



Fraud Law Resources for Oregon and Washington

Washington Consumer Protection Act (CPA)

In order to protect themselves from unfair and deceptive practices, consumers are allowed to bring private suits against individuals and businesses that engage in unfair or deceptive business practices. The consumer may recover actual damages, treble damages (\$10,000 maximum in most cases), and attorney's fees. Two types of actions may be brought under the law: 1) By the Attorney General or 2) By a consumer (under more stringent requirements).

The Washington Legislature enacted the CPA in 1961 and it has been amended in 1970, 1983 and 1987. The CPA governs all transactions between consumers and the public unless exempted by statute. Reasonable business acts and practices and business acts that do not injure the public interest are not prohibited by the CPA. Some agencies have specifically provided for CPA coverage of businesses under their jurisdiction. For example, private CPA suits may be brought against insurance companies under court decision and Insurance Commissioner rule.

In 1986, the Washington Supreme Court established the current five-part test for a private cause of action: the consumer must show an unfair or deceptive act or practice, occurring in the course of trade or commerce that affects the public interest and causes harm to the consumers' business or property. The statute is to be liberally construed to protect the public. Courts have stretched the CPA to cover suits between businesses that affect the public interest like a suit between an insurance company against a chiropractor involved in insurance fraud and a doctor against a drug company.

In *Hangman Ridge Training Stables, Inc. v. Safeco Title Insurance Co.*, (see below) the Washington Supreme Court held that a CPA plaintiff must prove: (1) the business engaged in an unfair or deceptive act or practice; (2) which occurred in trade or commerce (broadly construed); (3) which had a public interest impact; (4) injured the plaintiff's business or property; and (5) which was caused by the unfair or deceptive practice. All five elements are required.

To prove is the first one: an unfair or deceptive act or practice - the complainant must establish that an act or practice has the capacity to deceive the general public or, alternatively, that the act is per se unfair or deceptive (as defined by statute or case law). No intent to deceive is required as long as the conduct has the "capacity to deceive" a significant portion of the general public. One use of a standardized (form) deceptive contract that has a capacity to deceive is sufficient.

Often the most difficult element to prove is number three: the acts affect the public interest. If the action is not a per se violation, the plaintiff must a pattern of business conduct likely to be repeated or with the potential of affecting more than one member of the public using a five-part test: 1) Was the act or practice part of the defendant's business? 2) Was it part of a general course of conduct? 3) Did it take place repeatedly prior to the act involving the plaintiff? 4) Is there a real potential that the act will be repeated after the act involving the plaintiff? 5) If the act was a single transaction, where many consumers were harmed?

Emotional damages even if related to the business or property damage are not recoverable under the CPA.

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