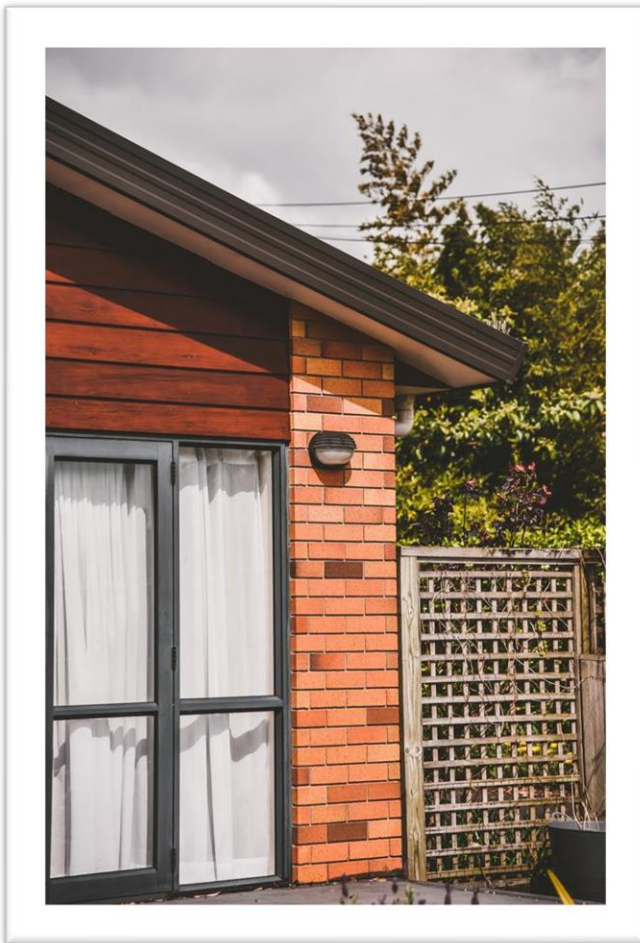


# PATENT AND LATENT HOME DEFECTS

## CONSULTANCY AND MEDIATION OPTIONS CONSUMER GUIDE



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## INTRODUCTION

The Consultancy and Mediation Options Consumer Guide will assist you in navigating the complex consumer law issues with the help of an experienced consumer law consultant and mediator. Suppose you have bought a home with patent and latent defects and the seller doesn't want to take responsibility. In that case, you need consultancy and mediation advice to save you hundreds or even thousands of rands. The cost of making a mistake is simply too high.

By reading this guide, you can make informed, intelligent decisions. We have dedicated our business to educating consumers. We'll be happy to answer any questions you might have - [I need consultancy and mediation advice.](#)

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## DID YOU BUY YOUR DREAM HOME BUT ENDED UP WITH A NIGHTMARE?

### From dream to nightmare

You found a bargain and made an offer on your dream home.

Blowing your savings to put down a deposit on this home was worth it.

Until...

The hidden problems you found left you flustered and dejected.

Your dream home has turned into a nightmare!

### You feel powerless

Some of these problems can make the home dangerous, especially structural or electrical defects. It may cost you thousands of rands to fix all these hidden defects in the property.

You also may not have received a complete list of patent and latent defects from the seller or agent. Neither the agent nor the seller wants to now take responsibility.

You feel like there is nothing you can do!

### You are not alone

#### Consumer law consultancy and mediation advice

Help and proper professional consultancy and mediation advice and assistance are available.

Talk to a consultant and mediator before giving any instructions to a repair service provider. The Consumer Protection Act No 68 of 2008, the common law, and consumer law itself protect you if you act quickly. Don't make the wrong move now. You have options... But you must act quickly.

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## WHAT IS A LATENT DEFECT?

### Latent vs patent defects

A defect is a flaw that creates an unreasonable risk of harm or further damage in its regular everyday use. The difference between a latent and patent defect is:

- a latent defect is a material defect, which is not visible after reasonable inspection of the property
- a patent defect is one that is easily discovered by any person doing a reasonably thorough inspection.

In terms of the common law, a seller is liable to a purchaser for all latent defects in the property sold for 3 (three) years after the discovery of the defects.

### Consumer Protection Act in terms of homes

The [Consumer Protection Act](#) (CPA) promotes a fair, accessible and sustainable marketplace for consumer products and services. This includes the buying or selling of immovable property.

The CPA provides for a statutory duty of full disclosure.

The CPA affects agreements concluded in the ordinary course of business by a developer who supplies goods (property) to the purchaser of the said property.

The result is that such a property developer cannot exclude liability for defects in the property by way of a *voetstoots* clause in their sales agreement.

You also have protection from an ordinary seller.

### Voetstoots or “As Is” clause in a sales document

Suppose a *voetstoots* clause is included in a sale agreement. In that case, the seller cannot be held liable if the purchaser discovers latent defects on the property after the sale.

Suppose the purchaser can prove that the seller was aware of the latent defect and failed to disclose this to the purchaser or should have known about it. In that case, the seller can be held liable.

All defects known to the seller or agent must be included in the sales document.

## Top 10 latent defects found in homes

These latent defects are the most common:

- Foundation and drainage trouble
- Electrical defects
- Roof problems (drainage, leaks, beetle infestation or rot)
- Heating combustion problems
- Improperly done owner repairs
- Structural damage
- Plumbing problems
- Infiltration by water or air
- Inadequate ventilation of attic or crawlspace
- Construction defects

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## WHAT SHOULD I DO NOW?

### Step 1: Check the Defects List

See if there is a defects list attached to your contract.

- Read the contract.
- Do a thorough inspection of the home
- Make a list of all undisclosed defects

### Step 2: Get an independent inspection report

Get a full diagnostic check of the home from an independent home inspector in writing. Ask him to check for any other possible problems or defects in the property.

### Step 3: Discuss the inspection report with the seller

Ask the seller what they intend doing about the various issues you have now discovered. Listen to what they say and what they are prepared to do and tell them you will revert to them shortly. Do not agree to allow them to repair the property yet. Be firm. Take consultancy and mediation advice first.

### Consider your options carefully

Remember, it is your choice to choose how to fix or tackle the problem.

#### **Step 4: Discuss the issue with your consumer law consultant and mediator**

Then call your consultant and mediator to discuss your options and what your consumer law rights are in your case. Your choices depend on the severity of the problems and whether the defect is latent. Your options are to enforce either:

- A repair, or
- Cancellation of the entire contract, which may depend on where you are in the sales process, or
- You can refuse to pay occupational interest or transfer costs until the serious and material defects have been repaired. You can refuse to take occupation until they are fixed.

#### **The Legal Advice Office**

Contact me at The Legal Advice Office to make an informed choice. I am Hugh Pollard, a consumer law consultant and mediator with a BA LLB and 40+ years' experience in the consumer law field.

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