Monday Contemplation No 10
Defects and the Property Practitioner Part 2

In last week's Monday Contemplation, we started to discuss the responsibility of the property practitioner (PP) when it comes to latent defects. These responsibilities flow from the Property Practitioners Act 22 of 2019 and its associated Regulations, as well as the Code of Conduct contained in the Regulations.

To remind you, we spoke Regulation 34.3.2.1 of the Regulations to the Property Practitioners Act, which says as follows:

"**An estate agent shall** -
34.3.2.1 convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge and which are or could be material to a prospective purchaser or lessee thereof;"

We now need to move on to discuss **Section 67** of the Property Practitioners Act itself. Section 67 says as follows:

<u>67. (1) A property practitioner must</u> -

(a) <u>not accept a mandate unless the seller or lessor of the property has provided him or her with a fully completed and signed mandatory disclosure</u> in the prescribed form; and

(b) provide a copy of the completed mandatory disclosure form to a prospective purchaser or lessee who intends to make an offer for the purchase or lease of a property.

(2) The **completed mandatory disclosure form signed by all relevant parties** must be attached to any agreement for the sale or lease of a property, and forms an integral part of that agreement, but if such a disclosure form was not completed, signed or attached, the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchaser.

(3) A property practitioner who fails to comply with subsection (1) may be held liable by an affected consumer.

(4) Nothing in this section prevents the Authority from taking action against a property practitioner or imposing an appropriate sanction.

(5) Nothing in this section prevents a consumer, for his or her own account, from undertaking a property inspection to confirm the state of the property before finalising the transaction.

<u>There are several important aspects to highlight</u>:

1. A **property practitioner cannot accept a mandate** unless the seller or lessor has provided a fully completed and signed mandatory disclosure form.

2. The property practitioner must provide a copy of the mandatory disclosure form to prospective purchasers or lessees who intend to make an offer to purchase or lease.

3. The completed mandatory disclosure form must be attached to the agreement of sale or lease.

4. In the event that the mandatory disclosure form was not completed, signed or attached, the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchaser.

5. **A property practitioner** who does not comply with points 1 and 2 above, may be held liable by an affected consumer. We will discuss this point in more detail in the coming weeks.

6. The PPRA can take action against a property practitioner who does not comply with this section.

7. A consumer is entitled to undertake their own inspection of the property.

We will continue this theme in our next few Monday Contemplations, including the contents of the mandatory disclosure form.