

Buyers at risk with delay of Property Practitioners' Bill

The publication of the new Property Practitioners' Bill has been delayed and the absence of this law compromises the consumer protection of all South African home buyers says John Graham, founder of HouseCheck.

Last year the Department of Human Settlements and its subsidiary the Estate Agency Affairs Board were hard at work on the new Property Practitioners Bill (PPB) which is planned to accomplish the following:

- Convert the Estate Agency Affairs Board into the Property Practitioners' Regulatory Authority (PPRA).
- Tighten-up governance by the PPRA of estate agents who, in terms of the PPB, are to become known as "Property Practitioners".
- Regulate home inspectors (also called property surveyors), who are now to be called Property Assessment Practitioners (PAPs). The PPRA is to regulate both training standards and the professional activities of PAPs.
- Remove all jurisdiction of consumer protection, as this relates to property transactions, from the ambit of the Consumer Protection Act (CPA) and bring this under the jurisdiction of the PPRA.

Government's intentions for the proposed PPB are extremely praiseworthy. Property consumers, especially first time home buyers, are in dire need of protection.

- Most South African homes are sold voetstoets. This is a legal measure which skews consumer protection sharply in the favour of the seller - leaving home buyers extremely exposed, particularly if they are uninformed as to the true condition of the house.
- Sellers, who are not property professionals, are also exempt from the authority of the CPA. This means that the only consumer protection available to aggrieved home buyers, who feel they have been ripped off by the seller, is the courts. Legal processes are an expensive, time-consuming and stressful experience which few home buyers are willing to follow through on.
- As regards consumer protection for buyers, who believe they have been unfairly treated by estate agents, the interpretation of the CPA has become a legal quagmire since it became law a few years ago. The Consumer Protection Commission, which operates under the aegis of the CPA, believes that estate agents, as property professionals, are accountable under the CPA. Yet there are many lawyers representing estate agencies, who beg to differ. They point to the fact that the CPA specifically does not apply to intermediaries who are controlled by other national legislation - in the case of estate agents this is the Estate Agency Affairs Board Act, ergo estate agents are not answerable under the CPA.
- This legal conflict regarding the CPA has yet to be resolved in the courts. In the meanwhile the South African property consumer is horribly exposed to risk when buying a previously owned home voetstoets from a seller, who is not a property professional.

The intention of the PPB to move consumer protection for property consumers to a specialised agency such as the proposed PPRA is certainly the sensible way for government to go. Tightening up on the disclosures made by estate agents to property consumers and regulating the activities of home inspectors completes the virtuous circle of consumer protection for innocent home buyers. These are people who are about to make the biggest investment of their life - voetstoets - with little or no objective information as to the true condition of their dream home.

When the new Property Practitioners' Bill was announced last year everyone cheered. John Graham (HouseCheck) and Eric Bell (Inspect-a-Home), South Africa's two biggest home inspection companies, both welcomed the move. So did various estate agency bosses. Some agencies even changed their offer to purchase documentation to include the option of a home inspection.

Bryan Chaplog, CEO of the EAAB, announced on national TV last November that the PPB was expected to be published for public comment in December 2014. Chaplog predicted that the PPB would become law before the end of 2015. Already we sit in June 2015 and nothing has happened. Chaplog informed HouseCheck last month that: "We do not have any information on this matter and await the law makers to provide us inputs and timelines."

Lengthy delays in government passing new laws are nothing new and with Eskom, Marikana, Nkandla, FIFA and the EFF to preoccupy its collective mind, perhaps the Cabinet can be excused for its tardiness in finalizing its praiseworthy intentions to protect home buyers via a more effective property law.

Meanwhile the major players in the South African real estate world - the banks and the estate agencies - need to raise their voices and pressurize the government to move forward with the PPB.

Scarcely a week goes past that I am not contacted by a stressed home buyer who has discovered previously undisclosed defects with their new home - sometimes extremely serious problems. In most of these cases, I am sorry to report, the seller and the seller's estate agent and conveyancing attorney have often proved to be less than helpful.

The solution for effective consumer protection for home buyers is really very simple:

- Require estate agents to provide written confirmation that they have properly explained the implications of any voetstoots clause to the home buyer and advised the home buyer to make their offer to purchase contingent on a satisfactory and impartial inspection report.
- Regulate the training, qualifications of home inspectors to better protect home buyers employing the services of these property practitioners.

In many parts of the world, getting a home inspection report is a no-brainer for home buyers. In the USA eight out of ten home buyers commission and pay for a professional home inspection report before finalizing their purchase. In South Africa perhaps less than one out of every 200 home buyers do so.

The government, the banks, the estate agencies and the conveyancers should hang their heads in shame for permitting such shoddy consumer protection to be perpetuated in the multi-billion rand South African residential industry. What is needed is a multi-million rand public awareness publicity campaign, by banks, estate agencies and lawyers, to make home buyers better aware of the huge financial risks they are taking in buying a home voetstoots without first confirming the true condition of the property via a home inspection report.

Estate agencies and the EAAB should also be disciplining agents who don't do a thorough job in counselling buyers regarding how to mitigate the risks of buying homes voetstoots.

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