

A Great acquisition for the Property Industry

The New Property Practitioners Act

By Lezanne Taylor

Introduction

President Cyril Ramaphosa signed the **Property Practitioners Act, Act 22 of 2019** [*hereafter referred to as "PPA"*] into law in September 2019. This Act were created with the intend of seeking the regulation and transformation of the property industry. In addition, it seeks to afford more protection to consumers. The PPA will *inter alia* place some new obligations on property practitioners, including mandatory display of fidelity fund certificates, the reviewing of trust account requirements and training of candidate property practitioners.

The PPA repeals the Estate Agency Affairs Act [*hereafter referred to as "EAAA"*]. This is the first time in thirty years that this legislation is being amended. The PPA now includes the entire spectrum of Property Practitioners^[1] involved in the purchase, sale and leasing of properties, the administration of properties and general dealing in property from funding through to the transfer of properties. This will however exclude attorneys and candidate attorneys; the Sheriff of the Court; A natural person who owns the property that in the ordinary course of their business sells the property belonging to him or her in their personal capacity.

The **PPA came into effect on 1 February 2022**, and with it now being operational, it has also brought about the creation of the **Property Practitioners Regulatory Authority** [*hereinafter referred to as the "PPRA"*]. The aforementioned is aimed at strengthening the regulatory aspect of the human settlements sector. Collectively, the entities herein involved, together with the national department, provincial departments and municipalities form a human settlements delivery [system](#) is critical for the implementation of our priorities.

Some important aspects relating to the PPA

Practitioners under the PPA, will now be referred to as *inter alia*: Property Practitioners; Candidate Property Practitioners and Principal Property Practitioners as opposed to being referred to as Estate Agents. Further, and as also held by the PPA's predecessor the requirement in respect of holding a valid Fidelity Fund Certificate [*hereinafter referred to as "FFC"*], the PPA goes further and sets into motion further requirements inclusive of a mandatory policy that requires all practitioners to have a valid FFC, a valid tax clearance certificate and a BEE certificate at the time of transaction. The Act elaborates that no commission may be claimed by practitioners if without a valid FFC. The PPA set as a further requirement in respect of any transaction, relating to property that a defect disclosure form must be annexed and attached to the agreement of sale and the seller's mandate. This aforementioned which was only a courteous gesture, under the EAAA has now become mandatory and failure to comply will result in the legal assumption that no defects were disclosed. The PPA also now promotes freedom of choice, by virtue whereof contracting of specific service providers will be excluded. As a result, consumers may now reserve the right to choose any conveyancer they deem fit. The PPRA may also in terms of the PPA appoint an inspector. The inspector will play a supervisor role, in transactions and will ensure fair and legal transactions across the board. The inspector has the authority to force compliance in accordance with the PPA, and issue out a compliance notice to property practitioners. Failure to comply with the inspector's compliance notice may lead to a reasonable fine. Every property practitioner must now also for a period of five years retain: (i) all documents exchanged with the Authority; (ii) all agreements, mandates and mandatory disclosure forms relating to financing, sale, purchase, or lease of property; and (iii) any advertising or marketing material relating to the carrying on of business as a property practitioner. For the purposes of providing redress in respect of the contravention of a code of conduct or other sanctionable conduct in terms of the PPA, the Minister may prescribe indemnity insurance which a property practitioner must take out and maintain.

The Regulatory Authority

The Act has established the Property Practitioners Regulatory Authority. The aforementioned regulatory body replaces the once known Estate Agency Affairs Board. The PPRA was created with to ensure compliance with the Act; to be a watch dog in respect of the conduct of all property practitioners; and the validity of all property transactions, and to become involved in educating property practitioners.

The Act also affords the PPRA with a dispute resolution function. It can thus receive complaints from consumers and parties described under the act, will refer the disputes for mediation process, and appoint independent mediators to deals with said complaints.

Lease or sale agreement must be in the official South African language requested by the purchaser or lessee.

The Act provides for the creation of a Property Sector Transformation Fund which will apply to all property practitioners, and which must be used by the PPRA. An inherent facet to the PPA is transformation, as already mentioned. The aforementioned transformation must include the promotion of black-owned firms; the inclusion of historically disadvantaged persons in the property sector; and to promote consumer awareness. Government is obliged to utilise the services of property practitioners compliant with BBBEE and employment equity legislation.

Like in all other legislation, provision is made for exemption from provisions under the act, which has to be brought on application to the necessary authority. Although the Act does not stipulate the grounds for the granting of exemptions, it does provide certain relevant considerations.

Practical application of the PPA

A home inspection should be conducted, wherein defects must be disclosed. There are generally two types of defects, namely patent defects which are those that are visible to the naked eye, and latent defects which usually relate to structural issues and are more difficult to spot. The property practitioner, in terms of the new PPA, MUST undertake a thorough inspection and the seller must point out all defects, regardless of whether they are patent or latent. Patent defects could include aspects such as cracks in the walls, sagging gutters, cracked or broken windows, damaged light switches, cracks around the swimming pool, deteriorated woodwork, damaged cupboards, cracking paintwork, cracked tiles, and damage to carpets, laminate, or wooden flooring. Latent defects include structural issues such as unsteady walls, leaking roofs, faulty geysers and swimming pool pumps, and rising damp.

Buyers should be mindful that once the contract is signed it becomes more difficult to act and can be costly if legal action is required. It will also put the buyer in a position to request repairs or negotiate reparations as part of the conditions of sale.

Conclusion

All and all, the PPA is a welcome addition to the Property Industry, in that the consumer -focus thereof, will provide for much needed protection.

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[1] property practitioner is any person who, for the acquisition of gain, directly or indirectly, on the instructions or on behalf of another: sells, purchases, manages or publicly exhibits for sale any property or business undertaking; leases or hires or publicly exhibits for hire any property or business undertaking; collects or receives money payable for a lease; provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or lease of a property or business undertaking; and/or renders services as an intermediary to effect the conclusion of an agreement to sell or let a property or business undertaking (except where this is not done in the ordinary course of the person's business; where it is done by a natural person in their personal capacity, or where the person is an attorney, candidate attorney or sheriff).