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DEFECTS UNDER THE PROPERTY PRACTITIONERS ACT: THE SELLER'S OBLIGATIONS BEFORE ENTERING INTO AN AGREEMENT (PART 3)

The Property Practitioners Act, 22 of 2019 (PPA) & the Regulations that were Gazetted on 14 January 2022 came into operation on 1 February 2022 and brought a number of changes to the property industry. Over the course of the next 7 weeks, we will discuss how defects and the disclosure of defects must be addressed in terms of the PPA. This article is Part 3 in the series, which discusses the seller's obligations before entering into an agreement.

The parties' obligations regarding defects before they enter into an agreement

Seller

The seller must disclose the following defects to the purchaser before the offer is made:

- All latent defects; and
- Patent defects of a significant nature.

The seller must disclose the following defects he/she is aware of:

Latent defects: The seller must disclose all latent defects to the purchaser. If the pro-forma Report supplied by the agent does not make provision for a specific defect that must be disclosed, it must be entered in the open space provided.

Patent defects: Although the purchaser must conduct a proper but reasonable inspection of the property before an offer is made, the PPA requires the seller to assist the purchaser and he/she must disclose patent defects of a significant nature he/she is aware of. Minor issues such as cosmetic and aesthetic matters or defects that can easily be repaired/replaced are not defects that need to be disclosed.

The seller is protected against claims for those defects that:

- Are disclosed in the report, unless he/she contractually agreed to attend thereto;
- He/she was not aware of;
- Are not required to be disclosed

The seller is not protected against claims for defects that:

- Are required to be to be disclosed but were not;
- Are covered by written contractual warranties.
- Are contractually undertaken to be repaired.
- Are concealed in order to deceive the purchaser.

If the seller does not complete and sign the report, it is deemed that no defects were disclosed, and the seller can be held liable in certain cases. It is in the best interest of the seller to make a full disclosure about the defects.