

CPA doesn't cover all property transactions

While the introduction of South Africa's Consumer Protection Act was publicly hailed by many, it has in some instances led property buyers to believe that they are afforded blanket protection, covering every commercial transaction in which they are involved.



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Rowan Alexander, director of Alexander Swart Property, has pointed out that in property dealing, most transactions do not fall under the Consumer Protection Act. One such transaction is the sale of a residential property by its owner by means of a private treaty, i.e. with a standard Deed of Sale. In these cases, said Alexander, the agreement is not covered by the Consumer Protection Act because legally the seller is not classified as a 'supplier'.

This, said Alexander, can lead to considerable frustration for buyers who have possibly neglected to inspect thoroughly the property they are about to purchase, believing that they will be fully protected by the act. Later they find that the property may have one or two serious defects, but they then discover that the seller cannot be held responsible for these.

Cases in which CPA applies fully

Properties which are sold by investors, speculators, traders, builders and developers "in the ordinary course of business" are, however, fully protected by the Consumer Protection Act. One effect of this is that a *voestoots* ('as it stands') clause cannot be applied, even if it appears in the sales contract. In these cases, defects will be deemed to be the seller's responsibility and she/he will have to put them right or pay compensation.

In most property transactions, including those by private treaty, said Alexander, a third party, the agent, is involved and their actions are subject to the Consumer Protection Act where they have provided a professional service. If it can be shown that they deliberately withheld information or misled the client in any way, they can be held liable – and be made to pay penalties. Misconduct will be recorded in perpetuity by the Estate Agency Affairs Board because it has contravened its Code of Conduct.

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