

The Property Practitioners Act and its impact on the property sector

By [Lethabo Mashishi](#)

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The long-awaited Property Practitioner Act 22 of 2019 came into operation on 1 February 2022. The Act has brought significant changes to the property sector. Amongst others, the Act recognises the need for transformation within the property sector and the protection of consumers.



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As a start, the Act has broadened the scope of its application by consolidating all role players in the property sector under this Act. The introduction of the concept of a “property practitioner” does not only refer to estate agents, but now includes other role players such as bridging financiers, property developers and property managers, to name a few.

Mandatory disclosure forms

The Act offers much needed protection to consumers by imposing an obligation on property practitioners to request sellers or lessors to produce a duly completed and signed mandatory disclosure form. This is a form that discloses all defects on the property that are known to the seller or the lessor. In terms of Section 67 of the Act, a property practitioner may not accept a mandate if this form is not produced.

If this form is not produced, the Act provides that it will be interpreted as if no defects or deficiencies on the property were disclosed to a potential purchaser or lessee and further that a property practitioner who accepted a mandate without this form being attached to the agreement of sale or lease agreement may be held liable by the affected consumer.



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Limitation on relationships

Another way of ensuring consumer protection is the introduction of Section 58 which places a limitation on the relationships that property practitioners have with other property market service providers. Section 58 provides that a property practitioner may not enter into an arrangement whereby a consumer is obligated or encouraged to use a particular service provider, including an attorney to render any service of which that property practitioner was the effective cause. A person who renders services in contravention of Section 58 is not entitled to any remuneration, payment or consideration in respect of such services rendered.

The Act requires a property practitioner to be in possession of not only a Fidelity Fund Certificate, but also a Tax Clearance Certificate and BEE Certificate. Section 56 of the Act provides that a property practitioner shall not be entitled to remuneration or payment, unless at the time of performance of their duties, such property practitioner was in possession of a valid Fidelity Fund Certificate. If the property practitioner is a juristic entity, i.e., company, close corporation, trust or

partnership, every director, member, trustee or partner must have a Fidelity Fund Certificate. The said certificate is valid for a period of three years. The Act imposes an obligation on conveyancers to request a copy of the Fidelity Fund Certificate from a property practitioner before making any payment to the said property practitioner.



Kubayi launches Property Practitioners Regulatory Authority

1 Feb 2022



Establishment of Property Practitioner Regulatory Authority

In order to address the inequalities and bring about transformation within the property sector, the Act provides for the establishment of a Property Practitioner Regulatory Authority. The authority must from time to time implement and assess measures to progressively promote an inclusive and integrated property sector, implement appropriate measures and assess the state of transformation within the property sector. Section 20 of the Act provides that when procuring property-related goods and services, all organs of state must utilise the services of property practitioners who comply with the broad-based Black economic empowerment and employment equity legislation and policies.

The Act further requires the Authority to open a Property Sector Transformation Fund within six months of its establishment. The authority must utilise the Property Sector Transformation Fund in a manner that will promote Black-owned firms and principals, encourage the participation of historically disadvantaged groups within the property sector and promote awareness of property transactions and business undertakings.

Far-reaching impact

It is clear that this Act will have a far-reaching impact on the property sector. As this Act has just been recently implemented, we are yet to see its practical application within the sector. It is advisable for everyone who falls under the definition of property practitioner to familiarise themselves with the provisions of this Act or seek legal advice in order to understand the implication and application of this Act to their business.

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