INTRODUCTION
There are a number of different laws that impact residential leases. This article explores certain of those laws relevant to a residential lease and explains the proper procedure to be followed when terminating a residential lease.

WHEN DOES THE CONSUMER PROTECTION ACT APPLY?
The Consumer Protection Act (CPA) applies to the supply of goods and services within South Africa, and this Act expressly defines residential accommodation as a service, meaning that residential leases are affected by this Act.

The CPA will apply to all leases, except:
1) where the lease is concluded between a landlord and a tenant which is a juristic entity (such as a company, trust, partnership or association) and where such tenant (at date of transaction) has an annual turnover or asset value which equals or exceeds R 2 million; or
2) where the landlord is not leasing the property in the ordinary course of business.

LIMITATION ON DURATION OF LEASES
The CPA provides in Regulation 5 that fixed term contracts (of which leases are an example), are limited to a maximum duration of 24 months, unless such longer period is expressly agreed with the consumer (tenant) and the supplier (landlord) can show a demonstrable financial benefit to the consumer.

CANCELLATION OF A LEASE BY TENANT BY NOTICE PRIOR TO EXPIRY IN A FIXED TERM LEASE
The cancellation of a lease before the agreed fixed term of the contract has run its course, is commonly referred to as ‘early termination’. If the fixed term lease does not provide for early termination, then the lease cannot (save for where the CPA or Rental Housing Act apply) be cancelled early, unless both parties agree to this.

Should the parties agree to an early termination, this termination and the terms thereof should be reduced to writing and signed by the parties.

Where the CPA is applicable, a consumer (i.e. a tenant) can cancel a fixed term agreement (i.e. a lease) for any reason whatsoever by giving the supplier (landlord) 20 business days written notice of the cancellation.

Such cancellation is subject to a “reasonable cancellation penalty” in favour of the landlord, the calculation whereof is set out more fully in Regulation 5 of the Consumer Protection Act.

The calculation of this penalty requires the following to be taken into account:

- the amount which the consumer is still liable for to the supplier up to the date of cancellation;
- the value of the transaction up to cancellation;
- the value of the goods which will remain in the possession of the consumer after cancellation;
- the value of the goods that are returned to the supplier;
- the duration of the consumer agreement as initially agreed;
- losses suffered or benefits accrued by consumer as a result of the consumer entering into the consumer agreement;
- the nature of the goods or services that were reserved or booked;
- the length of notice of cancellation provided by the consumer;
- the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
- the general practice of the relevant industry.

It must be noted that the landlord has a duty to mitigate his damages and to try find a new tenant. When the landlord thus received the written CPA notice to cancel, the landlord has a duty to take reasonable steps to find a new tenant.
Lease agreements need to be perused and understood prior to signing and or cancellation inasmuch as there are some lease agreements that provide for an agreed amount as the reasonable cancellation penalty, which amount, being pre agreed, is applicable in the event of early termination in terms of the CPA.

Where agent’s commission has been paid in respect of the full duration of the lease, the landlord would suffer damages to the extent that commission has been paid in respect of the period following cancellation of the lease. This pro-rata portion of the commission already paid commonly forms part of the reasonable cancellation penalty.

**CANCELLATION OF THE LEASE DUE TO BREACH**

Leases commonly contain breach clauses that stipulate where a landlord or tenant has breached the lease, the aggrieved party may give written notice to the defaulting party for such breach to be remedied. Failure to remedy the breach in the stipulated time period, will entitle the aggrieved party to either enforce the lease or cancel the lease and (where relevant) claim damages suffered from the defaulting party.

Where the CPA is not applicable to a lease agreement, the provisions of the breach clause in the agreement must be followed.

In instances where the CPA is applicable, the CPA provides that the landlord may not cancel the lease upon the tenants breach, unless the landlord (despite a shorter period provided for in the lease) first gives the tenant 20 business days written notice to remedy the breach. Provided that the tenant does not remedy the breach in this period, the landlord can cancel the lease after this period has expired.

This is critical because it applies despite what the lease says – it thus overrides the provisions of the lease or the common law. The Rental Housing Act does not stipulate how many days the breach notice period must be.

**EXPIRY OF LEASES / FIXED TERM CONTRACTS WHERE THE CPA IS APPLICABLE**

The landlord must notify the tenant in writing of the impending expiry date of the fixed term agreement, not more than 80 (eighty), nor less than 40 (forty) business days before the expiry date; and

(i) any material changes that would apply if the agreement is to be renewed or may otherwise continue beyond the expiry dates; and

(ii) the options available to the consumer.

**MONTH-TO-MONTH LEASES**

In terms of the CPA, upon expiry of the fixed term of the agreement, it will be automatically continued on a month-to-month basis, subject to any material changes of which the landlord has given notice, as contemplated above, unless the tenant expressly:

(i) directs the landlord to terminate the agreement on the expiry date; or

(ii) agrees to a renewal of the agreement for a further fixed term.

The Rental Housing Act also provides that if a tenant remains in occupation of the property after the fixed period defined in a written lease expires, that the lease will continue to run on the same terms and conditions as contained in the written document, save that the duration of the lease will be only one month (i.e. a month to month lease situation will arise).

In both cases above, in the absence of an agreement to the contrary, either party can terminate the lease by giving the other party one calendar month’s notice.

**CONCLUSION**

Landlords and tenants should seek legal advise when entering into or terminating lease agreements.