

Draft Letter Example

Competition and Consumer Protection Service
Ministry of Commerce, Industry and Tourism
Address: 6A Andreas Araouzos Str
1421 Nicosia, CYPRUS

DATE

Dear Sirs,

Unfair Commercial Practices Law

I am writing to complain about a property purchase in Cyprus. The specific parties involved are XXX Developers, XXX Bank and lawyer XXX, all of whom appear to have broken Law 103(1) 2007, which your organisation is responsible for enforcing.

Background (for example)

Agents were used in the UK to sell 'investments' which involved the purchase of properties by UK investors from developers XXX, using housing loans from XXX Bank and were allocated Cypriot lawyers whose role it was to represent the buyers' interests during the purchase *in Cyprus* under a power of attorney (POA).

The contractual arrangements for the purchase of the property and foreign currency loan were effected *in Cyprus* by Lawyer XXX under a POA.

The Law

The Unfair Commercial Practices Directive 29/2005/EC, which was introduced into Cyprus law as Law 103(1)/2007 on July 18, 2007, effective from December 12, states that it is a violation for a business to omit or hide material facts *from consumers*, which if had been made known, would have influenced the consumer's economic behaviour and decisions.

Furthermore, 'to materially distort the economic behaviour of consumers' means using a commercial practice to appreciably *impair the consumer's ability* to make an informed decision, thereby *causing the consumer* to take a transactional decision that *he would not have taken otherwise*;

Moreover, the Unfair Commercial Practices Directive also states 'A commercial practice shall be unfair if: it is contrary to the requirements of professional diligence', and that "professional diligence" means that the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with *honest market practices* and/or the general principle of *good faith* in the trader's field of activity;'

I understand also that in respect of complaints 'Where the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism, upon an

investigation, considers that there is a violation, it may - if it deems necessary- apply to the District Court for the issue of a prohibitory or mandatory order, including the interim order, against any person who, according to the Court's opinion is liable for this violation.'

That is to say that you will take court action on my behalf if this is required.

Specific Complaint

a) XXX Developers

I was not informed by them, or their agents, of a pre-existing mortgage from XXX Bank on the development which also encumbered the property I was purchasing, which in the event of their bankruptcy would mean that the bank claim would have priority over my sales contract and legal claim. In addition that the legal ownership could not pass to me until this developer mortgage had been repaid. The risk therefore was that even if I had paid my own mortgage I could still lose the property I was buying if the developer could not service their own mortgage – effectively also on my property.

Had I been told about these significant material facts I would certainly not have bought this property. (Note: even if a Power of Attorney was used this makes no difference, as per the law above, the commercial business needs to inform the consumer and not just their agent).

NB; The Unfair Commercial Practice Directive states 'A commercial practice shall be unfair if: it is contrary to the requirements of professional diligence' and that "professional diligence" means that the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practices and/or the ***general principle of good faith in the trader's field of activity;***

This vital material fact regarding the developer mortgage was not even mentioned in the sales contract (copy attached) – **definite proof of a deliberate act to hide this vital material information.**

It is clear that the developer's deliberate intention not to inform me of this material fact was an illegal act under the above law which therefore renders the sales agreement invalid from the outset due to this illegality.

Accordingly, I wish my deposit of € xxx (or other amount!) to be returned by the developer together with interest at the prevailing rate.

b) XXX Bank

Firstly, I was not informed by this bank or their agents, with whom I signed a mortgage/ loan application, about the pre existing developer mortgage. Had I been informed of this material fact I certainly would not have bought the property or obviously, taken out the loan with which to buy it.

This vital material fact regarding the developer mortgage was not even mentioned in the housing loan agreement (copy attached) - **clear proof of a deliberate act to hide this vital material information.**

(Note: to buyer - this section below needs to be personalised to reflect your own circumstances).** Example:

I was not informed by the bank that I was involved in this particular foreign currency arrangement or the amount involved. This latter amount was then converted to XXX Euros in an Escrow account and the developer allowed by the bank to drawdown on this account during the ongoing construction, without any apparent rationale or indeed without any reference to myself.

The bank failed to warn me of this arrangement where the developer would have unfettered access to my housing loan before the property was completed and that I would therefore incur charges before delivery to me.

Furthermore, XXX Bank did not send the housing loan agreement to me for my approval before proceeding. This document clearly stated in clause 18 *“The debtor states that he has studied and understood perfectly these terms and freely and willingly contracts and signs this agreement with the knowledge of all its provisions.”*

The XXX Bank mortgage document, ‘How it works’, also states “you should receive a ‘letter of offer’ via email from XXX bank.” – This never happened.

(Section ends)**

NB The Unfair Commercial Practice Directive states ‘A commercial practice shall be unfair if: it is contrary to the requirements of professional diligence’ and that “‘professional diligence’ means that the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practices and/or the *general principle of good faith in the trader’s field of activity;*’

It is clear that the bank’s deliberate intention not to inform me of these material facts was an illegal act under the above law which therefore renders the housing loan agreement invalid from the outset due to this illegality.

Should my developer be forced into receivership I also hold the bank fully responsible for any related losses (e.g. deposit) I might incur, as without this mortgage agreement I could have not entered into the sales contract either.

c) Lawyer’s name

I was not informed by my own lawyer about the pre existing developer mortgage.

(e.g. if valid to your case buyer) Nor was I informed of the housing loan details, even though he/she signed the foreign currency housing loan agreement in which

he/she confirmed to the effect that “*The debtor states that he has studied and understood perfectly these terms and freely and willingly contracts and signs this agreement with the knowledge of all its provisions.*”

Had I been informed of these material facts I certainly would not have bought the property, or obviously, taken out the loan with which to buy it.

NB The Unfair Commercial Practice Directive states ‘A commercial practice shall be unfair if: ***it is contrary to the requirements of professional diligence***’ and that ‘‘professional diligence’ means that the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practices and/or the ***general principle of good faith in the trader’s field of activity;***’

It is clear that this lawyer I used was breaking the law in not informing me of the material facts (and moreover, signing documents on my behalf), contrary to the requirements of professional diligence. This illegality in itself makes both the sales contract and the housing loan agreement invalid at their signing, and as such null and void from the outset.

Additionally, I wish that this lawyer returns in full the amounts of (XXX) previously paid to her/him by me, plus interest at the prevailing rates.

I understand that under Article 29 of the Cyprus Constitution I should be due a response from you within 30 days and look forward to your prompt reply.

Yours,

Signature

NAME

ADDRESS and email

CC: XXX Developers

XXX Bank

Lawyer

British High Commission (optional)