

Proposed Property Practitioners Bill will have far-reaching effects

Gazetted in March 2017 for comment, the long-awaited Property Practitioners Bill is intended to repeal the Estate Agency Affairs Act 112 of 1976 and transform the entire property market.

If passed into law in its present form, it will have far-reaching effects in the real estate industry, but will also provide for improved consumer protection.

As we know, the purpose of the bill is to provide for the regulation of property practitioners (estate agents). However, in terms of Section 1 of the new bill, this definition has been expanded to include anyone -

- who provides or markets bridging finance
- who is a bond broker / mortgage originator
- who lets or hires property or manages / negotiates the transaction
- who collects or receives any monies payable in respect of a lease or a property
- who assesses property to determine defects as part of the conclusion of an agreement to sell / purchase or hire or let property
- who sells or markets, promotes or advertises properties including time share / development
- who manages a property on behalf of another for payment
- who is employed by a property practitioner

The Bill is not applicable to persons who do not attend to property transactions in the ordinary course of their business, individuals selling their own property, attorneys or candidate attorneys and sheriffs of the court.

Storme Heath, Director at C&A Friedlander, says, "Of significance, though, in this instance, is that the condition that a person earns some sort of gain for their services has been removed from the definition. This means that even persons performing the above functions without reward may still be thought to be property practitioners, and therefore subject to the regulatory requirements."

The new Bill is also intended

- to provide for the continuation of the EAAB as the Property Practitioners Regulatory Body and for the appointment of the members of the Board, CEO and staff members of the EAAB;
- to provide for the establishment, appointment, powers and functions of the Property Practitioners Ombud Service;
- to ensure the continuation of the Estate Agents Fidelity Fund;
- and to provide for consumer protection.

Heath adds that with the establishment of the Property Practitioners Ombud, the bill now takes the responsibility for consumer complaints away from the regulatory authority and entrusts it to an independent body, the Ombud, who is charged with representing the interests of the public and who will follow an approved process in dealing with complaints.

This will also allow for mediation and resolution, in the hope that the less serious issues will be dealt with fairly, quickly and efficiently. "The Ombud may also hear disputes between property practitioners, but only if both parties agree."

Consumer protection is further boosted by the repayment of any compensation earned by a property practitioner whilst not in possession of an FFC (Fidelity Fund Certificate), "estate agent's licence" with the costs to be refunded to the person who provided the compensation.

Furthermore, a property practitioner may not accept a mandate to sell or let a property without a binding disclosure from the seller or landlord for commercial and residential properties that will form part of the sale or lease agreement, in which any defects or flaws are disclosed.

An aspect of some controversy, if passed into law, and likely to generate much litigation, will be the increased powers of inspectors from the regulatory authority who will have the authority at any reasonable time and without prior notice to conduct an inspection and seize and/or retain FFC certificates and certain articles, without a warrant.

So, we await an additional revision of the Bill, as some of these proposed provisions are unlikely to be passed, following further comment and input from the industry.

C&A Friedlander Press Release