

# How the new Property Practitioners Act will impact property developers

By [Wilco du Toit](#)

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Accreditation and compliance already dominate the operations of South Africa's property developers - such as ensuring that the necessary certifications are obtained and that the property to be developed follows all the necessary zoning laws. Now, for some property developers, the Property Practitioners Act (PPA) will usher in a new era of additional compliance and certification requirements.



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From 1 February 2022, the Property Practitioners Act repeals the Estate Agents Affairs Act and casts a wider candidate net that now includes property developers - including their directors, members, or trustees, who act as a facilitator on behalf of another in the sale and letting of immovable property for profit or gain.

The many property developers who will fall under the definition of a "property practitioner" defined in the Act will, among other legislation and provisions, need to ensure compliance with Chapter 8 of the PPA.

## Fidelity Fund Certificate

Sections 47 and 48 of the Act compels property practitioners (including its directors, members or trustees, and its employees who act as property practitioners) to obtain and hold a valid Fidelity Fund Certificate. No property practitioner can act as a property practitioner unless a valid Fidelity Fund Certificate is held by that person.

Anybody that fails to obtain a valid Fidelity Fund Certificate may be required to repay any amounts received in respect of any property transaction.



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## Black Economic Empowerment Certificate

Section 50 of the PPA says that the Property Practitioners Regulatory Authority may not issue a Fidelity Fund Certificate to any person who does hold a valid B-BBEE Certificate. The act and regulations don't define which level of BEE certification the property practitioner must hold, so the current opinion is that the property practitioners should at least have a valid BEE Certificate.



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## Mandatory display of a valid Fidelity Fund Certificate

Under Section 53 of the PPA, the holder of a Fidelity Fund Certificate must prominently, clearly and in a legible manner display their Fidelity Fund Certificate in every place of business from which they conduct business so that customers can easily view it. The Act also requires the property practitioner to include a prescribed clause in each property transaction, stating that they guarantee they are the holder of a valid Fidelity Fund Certificate. A property practitioner who contravenes this obligation is liable to a fine or to imprisonment for a period not exceeding 10 years.



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## Trust accounts

Every property practitioner must now open and hold one or more Section 54(1)(a) trust accounts with a registered bank and appoint an auditor. Once they open the trust account, the property practitioner must provide the Property Practitioners Regulatory Authority with the account details and auditor information. Section 54 of the PPA also compels property practitioners to deposit all trust money received into the new account, until such time as they are entitled to that money or lawfully instructed to transfer the funds.

Property practitioners will have to have their Section 54(1) trust accounts audited within six months after their financial year-end and submit an audit report to the Property Practitioners Regulatory Authority.

## Prescribed service provider

Property practitioners may no longer offer an incentive or encourage a customer to use a specific attorney or conveyancer to render ancillary services in respect of any transaction. Any attorney or conveyancer who contravenes this section must repay any remuneration and interest to the consumer within one month of being requested to do so.

## Mandatory disclosure form

Before accepting a mandate from a seller or landlord, every property practitioner must have a mandatory disclosure form completed and signed by the seller or landlord. The form requires the seller or landlord, amongst others, to confirm whether to their knowledge there are:

- Any defects in the roof of the immovable property.
- Any defects in the electrical systems.
- Any defects in the plumbing system.
- Any defects in the structure of the property.

This completed and signed mandatory disclosure form must then be attached to any agreement for the sale or lease of a property and forms part of the agreement. If the mandatory form is attached to the agreement, it will be deemed that no defects were disclosed to the purchaser or tenant.

Even though, in terms of Section 4 of the PPA, property developers may apply for an exemption from certain provisions of the new law, it is clear that the Act aims to tighten up compliance and reduce the increasing incidences of fraud, corruption and dishonesty within the industry.

## ABOUT THE AUTHOR

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