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THE PROPERTY REPORT AND THE RESPONSIBILITY OF PROPERTY PRACTITIONERS IN TERMS OF THE PROPERTY PRACTITIONERS ACT

The Property Practitioners Act 2019 (PPA) is new legislation which will replace the Estate Agency Affairs Act 1976. One of the main objects of the PPA is transformation in the property sector and to provide for consumer protection. The Act has been signed into law, but not operational yet.

The Property Practitioners Act 2019 now requires that the seller of a property must include a disclosure (property report) as part of the sale agreement to inform the prospective purchaser about the condition of the property. All defects need to be declared and the Act does not differentiate between latent and patent defects. As discussed in the previous MC2Agent (Enforceability of a property report) purchasers would usually have to follow an expensive legal process after discovering latent defects (if the property was sold voetstoots). This is where the Act intervened. Purchasers can now register complaints regarding defects with the Property Practitioners Ombud in terms of section 28 of the Act.

Property practitioners have the following obligations in terms of the Property Practitioners Act:

1. Obtain a fully completed and signed mandatory disclosure in the prescribed form before accepting a mandate;
2. Provide a copy of the completed disclosure form to all prospective purchasers; and
3. Attach the completed disclosure form to the sale agreement – it will form an integral part of the agreement.

If the property report is not completed it will be deemed that no defects were disclosed. This means that the seller/landlord will be exposed to claims for defects and will have no defense against such claims, unless he was not aware of the defects. Property practitioners who fail to follow the rules can be held liable for damages on the part of the seller, purchaser, landlord or tenant. It is of paramount importance that estate agents ensure that the property report is completed and signed before the mandate and to bring it to every prospective purchaser's attention. It is evident that the Property Practitioners Act places an obligation on the transferring attorney to ensure that a property report is present with every transaction.