

THE PROPERTY PRACTITIONERS ACT 22 OF 2019

UNDERSTANDING THE ACT

THE ACT IS OPERATIONAL AS FROM 1 FEBRUARY 2022.

THE PROPERTY PRACTITIONERS ACT (PPA) IS A TRANSITIONAL ACT:

WHAT DOES THIS MEAN?

- The purpose of the Act is to regulate the activities within the property industry as a whole to promote an inclusive and integrated sector.
- With the Act being transitional, it will continue to change and develop until the purpose of the Act has been achieved. It is for this reason that when the Act is silent on certain aspects pertaining to the sector, Property Practitioners are to interpret the Act in such a way that the new laws and regulations are adhered to but when the Act is silent or vague, the assumption must be reasonable and the status quo shall apply.

THE PPA REGULATIONS

THE NEW REGULATIONS HAVE BEEN PUBLISHED ON 14 JANUARY 2022:

- THE PUBLICATION OF THE REGULATION HAVE INCLUDED THE MANDATORY DISCLOSURE AND CLAUSES WHICH MUST BE INCLUDED IN VARIOUS DOCUMENTATION USED AND DISTRIBUTED BY PROPERTY PRACTITIONERS.

THE OLD CODE OF CONDUCT NO LONGER APPLIES

- The new Code of Conduct has been published in the PPA Regulations and has been divided into two main sections:
 - Duties Applicable to All Property Practitioners
 - Duties Applicable to Estate Agents

ALL PROPERTY PRACTITIONERS ARE ENCOURAGED TO FAMILIARISE THEMSELVES WITH THE APPLICABLE CODE OF CONDUCT

MAJOR CHANGES TO BE AWARE OF:

01.

FIDELITY FUND CERTIFICATES (FFC):

- No person or entity may act as a Property Practitioner without a valid FFC. Failing which, the Property Practitioner must immediately pay the commission received to the Property Practitioners Fidelity Fund.
- All current valid FFCs are valid for 1 year following which all FFCs are to be renewed every 3 years.
- Property Practitioners may elect to pay their FFC fees as a once-off fess (payable every 3 years) or attend to a part payment thereof on an annual basis.

IT IS THE OBLIGATION OF THE PROPERTY PRACTITIONER TO ENSURE THAT PAYMENT IS ATTENDED TO TIMEOUSLY.

- Conveyancers are now obligated to request certified copies of all Company and Agent FFCs prior to attending to payments in respect of commission.
- As opposed to certain criteria disqualifying certain individuals from acquiring a FFC, the prescribed requirements for obtaining a FFC include:
 - A valid BEE certificate; and
 - A valid tax clearance certificate.
- FFCs must be displayed at every place of business (including show houses) and FFC numbers are to be displayed on all marketing material (signage, email signatures, advertisements, social media and /or the like)
- All letterheads and marketing material must confirm that:
 - the Property practitioner has a valid FFC;
 - that the Property Practitioner is registered with the Practitioners Regulatory Authority (PPRA); and
 - Where a candidate estate agent is involved, that he/she is described as such.
- All agreements relating to property transactions must verify the validity of the Property Practitioner's FFC.

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FFC APPLICATIONS: **RECOMMENDED TIMELINE**

- Start application process: 1 October (or earlier).
- All applications must be submitted by 31 October in the year that your current certificate expires.
- Late applications will be subject to a fine.

Remember that you need to lodge confirmation that your tax affairs are in order, as well as your BEE certificate.

MANDATORY TIME PERIODS TO ISSUE FFCs

- The Authority must, within 30 working days, consider any complete application
- It may buy itself an additional 20 working days if good grounds exist
- If the Authority has failed to consider within 30 (or 50) working days the application is deemed to have been approved.

Authority must, upon written request by the applicant within 10 working days, issue the applicant with the relevant certificate.

PLEASE NOTE: If an application is incomplete or additional documents are requested, the 30 day timeline starts once again.

02.

TRUST ACCOUNTS:

- Property Practitioners are to disclose whether they have a trust account. Such disclosure must be visible on all letterheads and marketing material and contained in all agreements relating to property transactions.
- Property practitioners are warned against deducting commission from their trust accounts without disclosing that they have a trust account and without being in possession of a valid FFC.
- Should a Property Practitioners have a trust account, they are obligated to subject themselves to an annual audit. Property Practitioners are to report their auditors details to the Authority in writing or via email on an annual basis.
- If an agency has a trust account but has a turnover of less than 2.5 million Rand per annum, they are exempt from attending to annual audits.

03.

PROHIBITION AGAINST REMUNERATION:

You may not claim commission if:

- you and each director / trustee / member or partner of a Company / Trust / CC or partnership, fail to be in possession of a valid FFC at the commencement and for the duration of your mandate.
- The Act states that remuneration is only payable once the property practitioner is in possession of a registration certificate. This is however open to interpretation. Many property leaders have taken the stance that commission is payable when a valid offer is accepted by a Seller/Landlord.
- A conveyancer may not under any circumstances pay remuneration to a property practitioner unless that property practitioner has provided the said conveyancer with a certified copy of an FFC.

04.

CANDIDATE PROPERTY PRACTITIONERS:

- Are not entitled to draft or complete any document or clause in a mandate, a deed of sale or a lease;
- A Property Practitioner who allows this to happen will not be entitled to be paid for their services
- All Candidate Practitioner must disclose his / her capacity when attending to an marketing or correspondence.

05.

CHANGES OF PROPERTY PRACTITIONER DETAILS:

If your contact details change during the period of validity of your FFC, you must notify Property Practitioners Regulatory Authority (PPRA) within 14 days. Failing which will result in a criminal offence.

06.

APPOINTMENTS OF SERVICE PROVIDERS:

- A Property Practitioner may not enter into any arrangement whereby a consumer is obliged or encouraged to use a particular service provider, including an attorney or compliance certificate service provider.

- An arrangement includes ANY form of financial incentive or reward.
- Should a Property Practitioner be found to have concluded an agreement of this nature, they will be obligated to repay such remuneration, together with interest, within 30 days, failing which would result in a criminal offense.

07.

MANDATORY DISCLOSURE FORMS (S67):

- A Property Practitioner must not accept a mandate unless the seller or lessor has provided a duly completed and signed mandatory disclosure in the prescribed form (in accordance with the new regulations).
- This must be presented to any potential buyer or tenant upon making an offer.
- If no disclosure accompanies the sale or lease agreement, it can be assumed that no defects or deficiencies were disclosed to the purchaser.
- A Property Practitioner who fails to furnish a completed and duly signed disclosure form shall be presumed to not have provided the Seller/Lessor with same and may be held liable by an affected consumer.

- Property Practitioners must ensure all sale agreements and disclosure forms include a clause pertaining to Buyers and Sellers rights to request an independent inspection at any stage during the transactional process or upon taking occupation of the property. The costs thereof will however be for the account of the party requesting the inspection.
- Should a Buyer or Seller elect to engage in an independent inspection, same must be recorded under the special conditions / additional information section of the Disclosure Form.
- It is recommended that all Sale Agreements allocate a timeline for the submission of inspection requests (eg: 10 working days).
- When the duration of a transaction is abnormally extended, it is recommended that disclosures are updated.
- Property Practitioners are required to sign all disclosure forms along with the applicable parties to the transaction.
- Conveyancers are advised against opening a file for any property transaction without a duly signed disclosure form.
- if a Property Practitioner wants to allege that any disclosures were shared with the tenant/purchaser, he will be required to prove it, beyond a reasonable doubt, in order to set aside this presumption.

PLEASE NOTE: THIS DOES NOT AFFECT A VOETSTOOTS CLAUSE, AS A BUYER STILL ASSUMES THE RISK OF BUYING A PROPERTY WITH LATENT DEFECTS

QUESTION: What if the landlord/owner refuses to sign or complete the form?

ANSWER: Draw a line across it and write in the words "Seller unwilling to complete. Purchaser/tenant beware of non-disclosure".

08.

SAFEKEEPING OF RECORDS:

Documents are to be retained for a period of not less than 5 years:

- documents exchanged with the PPRA;
- all the Property Practitioner's assets and liabilities;
- electronic communications;
- agreements;
- disclosure forms;
- documents relating to the financing, sale, purchase or lease of a property;
- advertising or marketing material;
- financial records; and
- all the PP's assets and liabilities.

MARKETING:

- Agents are to ensure that all forms of marketing make reference to the fact that they are registered with the Property Practitioners Regulatory Authority (PPRA) and warrant the validity of their FFC on the date and for the duration of its publication.
- All letterheads, email signatures and other marketing material (including signage boards) are to include valid FFC numbers, credentials, contact details as well confirmation of a trust account (if applicable)
- Example:
 - An agent publishes advertisements on his/her private Facebook page. Such an agent is to ensure that he/she confirms that he/she is registered with the PPRA, ensure that he/she discloses their valid FFC numbers, credentials as well as their contact details within their profile bio.
- All Candidate Practitioners must disclose his / her capacity when attending to marketing or entering into any correspondence.

WHO IS REGARDED AS A PROPERTY PRACTITIONER?

A 'property practitioner' is any person or company involved in the selling, purchasing, letting, renting, financing and marketing of property, including:

- Agents attending to auctions, rentals, sales, exhibitions or management of property;
- Any person attending to negotiations of property transactions;
- Any person attending to the collection of rental;
- Any person employed by a Property Practitioner to act in a representative capacity;
- anyone who is employed to manage, supervise, or control the day to day business operations of a property practitioner;
- A property practitioner includes directors of companies, members of CC's and trustees of trusts (if applicable)
- Developers; and
- Bond originators;

NOTE: IF YOU OPERATE IN MORE THAN ONE CATEGORY, YOU WOULD REQUIRE A FFC FOR EACH.

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