

**Summary of Changes to the Fair Trading Act
now officially the
“Consumer Protection Act, R.S.A. 2000, c. C-26.3”**

Bill 31 – “A Better Deal for Consumers and Businesses Act” received Royal Assent in December 2017

Changes in relation to this Bill come into force during various dates because a lot of the Regulations still need to be made

1. **CHANGE OF NAME**

The name of the Act is changed from the *Fair Trading Act* to the *Consumer Protection Act*.

2. **CONSUMER BILL OF RIGHTS**

- a. Pursuant to Section 1.1. (1) the Minister shall establish a Consumer Bill of Rights.
- b. A Breach of the Bill of Rights or acting inconsistent with the Bill of Rights **does not** give rise to
 - i. A cause of action or legal remedy or claim for that breach or action;
 - ii. An offence under the Act, or;
 - iii. Proceedings in court or any other body to make a decision about the Bill of Rights.
- c. Pursuant to Section 6 (4) (t.1), if you fail to provide
 - i. prominent and full disclosure,
 - ii. of the details of the transaction, including
 - (1) duration
 - (2) changes in price
 - (3) renewals
 - (4) extensions, or
 - (5) amendments

Then such failure or contravention shall be deemed an “unfair practice”, which can lead to court action by the consumer and an offence and penalty under the Act

3. **UNILATERAL CHANGES TO CONTRACTS**

- a. Section 6.1 is a new section about “unilateral changes” to “substantive terms” in contracts for “ongoing consumer transactions”.
- b. This section isn’t yet in force because the regulations haven’t been made

- c. So, firstly we want to figure out if we are part of an “ongoing consumer transaction”.
 - i. Section 1 (1) (i.2) defines “Ongoing consumer transaction” as a consumer transaction for the continuing supply of services, whether for a fixed or indeterminate period of time.
 - ii. Section 1 (1) defines “Consumer transaction” as the supply of services
 - iii. Section 1 (1) (k) defines “Services” means any service offered primarily for personal, family or household purposes, including any credit agreement
 - iv. *Therefore*, an ongoing consumer transactions would include all personal loans that are granted as a mortgage, loan agreement or otherwise.

- d. Next we want to know what a “substantive term” is.
 - i. Under Section 6.1 (1), a “substantive term” is any change in an agreement relating to
 - (1) price,
 - (2) renewal or extension of the length or period of the agreement, or
 - (3) anything prescribed by the regulations.

- e. Section 6.1 (2) then states that you can not make a change to substantive term(s) unless
 - i. The borrower expressly consents to the change not more than 120 days before the change is to take effect; **or**
 - ii. If the following three things are met:
 - (1) the original mortgage document provides, in writing, that you can make substantive changes without the borrower’s express consent; and
 - (2) you have given the borrower at least 60 days’ but not more than 120 days’ written notice of the specific change or changes, and;
 - (3) you comply with all other applicable conditions or restrictions that the regulations say you have to do

- f. Section 6.1 (3) sets out the specific things that the written notice has to state, namely
 - i. Every substantive term that is proposed to be changed and its proposed replacement;
 - ii. The date upon which the change takes effect, which must be at least 60 days from the date of the notice;
 - iii. Must specifically state the borrower has the option to cancel at no cost or penalty within the 60 days from the notice or a longer period of time;
 - iv. Must provide your contact information to allow the borrower to payout the mortgage if they exercise that option
 - v. Under Section 6.2 (1) if they want to cancel, they have to give you written notice of that cancellation.
 - vi. If there is a change in the interest rate or payments or penalties or renewal

- fees, then you must set out the total financial impact to the borrower;
 - vii. You must meet any other requirements set out in the regulations and send it in the manner set out in the regulations
 - g. Section 6.1 (4) of the Act also provides that there is a substantive change to the mortgage, you must provide a complete copy of that change within 30 days of the borrower's request
 - h. Section 6.1 (5) of the Act states that if you don't comply, then
 - i. the changes are of no effect and
 - ii. It will be deemed to be an unfair practice – which can lead to a court action by a borrower or an offence and penalty being imposed under the Act.

4. **ARBITRATION CLAUSES**

- a. While this generally doesn't apply to mortgages, under Section 16 (1) of the Act, arbitration clauses in contracts are now void and unenforceable;
- b. You can still go to arbitration if
 - i. you both agree after the dispute has arisen, or;
 - ii. if the arbitration agreement gives the borrower the option to decide whether or not they want to go to arbitration after the dispute has arisen

5. **HIGH-COST CREDIT**

- a. Section 124.01 defines a "High-cost credit agreement" as one that provides for a rate of 32% or more but does not include pay day loans and a "high-cost credit business" as the activity of offering, arranging for or entering into a high cost credit agreement.
- b. The 32% will, for fixed term mortgages, be looked at for the Annual Percentage Rate of the mortgage.
- c. You can not provide high-cost credit or carry on a high-cost credit business unless you are the holder of a High-cost credit business license for each location you do business.
- d. As a high-cost credit business you must, in accordance with the regulations,
 - i. Disclose information regarding the high-cost credit agreement;
 - ii. Use prescribed agreements or contract terms for providing high-cost credit;
- e. Again the sections aren't yet in force again because no regulations in place

6. **COURT ACTIONS FOR BREACH**

- a. Section 142.1 of the Act permits a court action to be commenced in the Court of Queen's Bench of Alberta by a borrower where the borrower has suffered loss or damage due to a contravention of, or failure to comply with, the Act or the regulations
- b. One thing to also note is that the court action can also be commenced against any principal, director, manager, employee or agent of a Lender who engaged in or acquiesced in the breach of the Act or regulations
- c. Under Section 150 (1) The Minister can also publish information, including personal information relating to an investigation under the Act, or charges and convictions under the Act.
- d. Under Section 183.2 you can not bring an action for damages or any other loss resulting from someone complaining about you under the Act or assisting in an investigation under the Act.

7. **PUBLICATION OF INFORMATION**

- a. The new Act (s. 150) also beefs up the information that is published where there is an inspection or investigation, charges or convictions, or the status of a licence under the Act
- b. The Act also talks about publication of borrower reviews – likely aimed at the online reviews
- c. Section 183.1 - Businesses can't include a contractual provision that prohibits a borrower from publishing a review
- d. The Act prohibits any lawsuits against a borrower that has published a negative review or other communication unless the communication is “malicious, vexatious, or harassing or otherwise made in bad faith”
- e. Also can't commence a lawsuit against a borrower for making a complaint, or providing information to the Minister or Director, an inspector or any other person acting under the Act