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WHEN DOES THE CONSUMER PROTECTION ACT (CPA) APPLY TO A SALE AGREEMENT OF LAND?

- When a seller and a purchaser enter into an agreement for the sale of land, the CPA will only find application if i) the seller is a supplier or service provider, acting in the course and scope of his business. An example would be a property developer selling new units in a sectional title scheme or even in a new development. Also, (ii) the purchaser must be a consumer as defined, i.e.: a natural person or otherwise an entity if the entity's annual turnover is less than R2 million.
- Where the seller enters into a once-off sale (because he is relocating, wants to move closer to schools, is retiring, or similar reasons), he does not qualify as a 'supplier'/'service provider' because he is not acting in the course and scope of his business. The provisions of the CPA will therefore not apply to that agreement.

02

WHEN DOES THE CONSUMER PROTECTION ACT APPLY TO AN ESTATE AGENT MANDATE?

- In a mandate agreement, there is a legal relationship between the estate agent and the seller. Because the activity of marketing properties falls within the ordinary course of an estate agent's business, the latter is a 'service provider' for purposes of the CPA. As such, the mandate agreement falls within the ambit of the CPA and must comply with the provisions of that Act.
- Note, however, that the Act excludes legal entities (not natural persons) with a yearly turnover of more than R2 million from the definition of consumer. Therefore, if the seller falls in this category, the mandate agreement will not be governed by the provisions of the CPA.

03

WHAT CHANGES ARE THERE TO AN AGREEMENT AND AN ESTATE AGENT MANDATE WHEN THE CPA APPLIES?

- If the CPA applies, the agreement must comply with the provisions of the Act, the most important of which are:
 - (i) it must be in plain, understandable language;
 - (ii) the consumer's attention must be conspicuously drawn to clauses in which the consumer accepts risk or liability, grants an indemnity or acknowledges a fact; and
 - (iii) (in a sale agreement) the seller must clearly indicate what the condition of the property is.

04

WHEN CAN I EXERCISE THE 5-DAY COOLING-OFF RIGHT?

- A consumer may cancel any agreement (be it a mandate or sale agreement) to which the CPA applies within 5 days after signing it, if it was concluded as a result of direct marketing.
- 'Direct marketing' occurs when a consumer is approached in person, by ordinary mail or electronic mail to conclude a transaction. For example, if an estate agent approached a seller directly with the view to obtaining a mandate to sell the property, the seller may cool off and cancel the agreement, penalty-free, by giving written notice to the agent within 5 days after signing the mandate.
- If the contract did not result from direct marketing activities, the usual provisions will apply. This means that the mandate may only be cancelled if there was a breach on the side of one party. The correct procedures must be followed to act on breach and to cancel an agreement as a result. Contact an attorney for assistance.

For more information, contact us at info@stbb.co.za