

Monday Contemplation No 21

Code of Conduct – Part 4

We continue with our discussion of the Code of Conduct. This week, we turn our attention to **Regulation 34.3.4**, which deals with the PP's duty not to make misrepresentations or harmful statements or to use harmful marketing techniques.

A summary of Regulation (Reg) 34.3.4 follows below:

1. **Reg 34.3.4.1** – a PP may not publish an advertisement that creates the impression that it was published by the owner, seller or lessor of immovable property. This means that it must be clear that the property is being advertised by a property practitioner and not making the advert look like it is the owner that is marketing the property. A PP may do this to disguise the fact that a PP is marketing the property especially for prospective purchasers or lessees that do not wish to deal with a PP.
2. **Reg 34.3.4.2** – a PP may not make any false statements or assist anyone else to make false statements. As an example, let us assume that a property is sold for R1.5m. A PP may not assist the purchaser of a property to reduce the purchase price in the offer to purchase to R1m and the purchaser will give the seller R500 000 in cash, in order to allow the purchaser to avoid paying transfer duty.
3. **Reg 34.3.4.3** – a PP may not claim to have specialised knowledge, if in fact they do not have such knowledge. A simple example would be a PP who works with residential property would need to be cautious about accepting a mandate to market an industrial property for sale, if they do not have the knowledge required to market such a property.
4. **Reg 34.3.4.4** – as a PP, you may not advertise or market a property in respect of which you have a mandate, at a price or rental other than that agreed with your seller or lessor. Hence, you need to agree your pricing strategy with your seller or lessor and not use a lower price to bait a potential purchaser or lessee.
5. **Reg 34.3.4.5** – a PP may not mislead or misrepresent anything relating to the property which that PP has a mandate to sell or let. As a PP, it is your responsibility to disclose all facts relating to the property to a prospective purchaser or lessee.
6. **Reg 34.3.4.5.2** – a PP may not use any harmful marketing technique in order to secure a mandate to sell or let the property. A very obvious example would be where the PP purposefully overestimates the probable selling price or rental of the property in order to secure the mandate, in the hope that over time, they will be able to price counsel the seller or lessor down to a market related selling price or rental.
7. **Reg 34.3.4.7** – as a PP holding a mandate to sell a property, you may not inform a seller or purchaser, that you have obtained an offer in respect of the property, unless you have in fact obtained such an offer, which must be bona fide, in writing and signed. There are instances where PPs have filled in fictitious OTPs to demonstrate to their seller that they have been active in marketing the property. This behaviour is clearly prohibited in terms of this Reg.
8. **Reg 34.3.4.8** – a PP cannot place a board on a property that the property is for sale or to let or has been sold or let, unless the seller or lessor has consented to the board being placed, the PP in fact has a mandate to sell or let the property or has actually sold or let the property. This Regulation prevents a PP from placing boards all over a particular area

or neighbourhood with the intention of demonstrating to potential sellers, purchasers, lessors and lessees, just how active that particular PP is in the area.

9. **Reg 34.3.4.9** – a PP cannot erect or attach an advertising board to solicit business on local authority property, without the express written consent of that local authority or if the advertising board is in contravention of the regulations of the advertising by-laws of that local authority. PPs beware – many local authorities are quite vigilant in policing the advertising boards used by PPs.

Next week we will discuss the PP's duties in respect of offers and contracts.