

Monday Contemplation No 12

Defects and the Property Practitioner Part 4

In last week's Monday Contemplation, we started to discuss Regulation 36.1 of the Regulations to the Property Practitioners Act 22 of 2019 which is the Regulation dealing with the mandatory disclosure form. Refer back to Defects and the Property Practitioner Part 3.

Continuing on from last week, Part 3 of Regulation 36.1 says as follows:

"The **owner of the Property discloses** the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property. The owner hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement, and to disclose any information contained in this statement, to any person in connection with any actual or anticipated sale of the Property."

There are a number of important issues that need to be highlighted:

1. The **disclosures made** by the owner of the property in the mandatory disclosure form are not made as a warranty. In other words, the seller does not provide any warranties to a prospective purchaser relating to the condition of the property;
2. This is important insofar as any liability that the seller may have towards the purchaser if there are any problems with the property which the purchaser discovers. However, the seller needs to be aware that the purchaser may rely on the information when deciding whether or not to purchase the property; and
3. The seller authorises the property practitioner who is marketing the property to give a copy of the mandatory disclosure form to the Purchaser and disclose any information contained in the mandatory disclosure form.

Part 4 of Regulation 36.1 says in part, the following:

"The owner represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable"."

Hence, the owner needs to be aware that they are making certain representations when completing the mandatory disclosure form.

This idea is further enforced in Part 6 of Regulation 36.1 which says:

"The owner hereby certifies that the information provided in this report is, to the best of the owner's knowledge and belief, true and correct as at the date when the owner signs this report."

The seller is therefore certifying that the information provided in the mandatory disclosure form, is to the best of their knowledge, true and correct. In the event that the seller is a layman who genuinely does not know about any defects in the property, we can refer to ...

Part 8 of Regulation 36.1, which says:

"Both the owner as well as potential buyers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property. Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties pertaining to the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties."

This is clear indication that both the seller and potential purchaser need to be aware that they may want to obtain a professional inspection of the property. This requirement, must be included in the agreement of sale. This, therefore, provides an element of safety for both the seller and the purchaser.

The points above raise some interesting questions regarding the liability of the seller if the seller has made any misrepresentations relating to the condition of the property.

This question and the legal relevance of the mandatory disclosure form will be answered in Part 5 of Defects and the Property Practitioner next week.