Monday Contemplation No 3
<u>Is a sole mandate a soul mandate</u>?

Let us just remind ourselves, that we generally get three main types of mandates when dealing with clients in real estate:

Open mandate – this is a mandate that the client can give to as many property practitioners as possible. It can be given verbally by the client and does need to be in writing;

Sole mandate – this is a mandate that the client can give to one property practitioner only. In other words, the client agrees that the mandate will only reside with one property practitioner for the period that the mandate will endure. However, bear in mind, that the client could sell or let the property themselves with a sole mandate; and a

Sole and exclusive mandate – this is mandate where the client agrees that the property practitioner is the only person who may sell or let the property.
So, what's all the fuss about???

It is important for a property practitioner to explain the implications of a mandate to a client. A client should understand, the risks involved in using open mandates. Anyone who is looking to buy or rent a property, is likely to contact more than one property practitioner to see what stock they have that would be suitable. It is therefore very possible, that a potential buyer may have viewed a property with Property Practitioner A, but purchased the property through the agency of Property Practitioner B. This may have double commission implications for the seller with the seller potentially having to pay commission to both Practitioner A and B. Furthermore, there are two important aspects here:

1. **Regulation 34.6.3** of the Code of Conduct, which indicates that no estate agent shall introduce a prospective purchaser to a property or the seller, if the estate agent knows or has reason to believe that that prospective purchaser has already been introduced to the property or seller by another agent and there is a likelihood that the seller may have to pay more than one commission.
2. When dealing with an open mandate, the PPs claim for commission is based upon proving three things:

a. Did the PP have a mandate.
b. Was the transaction in accordance with the terms of the mandate.
c. Was the PP at least, AN effective cause of the transaction (not THE only effective cause of the transaction. Hence, in this case, Agent A, it would seem had a mandate.

One would assume that the transaction was in accordance with the terms of the mandate, even though concluded through the agency of Agent B. The issue of effective is not quite as simple as one would think. The simple question to answer is "If it were not for the intervention of Agent A, would there have been a transaction"? Agent A's intervention could be as simple as an introduction, but it may also be that Agent A had been negotiating with that buyer and the seller for several weeks. In this case, the question to ask, is why has Agent A not concluded the transaction? Just because Agent A has introduced the buyer to the seller, does not of itself make Agent A an effective cause of the transaction.

We would need to know the circumstances around Agent A's efforts and why Agent A did not conclude the transaction in order to know definitively if Agent A would be entitled to any commission

Two important lessons here: PPs get rewarded for results not effort. The fact that you have introduced a buyer, does not automatically entitle you to commission. As I have indicated, it depends on the circumstances.

Any property practitioner must ensure that a seller understands these risks and use this explanation as a means of communicating to a potential client the benefits of signing a sole and exclusive mandate. It surely makes sense, that if a property practitioner is going to commit to the client in terms of time, effort and resources, that the client makes a likewise commitment by agreeing to enter into a sole and exclusive mandate with the practitioner. The client ensures that they have a committed property practitioner marketing their property and also there is no possibility of any double claim for commission.

A sole mandate is therefore good for the soul of both the seller and the practitioner. They are both equally committed to each other and the client increases the chance of a successful transaction, which is ultimately why they approached the property practitioner in the first place!

<u>Question</u>:
1. How do you encourage seller's to give you a sole mandate?