Monday Contemplation No 2

Following on from my post last week, contemplation no 1.

<u>Does a mandate have to be in writing</u>?

In our last week's post, we discussed the importance of obtaining mandates in order to acquire property stock to sell or let. How does one obtain this mandate? Does it need to be in writing or can it be provided verbally?

The answer to this question depends upon the type of mandate that is secured by the property practitioner.

An open mandate is a mandate that the client, let us say the seller of a property in this case, may give to any number of property practitioners. This means that the client could appoint more than one property practitioner to market their property for sale. Such a mandate is not required to be in writing. Obviously, the challenge here is for either of the parties to prove the terms and conditions of the mandate in the event of a dispute. Although an open mandate does not need to be in writing, it makes sense to put this mandate in writing and record the terms of the mandate, such as the details of the property, the expiry date of the mandate, the mandated price for the property and the rate of commission payable.

A sole mandate, on the other hand, must be in writing.

Regulation 34.3.1 of the Regulations promulgated in terms of the Property Practitioners Act 22 of 2019 indicates that

no estate agent shall:

34.3.1.3 accept a sole mandate or the extension of the period of an existing sole mandate, unless –

34.3.1.3.1 all the terms of such mandate (or extension, as the case may be), are in writing and signed by the client in a manner acceptable in law, including by way of an electronic signature as permitted under the Electronic Transactions and Communications Act, 2002;

Whereas the client can give an open mandate to any number of practitioners, a sole mandate is a mandate that the client can give to one practitioner only and in terms of Regulation 34.3.1.3.1, this mandate must be in writing. You therefore cannot have a verbal sole mandate. This would not be legal in terms of the Property Practitioners Act 22 of 2019 and its associated Regulations.

Notwithstanding the difficulties that one would have to prove the terms of an open mandate which has not been reduced to writing, such a mandate also exposes the property practitioner and client to a number of risks. These risks will be discussed in next week's contemplation post.

<u>Question to consider</u>:

Can you take an open mandate in writing?