15 March 2024

ENFORCEABILITY OF A PROPERTY REPORT

A property report is regarded as a record of the latent defects (defects that cannot be seen with the naked eye) disclosed by the seller to the purchaser, and is currently a legal requirement (when an agent signs a mandate with a seller), in terms of the Property Practitioner's Act (PPA). It is strongly advised that the seller completes this report thoroughly and hands it to the potential purchaser prior to signing an agreement. If the seller does not complete this property report it will be deemed that he/she did not disclose any latent defects to the purchaser, and such as seller can be held liable for latent defects that was not declared, but that he/she was aware of.

It is however important to note that this report does not constitute a warranty of any kind or nature made by the seller to the purchaser relating to the existence, nature or extent of any defect. For example, should the seller declare on the property report that any additions and/or improvements have been duly affixed on approved building plans and it comes to the purchaser's knowledge that the building plans are not updated, the seller cannot be held liable if he was not aware that they were not updated. The purchaser however has a legal obligation to conduct a thorough inspection of the property to establish if it contains any patent defects (defects than can be seen with the naked eye) even if the seller has provided the purchaser with a property report as a seller is not liable for patent defects not specifically addressed in the offer to purchase.

Although the property is sold "voetstoots", the seller has a legal and contractual obligation to disclose the latent/hidden defects to the purchaser that he/she is aware of. The voetstoots clause will only protect the seller from the latent defects he/she either discloses or are unaware of. Should a purchaser encounter a defect after registration and it is alleged that the seller was aware of the said defect, the purchaser must prove the following:

- The property had the defect at time of conclusion of the sale agreement;
- The seller deliberately concealed the defect as he/she knew that if it was not concealed and the purchaser was aware of the defect, the purchaser would not have continued with the transaction or the purchaser would have negotiated a more favourable purchase price;
- The seller knew about the defect and did not disclose same to the purchaser and
- The seller made a fraudulent or material misrepresentation.