

I did not know my candidate needed a FFC

Last week, we discussed the decision in *Property Knight (Pty) Ltd v Van Niekerk and Others*. One of the issues in this case, was that the agent who negotiated the sale of a property was in the employ of Agency A, as an intern agent, but sold the property through the agency of Agency B. The agent did not hold an intern FFC bearing any relationship with Agency B.

What does the Property Practitioners Act No 22 of 2019 (PPA) have to say about all of this?

Section 64 of the PPA says as follows:

64. (1) A candidate property practitioner may not draft or complete any document or clause in a document—

(a) conferring any mandate on any property practitioner to perform any act referred to in paragraph (a), (c) or (d) of the definition of “property practitioner” in section 1; or
(b) relating to the sale or lease of property.

(2) A person who contravenes subsection (1) and a property practitioner who allows an act contemplated in subsection (1) is not entitled to any payment, remuneration, consideration or damages in respect of or by reason of any document contemplated in that subsection or for bringing about the transaction or agreement embodied in that document.

(3) In any proceedings in respect of sanctionable conduct, it is no defence that the principal property practitioner was not aware of the acts or omissions of the property practitioner or the candidate property practitioner.

(4) A principal property practitioner who conducts business from more than one business premises must supervise and control the property practitioners and candidate property practitioners in his, her or its employ, despite the fact that those property practitioners conduct their business in branch or other offices.

Hence, a candidate is prevented from drafting or completing certain documentation and the principal needs to be aware that they are responsible for the actions of their candidates and cannot raise a defence that they were not aware of the acts or omissions of the candidate.

In terms of Regulation 33.4 of the Regulations to the PPA, a candidate estate agent may not perform any act as a property practitioner unless the candidate estate agent has duly disclosed as far as practically possible in relation to the candidate estate agent's activities as a property practitioner, excluding authorized advertisements in the press, that he or she is a candidate estate agent and is acting under the active supervision and control of a property practitioner qualified in terms of regulation 33.1 and who is no longer subject to any restriction in terms of Regulation 33.3.

Regulation 33.4.3.3 says that a candidate estate agent may not, in his or her capacity as a candidate estate agent, complete or draft any documentation relating to any transaction negotiated by him or her in his or her capacity as a candidate estate agent, otherwise than under the supervision of a property practitioner qualified in terms of Regulation 33.1 and who is no longer subject to any restriction in terms of Regulation

33.3, and who certifies on the documentation in question that the said documentation has been completed under his or her supervision.

And important to note:

Regulation 33.4.4 says that the property practitioner contemplated in Sub Regulation 33.4.2.3 shall be responsible for all acts of a candidate estate agent done in his or her capacity as such, of which the principal property practitioner is aware.

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