

Consumer Protection Act does not apply to all property transactions

The wave of publicity that accompanied South Africa's widely praised Consumer Protection Act has led buyers (consumers) to believe that they are afforded a blanket protection covering every commercial transaction in which they are involved.

Rowan Alexander, Director of Alexander Swart Property, has, however, pointed out that in property dealing most transactions do not fall under the Consumer Protection Act.

One such 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.

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 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 his actions are subject to the Consumer Protection Act where he has provided a professional service.

If it can be shown that he deliberately withheld information or misled the client in any way, he can be held liable - and be made to pay penalties. His misconduct will be recorded in perpetuity by the Estate Agency Affairs board because it has contravened their Code of Conduct.

Alexander Swart Press Release