

SAPOA seeks clarity on Consumer Protection Act

Property practitioners, rental agents and brokers have been urged to err on the side of caution until questions regarding property leases and the new Consumer Protection Act have been resolved.

The South African Property Owners Association (SAPOA) is addressing Section 14 of the Act, and associated regulations, with the Department of Trade and Industry to obtain the clarity that the property industry needs.

"SAPOA fully supports additional protection for consumers. However, the impact of the new Act has severe implications for landlords, developers and business owners," explains Neil Gopal, CEO of SAPOA.

These consequences for the sector, Gopal notes, include allowing a tenant 20 business days to arbitrarily cancel a lease agreement and restricting the length of a property lease.

"The CPA will have far-reaching changes to lease agreements for immovable property as we know it," says Gopal.

Under the CPA, lease agreements have a maximum duration of 24 months. After expiry of the lease agreement, the lease will continue on a month-to-month basis, unless a new lease is signed.

"Banks will not give credit to a consumer to start up their business if their lease agreement with the lessor is for this limited two-year period as two years is insufficient time to enable the consumer to recover start-up costs for its business," explains Gopal.

He adds that it will also create uncertainty for the consumer, who will not know whether he or she could remain on the leased premises after the expiry of the lease agreement.

"Businesses cannot afford to have to move every two years."

Section 22 and 40 of the Act state that it is the inherent duty of the landlord to ensure the tenant understands the lease agreement - this opens the door for tenants to claim they did not understand the agreement or that they were forced or influenced to sign.

"We propose that special provision is made whereby the tenant writes out the words, in their own handwriting, that the contents of the lease agreement are understood," notes Gopal.

The above effects will be felt by property owners and buy-to-let investors who will be uncertain of their rental income, their bond repayment shortfalls and their ability to use lease agreements as collateral security for loans.

"These are unfortunate consequences of the Act, which we believe were not carefully thought out," he says.

"We are furthermore of the view that property leases are not governed by Section 14 of the Act and we have obtained legal opinion to this effect.

"SAPOA has raised these and other concerns with the minister of trade and industry, and will do so again."

Gopal explains that the Department of Trade and Industry has implemented the same consumer provisions across all industries, without knowing the full effect that this will have on each industry.

"Without proper consideration, the Act could result in unintended and unwelcome consequences for the property industry."

In the interim, SAPOA has advised members to ensure that rental agents clearly explain the Act and all its applicable provisions to their landlords and their landlord's tenants.

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