Property Practitioners Act versus the old EAA Act - here's what's changed

Launched on Tuesday, 1 February, the Property Practitioners Act 2019 (PPA) effectively repeals the old Estate Agency Affairs Act 1976 (EAA Act), aims to protect the interests of consumers, provides for the transformation of the property market and aims to facilitate property ownership to more South Africans through structured interventions.

Kagiso Mahlangu, real estate lawyer and conveyancer at CMS South Africa

The Act, for example, directs the Property Sector Transformation Fund to allocate and make available no more than 75% of the grants received annually towards the development, promotion, and support of historically disadvantaged property practitioners. The fund is also tasked, among other things, with the responsibility to facilitate ownership in property investment by historically disadvantaged individuals.

Monitoring estate agency matters

The Act is geared to address the deficiencies in monitoring estate agency matters. It, therefore, makes it unlawful for a property practitioner to obligate or encourage a consumer to use a particular service provider, such as a specified attorney or conveyancer.

There are some exemptions, however, which affect particular areas of the industry. This is according to Kagiso Mahlangu, real estate lawyer and conveyancer at CMS South Africa, who says: “For example, any person may apply to the Board of Authority to be exempted from any provision of the PPA by submitting an explanation of the reasons for the application accompanied by the supporting documents.”

“In examining such applications, the board may consider whether the granting of an exemption is likely to negatively impact the general public, consumers’ rights, competition in the property sector, or the objects of the Act, amongst other things,” adds Mahlangu.

Some of the differences between the PPA and the EAA Act include the fact that the PPA is regulated by the Board of Authority, unlike the EAA which was regulated by the Estate Agency Affairs Board of South Africa.

Kubayi launches Property Practitioners Regulatory Authority

1 Feb 2022

Range of professionals subject to the Act

Nomaswazi Nkabinde, candidate attorney at CMS South Africa, adds that the new law expands the range of professionals subject to the Act: “This now includes candidate property practitioners, property practitioners, principal property practitioners, sales and rental agents, auctioneers, business brokers, property managers, providers of bridging finance, bond brokers (excluding financial institutions), and property developers.”

The PPA covers trusts that perform the work of property practitioners and, for the purposes of certain sections of the Act, the definition includes a director of a company or member of a close corporation in the business of property practitioners, etc. "It is important also to note that the Act does not apply to persons selling their own properties, the Sheriff of the Court, and attorneys and candidate attorneys who are allowed to perform property practitioner activities without registering with the authority if operating in the name of, from the premises of and in the course of the law firm only, e.g., the sale of property as part of a deceased estate or during litigation," says Nkabinde.

Nomaswazi Nkabinde, candidate attorney at CMS South Africa

Additional regulatory measures brought about by the PPA

The PPA tightens the regulations around Fidelity Fund Certificates beyond the current requirements. Conveyancers are therefore prohibited from paying any commission to a property practitioner without receiving a certified copy of a Fidelity Fund Certificate valid during the period or on the date of the transaction to which such payment relates and on the date of such payment.

The Act further provides that the government must use the services of property practitioners who comply with broad-based black economic empowerment (B-BBEE) and the employment equity legislation.

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On property practitioners

The Act further details that property practitioners receiving funds from property transactions will be required to utilise a trust account and keep the accounting records separately (which must be audited) for a period of five years. A property practitioner whose turnover is below R2.5m will be exempted but should still employ the services of a registered accountant to independently review the account.

Property owners and disclosures

Unlike the old Act, which did not mandate disclosures on the side of property owners, the new Act requires owners to complete the property defects disclosure form prior to the property practitioner accepting a mandate, which shall form part of the property sale/lease agreement and thus be signed by all relevant parties when concluding such an agreement. Both the owners and the potential buyers of the property may obtain professional advice/inspection of the property.

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Wilco du Toit 26 Jan 2022

Code of Conduct

Lastly, the PPA declares that every property practitioner must comply with the prescribed Code of Conduct published at the time by the minister of human settlements. A property practitioner must, on request, provide a consumer with a copy of the Code of Conduct. And, any person found to be in contravention of the PPA may be fined, required to repay any fees received for a property transaction, or face imprisonment for a period not exceeding 10 years.

“The PPA is significantly stricter and more comprehensive than the EAA Act. In light of the serious consequences of non-compliance with the Act, any person who may fall within the ambit of the definition of property practitioner would be advised to seek guidance from a legal practitioner and ensure strict compliance with the provisions of the Act,” Mahlangu concludes.