

Consumer Protection Act will affect rights of property buyers and sellers

The Consumer Protection Act (CPA), which came into full effect on 01 April 2011, spells out some material changes that apply when the seller is acting in the ordinary course of business and the purchaser is either a body with a turnover and asset value of under R3 million or an individual.

“For example, estate agents will no longer be able to insert a clause in sales agreements which has the effect that the purchaser forfeits his deposit if the sale is cancelled for any reason other than due to a default by the purchaser, because there are a variety of causes which may well be outside the purchaser’s control and this would be an unfair condition,” Broekman says. If such a clause is included in a sales agreement, the entire agreement could be ruled void by an enforcement agency, such as a consumer court or a magistrate’s court, she says.

The Act may also have the unintended consequence of allowing you a cooling-off period when you buy a property that is directly marketed to you by an estate agent, even if the property is sold to you for more than R250 000 (as set out in the Alienation of Land Act), Clair McGee, an attorney with Shepstone & Wylie, says.

If you cancel the sale agreement during the cooling-off period, the seller has 15 days after the property is returned to refund the amounts that you paid. The seller may deduct a reasonable charge for your using the property and the costs to restore the property to a stable condition.

“There is no limit to the value of the property to which this cooling-off period applies, and the seller is not able to claim any compensation for the cancelled sale other than for the use of the property and restoration costs.”

Source: Trudie Broekman, a senior associate (Webber Wentzel)