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DOES AN ESTATE AGENT HAVE A DUTY TO INSPECT A PROPERTY AND DISCLOSE DEFECTS?

In terms of Section 4.1.1 of the Estate Agents Code of Conduct, an estate agent has a duty to disclose any facts regarding a property which she may have personal knowledge of and which may be material to a purchaser. This being said, an estate agent is under no obligation to carry out an inspection of the property. The duty to inspect the property for patent defects rests with the purchaser, as the duty to disclose latent defects (he/she is aware of) falls on the seller.

However, the estate agent should ensure that both the seller and the purchaser know what their respective rights and duties are. Ideally, the sale agreement should contain a clause wherein the seller acknowledges his duty to disclose any latent defects that he is aware of. It should also contain a confirmation by the purchaser that he inspected the property and accepts the property in its condition as at the conclusion of the sale agreement.

The Property Practitioners Act will bring a new requirement, as Section 67 states that a property practitioner is not permitted to accept a mandate unless the seller or lessor of the property has provided a completed and signed mandatory disclosure of the conditions of the property. If such mandatory disclosure is not completed, signed and attached to an agreement for the sale or lease of a property, the agreement is interpreted as if no defects or deficiencies to the property were disclosed to the purchaser. This means that the seller or landlord will be completely exposed for defect claims and will legislatively have no defence against such claims.

It will be to an agent's advantage to get into the habit of completing the mandatory disclosure on listing the property and providing it to a prospective purchaser before signature of an offer.