

# CPA – rental property industry still in dark

**Brian Joss**

The Consumer Protection Act (CPA) came in to effect on Friday April 1 but there is no clear distinction about how the Act will affect the rental property industry, says Michelle Dickens, managing director of TPN Credit Bureau, South Africa's only specialist property credit bureau and developer of the industry's first rental payment profile.

"The Minister of Trade and Industry has finalised the regulations, which have a direct bearing on the interpretation on certain sections of the CPA but which has created further confusion in so far as the Rental Property industry is concerned," she said. "We are still uncertain if the rental property industry might be excluded from the CPA, and the future seems complicated."

Vivien Marks, a registered assessor who runs the Assessment and Training Centre of Estate Agents in Pinelands, said, "Rental agents are most confused as to what needs to be altered as a result of the Consumer Protection Act.

"It is most unfortunate that there has been little clarity about the property rental aspect of this

Act coupled with the fact that the regulations were only registered on Friday April 1, on the day that the Act came into effect.

"The Consumer Protection Tribunal is certainly not up and running as was expected, and the necessary case history that this body will generate will probably only be available towards the end of the year. It would thus be difficult for the consumer to approach this body with a complaint until there is sufficient knowledge as to how the Act affects the real estate industry.

"Already there is disagreement among legal people as to whether estate agents and leases are affected or not.

"It is with surprise that the Estate Agency Affairs Board, the legislative body for the real estate industry, has not clarified this in advance."

However, Ms Marks said she is delighted that all contracts should be in plain language as it has always been her contention that this should be so.

"Landlords, rental agents and attorneys will have to be transparent in their dealings with consumers in future to avoid being reported to the Consumer Tribunal," she said.

"Rental agents and landlords should therefore simplify their documents and quietly wait during this window period until legislation is clarified, at which stage the correct alterations or additions can be made," she advised.

Marlon Shevelew, Chief Attorney from Marlon Shevelew and Associates, an industry expert on landlord-tenant law said: "It is regrettable, to the point of being inconceivable, that the South African property rental industry, which is already legislated by the Rental Housing Act (recently amended), the Debt Collectors Act (and recent case law), the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, the accompanying Unfair Practices regulations and the Rental Housing Tribunal, now potentially finds itself under the rubric of an act which seemingly affords tenants even greater protection at the expense of the landlord."

Mr Shevelew said that while the finalised regulations do provide clarity on the anomalous sections of the draft regulations such as providing guidelines to determine penalties and charges for consumers who want out of a fixed term consumer agreement and the

possibility to extend a fixed term consumer agreement beyond the previously suggested 24 months, there still remains a plethora of terms which are considered "grey list" terms and which are "presumed to be unfair". This can render a consumer agreement challengeable and of course invite unwanted litigation.

"There are still various different interpretations among the legal fraternity when it comes to the CPA and the rental property industry," said Mr Shevelew, an acknowledged expert on Landlord Tenant Law, rental claims and evictions, who lectures on the Consumer Protection Act and its impact on the property industry.

"If an individual owns one property, earns a rental income and the tenant is an individual then the CPA does not apply irrespective of whether there is a rental agency involved," he explained.

"But others say if there is a rental income earned and declared then it is in the landlord's ordinary course of business, irrespective of the landlord's occupation or the fact that the tenant is an individual

"A minority say if the rental income earned exceeds the landlord's normal occupational income

then it is in the landlord's ordinary course of business despite the landlord not being a serial property renter as such," Mr Shevelew said.

"Right now," said Ms Dickens, "the best advice we can offer property managers and landlords operating in the rental market is to be wary of potential consequences and hefty fines not dissimilar to the Competition Commission.

"The first safe step to take is to make sure that all lease agreements and other key documentation is drafted in keeping with the CPA.

"Essentially, we do not yet know how a court, the Consumer Protection Act or Rental Tribunal will perceive the ordinary course of business of a person. It is best to err on the side of caution and ensure that you, as the landlord or property manager, clearly explain the Act to your tenants and all its applicable provisions."

● Contact the TPN on 0861 876 000 or visit [www.tpn.co.za](http://www.tpn.co.za) for more information.

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