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CORPORATE & COMMERCIAL AND REAL ESTATE ALERT

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Property Practitioners Act: Obligations for property practitioners

What has happened to the Property Practitioners Act 22 of 2019 (PPA)? The President has signed the PPA into law, but the date of commencement is still to be determined. The PPA will repeal the Estate Agency Affairs Act 112 of 1976 (EAA) in its entirety. Draft regulations were published for public comment in March 2020. However, as things stand, there is no firm indication as to when the PPA will come into force.



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Property Practitioners Act: Obligations for property practitioners

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What has happened to the Property Practitioners Act 22 of 2019 (PPA)? The President has signed the PPA into law, but the date of commencement is still to be determined. The PPA will repeal the Estate Agency Affairs Act 112 of 1976 (EAA) in its entirety. Draft regulations were published for public comment in March 2020. However, as things stand, there is no firm indication as to when the PPA will come into force.

When the PPA does come into effect, it will place a number of new obligations on property practitioners, including some that are not currently contained in the EAA. So, what are the principal obligations of property practitioners under the PPA?

Certification, trust accounts and record keeping

Fidelity Fund Certificates (FFCs) must be easily available for consumers to inspect. FFC holders must have their certificate prominently displayed in every place of business where they conduct property transactions. The FFC holder should also ensure that the prescribed sentence regarding holding a FFC is reproduced on any letterhead or marketing material. Importantly, in any agreement relating to property transactions, the FFC holder must include a prescribed clause guaranteeing the validity of the certificate.

Every property practitioner must also:

- open and keep one or more separate trust account/s;
- appoint an auditor;
- provide the Property Practitioners Regulatory Authority with all information regarding the trust account/s and auditor appointed;
- deposit all trust money in the relevant trust account; and
- keep separate accounting records for the trust account/s and have them audited.

The PPA also requires property practitioners to keep accounting records and other documents for a period of five years, including: all documents exchanged with the Property Practitioners Regulatory Authority; all agreements, mandates and mandatory disclosure forms relating to the financing, sale, purchase or lease of property; and any advertising or marketing material that relates to the carrying on of business as a property practitioner.

Remuneration and insurance

A property practitioner is not entitled to any remuneration unless the property practitioner and, if a company, every director of the company, is in possession of a FFC. A conveyancer may not pay any remuneration or other money to a property practitioner unless the property practitioner has provided the conveyancer with a certified copy of the relevant FFC.

Every property practitioner must comply with the prescribed code of conduct that will be published by the Minister of Human Settlements. To provide redress when a code of conduct or other sanctionable conduct in terms of the PPA is contravened, the Minister of Human Settlements may prescribe indemnity insurance that a property practitioner must take out and maintain.

All property practitioners must also comply with the Property Sector Transformation Charter Code, which is still to be published.

Consumer-focused

The PPA is a consumer-focused piece of legislation that has been designed to protect consumers in the property industry. In line with this, the PPA obliges property practitioners to deliver a "disclosure form" to a seller/lessor before concluding a mandate, and to a purchaser/lessee before making an offer.

Property Practitioners Act: Obligations for property practitioners

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Section 58(2) of the PPA outlaws any type of practice in which a practitioner provides a consumer with an incentive to use a particular conveyancer or service provider.

The disclosure form must be signed by all parties and attached to the sale or lease agreement. If no disclosure form is signed and attached, the PPA provides that the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchaser. A property practitioner cannot accept a mandate unless the seller or lessor has provided a fully completed and signed disclosure form.

Impact on service provider selections

Section 58(2) of the PPA outlaws any type of practice in which a practitioner provides a consumer with an incentive to use a particular conveyancer or service provider. This is probably one of the most debated sections of the PPA, with significant practical ramifications for the way property practitioners do business.

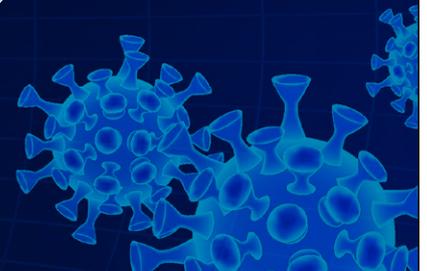
These obligations are clearly intended for the protection of consumers. Any property practitioner in contravention of the PPA will be required to repay any fees received for a property transaction and may be issued with a fine. Furthermore, any person convicted of an offence in terms of the PPA is liable to pay a fine, or to imprisonment for up to 10 years. Thus, even if property practitioners do not hold monies in trust, they will need to comply with the remaining obligations in terms of the PPA.

Property practitioners should familiarise themselves with these requirements so they can be ready to implement them when the PPA comes into effect.

Justine Krige

CDH'S COVID-19 RESOURCE HUB

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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