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CPA gives buyers rights, but beware voetstoots clause

August 10 2011 at 01:33pm

The Consumer Protection Act affords the house buyer (as "consumer") specific protection and rights. Likewise the house seller and agent (as "suppliers of goods and services") have specific responsibilities and liabilities under the act, says John Graham CEO of HouseCheck.

"In terms of the act, the house buyer has a right to expect that the property being purchased is of good quality, complies with all relevant legal standards and is without undisclosed defects. The act defines "defects" as any imperfection that renders the property less acceptable than "persons would reasonably be entitled to expect in the circumstances", he says.

Graham says that the traditional "voetstoots" ("as is") no longer provides blanket protection for sellers and their agents. He points out that Section 55 (5) of the act says: "It is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods."

However, Graham adds that the buyer's right to receive a good quality property free of defects does not apply if the buyer has been specifically informed that the property was offered to the buyer in a specific condition and the buyer has "expressly agreed to accept the property in that condition" – Section 55 (6).

Graham says the only real protection from liability under the act is for sellers and agents to commission a home inspection report upfront and to make this inspection report available to potential buyers. Graham also recommends that the deed of sale should include a declaration by the buyer that he is aware of the defects disclosed in the home inspection report.

Even if a home inspection report is made available to the buyer, Graham says that during a six-month period after the buyer has taken delivery of the property, the buyer can demand redress if previously undisclosed defects are discovered. In terms of the act this redress places an obligation on the seller to: "repair, replace or refund" – Section 56 (2). The act provides for a further three-month implied warrant after these defects have been repaired – Section 56 (3).

Graham points out that if the seller and estate agent have taken the precaution of commissioning a home inspection report, disclosed up front to the buyer, the only potential liability remaining after the buyer has taken delivery of the property is for latent defects which could not be seen by the home inspector (faulty plumbing in walls, roof leaks or equipment failure such as a burst geyser); and observable defects which were somehow missed by the home inspector.

HouseCheck is developing a simple insurance product to protect sellers and estate agents from liability under the act. Graham says the insurance periods will probably be for 12 and 24 months and will involve a once-off single premium.

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