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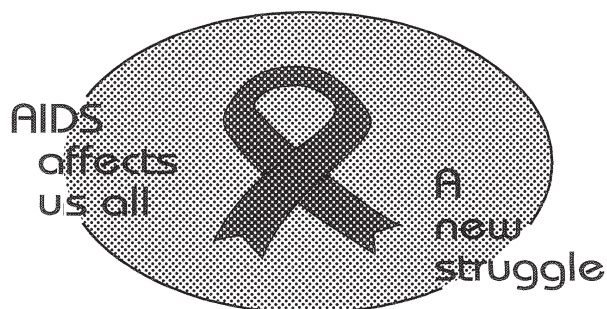
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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 46 OF 2017**REGULATIONS MADE IN TERMS OF SECTION 23 OF THE NORTH WEST CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1996 (ACT NO. 4 OF 1996)**

I hereby publish the Regulations made in terms of section 23 of the North West Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 4 of 1996) as set out in the Schedule hereto, with effect from 15 March 2017

Given under my Hand at Mahikeng, this 10 day of MARCH Two thousand and seventeen



HON WENDY JOY NELSON

Member of the Executive Council of the North West Province
responsible for Finance Economy and Enterprise Development

SCHEDULE

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PART 1
DEFINITIONS AND COUNTING OF DAYS

Definitions

1. In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 4 of 1996) retains that meaning, unless the context requires otherwise: –

“**act**” means the Consumer Affairs (Unfair Business Practices) Act, 1996 (Act No. 4 of 1996 as amended;

“**chairperson**” means a person appointed in terms of section 11(1)(a) of the Act;

“**clerk of the court**” means a person appointed in terms of section 13(2) (a) of the Act;

“**consumer protector**” means a person appointed in terms of section 2A(1) of the Act;

“**court**” means a Consumer Affairs Court, quasi-judicial body established in terms of section 10 of the Act;

“**days**” means working days;

“**defendant**” means a person against whom proceedings have been initiated in terms of section 9(b) of the Act;

“**deliver**” depending on the context means to serve or file a document;

“**Office**” means an Office for the Investigation of Unfair Business Practice as established in terms of section 2(1) of the Act;

“**Plaintiff**” means a person who initiates proceedings in the Court;

“**public holiday**” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);

“**sheriff**” means a person appointed as a sheriff or deputy sheriff in terms of the Sheriff’s Act, 1986 (Act No. 90 of 1986).

Counting of days

2.(1) The period of days must in terms of these regulations, be counted from the start of the day following that particular day to the end of the last day of that period, but if the last day falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.

(2) For any action contemplated in terms of these regulations for which a timeframe is prescribed, the period of 15th December to 2nd January must be excluded.

PART 2 INVESTIGATION OF UNFAIR BUSINESS PRACTICE

Investigation of unfair business practice or prohibited conduct by Office (section 5(1)(a) of Act)

3.(1) The Office may upon receipt of the alleged unfair business practice or prohibited conduct complaint –

- (a) reduce information in writing;
- (b) request the consumer to provide information in a form of an affidavit or otherwise;
- (c) institute investigation of the complaint;
- (d) notify the person alleged or suspected to have committed an unfair business practice or prohibited conduct of the investigation; and
- (e) a person receiving such notification as contemplated in sub-regulation 3(1)(d) above has a right to give a statement or explanation within five days from the date of notification.

(2) A notification referred to in sub-regulation 3(1)(d) above, must warn a person allegedly implicated that a statement or explanation, which he/she may give, may be used against him/her in proceedings before the court must accompany a notice referred to in sub-regulation 3(1)(d).

PART 3
SUMMONING OF PERSONS AND INITIATION OF PROCEEDINGS

Summoning and questioning of persons and productions of books and documents (section 6(1)(a) of Act)

4.(1) A person in the service of the Office authorized by the Consumer Protector, may in line with the provisions of section 6(1)(a) of the Act, summon a person to appear before him or her, for the purpose of investigation at the time and place specified in the summon that must substantially comply with the form in Annexure B of these regulations.

(2) A person so summoned may be requested to produce any book, document, or object relating to the investigation in question.

(3) A person in the service of the Office may question that person and may require that person to take an oath or solemn affirmation as prescribed in the form in Annexure D.

(4) The summons must be served by the delivery of the copy to the person named therein in any manner prescribed under regulation 7.

(5) Any arrangement or agreement reached must be reduced into writing and signed for by both parties and may be subjected to confirmation by the court in terms of section 17 of the Act.

Initiating of proceedings in Consumer Affairs Court in terms of section 9(b) of Act

5.(1) The Consumer Protector may on completion of investigation, in line with the provisions of section 9(b) of the Act, institute proceedings in the Court.

(2) The defendant must be informed of the intention to initiate proceedings in the Court, 20 days before the Court date.

(3) Summons contemplated in section 9(b) of the Act must be served 15 days before the Court date.

(4) Proceedings before the Court must be commenced by summons calling upon the defendant to answer the plaintiff's claim and warning the defendant of the consequences of failure to do so.

- (5) The summons must comply substantially with a form as prescribed in the form in Annexure B of these regulations and must specify time, date and place where a person so summoned is required to appear before the Court.
- (6) The summons must contain particulars of the parties and should disclose the subject matter of the reasons for the summons.
- (7) The summons must be served by the Sheriff or the Office.
- (8) Summons must be issued and signed by the Clerk of the Court;
- (9) All processes thereafter must be served with the Clerk of the Court.
- (10) The defendant may within five days after receipt of this summon, request for clarity or any document, book or object in possession of the plaintiff or Office and must submit to the clerk of the court any document, book, object or any other thing that he or she intends to use during the proceedings.
- (11) Documents, books, objects or anything not disclosed may only be accepted and used if the court allows.

Summoning of witnesses

- 6.(1) The Office may, may subject to order of court, summon any witness to appear before the Court and give evidence, produce book, document and/ or object.
- (2) A summons must comply substantially with a form prescribed in the form in Annexure C of the regulations.
 - (3) A summons must be served by the delivery of a copy in any manner prescribed under regulation 7.
 - (4) The Court may on its own and on its terms order any person who it believes to be able to furnish any information to appear before it.

Manner of service (Section 6(2)(d) of Act)

7.(1) A Summons must be served by the Sheriff or Office in any of the following manner –

- (a) by delivery of copy of the summons to the person named therein;
- (b) by leaving a copy thereof at a place of business or residence of the person named therein, with a person who appears to be in charge of the said premises at the time of delivery and who seems to be older than 16 years;
- (c) by delivering a copy thereof at the place of employment of the person concerned to a person who appears to be having authority over the said person and who seems to be older than 16 years;
- (d) by delivering the summons to a chosen address at which the summons must be served;
- (e) in case of a company, partnership or a close corporation, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the jurisdiction of the court, or if none of the employees are willing to accept service, by affixing a copy to the main door of such office or place of business;
- (f) by delivering a copy thereof to an agent who is duly authorized in writing to accept service on behalf of the person to be served;
- (g) Where a partnership, firm or voluntary association is to be served –
 - (i) by leaving a copy thereof at the place of business of the partnership, firm or voluntary association with a person who appears to be in charge of charge premises at the time of delivery and who seems to be older than 16 years old; or
 - (ii) if such partnership, firm or voluntary association has no place of business at the time of service, by effecting on a partner, the proprietor or chairperson or secretary of the committee or other managing body of the association as the case may be.
- (h) in a manner determined by the court in a particular case.

(2) Where the person to be served is a minor or a person without legal capacity, the summons must be served in a manner mentioned in sub-regulation 7(1) on that minor's guardian.

(3) For the purposes of sub-regulation 7(1)(b), when a block of flats or other building (other than a hotel, boarding-house, hostel or similar residential building) is occupied by more than one person or

family, the summons must be served as provided in the said sub-regulation at that part of the building which the person to be served occupies as his or her residence or place of business.

(4) Service of all documents may be hand delivered, faxed or e-mailed.

(5) The Office must cause summons to be served, unless the Court orders otherwise in a particular case.

PART 4 PROCEEDINGS BEFORE THE COURT

Proceedings in court

8.(1) Proceedings before the Court must be conducted in an informal manner.

(2) A person summoned must before being questioned be required to take a solemn affirmation or an oath as prescribed in the form in Annexure E.

(3) the plaintiff must be represented by the Consumer Protector.

(4) A party requiring an interpreter must inform the Clerk of the Court ten days before the hearing.

(5) the Office must ensure that an interpreter is available at the hearing.

(6) an application for postponement can be made, before the proceedings commence or during the hearing, by either party to the proceedings and the Court must make a ruling on such application.

(7) If the plaintiff does not appear at the time indicated for the hearing, the hearing may be proceeded with, postponed or disposed of in his/her absence.

(8) Proceedings must be recorded and the record thereof must be kept by the Clerk of the Court.

(9) Any person requiring the transcription of the record of proceedings of the Court may in writing apply for such transcription and records and must be liable for the costs of the transcription and

copying of such records.

(10) Where the Court awards costs against a person found to have conducted a prohibited conduct, as contemplated in section 13B of the Act, such costs must be paid to the Office by the person against whom they are awarded.

(11) The Office must cause the amount of costs paid to the Office to be paid into the Provincial Revenue Fund.

Oath and affirmation

9.(1) A person appointed or designated to take down or record the proceedings, must before commencing with his/her duties make and sign an oath or solemn affirmation before a commissioner of oaths by using the form in Annexure F.

(2) A person appointed or designated to perform the functions of an interpreter before the court must before commencing with his/her duties make and sign an oath or solemn affirmation before a commissioner of oaths by using Form G of Annexure G.

(3) Member of the Court and alternate member must before assuming office subscribe to an oath or affirmation by using Form H of Annexure H.

Examination of witnesses

10.(1) A witness called by the Office may be cross-examined by the defendant and the other way around, and a person ordered by the Court in terms of regulation 6(4) may be cross-examined by the Consumer Protector and the defendant or their representatives.

(2) The Court may direct that a person may not be allowed to disclose in any manner whatsoever the name or address of a person who testified or testifies or who has been summoned and so requests the Court not to reveal his or her identity.

(3) Where evidence is given in a language with which the Court or any party to the proceedings or their representatives are not sufficiently conversant, a competent interpreter must

interpret the evidence.

(4) If, in the opinion of the Court, it is expedient to appoint a competent interpreter or if the Office or the person allegedly implicated so desires, the Court may satisfy itself as to the competence and integrity of a proposed interpreter before he/she is employed as such.

Joinder of parties

11.(1) Any person may be joined as party either jointly, jointly and severally, separately, or in the alternative as parties to the same proceedings if their rights of relief depend on the determination of substantially the questions of law or fact.

(2) The joinder will not affect the validity of any prior processes in the matter.

(3) A party may not be joined 10 days before the date of the hearing.

PART 5 GENERAL PROVISIONS

Process in execution

12. Orders granted by the Court may be referred to the competent court to be made an order of that court in accordance with its rules.

Witness fee

13.(1) A person who attended the Court proceedings as a witness must be entitled to the applicable fees in accordance with the tariffs as set out in terms of the Magistrate Court Rules and Regulations as may be amended from time to time.

(2) A witness who has incurred accommodation expenses may be paid such reasonable expenses on submission of documentary proof.

Scale of fines (Section 13)(A)(d) of Act)

14.(1) A prohibited conduct or unfair business practice must be published in the *Provincial Gazette*.

(2) The court may impose a fine ranging from R500 to R20 000 for the first transgressor.

(3) The second and subsequent transgressors may be fined on a scale ranging from R10 000 to R100 000.

Office hours and address of Office

15.(1) The Office will be opened to the public every Monday to Friday from 08h00 to 16h30, excluding public holidays.

(2) Notwithstanding paragraph (1) above, the Office may accept documents served on specified date and time in exceptional circumstances.

(3) Any communication to the Office, may be delivered by hand at:

The Clerk of the Court
Development House
Corner University Drive and
Provident Street
MMABATHO, 2735

Repeal of Regulations

16. The North West Consumer Affairs (Unfair Business Practices) Regulations, 2017 published in the Provincial Government Gazette No. 7730, dated 07 February 2017, are hereby repealed.

Short title

17. These Regulations are the North West Consumer Affairs (Unfair Business Practices) Regulations, 2017.

ANNEXTURE A**Summons to appear before the consumer protector for questioning and/ or production of books, documents and/ or objects [section 6 (1)(a) of the Act and Regulation 4]****Our Ref:** _____**TO** : _____
_____**Subject** : _____

You are hereby summoned in terms of Section 6 (1) of the Consumer Affairs (Unfair Business Practice) Act, No. 4 of 1996 (as amended) to appear before a person in the service of the Office at:

Place: _____

Date : _____

Time : _____

to be questioned in connection with the matter above particularised, and to produce the following books, documents and/or objects:

and be questioned in connection therewith.

**A Person in the service
of the Office**

Date

NOTE THAT

- (a) You may be assisted at examination by a person of your choice;
- (b) You are entitled to a prescribed witness fee;
- (c) You must be guilty of an offence if you:
 - (i) fail to without sufficient cause attend at the time and place specified in the summons, or remain in attendance until the conclusion of the proceedings,
 - (ii) refuse to take oath or take affirmation,
 - (iii) refuse to answer, or to answer fully and satisfactory to the best of your knowledge and belief any question lawfully put to you,
 - (iv) fail to produce books, documents and/ or objects in your possession, custody or control which you were required to produce,
 - (v) make false statement to the person in the service knowing such statement to be false.

ANNEXTURE B**Summons initiating proceedings before the Consumer Affairs Court for the North West Province held**

At _____

Case No. ____

Competent Court
Case No. ____

In the matter between:

Name and address
_____**PLAINTIFF**And
_____**DEFENDANT**

Pursuant to a notice served on the, you are hereby summoned to appear in person before the Consumer Affairs Court on the _____ day of _____ 20____ at _____ am/pm at _____ (Place)

You are alleged to be responsible for the unfair business practice or prohibited conduct in that:

Wherefore the plaintiff prays for an order against you for:

Clerk of the court

Date _____

If you admit liability, you may tender payment or restitution to avoid this matter be heard before the court.

NOTE THAT:

- a) you are entitled to a legal representation or to be represented or assisted by any person;
- b) an order may be granted against you if you fail to attend;
- c) an order may be issued to prohibit you to cease and desist from engaging in unfair business practices or prohibited conduct;
- d) an administrative fine may be imposed against you;
- e) you may within five days after receipt of this summon, request any document or object in possession of the plaintiff or office and submit to the clerk of the court any document, book, object or any other thing that you intend to use during the proceedings.

FURTHER NOTE THAT

You must be guilty of an offence if you:

- a) fail without sufficient cause to attend at the time and place specified in the summons, or remain in attendance until the conclusion of the proceedings;
- b) refuse to take oath or take affirmation
- c) refuse to answer, or to answer fully and satisfactory to the best of your knowledge and belief any question lawfully put to you;
- d) fail to produce books documents or objects in your possession, custody or control which you were required to produce
- e) make false statement to the person in the service knowing such statement to be false.

ANNEXTURE C**SUMMONS TO APPEAR BEFORE THE CONSUMER AFFAIRS COURT****TO:**

Name:
Address:

You are hereby summoned as contemplated in section 6(1)(a) of the Act, to appear before the Consumer Affairs Court for purposes of ascertaining any matter relating to the proceedings before the court.

Details of evidence required and books, documents and/or objects to be presented:

Date	Time	Place

NOTE THAT

You must be guilty of an offence if you:

- fail to without sufficient cause to attend at the time and place specified in the summons, or remain in attendance until the conclusion of the proceedings
- refuse to take oath or take affirmation
- refuses to answer, or to answer fully and satisfactory to the best of your knowledge and belief any question lawfully put to you;
- fail to produce books documents or objects in your possession, custody or control which you were required to produce
- make false statement to the person in the service knowing such statement to be false.

Clerk of the court

Date:

ANNEXURE D**Oath or affirmation by person summoned to appear before a person in the Office in terms of section 6(1) (a) of the Act**

I, _____ swear / solemnly affirm, that the information which I must give is the truth, the whole truth and nothing else but the truth. (In the case of an oath) So help me God."

DEPONENT

I certify that the deponent acknowledged that he/she knows and understands the contents of this oath/affirmation and has no objection to taking the prescribed oath/affirmation which was signed and sworn before me at _____ on this _____ day of _____ 20____

Commissioner of oaths

Date

ANNEXURE E**Oath or affirmation by person summoned to appear before the court**

I, _____ swear / solemnly affirm*, that the evidence which I must give is the truth, the whole truth and nothing else but the truth. (In the case of an oath) So help me God."

Deponent

Date

I certify that the deponent acknowledged that he/she knows and understands the contents of this oath/affirmation and has no objection to taking the prescribed oath/affirmation which was signed and sworn before me at _____ on this _____ day of _____ 20____

Chairperson

Date

ANNEXTURE F**Oath or affirmation by transcriber/sternographer (Consumer Affairs Act 4 of 1996) as amended**

I, _____ swear / solemnly affirm, that

(a) I must faithfully and to the best of my ability take down/record the proceedings of the Consumer Affairs Court for North West Province /the area of _____ (insert area), in short hand/by mechanical means as ordered by the chairperson of the court or other person presiding;

(b) that I must transcribe fully and to the best of my ability shorthand notes/ a mechanical record of the proceedings of the Consumer Court for North West Province / the area of _____ (insert areas) made by me or by another person.

(in the case of an oath:) so help me God."

Deponent

Date

I certify that the deponent acknowledged that he/she knows and understands the contents of this oath/affirmation and has no objection to taking the prescribed oath/affirmation which was signed and sworn before me at _____ on this _____ day of _____ 20_____.

Commissioner of oaths

Date

ANNEXURE G**FORM G****Oath or affirmation by interpreter (Consumer Affairs Act 4 of 1996) as amended**

I, _____ swear / solemnly affirm*, that I must faithfully and to the best of my ability take down/record the proceedings of the Consumer Affairs Court for North West Province*, I will truly and correctly to the best of my ability interpret from the language which I may be called upon to interpret into another language as required by the Court, and the other way around. (In the case of an oath) So help me God."

Deponent

I certify that the deponent acknowledged that he/she knows and understands the contents of this oath/affirmation and has no objection to taking the prescribed oath/affirmation which was signed and sworn before me at _____ on this _____ day of _____ 20____

Commissioner of oaths

Date

ANNEXURE H**FORM H****Oath or affirmation by a member or alternative member of the Consumer Affairs Court
(Consumer Affairs Act 4 of 1996) as amended**

I _____, appointed as a member of the Consumer Affairs Court for the North West Province, in terms of section 11 of the Consumer Affairs (Unfair Business Practice) Act No.4 of 1996, as amended, do hereby swear/solemnly affirm that I will hold my office as a member of the Consumer Affairs Court with honour and dignity, that I will perform the duties of my office conscientiously and to the best of my ability without fear, favour or prejudice, and that I am not disqualified in terms of the Consumer Affairs (Unfair Business Practice) Act No.4 of 1996, as amended, from holding office as member of the Court.

Deponent

Date

I certify that the deponent acknowledges that he / she knows and understands the contents of this oath/ affirmation and has no objection to taking the prescribed oath /affirmation signed before me at on this day of 20____.

Commissioner of oaths

Date

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