

The Disclaimer and Exemption Clause Compliance Checklist

For South African businesses that use disclaimer notices, indemnity forms or standard trading terms.
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Start here. Three exclusions are void no matter how well they are drafted. If any of them appear in your documents, fix those first and then work through the rest of this checklist.

1. Liability for your own **gross negligence**, or that of anyone acting for you. Prohibited by section 51(1)(c)(i) of the Consumer Protection Act 68 of 2008.
2. Liability for **fraud or dishonesty**. Prohibited at common law and never enforceable.
3. Any term that **waives a consumer right or avoids a duty** imposed by the Act. Prohibited by section 51(1)(b).

Part 1. Drafting

- ☐ **Gross negligence removed.** No exclusion or limitation of liability for gross negligence appears anywhere in the document.
- ☐ **Fraud and dishonesty removed.** No attempt to exclude liability for dishonest conduct by you or your staff.
- ☐ **Plain language.** A person with average education and no legal training can understand the clause on one reading.
- ☐ **Unambiguous.** The clause says clearly what it covers. Any ambiguity will be read against you as the party who drafted it.
- ☐ **Scope stated.** The clause identifies the specific risks it covers rather than relying on wording such as loss of whatsoever nature.
- ☐ **Severability.** The agreement provides that if one term is found void the remainder survives.
- ☐ **No waiver of statutory rights.** The document does not purport to remove rights the Act confers, including the right to quality service under section 54(1)(b).
- ☐ **Reviewed against section 48.** Nothing in the document requires the consumer to assume a liability that would strike a court as unfair or one sided.

Part 2. Notice and display

- ☐ **Point of entry.** The notice is displayed where a person would ordinarily expect to find it, at the entrance and before commitment.
- ☐ **Every access point.** The same current notice appears at every entrance, not only the main one.
- ☐ **Unobstructed.** Nothing blocks the notice. Check for stock, plants, promotional material, seasonal displays and parked equipment.
- ☐ **Distinct heading.** The heading is in large print and clearly separated from the body text.

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- ☐ **Legible body text.** The body of the notice can be read at a glance from where a person naturally stands, not only close up.
 - ☐ **Height and lighting.** The notice is at eye level and adequately lit at all trading hours.
 - ☐ **Signed forms.** Any risk or indemnity clause on a signed form has its own heading and its own initial or signature.
 - ☐ **Copy provided.** The customer is given a copy of anything they sign, and this is part of the standard procedure.
 - ☐ **Digital equivalents.** Online terms require a positive tick before the transaction completes. Pre ticked boxes and browsewrap do not satisfy section 49.

Part 3. Evidence, because you will need it years later

- ☐ **Dated photographs.** Each notice is photographed on installation and at regular intervals, showing its position in context and not only a close up.
- ☐ **Installation records.** Invoices, delivery notes or signage orders are filed and retrievable.
- ☐ **Inspection log.** A named person checks the notices on a schedule and signs off that they are present and unobstructed.
- ☐ **Staff who can testify.** At least two current employees can confirm from personal knowledge that the notice was in place on any given date.
- ☐ **Version control.** Superseded wording is kept on file with the dates it was in use.
- ☐ **Change of ownership.** Signage naming a previous owner has been replaced. Inherited notices have already cost defendants their disclaimer defence.
- ☐ **Operational records.** Cleaning schedules, maintenance logs, incident reports and clinical or service notes are complete, contemporaneous and legible.
- ☐ **Retention period.** Records are kept for at least three years after the event, and longer where a minor may be involved.

Part 4. Governance and claims handling

- ☐ **Ownership assigned.** A named executive is responsible for disclaimers, notices and standard terms across the business.
- ☐ **Full inventory.** Every clause and notice in use has been identified. Most businesses have more of them, in more places, than the executive realises.
- ☐ **Staff training.** Reception, admissions and floor staff know what to say and what not to say, and the training is documented.
- ☐ **Incident procedure.** Staff know to record an incident immediately, in writing, with the time, the conditions and the names of witnesses.

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- ☐ **Insurance aligned.** Cover is priced on the assumption that the clause may fail, not on the assumption that it will hold.
 - ☐ **Settlement policy.** It is clear who assesses an offer to settle, on what evidence and by when. An unreasonable rejection now attracts costs on the attorney and own client scale.
 - ☐ **Scheduled review.** The whole document set is reviewed annually, and immediately on any acquisition, refurbishment or change of premises.
 - ☐ **Legal sign off.** The wording has been reviewed by an attorney against the Consumer Protection Act, not merely copied from another business.

Two points worth remembering

A term prohibited by section 51 is void by operation of the Act, and no court order is needed. A term attacked under section 48 as unfair requires a court or the Tribunal to declare it so and to grant relief under section 52. The first is fatal. The second is a fight.

Most disclaimers that fail in court fail on how they were displayed, not on how they were written. That makes this largely a management problem, and it is one you can fix this month.

Have your terms reviewed before someone else tests them

We review exemption clauses, disclaimer notices, admission forms and standard trading terms for hospitals, clinics, retailers, landlords, gyms, schools, event organisers and service businesses. We tell you which parts are void, which are vulnerable, and what has to change on the premises rather than only on the page.

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Every email we receive is followed up with a phone call.

This checklist is general information about South African law current at 24 August 2026 and is not legal advice on your particular situation. Bregman Moodley Attorneys Inc., taking the sting out of legal problems since 1974.