

Monday Contemplation No 26

Undesirable business practices

Over the last seven weeks, we have been discussing the Code of Conduct. Please search for any of the discussions that you may have missed. This week we turn our attention to the issue of **undesirable business practices**.

Section 63 of the Property Practitioners Act highlights undesirable business practices.

Section 63 refers to the following:

1. **S63(1)** – the Minister may declare a particular business practice in the property market to be undesirable and consequently prohibited.
2. **S63(2)** – when deciding whether a business practice is undesirable, the Minister and the Board of the PPRA, must consider various factors. These factors include the right of every person to freely choose their occupation, whether the business practice will damage the relationship between property practitioners themselves and/or consumers and unreasonably prejudice, deceive or affect any consumer or category of consumers.

Examples of undesirable business practices are provided in Regulation 35 of the Regulations to the Act. These examples include:

1. **Reg 35.1.1.1** – a franchisor of a franchised business, may not require the franchisee, when disposing of the franchise, to market, promote or dispose of the franchised business through the agency of the franchisor. This means, that the franchisee would be free to dispose of the franchised business as they wish and via any agency, but of course the franchisor may have rules relating to the disposal of the business.

2. **Reg 35.1.1.2** – any person or party, including a body corporate or homeowners association, that controls or manages residential property, **may not have an arrangement:**

- Where they receive money or reward in exchange for preferential treatment relating to the marketing of property in that development;
- Where property in that development may only be disposed of through the agency of the managing organisation or a property practitioner designated by the managing organisation;
- Where the property may only be sold back to the managing organisation; or
- Where one property practitioner is advantaged over another property practitioner or one property practitioner is excluded from providing services to that development.

In my opinion, a developer who undertakes a development would be free to choose their own sole marketing agent or practitioner. **It would however be a problem, if the rules of the development stipulate that second hand sales may only be undertaken by a certain property practitioner.**

Do you think that a homeowners association can charge a property practitioner a fee in order for that practitioner to gain access to an estate or development to market second hand property?

What about a homeowners association demanding a share of your commission if you sell a property in that development or estate?

What are your thoughts? It would be most interesting to hear about your experiences.