

Unpacking the Property Practitioners Act and what it means for community housing schemes

While much has already been said about the Property Practitioners Act (PPA) which came into effect earlier this year, there are some provisions and changes specific to community housing schemes that need much closer examination, says Andrew Schaefer, MD of Trafalgar.



Source: www.pixabay.com

“Firstly, it is interesting to note that the PPA also applies to any homeowners’ association (HOA) which sells, rents, auctions, manages or even shows any property in its own community housing scheme, for any kind of financial gain.

“It also applies to the employees of any HOA that is deemed to be acting as a property practitioner, such as a caretaker or onsite property manager. What this means is that the HOA on an estate, for example, cannot earn fees by sourcing tenants and renting out homes on behalf of absentee owners, unless it is a registered property practitioner in possession of a valid Fidelity Fund Certificate (FFC).

“In addition, the developers of new community housing schemes may not now sell any stands or homes in these schemes themselves unless they register as property practitioners.”

Service provided for gain requires written mandate

Secondly, he says, the Act says that any property practitioner who is providing a service for gain must have a written mandate. “And what this means is that any HOA or sectional title body corporate that appoints a managing agent will now need to give them a written contract that clearly sets out what services they must provide in return for their fees.

“Of course, the other side of that coin is that anyone who manages any property on behalf of someone else, whether it is one rental property, a sectional title complex or an estate, must also be a registered property practitioner in terms of the PPA – although there is still some uncertainty about which support staff in property management and sales agencies need to be registered. So as usual, HOA directors and body corporate trustees would do well to check that anyone they hire is fully compliant. This is even more important if the managing agency will be collecting levies and paying the accounts of the community housing scheme.”

(The registration requirements for property practitioners and potential penalties for non-compliance are clearly set out in the Act itself, which can be read [here](#).)



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Mandated disclosure

Schaefer says a third aspect of the PPA which is specific to community housing schemes concerns the property practitioner’s legal duty to take reasonable steps to ensure that any property consumer they are dealing with does not suffer damages due to any oversight on their part. “This means, for example, that property practitioners should always explain the material terms of any sale, leasing or service contract to their clients, and that they should ensure that the contract reflects the true intentions of all parties in clear and accessible language.

“In addition, they are obliged to tell the buyer or tenant everything they know about the property that might possibly influence their decision to buy or rent, or the price they are prepared to pay. To this end, the Act makes it mandatory now for an estate agent or broker to obtain a signed disclosure document from the seller or landlord before accepting a mandate, to present that document to potential buyers or tenants, and to make it part of the sale or lease agreement.

“However, in the case of community housing schemes, we believe full disclosure should also include a copy of the conduct rules, the financial state of the scheme, information about any special levies in force, and accuracy when it comes to describing ‘exclusive-use’ garages, gardens and storerooms.”



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'Accreditation fees'

Then finally, he says, there is the thorny issue of the “accreditation fees” which have until now been charged by many HOAs in return for giving selected estate agents or agencies exclusive rights to market properties within specific estates.

“Under Regulation 35 of the PPA, this practice is now specifically and unequivocally prohibited as an undesirable practice,

as defined in Section 63 of the Act, and the effects of that will be that all agents and agencies will now be able to compete on an equal footing to secure sale or rental mandates in estates, and that owners will also not be restricted in their choice of property practitioner to market their homes.

(The gazetted Property Practitioner Regulations 2022 can be read [here](#).)

“However, HOAs concerned about the effects this change might have on the appearance and security of their estates may now want to consider some new rules on the use and removal of for sale boards and perhaps specific access times for agents and prospective buyers or tenants. These rules would then need to be filed with the Community Housing Schemes Ombud before they could be put into practice.”

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