

# CPA brings big wake-up call for estate agents

*Crucial changes ahead for SA's property industry*

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**T**HE CONSUMER Protection Act has let the genie of consumerism out of the box forever and, as a result, the real estate business in South Africa is now changing fundamentally.

Remember the days of photographic film and taking your film spool down to the camera shop to be developed and printed? Well, it won't be too long before the voetstoots clause in the Option to Purchase will seem as much a part of history as the old Kodak film.

A tsunami of consumerism is poised to wash over South Africa's property industry. Wise estate agents are alert to this change and are either making plans "to get off the beach" or to change their game plan and catch the new wave of consumerism.

Consumerism poses new challenges – and opportunities – for estate agents as they decide how best to meet buyers' demands for more and more information and greater transparency on properties for sale.

It is common cause that the CPA is a badly drafted law (which will almost certainly need to be amended and tightened up in time to come). However, if overseas experience is anything to go by, any amendments to the CPA will tend to confer more, rather than fewer, rights on the South African consumer.

Many estate agents are in some denial and are clinging to the opinion of some lawyers that the CPA does not apply to private sellers (correct), or to their agents (incor-

rect) – because agents are regulated by the Estate Agents Affairs Board – and are therefore exempt from the provisions of the CPA. This opinion appears to arise from a misinterpretation of the scope of the disclosure obligations of intermediaries regulated by other national legislation (Section 27 of the act).

However, most attorneys believe that estate agents do indeed have obligations and liability under the CPA.

They point out that estate agents are professional purveyors of a "product" – the product being information on the properties on the agent's books. With regard to information on properties which agents communicate, both buyers and sellers enjoy protection under the CPA, because they are "consumers" of the product supplied (the agent).

It is clear that estate agents do bear accountability in terms of the CPA for the material information about a property which they communicate to both buyers and sellers. It will probably take a test court case or two to convince some estate agents on the reach of (and the teeth of) the CPA.

Meanwhile, the question remains: How should professional estate agents be responding to the CPA and to the wave of consumerism generated by the enactment of this new law? In particular, how should agents react to the increasing practice of buyers demanding a home inspection report as a condition of the offer to purchase?

Also how can agents protect their business if they perceive a home

inspection report to be unnecessarily harsh and a potential deal killer? I believe there is a growing need to build trust and understanding between estate agents and home inspectors.

Two of the issues which need addressing are the accreditation of the inspector and also the tone of the inspection report. While not deserting their professional objectivity, home inspectors do need some sensitivity regarding the dynamics of the sales process and the pressures under which agents operate.

HouseCheck was established in response to the rising wave of consumerism and the growing number of younger Internet-savvy buyers who constantly seek more transparency in their dealings.

HouseCheck recognises the central role of estate agents in the property industry and seeks to produce reports which are factual, objective, but also realistic in the light of the fact that "no property is perfect". Unnecessarily negative home inspection reports are not in the genuine interest of the buyer, seller or estate agent.

Over the next six weeks I will be advising estate agents on how to deal with the challenges of

- The Consumer Protection Act.
- Buyers demanding more and more information.
- Buyers insisting on home inspection reports.
- The wave of consumerism.

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