Monday Contemplation No 5
Following on from my post last week: **Claiming commission when no one wants that "renovator's dream"** – continued:

In last week's Monday Contemplation, I discussed the case of **Naidoo v Wakefields Real Estate (Pty) Ltd. ZAKZPHC/2023/95**.

There are a number of important lessons that flow from the case:

1. The buyer in the Naidoo case wanted to complete the OTP as quickly as possible. The property practitioner (PP) in the case, indicated to the buyer that she would email a copy of the OTP for the buyer to peruse, but the buyer was insistent on following the PP to her office to complete the OTP. In such an instance, it is important that a PP leaves no room for assertions to be made that the buyer was pressurised into signing the OTP.

2. Following on from point 1 above, the buyer in the case raised a point that the PP did not go through the contract and explain the terms and conditions of the contract and hence the buyer was not aware that he would be responsible for commission in the event that he was in breach of the contract. Once again, the lesson here to be learned, is that any PP must ensure that they explain each term and condition of the contract, in accordance with their obligations in terms of the PPRA's Code of Conduct. Failure to do so, may result in disciplinary action being taken by the PPRA against the PP.

3. A further point raised by the buyer, was that he indicated to the PP in the case, that the offer was made on condition that his daughter viewed the property. What we learn from this, is that any special conditions must be included in the contract. Furthermore, it is standard practice, that OTPs contain a clause indicating that anything not reduced to writing is of no force and effect. In any event, all terms and conditions relating to an OTP, must be in writing.

4. Probably one of the most important lessons for all PPs that this case demonstrates, is for the PP to ensure that any potential buyer clearly understands, that by signing an OTP, you are creating legal obligations. Once a buyer has signed an OTP, they cannot just change their mind.

Question for you to consider:
What proof do you have that you have explained your OTP to both the buyer and the seller?