that in a regular basis offers, distributes, sells, leases, or offers products or services, even when this is not their main activity". This definition embraces both physical persons and corporations, and also includes wholesalers as well as public institutions such as INS –insurance company–, ICE –telephone and electricity provider–, RACSA –internet service provider– and AyA –water company–, to put some examples.

Now all merchants are required to adjust their practices in order to match the new rules or they will face severe fines and penalties. The law forbids any actions that can cause damage by creating confusion or offering misleading information about the real characteristics of the service or product purchased. It is well known that many companies such as building contractors, car rental agencies, appliance/electronics stores, time shared hotels, real estate developers, among others, have

abusive clauses in their rental agreements and purchase contracts.

Another interesting point in relation to this new law has to do with doorstep sales (a good example could be the purchase of products that are advertised on TV) where a retraction right is granted to consumers. This means that any buyer who has a last minute change of mind can legally return any purchased product within 8 days from the delivery date, as long as the product has not been used, and the purchase money will be reimbursed.

Nowadays any affected consumers have the right to sue these dealers by means of the Consumer Protection Law which offers the possibility to choose between two different ways to confront the same issue:

- File a complaint in front of the National Consumer Commission, a branch of the Ministry of Economy. In this case an administrative procedure will start granting both parties the right to present all kinds of valid evidence and testimonies before a verbal hearing takes place. This Commission has the faculty to impose fines against any merchant and to order the repair, substitution or restitution of the price paid for the specific article or service. It is very important to take to consideration that under no circumstance might the Commission grant claims different from the ones stated above, such as: damages, legal costs, interests and similar. It is also imperative to be aware that any complaint is required to be filed within two months because of the statute of the limitations.
- Start a civil lawsuit in Court by means of a summary process, where a larger number of pretensions can be filed, including but not limited to reimbursement of any purchase price, damage costs and interests. One of the advantages that this option offers is a wider term before the possibility to do so lapses. Given that this civil lawsuit can be presented at the nearest Civil Court, this might be way to go for all of those Expats living outside the central Valley, in view of the fact that the National Consumer Commission offices are to be found only in San José.

Here is an example in regards to consumer protection rights: an Expat came to Costa Rica to spend his vacation, the first thing he did was rent a car to drive to the beach. On the road he made a stop, had a few beers and hit the road again, losing control of the vehicle and crashing it, damaging the front part of the car. Because he was drunk the Insurance Company declined any payment to repair the car. Later on he went to the car rental company, where he was told not to worry and that they would contact him to reach an agreement. The Expat went back home, forgetting he had signed a blank voucher when he first rented the car. Next he noticed a charge for USD \$12,000 appeared on his credit card balance. This person came back one more time for vacation as well as to start a summary lawsuit in Court, where he was granted the right to recover all the money plus legal interest. In this case, and even though the customer was responsible for crashing the car, the Judge stated that the car rental company did not grant a Due Process or Defense Opportunity prior to charging the client's card plus it was demonstrated that

the total value of the car before the crash was less than USD \$10,000.

It is important for all consumers to obtain as much information as possible concerning any product or service that they might be interested in, to pay attention to the small print on any contract before signing it and to always demand a warranty and a proof of payment from any seller, but if something goes wrong the law might be on their side. In the same way Merchants need to adjust their practices according to the Law as well as provide clear information to their customers in order to avoid any potential contingencies.

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