

THE CONSUMER PROTECTION ACT 68 OF 2008

As most readers will, by now, be aware the Consumer Protection Act, 68 of 2008, ("the CPA"), was signed on 24 April 2009 and has since been promulgated in the Government Gazette. Chapters 1 and 5 of the Act will come into operation on 25 April 2010 while the remainder of the Act will be enforced as from 25 October 2010. This issue of AGENT, thus, presents a brief overview of the Act which will, however, be more fully analysed and evaluated in a forthcoming edition.

It should be noted that the CPA seeks to:

- promote a fair, accessible and sustainable marketplace for consumer products and services;
- establish national norms and standards for ensuring consumer protection;
- provide for improved standards of consumer information while prohibiting certain unfair marketing and business practices;
- promote responsible consumer behaviour;
- promote a consistent legislative and enforceable framework for consumer transactions and agreements; and
- establish the National Consumer Commission.

The CPA, in so doing, has replaced, or amended, existing provisions of the following legislation, namely, the Merchandise Marks Act of 1941, the Sales and Service Matters Act of 1964, the Price Control Act of 1964, the Trade Practices Act of 1976, and the Consumer Affairs (Unfair Business Practices) Act of 1988.

The CPA applies to all transactions occurring within South Africa as well as to the promotion or supply of goods and services within South Africa. The CPA is, however, not applicable in respect of:

- goods or services that are promoted or supplied to the State;
- industry-wide exemptions granted to regulatory authorities pursuant to the Act;
- credit agreements, although not goods and services, concluded in terms of the National Credit Act;

- services rendered pursuant to concluded employment contracts;
- agreements entered into to give effect to collective bargaining agreements; and
- agreements giving effect to bargaining agreements.

Pursuant to the provisions of the CPA consumers will henceforth enjoy an increased protection including the right to demand quality service and safe goods of excellent quality. Consumers will also be entitled to cancel agreements and bookings under the circumstances more fully described in the Act. It will, furthermore, no longer be necessary for consumers to prove fault on the part of, for instance, importers, producers, distributors or retailers of goods to achieve success in legal claims arising from any harm or loss that may have been suffered due to defects in goods that were supplied. Consumers, who are defined as persons to whom goods and/or services are marketed, who have entered into transactions with suppliers or who are the users of particular goods or the recipients or beneficiaries of services, will, in the future, enjoy the following key consumer rights, namely:

- the right to equality in the consumer market and protection against discriminatory marketing practices;
- the right to privacy;
- the right to choose;
- the right to disclosure of information;
- the right to fair and responsible marketing;
- the right to fair and honest dealing;
- the right to fair, just and reasonable terms and conditions;
- the right to fair value, good quality and safety; and
- the right to accountability by suppliers.

As it is essential that the property sector in general and estate agents in particular should fully acquaint themselves with the provisions and requirements of the CPA, the EAAB intends taking all steps necessary to draw the provisions of this legislation to the attention of stakeholders. The Estate Agency Affairs Board will, in addition, be suitably amending the study material for both the NQF Level 4 and 5 estate agency qualifications to deal with the provisions of the CPA. 