

THE MARYLAND CONSUMER PROTECTION ACT AND TOXIC TORTS

Maryland's Consumer Protection Act ("CPA") prohibits any person from engaging in unfair or deceptive practices in the sale, or offer for sale, of consumer goods. MD. CODE ANN., COM. LAW II §§ 13-303 (Repl. Vol. 1990). Consumer goods are goods "which are primarily for personal, household, family, or agricultural purposes." § 13-101(d). In 1976, the Maryland General Assembly amended the CPA to apply to certain real property transactions, including the sale or rental of consumer realty. *CitaraManis v. Hallowell*, 328 Md. 142, 613 A.2d 964 (1992); *Golt v. Phillips*, 308 Md. 1, 517 A.2d 328 (1986). The statute specifically authorizes a private cause of action for recovery of damages, and possibly attorney's fees. MD. CODE ANN., COM. LAW II §13-408 (Repl. Vol. 1990).

The purpose of the CPA is to establish minimum standards of conduct in the market place and to protect consumers. MD. CODE ANN., COM. LAW II §§ 13-302(b)(1), 13-103(a) (Repl. Vol. 1990); *Consumer Protection Division v. Luskins, Inc.*, 120 Md.App. 102 (1998).

To establish a violation of the CPA, a plaintiff must prove that the defendant engaged in unfair and deceptive trade practices in connection with the sale or offer for sale of consumer goods, causing the plaintiff to sustain injury. *Morris v. Osmose Wood Preserving*, 340 Md. 519, 538-539, 667 A.2d 624 (1995). The deceptive practice must occur in the sale or offer for sale to consumers. A private party suing under the CPA must establish actual injury or loss. *Morris*, 340 Md. at 538.

In Maryland, tenants often assert claims based on a violation of the CPA in lead-paint poisoning cases. See, for example, *Richwind v. Brunson*, 335 Md. 661, 645 A.2d 1147 (1994); *Benik v. Hatcher*, 358 Md. 507 (2000).

In landlord/tenant cases, such as the typical lead-paint poisoning case, Maryland courts have consistently held that the CPA applies only where the landlord engages in the deceptive or unfair practice at the inception of the lease. *Richwind*, 335 Md. at 683. The reasoning is that the landlord is in a better position to know of any defects or hazards on the premises.

Plaintiffs may recover attorneys' fees in cases based on the violation of the CPA.

For additional information, see *Comment: Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices*, 38 Md. L. Rev. 733 (1979).