

Unpacking the importance of plain language in property agreements

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Have you ever started to read through a document, contract or terms and conditions, only to find yourself halfway in, thinking, "Ah, I'm sure it's all fine," and then scrolling down, signing and accepting without a second thought?



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But what happens when a query arises later on? It is a common experience, where much of the legal jargon and complex terminologies in many agreements make it difficult for individuals to fully comprehend the terms and make informed decisions.

The importance of plain language in contracts and agreements cannot be overstated, as it plays a vital role in ensuring consumer protection and promoting fair business practices.

Promoting fairness and transparency

The core purpose of the Consumer Protection Act (CPA) is to shield the consumer against exploitation while promoting fairness and transparency between both parties. Under the CPA, suppliers have a legal duty to act in good faith and provide agreements or contracts that are clear, concise and understandable to consumers. The plain language requirement, as stipulated in Section 22 of the CPA, aims to protect consumers from unconscionable, misleading or deceptive business practices.

The right to disclosure of information, conferred by the CPA, ensures that consumers have access to information directly affecting them, presented in a plain and understandable manner. This requirement applies to all legal documents, including property agreements, lease agreements and fixed-term contracts.

To meet the plain language requirement, Section 22 of the CPA sets out criteria that must be met. The wording of the documents should be reasonable for an ordinary consumer, with average literacy skills and minimal experience, to understand the content, significance, and import of the notice, document, or visual representation without undue effort. Factors such as context, comprehensiveness, consistency, organisation, form, style, vocabulary, usage, sentence structure and the use of illustrations and headings should be considered.

Unclear clauses

In the realm of property agreements, it's not uncommon to encounter clauses that could stump even the most seasoned puzzle-solvers. Take, for instance, the 'quiet enjoyment' clause, which states that the tenant has the right to 'quietly enjoy' the premises. While it may sound straightforward, it leaves room for interpretation. Does it mean no parties or loud music, or does it extend to noise from neighbours or construction work?

Then there's the 'force majeure' clause, a true head-scratcher. It references unforeseeable events like 'acts of God', but what exactly falls under this category? Does it include natural disasters, pandemics or other unforeseen circumstances? And let's not forget about the 'indemnification' clause, with its complex language about holding parties harmless. What exactly are the limits and scope of this obligation? These examples demonstrate how confusing property clauses can be, leading to misunderstandings and potential conflicts if not clarified in plain and understandable language.

An example of a clause that satisfies the plain language requirement in property agreements, for example, is: "The Tenant shall be responsible for the payment of ordinary consumption charges levied on the premises such as electricity, water, sanitary, sewerage and refuse removal services that are not included in the annual rates and taxes." This clause is clear, in plain language and does not give rise to any ambiguity or vague terms, thus meeting the requirements of Section 22 of the CPA.



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Consequences for suppliers

Failure to comply with the plain language requirement and the right to disclosure of information can have serious consequences for suppliers. Consumers who find agreements or contracts incomprehensible may file complaints with the National Consumer Commission and/or approach the special consumer court to enforce their rights and seek appropriate remedies. Suppliers may face imprisonment for up to 12 months for breaching the CPA.

In light of these implications, suppliers have an onerous responsibility to draft agreements in plain and understandable language. Failure to do so may render an agreement unenforceable.

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