

# CPA exposes estate agents to greater risk

Delegates who attended a recent Rawson Properties Western Cape Franchisee Conference were told by Elana Hopkins, an attorney with the Cape legal firm Dykes, van Heerden, Slabbert and Hopkins, that many members of the legal fraternity believe that the new Consumer Protection Act, which now governs the relationship between the buyer and the seller (if the seller is a "supplier" of properties) and the relationship between the estate agent, the buyer and seller in any residential property transaction, does expose the agent to a greater risk than ever before.



This is because certain legal commentators argue that in terms of the act the agent facilitating a deal is doing so as part of his everyday business and can be considered by purchasers in legal terms to be part of the supply chain, although as yet no precedent has been set. By way of contrast, an individual home seller involved in a one-off transaction to sell his house is not in this category and is therefore exposed to less risk.

## Holding agents responsible

Hopkins pointed out that, although the voetstoots clause still applies to sales between private individuals, estate agents in practice can find themselves in a position where buyers attempt to hold them responsible for defects in the home which had not been disclosed to them or to the buyer by the seller.

To protect themselves estate agents should now consider asking sellers to sign a disclosure certificate, listing all the known and also possibly the suspected defects in the property. If such defects become apparent shortly after the transfer, buyers may attempt to argue that they should have been picked up by a diligent agent inspecting the property thoroughly, and they would hold the agent responsible for these.

A disclosure certificate is proof that the agent did inspect the property and advised the seller to disclose all the defects. However, agents will still have to be careful that no latent defects are being hidden by buyers.

Hopkins mentioned a case study in which serious weaknesses in the structure and damp spots in the walls had been hidden by the seller, who had cleverly arranged paintings and furniture so as to ensure that they would not be seen on a casual inspection. In such instances, she said, the purchaser usually tries to hold the estate agent liable.

## **Court can be approached**

She points out, however, that even when occupation takes place on transfer, the buyer still has the right to approach the High Court on an urgent basis on issues with which he is not satisfied and he may well then obtain a court order that part or all of the sales price be held back pending the outcome of an action to be instituted. A court can determine who is liable for the repairs, but such actions can take years as a result of delays in our legal system.

Hopkins stressed that the Consumer Protection Act, although now law, has not been on the statute books long enough to obtain clarity on how it will be enforced. The Consumer Commission's decisions on these matters, she said, will be watched carefully. They will define the role and the responsibilities of all parties in property transactions.

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