

# Consumer Protection

**Booklet | Layby**

Buying on layby



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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New Zealand Government



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# What is layby?



Layby is a popular way to buy goods when you can't afford to pay for them straight away. Your goods are kept at the shop until the whole price, or a specific part of it, has been paid off and no interest is added to the price.

You agree to pay for them in three or more instalments, or in two or more instalments if the agreement states it is a layby sales agreement. Any deposit you pay will be an instalment, while a layby sale agreement does not include an agreement where the purchase price is more than \$15,000.

## **For example:**

You see a coat you want but you don't have enough money to pay for it. You ask the seller to hold the coat for you. You pay a deposit. Then you pay the rest of the total price in weekly payments over two months.

The seller must hold the goods for you unless you do not make payments as agreed. The price of goods held on layby cannot be increased if new stock comes in at a higher price.

Any sale that matches this description or type of sale is a layby sale, even if the seller calls the sale by another name such as 'part-payment'.

## **Christmas hampers**

Many of the Christmas hamper offers – where you pay instalments throughout the year to the company for the hamper to be delivered near to Christmas after final payment – will be covered under the same rules as layby sales.

Layby differs from credit sales where you can take the goods home and use them while you make regular payments. However, interest, or other charges, are usually added to the price of the goods with credit sales. For more information about credit sales check out our website or our booklet *Credit – What you need to know when borrowing money or buying goods on credit*.



**Be aware:**

The Fair Trading Act parts that deal with layby sales may not apply to a contract for the supply of goods and services together. For example, you contract a furniture maker to make a set of dining chairs which you place on layby.

**Entering into a layby sale**

You and the seller agree on the terms of the layby.

The contents of the layby agreement must:

- › set out a clear description of the goods
- › state the total price payable
- › include a summary of your right to cancel
- › include information on whether a cancellation charge applies and if one applies, the amount of the cancellation charge or a clear description of how it is calculated
- › set out the seller's name, street address, telephone number and email address.

The layby agreement itself must be:

- › in writing
- › set out in plain language
- › understandable to read
- › presented clearly
- › given to you
- › dated.

You may have to pay a deposit. The amount is agreed by you and the seller. There are no rules about the deposit amount, so the seller can set the deposit required. However a deposit is regarded as an instalment. Deposits may range between 10-20% of the total price.

If the goods are too large to be stored at the shop or the seller's business premises, the seller may charge a storage fee. The seller must ask if you agree to this when you begin the layby as it forms part of the agreement.

### **Paying off the price of the goods**

You and the seller agree on how long you have to pay.

You can agree to pay by:

- › regular payments – for example, \$15 a week for five weeks or
- › payments of any amount so long as the full (or a specified portion of the) price is paid within the agreed time

### **Keeping a record of payments**

You must be given (and should keep) a receipt for the deposit, each payment you make as well as the layby sales agreement.

### **Your right to a written statement**

You are entitled to a written statement from the seller, which sets out:

- › the total purchase price of the goods
- › the amount you have paid up until then
- › the amount you will have to pay the supplier if you have already cancelled the agreement or the amount you will have to pay if you decide to cancel
- › the outstanding amount under the agreement (if any) that you will have to pay the supplier as well as when and how it will be paid.

You are entitled to this at the time you enter into the agreement or at any later time.

# Cancelling a layby



## **If you (the customer) cancels**

You can cancel a layby before you have finished paying for it or before you take the goods. In this case you can let the seller know by calling at the shop, writing a letter or sending an email. You do not have to give a reason for cancelling just as long as you make it clear that you are cancelling.

## **Cancelling if goods are damaged, lost or stolen**

If the goods are damaged, lost or stolen while on layby, you have the right to:

- › cancel the layby, or
- › ask the seller to either compensate you for damage to the goods, or reach an agreement with you that the goods will be replaced.

## **If the seller cancels**

The seller can cancel your layby if you breach an important part of the agreement. For example, if you do not make all the payments under the layby

The seller can also cancel your layby if:

- › the goods under the agreement are no longer available and no satisfactory substitute goods can be found or
- › the seller stops trading (but not due to bankruptcy, receivership, liquidation or voluntary administration).

The seller should tell you that they are cancelling your layby, in writing or in person.

The seller must immediately repay you all the money you have paid under the agreement, less any cancellation charge that is payable. However a seller cannot charge you a cancellation fee if the supplier itself breached the agreement eg. if the seller held the wrong goods for you under the agreement.

In some circumstances the seller may be willing to offer you more time to complete the layby rather than cancel. If you accept such an offer, you should make sure you are clear about the time extension given by the seller. This is because the seller will still have the right to cancel if you fail to pay by the new expiry date.

### **Will I get my money refunded?**

If you are cancelling and the agreement includes a cancellation charge the seller is entitled to impose this charge (ie. keep some of your money) to cover reasonable costs that directly arise from the agreement. This includes:

- › reasonable selling costs in storing and insuring goods during the agreement



- › loss of value of the goods between when the agreement started and was cancelled
- › reasonable administration costs, such as office expenses, salaries or wages, that are directly related to the agreement.

Where you have paid in cash you have the right to a cash refund. You do not have to accept a credit note or buy other goods instead, even if shop signs or layby dockets say 'no cash refunds on cancelled laybys'. Signs like these may breach the Fair Trading Act.

### **Can the seller deduct a set percentage for selling costs?**

Some stores may have a set amount or percentage they will withhold if the layby is cancelled. It may be called an administration fee rather than 'selling costs'.

A seller must still be able to justify that the fee is reasonable and directly related to the agreement.

### **Loss in value**

For example, stores have permanently reduced the price because the goods are no longer in season, or a newer model is available.

#### **For example:**

In May you put a \$395 winter coat on layby with a \$50 deposit, and make one payment of \$40. You cancel the layby in October. All clothing shops are now stocking summer goods and coats have been put in an end-of- season sale. These coats are marked down by \$70 (to \$325) – this is the loss in value. The layby agreement includes a cancellation charge and the seller charges you \$10 for reasonable selling costs and \$70 for loss in value. As a result you will get only a \$10 refund.

### **No loss in value**

For example, you layby a television priced at \$400. Your deposit is \$100. You have 12 weeks to pay \$25 per week. You have made five payments totalling \$125 when you decide to cancel the deal. The television is still the current model so there is no loss in value. Therefore the store can only deduct reasonable selling and reasonable administration costs from your refund.

### **'Reduced' goods where there is no loss in value**

You put a dinner set priced at \$120 on layby and cancel after paying a total of \$80. In the meantime, the seller has put all dinner sets in a 'specials' sale because they no longer wish to stock dinner sets.

In this type of situation there is not really any loss in value because the goods are not seasonal or fashion goods, especially if other shops are selling similar dinner sets at the usual price. You should only be charged reasonable costs (storage, insurance) and reasonable administrative costs.

### **What if I have paid only a deposit or a few instalments when I cancel?**

If the reasonable costs (storage, insurance) and administration costs and loss in value under a cancellation charge are more than the amount you have paid, the seller can ask you to pay the difference.

#### **For example:**

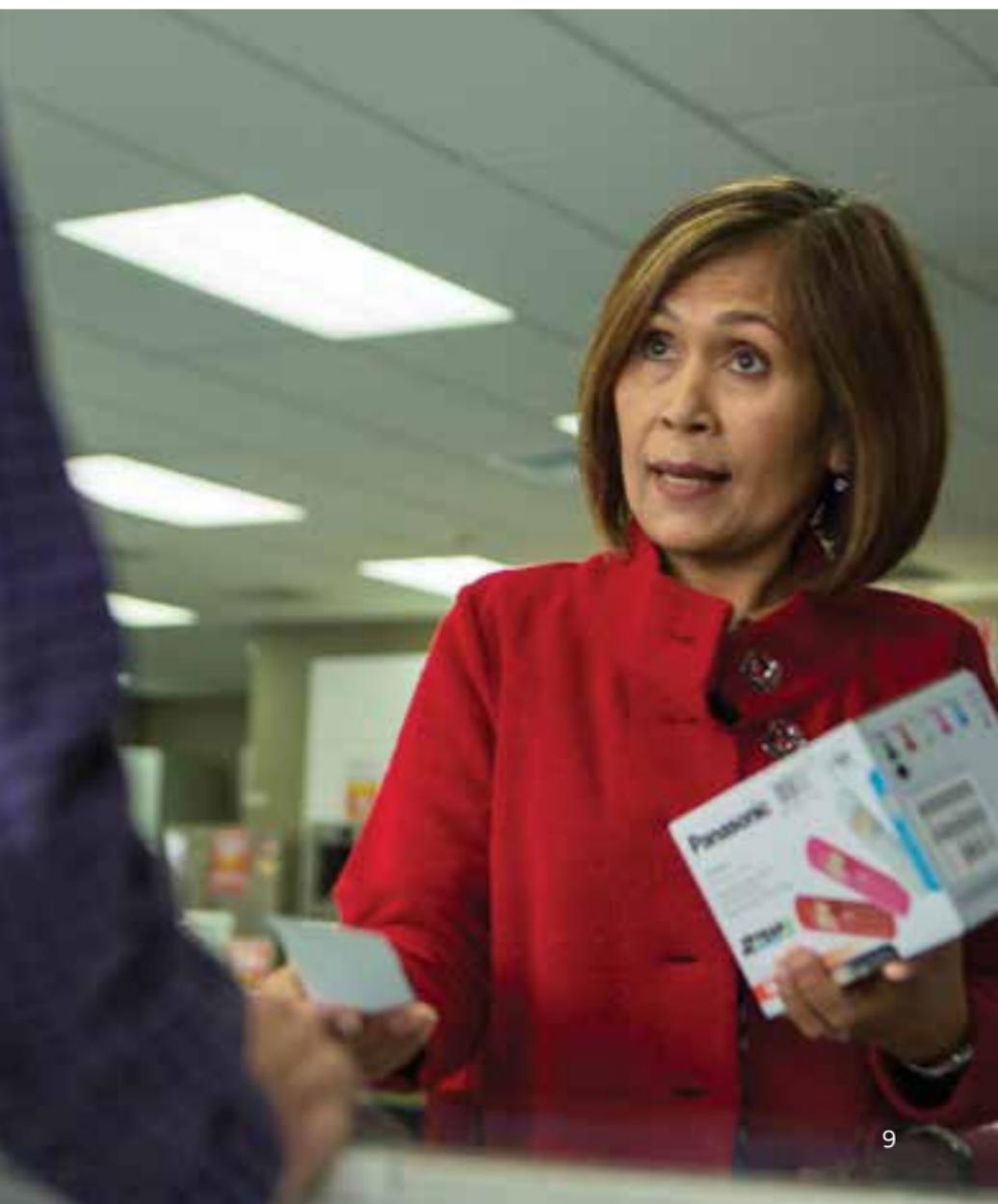
The winter coat referred to earlier has been further marked down by \$30 to \$295. This would mean the total loss in value would be \$100. Adding the \$10 selling costs this would mean the seller's overall reasonable costs would be \$130 which is \$40 more than the total amount you have paid for the coat so far (ie \$90).

# General questions

## **What if the goods are faulty?**

The Consumer Guarantees Act sets out your rights if the goods you have bought on layby are faulty. The Act covers personal, domestic or household goods. For more information about faulty goods, see our website or our booklet *Your consumer rights (Goods)*.

If the goods you have bought on layby are normally used for commercial or business purposes then the Consumer Guarantees Act will not apply. The Sale of Goods Act may apply, however sellers can contract out of the Sale of Goods Act at the time you enter the layby.



# Store closure



## **Seller in receivership, liquidation, bankruptcy or statutory management**

Certain rules apply where a seller goes into receivership, liquidation, bankruptcy or statutory management.

If you have goods on layby and pay the balance owing under the agreement you have the right to complete the agreement and collect your layby. If there aren't enough goods to honour all laybys, agreements must be settled in the order they were entered into. However these rules don't apply if you have made no payments to the seller in the three months before the receivership, liquidation, bankruptcy or statutory administration.

If you make a payment to the seller after the seller went into receivership, liquidation, bankruptcy or statutory administration you are entitled to a refund in full of that amount.

## **Consumer as creditor**

If you have cancelled the layby or haven't been able to complete it due to insufficient goods, then you will be a creditor in the receivership, liquidation or bankruptcy. This means you are entitled to recover that amount from the seller and you have priority over:

- › all other unsecured creditors and
- › all creditors who are secured by a security interest over all or any part of the supplier's accounts receivable and inventory.

Accounts receivable is a claim for payment that a business has for goods or services supplied that its customers have ordered but not paid for. Inventory includes goods that are part of a business's assets that are, or will be, ready for sale.

Note: Under the Fair Trading Act there are several situations where a consumer creditor will rank behind other creditors.

- › Where that other creditor has a perfected Purchase Money Security Interest (PMSI) over the seller's accounts receivable or inventory
- › Where that other creditor has a perfected security interest over accounts receivable for which new value has been provided.

However this area can be complex and so if in doubt, you should contact a Consumer Law Centre or lawyer. A customer who has goods on layby is unlikely to know all or any of the contractual arrangements the seller has with other creditors.

### **Action to take**

To find out how you can get your goods or a refund, write to the receiver or liquidator of the company.

Some ways to find out the receiver's name and address are to:

- › call or visit the company. The receiver may be 'trading on' and someone will be there who can tell you who the receiver is. If the shop is closed, there may be a notice on the door giving the details you want
- › contact the Companies Office and find out where the seller's company is registered. You can conduct a search on the website **www.companies.govt.nz** or call 0508 COMPANIES (266 726)
- › look through the Public Notices column in the local newspaper for a notice about the receivership. This will say who the receiver is and give a contact address
- › look in the New Zealand Gazette at **www.companiesoffice.govt.nz** or at your local library for the name of the seller and the receiver.

When you know the receiver's name and address, write to the receiver and say that you have a layby with the seller. Ask how they will get your layby goods to you, or refund your money if there are no goods available.

### **The store has been sold**

If the storeowner chooses to close down or sell the business, it is reasonable to expect the seller to notify you in advance. This should allow you a reasonable time to complete your layby.

### **Credit Card**

If you have paid a deposit or instalment by credit card you may be able to get a refund through a “chargeback”. Contact your bank as soon as possible because there are strict time frames regarding this.

### **Taking the matter further**

When you are unable to resolve a layby dispute with the seller you can take a claim to the Disputes Tribunal. The Tribunal is an informal and relatively inexpensive way to resolve a complaint made under the Fair Trading Act. You don't need a lawyer to take your claim to the Tribunal.

For more information about making a claim in the Disputes Tribunal, see [www.disputestribunal.govt.nz/](http://www.disputestribunal.govt.nz/) or ask at your nearest District Court.

For more information on the Fair Trading Act see [www.commercecommission.govt.nz](http://www.commercecommission.govt.nz).

## **Consumer Protection**

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ISBN 978-1-98-851742-1 (print)

MB13927 | MBCA0001 | April 2017