

Buying 'voetstoots' and your rights

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Buyers are going to have to “drive” the process towards full up-front disclosure of material defects by home sellers and their agents according to John Graham of HouseCheck.

Graham says that because “once-off” private sellers of houses are exempted from the provisions of the Consumer Protection Act (CPA) – which came into force on 1 April this year - most estate agents are still adopting a “wait and see” attitude regarding the new law.

Graham adds that the easiest way for buyers to ensure that their consumer rights are protected is to insist on them. He says that in the current “buyers’ market”, there are several ways that buyers can protect themselves from the perils of buying a house with undisclosed defects:

Graham says that a buyer can:

- Insert a conditional clause in the Offer to Purchase in terms of which the offer is subject to the buyer obtaining a favourable [home inspection report](#).

- Tell the agent that no home will be considered which does not have an inspection report provided, at the seller’s expense, by a reputable [home inspection company](#).

- Thirdly, the buyer can simply delete the voetstoots clause from the agent’s offer to purchase document. Graham says that if buyers routinely refused to sign any offer containing a voetstoots clause they would force sellers and their agents to ensure transparency and up-front disclosure of all significant defects.

Graham points out that by removing the voetstoots clause from the contract, the buyer effectively strips away any legal protection that the private seller may have enjoyed if the property was later found to be defective in any material way.

Voetstoots has always meant that a property is sold “as is” – no matter its condition and without any guarantees. With a voetstoots clause in the agreement, the buyer was protected only where it could be proved that he had been cheated by the seller in that the seller knew about defects and deceptively kept quiet about them.

While Section 55 of the CPA stipulates that every consumer “has the right to receive goods that are appropriate to the purpose for which they are bought and that they should be of good quality, in working order and without defect”, Graham says that the Act itself does not provide adequate protection from home buyers. This is because private “once-off” sellers of house are excluded from the provisions of the CPA. The CPA only covers those who sell “in the normal course of their business”. Graham says that this includes developers, investors and estate agents – but not private “once-off” sellers.

For this reason most estate agents’ agreements still retain a voetstoots clause. Most prospective buyers are unaware that they sign many of their rights away when they sign the Offer to Purchase agreement, which includes a voetstoots clause.

Graham says standard [home inspections](#) are not yet the norm in [South Africa](#) but he believes this will change as “the wave of consumerism” advances. He points out that in 1970 less than 2 per cent of houses in the US were inspected prior to sale. Yet by 2010 the home inspection industry had grown to the point that over 70 per cent of houses were inspected and in many states home inspections were now mandatory at the time of sale.

Apart from physical defects like roof leaks, incorrectly installed geysers, or wall cracks which are routinely documented in a good home inspection report, Graham says that material defects may also include the fact that some of the structures on the property are illegal and have not been approved by the local authority.

For these reasons [HouseCheck](#) has now teamed-up with a new business Property Runners. In [Cape Town](#) and [Johannesburg](#) Property Runners are able to quickly obtain copies of the approved municipal plans and also details of zoning. Copies of these plans enables the HouseCheck to provide a limited “due diligence” on the property.

For more information on home inspections, visit the [HouseCheck](#) website.

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