

Monday Contemplation No 15

Do I need to register with the PPRA? Part 2

In last week's Monday Contemplation, we started to discuss the definition of who is a property practitioner (PP) in terms of the Property Practitioners Act 22 of 2019 (PPA).

Continuing our discussion, if you do the following you are considered to be a PP and must hold a FFC:

1. **Provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or lease of a property or a business undertaking, including a provider of bridging finance and a bond broker.** Hence, it is clear that if you are a bond originator or provide bridging finance, you need to be registered as a PP and have a FFC.

2. **Acts or provides services as intermediary or facilitator with the primary purpose to, or to attempt to effect the conclusion of an agreement to sell and purchase, or hire or let,** as the case may be, a property or business undertaking. A simple example would be if you sit show houses for a PP, then you would fall into this category as you are providing services as an intermediary or facilitator with the primary purpose to effect the conclusion of an agreement of sale.

3. The person mentioned in point 2 above, **is not included in the definition** of a PP if what they do is not in the ordinary course of their business, **they sell their own property or they are an attorney or candidate attorney.** It is therefore clear that attorneys do not fall under the definition of a PP and **do not need to hold a FFC.** More about attorneys next week.

4. **Includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership,** in a property **or property development.** This means that if you are involved in the sale of sectional title, time share, share block or any scheme of ownership relating to property or property rights, you are considered to be a PP and need to hold a FFC. A good example would be fractional ownership schemes in places like game reserves. If you are marketing or selling such ownership arrangements, you are a PP.

5. Includes **any person who for remuneration manages a property on behalf of another.** This is a most interesting category. Imagine the following scenario. A person (Person X) owns various properties in an entity, which let us call PropCo. These properties are let out for profit, i.e: tenants are placed in the properties and the tenants pay rent. Person X sets up a second company, which is called ManCo. ManCo manages the properties, collects the rentals, pays the expenses and charges a management fee which is then paid to Person X as their own remuneration. Ignoring the tax implications of such an arrangement, the point is that **ManCo is managing property on behalf of PropCo** and therefore ManCo needs to be registered as a PP holding a FFC and likewise, anyone who is employed by ManCo, which in this case, could just be Person X.

This means that anyone considering such a structure needs to think about the implications in terms of the PPA.

6. **Includes a trust in respect of which the trustee, for the acquisition of gain on the account of the trust,** directly or indirectly in any manner holds out that it is a business which, on the instruction of or on behalf of any other person, performs any act referred to in paragraph (a). Paragraph (a) refers to the activities of a PP, **being buying, selling, negotiating, marketing, canvassing** and so on. Hence, like point 5 above, **if the trust is set up to let,**

manage, sell, etc, property on behalf of another or someone else, then that trust will need to be registered as a PP and hold a FFC.

As an example, a wealthy investor may have a fairly complex structure of property owning companies and a family trust. Such a person needs to obtain appropriate advice regarding this structure as the various entities may very well be offering the services of a PP.

Next week, I will finalise the list of functions that, if you perform those functions, would classify your work as a PP.