

## **New service offers CPA compliance comfort for property transactions**

(Cape Town, South Africa – 4 April 2011) The new Consumer Protection Act (CPA), which came into effect on 1 April 2011, could see property sellers and estate agents exposing themselves to great risk should they attempt to market and sell a property without letting a buyer scrutinise all relevant documentation prior to the signing of a sale agreement.

A new service, aimed at protecting property buyers, sellers and estate agents equally during the course of a property transaction, addresses – and ultimately provides – a transparent process in purchasing a property.

Property Transaction Kit (PTK), the brainchild of conveyancing attorney Meyer de Waal, was developed in consultation with key industry associations and service providers, and offers a structured process through which to gather required compliance material, in order to ensure a smooth transfer. The service is available to buyers, sellers, estate agents and property attorneys, and enables them to either compile or have secure online access to all the documentation and certificates of compliance related to the sale of a property.

Says De Waal: “Once a seller registers for the service, the PTK team will access a database of accredited service providers to source all the relevant documentation, and issue certificates of compliance pertaining to the property. The documents are then loaded onto a virtual ‘property vault’ on the PTK portal. There the seller, his estate agent, buyer, attorney or bank can securely access the information.”

“The seller can, after viewing the various reports, either decide to improve the property’s condition or simply share the documentation with the potential buyer, so as to disclose the true condition of the property. Potential buyers can also request access to this comprehensive report to help them decide whether or not to put in an offer on the property.”

De Waal explains that, for years, the lack of strong consumer protection laws have left ill-informed property buyers at the mercy of sellers and estate agents, who often sold properties *voetstoots*. The *voetstoots* clause used to protect the seller from defects that the buyer could identify during a viewing of the property, but not against defects that the seller did not know about, and thus could not disclose to the buyer.

Without knowing the true condition of the property, many buyers had to fork out a substantial amount to repair their homes, resulting in serious implications on their budget and their ability to meet other financial obligations after taking ownership. In addition, most buyers do not have the knowledge or experience to request relevant information about a property in which they’re interested, and seldom ask for even basic documentation, such as a copy of the title deed, current and approved building plans, or zoning certificates.

The new Act, however, places greater responsibility on South African property sellers and estate agents to facilitate a transparent sales process.

The service combines the efforts of conveyancing attorneys, the Institute of Estate Agents (IEASA), the Institute of Plumbers of South Africa (IOPSA), the Electrical Contractors Association (ECA), the SA Pest Control Association (SAPCA), as well as a number of inspectors and service providers in the property sector.

### ***Implications of the CPA on property transactions:***

#### **Implications for property sellers**

Sellers are quite often in a rush to sell their properties, but do not consider the impact of the costs of repairs related to plumbing, beetle damage, electrical faults and full disclosure of the condition of their property.

Property buyers may attempt to hold sellers and their estate agents responsible for defects or non-disclosure of property faults, even months after ownership has passed to the buyer. Sellers now have to ensure that properties being sold are inspected and evaluated by accredited or registered service providers, which can be a time-consuming and laborious exercise. The results of these inspections have to be made available to potential buyers, giving them an objective description of faults or defects to the property. The buyer has to agree to purchase the property in that condition, should they wish to, or can request that the seller repair these faults, before the buyer signs the deed of sale.

#### **Implications for property buyers**

Buyers, who are usually led by the emotions of buying a new home, often do not focus on the administrative details required to finalise a transaction. They are generally unaware that they are able to obtain comprehensive due diligence information on the property on which they are to spend thousands or millions of rands.

Buyers now have the right to information that will help them to make an informed decision about the property they are planning to buy. However, they have just as much responsibility to request the required documentation from the seller, as the seller has to obtain and present it to them. Once presented with all the facts, the buyer can then decide to buy the property as is, ask the seller to adjust the asking price, or ask the seller to repair the faults to the property and cover those costs.

Having all available information pertaining to the property at hand also helps buyers to strengthen their applications for a home loan. The structural condition and construction of a property, according to the approved building plans (which are included in the information that buyers should have access to), are important factors considered by a bank before granting a loan.

#### **Implications for estate agents**

Sale agreements must be prepared in simple and understandable language. A buyer with average comprehension skills and education must therefore be able to understand the sale agreement presented to him for signature. In many instances,

the “voetstoots” clause will also no longer be applicable, as the term “voetstoots” must be explained in simple and clear language to the buyer.

Property Transaction Kit affords estate agents access to the necessary systems and infrastructure to ensure that a structured process is in place to facilitate a smooth transfer. Estate agents will be able to easily gather the required documentation and certificates, and in so doing, provide buyers and sellers with the comfort that the property meets compliance requirements.

*Property Transaction Kit launched in the Western Cape on 1 April 2011, and will be rolled out nationally through the association of each institute endorsing the service. For more information, visit [www.propertytransactionkit.co.za](http://www.propertytransactionkit.co.za)*

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### **Notes to editors**

#### **What's included in the Property Transaction Kit report?**

Copies of:

- Mandate to the Estate Agent (with a valid fidelity certificate of the Estate Agent)
- Property valuation
- Appointment of a Conveyancing Attorney (with a valid fidelity certificate)
- Standard Sale Agreement
- Existing Title deed
- Surveyor General Diagram
- Body Corporate rules
- Home Ownership rules and regulations
- Building plans
- Zoning certificate
- House inspection report
- Beetle Inspection report
- Electrical Inspection report
- Plumbing Inspection report
- Gas Inspection report
- Dispute resolution – process - Mediation or Arbitration
- Insurance to cover litigation costs

Sellers have the option to register for either a “light” or “full” version of the Property Transaction Kit report.

#### **Industry endorsements**

- “PTK will be a welcome product to estate agents, especially in smaller agencies. They will benefit from the process PTK provides, as they often do not have the infrastructure to provide for all the compliance requirements. The Institute is at the

forefront of educating industry professionals regarding the Consumer Protection Act and the impact it will have on property transactions." - *Sandy Walsh, Head of Education, Institute of Estate Agents Western Cape*

- "A pre-inspection of the plumbing of a house is one of the most important aspects to be completed. Since 18 February 2011 a certificate of compliance (COC) is required by the Municipality of Cape Town. Timing is of importance as all repairs to the plumbing, if required, in order to comply with the new water by-law, must be completed before the COC can be issued. No transfer of ownership can be registered in the Deeds Office until such certificate of compliance is submitted to the Municipality." - *Larry Berger, Chairman, Institute of Plumbers (Western Cape)*
- "We're delighted with the focus of Property Transaction Kit. Never before have key service providers - on a regional and national basis - stood together to set an industry standard and assist a seller and buyer in a property sale transaction" - *Mark Enslin (President), Aubrey Harris (Chairman) and Colin Jardine (Vice Chairman – Western Cape), SA Pest Control Association*
- "The need for a pre-sale structural defect inspection is of utmost importance. With the assistance of The Property Runners, another PTK service provider, we obtain building plans of the house and zoning certificates, and so are able to conduct a comprehensive report on the additions to the property, its condition and defects of the house being sold. – *John Graham, MD, HouseCheck*
- "In terms of the Electrical Installation Regulations, where there was a change in ownership of a property after 1 March 1994, every user or lessor of an electrical installation has been required to be in possession of a valid Certificate of Compliance for that installation. The user may, since 2009, not allow a change of ownership if the Certificate of Compliance is older than two years, and will therefore have to obtain a new Certificate from a registered electrical contractor if this is the case.

It must also be mentioned that, where any additions or alterations are carried out on an installation where no Certificate of Compliance has been issued, the user or lessor must obtain a Certificate for the whole installation, and where additions or alterations are carried out to an installation for which a Certificate was previously issued, the user or lessor shall obtain a Certificate for any such addition or alteration. The ECA, under its Guarantee of Workmanship Scheme, guarantees the workmanship of its member electrical contractors to a maximum value of R15 000, and the homeowner is therefore encouraged to utilise the services of an ECA member contractor for any electrical installation work." - *Pierre Foot, Regional Director, Electrical Contractors' Association (ECA)*