

Property Practitioners Act: What landlords and tenants need to know

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The Property Practitioners Act now just needs the president's signature to come into effect, and when it does it will bring about many significant changes in South Africa's property sector.



Image source: Gallo/Getty

It will not only replace the Estate Agents Act, which has been in force since 1976, but will considerably broaden the scope of that legislation to cover commercial property brokers, bond originators, home inspectors, home owners' associations, companies selling timeshare and fractional title, property developers and property managers as well as "traditional" estate agents.

The new legislation also defines a managing agent as anyone who collects or receives any money payable in respect of a leased property or business undertaking or who provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management of leased properties.

Protection for landlords and tenants

Thus everyone who sets up in business to let and manage rental properties will now fall under the provisions of the new Act as regards trust accounts and the management of client's deposits and monthly rentals, for example, and that means better protection for both landlords and tenants. All managing agents will also need to hold a valid Fidelity Fund Certificate (FFC) in order to claim commission on any new or renewed leases.

The Act also provides for a new Board of Authority to replace the current Estate Agency Affairs Board, as well as further protection for landlords, tenants and other consumers of property services in the form of a separate and independent Property Practitioners Ombud to deal with any complaints against property practitioners.

The new law allows for both mediation and adjudication as part of the process for dealing with such complaints, and this should help the Ombud's office to resolve most matters quickly and efficiently. However, it is important to note that disputes between tenants and landlords will still need to be taken before the Rental Tribunal.

Other important provisions of the new legislation for landlords and tenants to note include the following:

- A defects disclosure form is now a mandatory part of any property sale or lease agreement. The Act says that a property practitioner may in fact not even accept a mandate to sell or let a property without a disclosure form from the seller or landlord. What is more, if a disclosure form is not included in a sale or lease agreement, that agreement will be interpreted in law as if no defects or deficiencies were disclosed.
- The buyer or tenant of any property can request the sale agreement or lease in whichever of SA's official languages they prefer, and the seller or landlord or managing agent must comply. To assist them, sample contracts in all languages are to be provided on the new Board of Authority's website.
- In order for a property practitioner to legally claim commission on a property sale or lease, every other property practitioner in their agency must also hold a valid FFC. To qualify for an FFC, the practitioner themselves must produce a current tax clearance certificate and any appropriate BEE certification. What is more, practitioners who don't have a valid FFC when a sale or lease contract is signed could be required to refund any commission paid by the property seller or landlord, on demand.

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