SELLERS & PURCHASERS:
Get to know your consumer rights!

WHEN DOES THE CONSUMER PROTECTION ACT (CPA) APPLY TO A SALE AGREEMENT?

- When a Seller and a Purchaser enter into an agreement, the CPA will only find application if the **Seller** is acting in the **course and scope of his business**, such as a property developer selling new units. This is because the Act applies to the relationship between a 'supplier', acting in the scope of his business, and a consumer. The purchaser must be a consumer as defined, ie: a natural person or an entity with an annual turnover of less than R 2 million.
- Where the Seller enters into a **once-off sale** (because he is relocating, wants to move closer to schools, is retiring, or similar reasons), he does not qualify as a 'supplier'/'service provider' in terms of the CPA and the transaction will *not* fall under the provisions of the CPA.

WHEN DOES THE CONSUMER PROTECTION ACT APPLY TO A MANDATE?

- In a mandate agreement, there is a legal relationship between the Estate Agent and the Seller. Because the activity of marketing properties falls within the ordinary course of an estate agent's business, the latter is a 'service provider' for purposes of the CPA. As such the mandate agreement falls within the CPA.
- Note however that the Act **excludes legal entities (not natural persons) with a yearly turnover of more than R 2 million** from the definition of consumer. Therefore, if the Seller falls in this category, the mandate will not fall under the provisions of the CPA.

WHAT CHANGES ARE THERE TO AN AGREEMENT WHEN THE CPA APPLIES?

If the CPA applies, the agreement must comply with be provisions of the Act, the most important of which are:

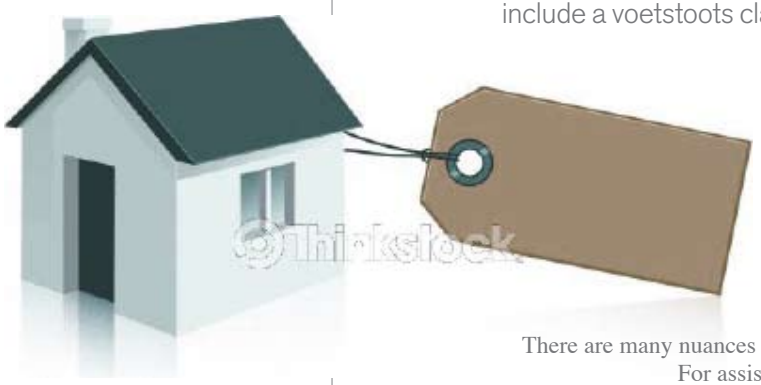
(i) it must be in **plain, understandable language**;
(ii) the consumer's attention must be conspicuously drawn to **clauses in which the consumer accepts risk or liability, grants an indemnity or acknowledges a fact**; and
(iii) (in a sale agreement) the Seller cannot attempt to escape liability for defects by hiding behind the **voetstoots** clause.

WHEN CAN I EXERCISE THE 5 DAY COOLING-OFF RIGHT?

- A consumer may cancel any agreement (be it a mandate or sale agreement) within 5 days after signing it, if it was **concluded as a result of direct marketing**.
- 'Direct marketing' occurs when a consumer is approached in person, by ordinary mail or electronic mail to conclude a transaction. For example, if an estate agent approached a Seller directly with the view to obtaining a mandate to sell the property, the Seller may cool-off and cancel the agreement, penalty free, by giving written notice to the agent within 5 days after signing the mandate.

NO MORE VOETSTOOTS?

- The CPA determines that consumers have the right to receive goods that are free from defects.
- As such, **if the sale agreement is subject to the CPA**, the Seller cannot rely on a voetstoots clause to exclude liability for defects in the property of which he was unaware of. This risk now lies with the Seller.
- If the transaction falls outside the scope of the CPA, then it is still possible for a Seller to include a voetstoots clause in the sale agreement.



There are many nuances to the CPA's application to property transactions. The above notes are introductory only. For assistance, contact STBB | Smith Tabata Buchanan Boyes at info@stbb.co.za

STBB | SMITH TABATA BUCHANAN BOYES