

Buying a car: Can the CPA turn sour into sweet?

Buying a car, whether new or used, can be stressful. Cars are one of our biggest purchases and there is always the concern that the car you buy might turn out to be a lemon. The Consumer Protection Act, or CPA as it is commonly known, provides some peace of mind for car buyers but consumers also need to be aware that their rights are not always unlimited.



Source: pixabay.com

"For a car buyer, the most important part of the CPA is the probably the right to safe, quality goods in good working order," Jamie Surkont, director at used car retailer getWorth explains. "And with that comes the so-called "6-month CPA warranty" if the car does not meet the CPA requirements. Consumers are generally very excited about these CPA rights."

Jana van Zyl, director at Dommissie Attorneys, explains further, "The CPA aims to provide protection to consumers who are normally in a more vulnerable position when it comes to buying goods or services from sellers – including buying a motor vehicle from a car dealer."

She continues, "A car is a complicated piece of equipment and it is not unusual for something to go wrong, especially when you are talking about used cars. But one must bear in mind that the CPA is one piece of law to regulate the sale of all types of different goods - and including new or used. An element of reasonableness must be taken into account. This means that things are not always cut and dried."

Surkont and van Zyl answer a few common questions:

■ ***What if I signed a contract that says the sale is voetstoots?***

Fortunately for car buyers, a seller cannot contract out of the law. Van Zyl confirms that the CPA simply says that a term in a contract that goes against the CPA rights, will be void – this means that even though the term is included in the contract, the seller will not be able to rely on it. This may also apply if you signed a contract saying that the sale is voetstoots.



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■ ***What if I bought the car privately, or at auction?***

Private and auction sales are generally not covered by the CPA.

Surkont warns, “Defective or poor-quality cars can cause huge cost and frustration. Most people understand that purchases on auction are generally voetstoots, so they expect to pay lower prices to compensate for that risk. But not everyone realises that they may be in the same boat with private purchases. It’s something to take into account when you decide how to buy.”

■ ***What if the seller disclosed the defects?***

Van Zyl says that it is not the intention of the CPA to smother the used car industry – sellers of older cars, including those with some defects, should still be able to sell them at a reasonable price, considering what they are worth.



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“The important thing is that the buyer must be properly informed. If the seller clearly disclosed the defects or quality issues, or for example that the car is a non-runner, then you knew what you were buying and you can’t expect to be covered by the so-called six-month CPA warranty.”

According to Van Zyl, “Consumers must also be fair and reasonable and think about it in a sensible way. If you purchase a car which is an old model with high mileage, you cannot expect to receive a car which is as good as new and with no possibility of something going wrong. If this was the case, no second-hand dealer would be able to make a living and consumers would struggle to sell or trade in their vehicles.”

■ ***What if what the car is not what I thought it was?***

Surkont says that consumers must do their homework and make sure that the cars they are buying, are suitable for their needs.

He continues, “Dealers can, of course, assist with questions and can provide valuable information. Dealers also have an obligation to give true and correct information. At the very least, the seller must disclose to you the correct registration year and code status (e.g. new, used, rebuild). It is also reasonable to expect that the seller should disclose the correct vehicle

make, model and variant description and mileage. If one of these critical pieces of information is materially different from what was disclosed to you, you could argue that the salesperson misled you and that you would not have bought the vehicle if you knew the true facts.”

❏ ***What is included in the 6-month CPA warranty?***

Consumers must bear in mind that the CPA does not give protection against fair wear and tear, misuse or abuse. In these cases, the CPA’s “quality warranty” will not apply.

Surkont explains that this is not always easy to determine, “There will be some clear-cut cases, where it is easy to show that the cause of the issue must have been around when the car was sold,” he says. “However, cars are highly complex machines and things will go wrong in the normal course of things. It can be difficult to isolate the root cause and when it arose. It is also not always easy to determine whether negligence or abuse played a role to determine the cause of the defect.”

Van Zyl also points out that minor defects won’t necessarily result in a refund. She gives the following example: “Let’s think about something like a faulty battery. A consumer may try and argue that this presents a quality issue which entitles the consumer to return the vehicle – after all, the vehicle cannot run if the battery is faulty.... But surely if one thinks about it logically, it would not make sense to return a vehicle because of a faulty battery that can easily be replaced? A standard of reasonableness should therefore always apply.”

❏ ***What if I financed the car, or bought additional services?***

If you financed the car, your loan agreement with the bank who provided the finance will be subject to the National Credit Act rather than the CPA.

Van Zyl explains, “In most cases, it will be your responsibility to arrange settlement of the loan. The same may also apply to add-ons, like insurance products or warranties that you purchased at the same time as the car.”

❏ ***Can I return the car if I don’t like it?***

Surkont says, “The CPA only covers you if you for defects or quality issues, or if the car is not fit for its intended purpose. If you simply find that you don’t like it and want a refund, that would be subject to the return policy of the particular seller. But it is rare to find a generous return policy for cars in South Africa. There are several overseas car sellers that offer no-questions-asked money back guarantees, but as far as we’re aware, there is only one in this country.”

Van Zyl confirms, “There is no general cooling off period that applies to car sales. The consumer should, therefore, make sure that he is satisfied with the car before purchasing it.”

❏ ***What if I can’t reach agreement with the seller?***

Van Zyl explains the process, “If the consumer and seller cannot come to an agreement, the dispute can be referred to the Motor Industry Ombudsman, ([www.miosa.co.za]) who is the accredited ombudsman for disputes in the motor vehicle industry.”

Surkont concludes with some advice, “The CPA provides some very useful protections in case things go wrong, but you’re always better off not having to fall back on legal provisions. Do your homework beforehand, insist that the seller disclose as much as they know about the history of the car, make sure there are no strange gaps, and buy from a party with a good reputation.”