

How the Property Practitioners Act is helping buyers make more informed decisions

Among the significant changes the Property Practitioners Act (PPA) has brought to the real estate industry, a highlight is that it is now a legal requirement for sellers to disclose all property defects of which they are aware. This has always been best practice but is now mandatory.



Andrea Tucker, director of MortgageMe

“In what is arguably one of the biggest investments you will ever make, this new act ensures that you have all the facts at hand before you sign on the dotted line,” says Andrea Tucker, director of MortgageMe.

The property defects disclosure form needs to be signed by all parties and attached to the sale or lease agreement. This places a legal obligation of fairness to both the buyer and seller on the agent, or the 'property practitioner', a term now used to describe estate agents as well as commercial property brokers, bond originators, lawyers, auctioneers, property developers and other professionals in the property industry.



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What does this mean?

The PPA compels homeowners wishing to sell or rent their house to make a written disclosure to every potential buyer or tenant disclosing all known patent and latent defects of the property. Some common examples of patent defects, or those that can be seen by the naked eye, include cracked walls, broken windows, chipped paint, broken tiles, rotting woodwork and any other obvious damage.

Latent defects, which are harder to detect and often require the help of professionals to recognise, include unsteady walls, rising damp, leaking roofs and other structural issues. Tucker says that while not mandatory, a home inspection done by an independent property inspector makes good professional sense on the part of the agent selling the house, and the report can be used as a disclosure document. Sellers who conceal defects in their properties can be sued by buyers for false advertisement.

“A professional property inspection will bring peace of mind to buyers and increase trust between buyers, sellers and the agent,” says Tucker.

The Act also requires that every person or business who earns a commission or a fee from the sale or lease of a property holds a valid Fidelity Fund Certificate (FFC) from the new Property Practitioners Regulatory Authority (PPRA) and can prove that they are tax and BBBEE compliant.

“This will assure buyers, sellers, tenants and landlords that the agent they are dealing with is a properly qualified property practitioner,” explains Tucker.



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What to look out for when signing an OTP

When signing an OTP, look specifically for the mandatory disclosure form. It must be provided to any prospective buyer, signed by both the seller and estate agent (property practitioner), and attached to the sale agreement. If there is anything on that form that concerns you, you are fully entitled to undertake a property inspection to confirm the state of the property before finalising the sale. But it is in the best interests of the estate agent to certify that the form discloses any issues as they can be held liable for not complying with these requirements.

This new Act, created primarily to protect consumers in the property industry, will go a long way to ensure a more regulated industry, cutting down the number of unregistered agents scamming consumers out of deposits and other fees.

“The PPA will create more informed buyers, and informed buyers make good decisions,” says Tucker.