

New Property Practitioners Act set to tighten up property legislation

Chairperson of the Real Estate Business Owners of South Africa (Rebosa) Tony Clarke has welcomed the introduction of the new Property Practitioners Act (PPA), set to commence as of 1 February 2022. This is a step in the right direction for an industry previously plagued by unclear and often poorly implemented legislation, says Clarke.



Tony Clarke, chairperson of Rebosa

“The PPA clears up a lot of the grey areas in the previous legislation,” he says. “We’re really looking forward to the clarity it brings, along with the additional protection it gives consumers by formally legislating processes that we’ve considered best practice for some time.”

Disclosure

One of the most important new consumer protections, according to Clarke, is the now-compulsory inclusion of a comprehensive property defects disclosure document for both property sales and rentals.

“At Rebosa, we’ve been encouraging this for several years now,” says Clarke, “but under the PPA, it will be officially illegal to accept a mandate from a seller or a landlord without receiving a comprehensive disclosure document first. This document must be signed by all parties and attached to the sale or lease agreement. It’s a valuable reinforcement of our ethical responsibility to ensure open and honest property transactions.”

Certification

Disclosure isn’t the only area in which the PPA is tightening up on legislation. It also requires any business earning a commission or brokerage from the sale or lease of a property to hold not just a valid Fidelity Fund Certificate (FFC), but tax clearance and BBE certificates as well.

To reduce the administrative burden, however, new FFCs will be valid for a period of three years instead of one. Fees have also been standardised across all professional levels. Only candidate property practitioners will pay a different, reduced fee for the first two years of their candidacy, after which the standard fees will apply.

“We’re particularly pleased with the fact that FFCs are also no longer linked to a specific employment position,” says Clarke. “Certificates will now remain valid if an agent progresses to principal, for example, or changes employers.”

As for the issuance and policing of FFCs, Clarke is hopeful that processes will be better managed under the Property Practitioners Regulatory Authority or PPRA which replaces the Estate Agency Affairs Board.

For now, digital application processes and downloadable FFCs are a step in the right direction. So is the amnesty offered to agents previously operating non-compliantly (provided they are not subject to criminal investigation or prosecution).

However, Clarke says the automatic approval now legislated for applications not processed by the authority within the stipulated time may not be as effective as intended.

“Realistically, we’re expecting teething problems with FFC applications,” he says. “Not only will more people be applying for

FFCs under the broader definition of 'property practitioner' in the Act, the already-flawed systems have not been updated to handle the other changes the legislation brings. Having automatic approval as a fallback to avoid the massive backlogs we've seen before is a good idea. Unfortunately, that approval is almost impossible to prove without the accompanying certificate."

While the authority is mandated to provide a certificate within 10 working days of automatic approval, Clarke says these processes seldom follow the designated timelines. As a result, certified agents could still face delays, making it difficult to receive commission from conveyancers who are legally obligated to confirm the validity of both the agent and their agency's FFCs before making payment.



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Trust accounts

Thankfully, not all processes are getting more complicated under the PPA. Clarke says the changes to trust account requirements, in particular, will provide welcome administrative and financial relief to many property practitioners.

"Previously, all property practitioners needed to have a trust account, regardless of whether or not they handled trust monies," he says. "Those accounts, idle or not, accrued bank fees and forced businesses to undergo a full – and expensive – annual audit.

"Now, property practitioners only need a trust account if they actually handle trust monies," he continues. "If you use a dedicated third-party payment processing agent or intermediary with their own compliant trust account, there is no need for you to have a trust account of your own. That means your business accounts can go through a far simpler and more affordable annual review. Clarke adds that it is very important to note that an exemption application is a prerequisite to not having your own trust account."

Training

The new regulations also promise smoother and more affordable property practitioner training. "Under the PP Act, prospective agents can study and sit their Professional Designation Examination (PDE) before joining an agency," says Clarke. "No more year-long internships or expensive NQF4 exams. If you've passed your PDE, you can literally start selling property in less than six months – under supervision – provided you complete a further six practical course modules."

Businesses are now also allowed to develop and run their own CPD training for a dramatically reduced CPD fee.

"Course content must be approved by the authority, but this approval can't be unreasonably withheld," says Clarke. "Those doing CPD training via the authority should also have a smoother experience, as all course modules can now be available at all times and at a reduced fee, i.e., R1,500. This should make issues like delayed course content a thing of the past, supporting agents in honing their skills rather than acting as a professional roadblock."

Transformation

Better support for agents is at the heart of changes to the Transformation Fund, too. It will be run by an independent body appointed by the PPRA. Clarke is hopeful that this will finally see the fund fulfil its potential as a force for positive industry change.

"There are a lot of great transformation initiatives outlined in the new regulations," he says. "My personal favourite is the

training, development, and financial support being made available to existing historically disadvantaged property practitioners. Increasing the diversity of new recruits is important, but I believe change can happen faster if we help those already in the industry prosper and grow, and support the creation of more job opportunities.”



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Equal opportunity

Small businesses may also soon be tapping into new opportunities within security estates and other developments. This, Clarke says, is due to the PPA’s abolition of the practice of charging real estate agents “accreditation fees” in return for exclusive rights to property transactions within a development.

“Sellers and landlords within estates will no longer be limited to their development’s approved agents,” says Clarke. “This gives all businesses – large and small – a fair chance to win mandates based on the quality of their service instead of the size of their bank account.”

Developers will also no longer be able to sell their own properties without registering as a property practitioner, providing more opportunity for real estate agencies to provide this service.

Industry consultation

“Overall, we’re very pleased with the direction the PPA is taking our industry’s regulations,” says Clarke. “It’s also good to know that the PPRA has been formally mandated to consult with the property practitioners it governs and I formally invite the new PPRA’s board, to regularly do so, especially during the transitional phase, which will see some challenges and interpretational issues arising and that the way the PPRA is going to apply these new regulations is going to be critical to achieving the results that the PP Act wishes to achieve.

“We also thank all the real estate industry associations that participated in commenting on the draft regulations.

“Overseeing an industry of this scale is a gargantuan task. Rebosa is eager to assist in any way possible to ease the coming transition and help the new legislation realise its promise.”

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