

Developer regulation under the Property Practitioners Act

On the 1st of February 2022, the Property Practitioners Act 22 of 2019 ('the Act') became operational, thereby replacing the Estate Agency Affairs Act 112 of 1976. Importantly, the Act brought about significant changes for role-players in the real estate industry, including developers and impacts the way in which they conduct their businesses going forward. For the purposes of this newsletter, the most notable changes insofar as developers are concerned, are summarized.

Are all developers always "property practitioners"?

Yes and no. Section 1 of the Act now extends the definition of 'property practitioner' to include many activities performed by property developers. Join our [webinar](#) for a detailed discussion on the impact of the Act on developers and which of their activities are specifically regulated.

Fidelity Fund Certificate ('FFC')

The Act requires that all property practitioners must have applied for and been issued with a valid FFC, failing which the person or business may not act and perform activities as a property practitioner. Where the business is a company, close corporation, trust or partnership, each director of such company or every member of such a close corporation or every trustee of a trust or every partner of a partnership, as the case may be, must also be in possession of an FFC, in addition to the business itself that must have such a certificate. Furthermore, if such a person or business employs any other person as a property practitioner, that employee is also required to hold a valid FFC.

Under the Act, the FFC will be valid for a period of three years. Therefore, every three years the individual and business property practitioner is obliged to apply to the Authority (the body that replaces the Estate Agency Affairs Board (EAAB)) for the issuing of a new FFC. This application must be accompanied by proof of payment of the prescribed fees. In the case of a business property practitioner, a BBEE certificate must also be submitted, as well as a tax clearance certificate confirming that the business' tax affairs are in order.

In addition to requiring all property practitioners to be in possession of a valid FFC, the Act provides for additional requirements which must be complied with in this regard, namely:

1. All property practitioners, including property developers, must display their FFC at every place of business where they conduct property transactions. This is to ensure that the FFC is readily available for consumers to inspect.
2. All letterheads and marketing material utilised by developers (when performing activities as property practitioners) must confirm that they are in possession of a valid FFC. The relevant sentence should read 'Registered with the PPRA'. (The reference to PPRA is to the Property Practitioners Regulatory Authority.)
3. All agreements relating to property transactions in which developers are involved (and acting as property practitioners) must contain a clause which guarantees the validity of

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the FFC. Such clause must read as follows” “[Insert name of property practitioner as defined in the agreement] hereby warrants the validity of his/her/its Fidelity Fund certificate as at the date of signature of this Agreement’.

Failure to be in possession of a valid FFC, invites serious consequences, including that the property practitioner:

1. May not trade as a property practitioner;
2. May not receive commission if the practitioner was not in possession of a FFC that was valid at the time of entering into the sale agreement as well as at the time of receiving payment of the commission amount.
3. If it comes to the consumer’s attention that the practitioner did not have an FFC at the time that the transaction was concluded, the consumer has three years within which to claim the relevant monies back. Should such a claim be instituted and the property practitioner does not repay the money immediately, then the practitioner may be guilty of an offence.

Disclosure of defects:

The Act states that property practitioners may not accept a mandate in respect of a sale or lease agreement unless the seller or the lessor of the property has provided him/her/it with a fully completed and signed mandatory Disclosure Form. This form is prescribed in the regulations and contains a set list of items which the seller or landlord must disclose therein. The completed Form must be disclosed to interested purchasers and tenants, by the property practitioner. Should this not be complied with, the practitioner may be fined by the Authority, and may also be held liable for ensuing damages by a purchaser or tenant (in certain circumstances).

Replacement of the Estate Agencies Affairs Board:

The new Act has the effect to replace the Estate Agencies Affairs Board with a new governing body known as the Property Practitioners Regulatory Authority (‘the Authority’). The Authority is responsible for regulating the property industry at large.

Should you have any questions regarding the content, please do not hesitate to contact our team of trusted attorneys who are here to assist you with any queries you may have.

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