

How does home inspection fit into the picture of property sales?

Property transfers in South Africa can be very slow. Many sales are delayed as a result of deals being finalised without proper investigation into the financial soundness of home buyers and home sellers, or into the soundness of the property itself.

The three major causes of delays in finalising transfers are:

- The failure of home buyers to pay their transfer costs and deposits and purchase price when required to do so;
- The failure of home sellers to resolve issues with their bond holders and with SARS;
- Disputes over property defects which can cause major delays before the transfer is registered, or even lead to the cancellation of the sale.

Many property buyers when taking occupation of a property discover defects that were not disclosed to them at the time that the sale was finalised. These defects range from hidden damp and wall cracks, to defective alarm systems and swimming pool pumps, from roof leaks and geyser malfunctions to security gate breakdowns.

The Consumer Protection Act

The discovery of defects post sale can lead to “home buyer’s remorse”, to arguments and disputes and sometimes also to expensive legal action.

The new Consumer Protection Act (CPA) which came into force on 1 April 2011 drastically reinforces consumer rights and this new law is part of the wave of consumerism which has been sweeping the Western world. If the experience of other countries is anything to go by, then the rights of South African consumers will become steadily more protected into the future with additional consumer legislation. The protection of the consumer under the CPA will also be sharpened once the provisions of the CPA have been clearly defined in test court cases.

Some of the areas in which the CPA will impact the property industry are:

‘Voetstoots’ sales:

The CPA will prevent the sale of property voetstoots when that sale occurs in the ordinary course of business, unless the purchaser has been expressly informed of the specific condition of the property, including all defects and the purchaser has agreed to accept the property in that condition.

Return of property or refund of all or part of the purchase price:

In terms of the CPA, should the courts decide that an agreement was, in whole or in part, unjust, unreasonable or unfair, then the court may make any order it considers to be just and reasonable in the circumstances. This includes: ordering the seller to return all or part of the purchase price to the buyer, to compensate the buyer for damages and costs and/or to cancel the transaction.

Potential for the SA Home Inspection Industry

The South African home inspection industry has great potential for development. There is currently a shortage of competent and qualified home inspectors who are able to undertake home inspections according to accepted international standards and procedures.