

# **GOLDEN hOMES ADMIN AND COMPLIANCE MANUAL.**



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# Section 1

## FRANCHISOR

### Overview

Being under the leadership of Dave and Yvonne van Wyk, who between them have a combined real estate knowledge of more than 69 years, has given Golden Homes (herein referred to as the Company) a sure foundation. The Company has a strong Christian ethic, without discriminating against anyone in the organisation for their religious belief, race, or gender. Together with a great team of attorneys and auditors, the Company is able to offer its Franchisees a great opportunity to build their own real estate company with a productive and successful team of agents. The head office is situated in Gauteng and has expanded its base to include franchises in KZN and Western Province. As a company, we foresee the founding and developing of new franchises throughout the country. Our aim is to offer any dedicated, motivated, and passionate agents the opportunity to own their own Golden Homes franchise in their local community. There are many benefits to belonging to a franchise organisation and we strive to assist our franchisees through providing them affordable in-house branding and stationery supplies, a proven business concept, an existing and improving operations structure, training and a passion for property!

#### **1. Our franchisees**

The nature of the franchise agreement with SA Golden Homes is one based on allowing the Franchisee to operate as an independent business within the framework of the Group, with all the advantages of belonging to a close-knit network of real estate companies with the same set of values, goals and standards. Unlike other franchise groups, our franchise fee is designed to be of minimal impact to the franchisee, being based on a small percentage of the Purchase Price, or commission in the case of Commercial and Industrial transactions. The franchise fee is payable on a success basis. Our goal is to keep the Franchisee in a position to be able to maximise profits without the Franchise fees becoming a burden. 2. Trademark The Company's trade name "Golden Homes" and its logo are registered trademarks under the Trademarks Act 1993 (Act 194 of 1993). The slogan "if it's gold it's sold" is part of the Company's brand identity in the marketplace. Consumers' decisions to purchase through a particular company are greatly influenced by its brand, which conveys intellectual and emotional attributes and messages about the company, who they are, their reputation and service. As such, the brand must be respected and protected. Our Trademark Certificate can be viewed below.

#### **1 – Trademark Certificate**

#### **2. Trademark**

The Company's trade name "Golden Homes" and its logo are registered trademarks under the Trademarks Act 1993 (Act 194 of 1993). The slogan "if it's gold it's sold" is part of the Company's brand identity in the marketplace.

Consumers' decisions to purchase through a particular company are greatly influenced by its brand, which conveys intellectual and emotional attributes and messages about the company, who they are, their reputation and service. As such, the brand must be respected and protected.

Our Trademark Certificate can be viewed below.

## **Annexure 1 – Trademark Certificate**

### **3. Administration and Compliance Manual**

We have a uniquely designed Administration and Compliance Manual, outlining in detail the organisation's legal compliances and in-house management and training system, referred to as "The HUB."

Through The HUB, the Franchisees are able to manage their organisation and the Franchisor is able to pull their reports and track the overall success of the organisation, and ultimately to incentivise and recognise the top performers.

The HUB administration page on the website forms part and parcel of the Administration and Compliance Manual which is not to be read separately from the rest of the information in this manual.

This Administration and Compliance is available online in the Principal's page where it may be viewed as a complete document. The document has been broken down into blogs for ease of reference.

### **4. Code of Ethics and Business Practices**

The aim of Golden Homes is to ensure that its members practise the highest standard of ethics and fair business practices in franchising, and to develop and expand the business environment for franchising in South Africa.

As a Franchisee of Golden Homes and/or as an estate agent, you hereby agree always to act in a way consistent with this code of conduct, which incorporates the codes of conduct of the IEASA, the PPRA and the FASA.

Any dispute between a Franchisee and the Franchisor, in terms of conduct, which is non-compliant with this code of conduct, will be referred to an SAGH Board for arbitration.

Any dispute between a Franchisee and an agent/employee in their service, in terms of conduct, which is non-compliant with this code of conduct, will be referred to a Golden Homes Board for arbitration.

This Code reflects the collective beliefs of all Golden Homes members with respect to the manner in which franchise relationships must be established, structured and implemented.

The purpose of this Code is to ensure a system of self-regulation and compliance with applicable laws in the public interest and that of the Members of Golden Homes.

This Code is subject to Golden Homes' Administration and Compliance Manual and all applicable laws of the Republic of South Africa.

Kindly familiarise yourself with the full code of ethics attached:

## **Annexure 2 – Code of Ethics and Business Practices**

### **5. Training and Support**

At SAGH we place extreme importance on the training of our agents. A well-trained sales team can lead to huge returns for a company and offers great opportunities for its agents. Real Estate is a highly competitive industry and having the edge over one's competition is useful.

According to a study cited on the Salesforce Training website, the calibre of a salesperson is the most important factor influencing a prospect's decision to buy. Our management system is designed as a full CRM (Customer Relationship Management), giving us a management advantage.

Sales training enhances the person-to-person experience which is necessary to gain the loyalty of consumers. Studies have shown that 71% of people base their buying decisions on trust and credibility. This is especially true in real estate. When agents thoroughly understand the needs of their sellers and buyers and are able to communicate effectively while delivering trustworthy service, then their real estate sales will grow.

Our aim is to provide sales training courses that will enable our agents to build pleasure into their interactions with clients so that the sale and purchase of a new home is a win-win, allowing each person to walk away feeling understood.

Our agents' communication skills are essential because they need to ensure that their clients understand the services they offer. Effective communication skills successfully connect our buyers and sellers, and simplify the transfer and registration process all the way through to key handover.

Our agents are the "face" of our company and as such, it is our aim to continually educate them in the skills that they need. To do this, it is often necessary to push them out of their comfort zones so that we, as a Company, can differentiate ourselves from our competitors.

Other than communication and marketing skills, SAGH offers its Franchisees and agents extensive training via the HUB to familiarise them with the Business System. Training is available for free to each new franchisee and their agents.

We also offer an extensive Agents Training Manual covering all the related information estate agents require to develop their product knowledge.

All the information in the Training Manual is on the HUB blog page and is available to the agents on demand as they go about their daily business.

The Franchisee is encouraged to add any additional information they have at their disposal that they feel would be a benefit to the training manual. Such information should be forwarded to the Franchisor for processing.

## **6. Franchisor Financial Disclosure Document**

The Franchisor's financial disclosure document will be made available to new franchisees for a period of 14 (fourteen) days once a pre-agreement to purchase a franchise has been entered into.

The following disclosure document is designed to assist any qualified prospective purchaser make a final decision with regards to purchasing a Golden Homes Franchise.

## **Annexure 3 – Confidentiality and Non-Disclosure**

### **1. The Franchisors**

The Franchisors initially began Golden Homes as a single Real Estate enterprise based in Primrose, Germiston. The Company was incorporated in 2006 with a view to franchise once the Company was in a financial position to do so. The first Franchisees joined the Company in 2008 and the Company currently has nine Franchisees.

The Company's registered trading name is SA Golden Homes Property Group (Pty) Ltd, registration number 2006/025547/07.

The Franchisors/Directors in the Company are David Charles van Wyk and Yvonne van Wyk, whose contact details are on the cover of this document.

The Company is registered with the Estate Agency Affairs Board and currently has no other affiliations within the Real Estate Industry.

The Franchisors have respectively been in the Real Estate Industry for thirty plus years, giving them in excess of sixty years combined experience in the Industry. Both directors are Master Practitioners in Real Estate and have highly developed skill in the running and marketing of a Real Estate Enterprise.

The original estate agency, namely Golden Homes Primrose, began trading in January 2000 and is still a highly performing Franchise Branch within the Company.

The Directors are the officers in the Company, which employs one other employee who heads up the administration of the printing and ordering department. All other activities are handled by the Directors themselves. The bookkeeping and audits are outsourced. Some administration and secretarial work is also outsourced.

The Directors do not have, and have never had, any criminal or civil actions taken against them or any of their officers.

### **2. The Franchisee**

The Franchise the Company offers is to the Real Estate Industry. As such, it is restricted to offering its franchise opportunities solely to those who qualify as directors in a Real Estate



Company as per the terms and conditions of the Estate Agency Affairs Board. This means any prospective franchisee must have a minimum of an NQF5 Certificate in Real Estate.

The business being offered to a qualified prospect is the Golden Homes Business System which includes, among others, the Company's CRM, Website, stock, advertising and printing.

### **3. Franchisor's Obligations**

The Franchisor's obligations are as follows:

- a) To make the Business System available to the Franchisee together with support and training.
- b) Training on the system is done online. The Franchisor retains the right to choose whether or not to do training at the offices of the Franchisee. The Franchisee can attend training at the offices of the Franchisor.
- c) To make stock available at prices that are as affordable as possible. Where the Franchisee is able to source stock from another supplier, they have the freedom to do so, provided that the artwork has been approved by the Franchisor and the supplier has conformed to the branding, terms and conditions of the Franchisor.
- d) To make online training available to both its Franchisees and the Franchisees' agents.
- e) To assist the Franchisee with any questions and/or queries they may have in relation to the running of their Franchise, provided the question or query is within the scope of the Franchise Agreement and the Real Estate Industry.
- f) The Franchisor does not dictate who the prospective purchaser uses in its organisation with regards to attorneys, bond originators, banks, and auditors. The purchaser is at liberty to use and appoint its own support system for the internal running and management of their business, except when it comes to the Franchisor's Business System as outlined in the Operations Manual and Franchise Agreement.
- g) To make available their branding, including trademark, which may only be used within the Business System and for the purposes of promoting and furthering the brand of the Franchisor.
- h) To keep the Company up to date with any new laws and regulations that would affect the Franchisee's business and to offer any training if necessary.
- i) 4. Franchisee's Obligation
- j) The Franchisee's obligations are as follows:
- k) To adhere to the Franchisor's Business System as outlined in the Franchise Agreement and the SAGH Administration and Compliance Manual.
- l) Not to disclose the Intellectual Property of the Franchisor to third parties outside of the SA Golden Homes Property Group (Pty) Ltd organisation.
- m) To conform to, and operate within, the branding of the Company.
- n) To keep themselves in the knowledge of the Franchisor's Business System and to further educate themselves and their staff as and when the Franchisor introduces updates to enhance its operating system.
- o) To abide by the Franchisor's Code of Ethics and Business Practices.

- p) To manage their staff according to the terms and conditions laid out in the laws and regulations of South Africa and its Municipalities.
- q) To take personal responsibility for the training and education of their agents as per the industry standards, ethics, and conduct.

## **5. The Franchise Agreement**

The Franchise Agreement will be discussed in person with the prospective Franchisee and any further explanation required on particular clauses, will be provided for them in a written format. No agreement will be entered into before both parties fully understand the terms and conditions of the Franchise Agreement.

Every Franchisee has a Geographical zone in which they are allowed to operate, and this is clearly stipulated in the Franchise Agreement. The boundaries of the Franchise Zone will be demarcated as per the Municipal maps for the area in which they operate. Each Franchise Zone will have approximately 40 000 residential units.

A Franchisee is restricted from operating outside of their demarcated Franchise Zone and may not infringe upon the zone of another Franchisee. If there is no Franchisee in an area outside of the Franchise Zone, it is considered the Franchisor's zone and special arrangements and referral payments need to be arranged with the Franchisor. This must be reduced to writing.

## **6. Financial Projections**

The financial projections for the Company over the next two years is based upon the success of its Franchisees. As this is a "pay as you perform" system, the performance of the individual Franchisees is paramount to its continued growth and success.

The Company has not yet actively marketed or expanded its operation while building its own financially secure foundation and the full Business System. The Company's growth over the last few years has been by association and recommendations only.

With the Business System now being complete, the goal is to grow the Franchise Brand throughout South Africa.

The following chart is based upon the SAGH financial report for the last four years.

### **Annexure 4 – SAGH Financial Projections**

## **7. Franchisee Payments**

The Franchisee will be liable for the following ongoing expenses, excluding any suppliers they engage outside of the Franchisor's business. All amounts are excluding VAT.

An annual increase in relation to inflation is applicable, however, the Franchisor retains the right to increase these fees should their supplier costs increase substantially. The Franchisor reserves the right to increase or decrease or leave the fees as they are at its sole discretion.

Accounts are payable on or before the first day of each and every month. Non-payment of the account will result in suspension of the use of the HUB by the Franchisee and its agents

if the account is not settled within the notice period given as per the CPA 21-days' notice requirements.

Description      Amount              Explanation

Franchise Purchase Fee      R50 000.00      This is a once off fee payable to the Franchisor for the business system and the right to trade with the name Golden Homes as defined in the Franchise Agreement.

Description	Amount	Explanation
Franchise Purchase Fee	R50 000.00	This is a once off fee payable to the Franchisor for the business system and the right to trade with the name Golden Homes as defined in the Franchise Agreement.
Administration Fee	R 3 000.00	<p>This monthly fee includes the following:</p> <ul style="list-style-type: none"> <li>✓ Use of the business CRM and its functions,</li> <li>✓ Website,</li> <li>✓ P24 leads up to 300,</li> <li>✓ P24 Branded listings</li> <li>✓ emails and email backup,</li> <li>✓ general support,</li> <li>✓ cloud storage,</li> <li>✓ Training manual</li> <li>✓ Logbook and RPL</li> <li>✓ Functions</li> <li>✓ Design layouts</li> <li>✓ other fees associated with the CRM payable by the Franchisor,</li> <li>✓ Marketing of the SA Golden Homes Group, which is done at the sole discretion of the Franchisor. (This does not include the franchisees advertising costs</li> </ul>

		related to its own business).  Annual increase of 10% per annum, or as per the Franchisor's sole discretion.
Franchise (Royalty) Fees	.22% on the purchase price of a property sold. (Excluding VAT)	This is further broken down in the Franchise Agreement. Fees are payable by the transferring attorney upon registration.
Stock, delivery and postage		This is determined by any orders placed by the Franchisee and which have been delivered.

## **8. Existing Franchisees**

All details can also be viewed at [www.goldenhomes.co.za](http://www.goldenhomes.co.za)

<b>Branch</b>	<b>Telephone</b>	<b>Principal</b>	<b>Contact details</b>
Benoni	011 849 0148	Corina Reuselaars Kim Rossouw	082 565 1929 083 660 2454
Boksburg	011 828 4976	Yvonne van Wyk	082 780 8071
Germiston	011 828 4967	Yvonne van Wyk	082 780 8071
Midrand	011 315 0559	Judy van Schalkwyk	083 258 6533
Richards Bay		Marie Roux	083 417 0594
Glenwood	031 201 9323	Andre Bredenkamp	079 088 4928
Montclair	031 469 3201	Colin Chetty	082 517 1047
Amanzimtoti	031 469 3201	Colin Chetty	082 517 1047
Kingsborough	031 469 3201	Colin Chetty	082 517 1047
Hibiscus Coast	011 849 0148	Corina Reuselaars	082 565 1929
George	011 849 0148	Corina Reuselaars	082 565 1929
Helderberg	011 828 4976	Yvonne van Wyk	082 780 8071

## **9. Franchisor's Statement**

We, Dave and Yvonne van Wyk, as the Franchisors of the SA Golden Homes Property Group (Pty) Ltd hereby confirm that to the best of our knowledge and belief, the financial situation of the SA Golden Homes Property Group (Pty) Ltd has not deteriorated since the day the Auditor's Certificate was issued.

## Section 2

### FRANCHISEE RESPONSIBILITY

#### Overview

Our Franchisees are the heart and soul of our business and it is our desire and hope that we in turn are a great benefit to them as a Franchisor. We believe in our Franchisees, and believe they make a difference in the world in which we live.

In developing a relationship with our Franchisees, we desire to help them be passionate about their business and inspire their teams through treating them with dignity and respect. Happy teams lead to happy customers.

Our Franchisees communicate our bold, specific, and consistent vision. Most agents, especially the millennial generation, want more than just a pay cheque. They want to feel as though their work has meaning and that their efforts will connect them to the bigger picture of life. In today's real estate industry, the Millennial generation is arising, and SA Golden Homes is aspiring to be a vehicle through which many of them will realise their dreams.

Few people are moved by the "how" until they know the "why." The reason why an agent would want to work with Golden Homes include many benefits, some of which are ongoing support and training, product knowledge and tools, a great team environment, freedom to expand one's horizons, and the ability to earn good money.

Through the centuries, real estate has always been an industry for entrepreneurs, and our up and coming Millennials are waiting for good leaders to help them achieve their dreams.

Our Franchisees are dream makers!

Currently (2019) SA Golden Homes has nine independent franchises. Part of our vision is to train up and establish agents from within our organisation, to grow and ultimately move on toward owning and managing their own independent franchise. A typical franchise zone covers +/- 40 000 residential units.

The benefits of being a Golden Homes Franchise are numerous and varied, including:

- The independence of small business ownership supported by the benefit of a big business network.
- You don't need all the business skills and knowledge necessary to start your own business, as we provide the training you need to operate our Business System.
- Franchisees have a higher rate of success than small start-up businesses.
- Smaller start-up fee than that of starting your own brand. There is an immediate buy-in to the Business System, saving you time and money.
- Easier to obtain finance, should you need it, for your start up and purchase costs.
- We have an established reputation and image, proven management and work practices, national advertising and ongoing support.

- Our Business System leaves room for you to be creative, while still staying within the brand.
- We offer stationery and printing at cost to our Franchisees, giving them a market edge.

### 1. Franchise Agreements

There are three franchise divisions within the Golden Homes organisation and any Franchisee wishing to operate any division must enter into a separate agreement for each, as they differ in fees and management processes.

#### a) Residential Franchise Agreement

- This agreement covers all residential property sales including plots and farms under R5 000 000 (five million rand) within the allocated franchise zone.
- The average franchise zone is +/- 40 000 units.
- A 0.22% plus VAT franchise fee is payable on the purchase price of a property.
- This fee is payable by the transferring attorney upon registration of transfer.
- There are no fees payable for any letting procurement or letting management.
- A monthly service and administration fee is payable.

A Masterfile information form and FICA documents are required for all Franchise owners, partners, members, directors and/or managers.

### **Annexure 5 – Residential Franchise Agreement**

#### b) Commercial and Industrial Franchise Agreement

- This agreement covers all commercial and industrial property, as well as agricultural land over R5 000 000 (five million rand), within the franchise zone.
- A franchise zone generally includes the entire municipal district in which the franchise is situated.
- A 4% plus VAT franchise fee is payable on the commission earned.
- The same fee is applicable and payable for all letting procurement and management.
- The fees are payable by the attorneys upon registration of the transfer or upon conclusion of the lease agreement.
- A monthly service and administration fee is payable.

A Masterfile information form and FICA documents are required for all Franchisee owners, partners, members, directors and /or managers.

This section is under discussion and will be updated once it has been finalised.

Any commercial and industrial sales done by the franchisee are subject to the commission terms and conditions as follows:

The Franchisee will be obliged to pay to the Franchisor a royalty fee on all registered sales, including letting and building management, a fee calculated at 4% (four percent) excluding Vat of the Gross Commission as stipulated in the offer to purchase or lease agreement. Such

amount shall be paid by the Conveyancer to the Franchisor against registration of transfer, and the Franchisee will instruct the Transferring Attorney accordingly. All lease and management commission shall be payable by the Franchisee upon conclusion of the lease or annual management fee collected.

## **Annexure 6 – Commercial and Industrial Franchise Agreement**

### **c) Auctions**

This section is still under discussion and will be updated once it has been finalised.

## **2. Masterfile Information Form**

In keeping with FICA and CPA requirements, the attached form together with all the relevant FICA documents are required to be submitted to Head Office for record purposes.

- Copy of ID
- Proof of Residence
- Copy of Income Tax verification
- FFC

The Franchisee will provide the Franchisor with an annual tax clearance certificate which is to be uploaded to the Franchisee's Personal Folder.

## **Annexure 7 – Franchisee Information Form**

## **3. Franchisor Step-in Right**

As a Franchisor, it would always be our goal to assist any of our Franchisees who are experiencing problems, be they financial, technical or managerial, and to resolve these long before any step-in right becomes necessary.

The Franchisor's step-in right is a protective right giving the Franchisor authority when the Franchisee is in breach of contract or in the process of going insolvent. The right is given in favour of the Franchisor to protect the brand as well as other franchisees, provided that the Franchisor has not contravened the regulations of the Consumer Protection Act.

Should the step-in right become necessary, the Franchisor has the right to step into the position of Principal and Manager of the franchise and in such a capacity to save and protect its brand and organisation.

There are no specific regulation requirements the Franchisor needs to follow in order to exercise the step-in right.

## **4. Disputes**

Disputes are those arguments that we all strive to avoid; however, conflicts can arise and as a result a guideline to manage disputes is necessary. Legal disputes can become very expensive and to avoid having to go to attorneys and courts, the following dispute procedures have been put in place to assist all involved.

**a) Dispute Between Franchisor and Franchisee**

Should a dispute arise between the Franchisor and a Franchisee, the matter will be resolved as per the franchise agreement. The outcome and decision of the arbitration will become final and binding on all parties, as agreed to in the SA Golden Homes Code of Ethics and Business Practices.

**b) Dispute between Franchisee and Agent**

Should a dispute arise between a Principal and an Agent, either party may call for arbitration through a Board formed from members of the SAGH organisation. This Board will comprise any two agents that the Agent chooses, any two principals that the Principal chooses, and an attorney appointed by SAGH. Any such disputes must be brought to the Franchisor's attention within 7 (seven) calendar days of the dispute arising, and the Franchisor will first see if the dispute can be resolved before the formation of any Board becomes necessary.

Should any costs arise out of the formation of the Board, these expenses will be borne by the Franchisee and Agent respectively, or as per the Board's decision.

**c) Dispute Between Franchisee and Internal Staff**

As it is necessary for all staff of the Franchisee to sign the SAGH Code of Ethics and Business Practice, the same procedure as in clause ii is applicable.

The above dispute procedures have been implemented to save time and money for all involved.

**5. Registration Requirements**

There are a number of institutions with which a Franchisee is required to be registered. These requirements need to be in place within 90 (ninety) calendar days of the franchise agreement being signed. The Franchisor will assist wherever necessary to facilitate the process, provided that the franchisee has attempted to follow the procedures below.

**1. PPRA (Property Practitioners Regulatory Authority )**

The PPRA gives a prospective franchisee/agent 90 days in which to complete their registration with them. It is essential to follow their procedures exactly and to have all relevant documentation in place BEFORE attempting to do the registration.

The following documentation is required to register the Company, known as the Firm by the PPRA:

- Certified copies of all directors'/Principals' ID
- Copy of Company Registration documents
- Letter from Franchisor confirming the Franchise is valid
- Auditor's letter confirming they have been appointed as the Firm's auditor
- Bank confirmation letter that a trust account has been opened.



Note: The bank confirmation letter MUST stipulate that the account has been opened “in terms of section 32(1) of Act No 112 of 1976.”

a) Agency Registration process with the PPRA:

Log into the My PPRA Agents Portal at <https://www.eaab.org.za/myffc>. You should already be registered with the PPRA as an agent and have your own PPRA Pin. No one can register as a Principal without first having been an agent and having completed the relevant PPRA training and PDE qualifications.

- Once logged in, go to “reserve new agency name” link found in the YOUR AGENCY block in the column on the righthand side.
- In 48 hours log in and check whether your name has been approved through the “view your reserved agency name” link. Once approved, proceed. If not, contact the PPRA and find out why it has not been approved.
- Proceed to “register a new agency” link.
- Once successful, the PPRA will send you an email with your Firm ID. This pin number will begin with an “F.”
- You will receive an additional email requesting you to upload your documentation and the payment details.
- Make payment as soon as you have uploaded your documents and completed the process. NB: Use your new “F” pin number as your payment reference! If you use any other reference the payment will not be linked to your profile and your application will not proceed any further.
- Email all your documentation, proof of payment and registration, to [applications@eaab.org.za](mailto:applications@eaab.org.za) and request both a delivery and read receipt for the email.
- Your application will be processed by the PPRA.
- On successful allocation of the payment, your FFC will be issued and an email notification will be sent to you.
- Log into My PPRA agents’ portal using your pin number and go to “view firm history” link.
- Download and print FFC.

Once you have downloaded the Firm FFC it needs to be printed and displayed for public view in your office, together with your personal FFC as well as those of any agents registered with you.

Finally, the FFC certificates need to be uploaded to the HUB.

**Annexure 8 – How to reserve and estate agency name**

**Annexure 9 – How to register and estate agency entity**

**Annexure 10 - How to register an estate agent**

## **2. SARS**

Have your bookkeeper/auditor register you with SARS with regards to the following:

- Income Tax
- PAYE
- UIF
- SDL
- VAT (If applicable)

Provisional tax is not a separate tax from Income Tax. It is a method of paying the income tax liability in advance, to ensure that the taxpayer does not have a large tax debt on assessment. Provisional tax allows the tax liability to be spread over the relevant year of assessment. It requires the taxpayers to pay at least two amounts in advance, during the year of assessment, which are based on the estimated taxable income. A third payment is optional after the end of the tax year, but before the issuing of the assessment by SARS. On assessment, the provisional payments will be off-set against the liability for normal tax for the applicable year of assessment.

Companies automatically fall into the provisional tax system. There is no longer a registration or deregistration process to be a provisional taxpayer. The onus is on the taxpayer to determine if he/she is liable for provisional tax, and to request and submit an IRP6 return via eFiling.

### **3. Municipality**

Obtain a copy of your municipality's by-laws and check for the following:

- a) Permit for the display of boards. If required, register and pay for permit.
- b) Regional Services Council (RSC) levies. Find out whether they are applicable.

### **4. FIC (Financial Intelligence Centre)**

An Estate Agency is considered to be an accountable and reporting entity and is required by law to register with FIC (Financial Intelligence Centre). Once registered, you will be given an "AI" number. This number will be required by your auditor before they can complete the PPRA Audit reports.

Failure to register with FIC or to update changes is an offense and may result in imprisonment for a period not exceeding five years and/or a fine of R10 million.

Registration is required to be completed within 90 days of the Company being registered. As soon as your registration with the PPRA is complete, make sure you register with FIC. There is no cost involved with this registration.

The following links will guide you through the registration process. Should you have any queries kindly contact them on 012 641 6000.

### **Annexure 11 – FIC New registration and Reporting**

## **Annexure 12 – goAML Registration**

### **5. PAIA (Promotion to Access of Information Act)**

All estate agencies are required to register their PAIA manuals with PAIA, and failure to do so incurs penalties. In order to register, the following is required:

- a) Compile a section 51 manual which is a roadmap of the enterprise (see example attached below)
- b) Submit the manual to the South African Human Rights Commission (SAHRC). The manual can be emailed to [dmales@sahrc.org.za](mailto:dmales@sahrc.org.za) or posted to Private Bag X2700, Houghton, 2014. Keep a copy of the email submission and request a delivery and read receipt. Keep all emails on file!
- c) Update any material changes on an ongoing basis and send updated manual to SAHRC.
- d) Make the manual available in your office. A copy of the SAGH manual is available on the website.
- e) Annex a request form to the manual in your office.

## **Annexure 13 – PAIA Manual**

### **6. BEE Compliance**

Whilst most business owners are scared off by BEE terminology, BEE is a rather simple government policy, which is mostly referred to as Black Economic Empowerment. With the implementation of the newly Amended BEE Codes, companies will have to be pro-active in their approach to transformation in order to maintain a good BEE score.

It is important to know that BEE is not forced upon any entity by law. HOWEVER, any entity wanting to do business with Government or any Organs of State, must be BEE Compliant first. The process of becoming BEE Compliant is known as the BEE Verification process.

This is a process where the entity needs to come into contact with a SANAS Accredited BEE Verification Agency. Together with the Verification Agency, the entity needs to undergo a partial or full audit to determine its BEE Compliancy Levels.

#### **a) Benefits of being BEE verified:**

Your business will have to be 100% compliant if you want to engage with any kind of Government Body to:

- I. Apply for a tender
- II. Purchase a state-owned asset or
- III. Enter a public-private partnership
- IV. Private companies that engage in business with each other may also reap the benefits of being BEE compliant through preferential procurement. Larger businesses are incentivized to do business with you because it improves their own B-BBEE score.

- V. Being BEE compliant means, you will not miss out on prospective business from companies wanting to deal only with BEE compliant companies. It could also mean you gain business from non-compliant competitors.

And lastly, if you have a B-BBEE Certificate you become eligible for obtaining grants and finance. You can also be a beneficiary of corporate supplier development initiatives.

#### **b) General BEE regulations**

All start up enterprises are Exempt Micro-Enterprises for the first year following their formation or incorporation, regardless of their expected revenue.

Following the first year, an Enterprise may continue as an Exempt Micro-Enterprise (EME). Evidence required for such qualification is a certificate from an auditor's or similar accounting officer or verification agency.

An EME is any business that has an annual turnover of less than R10 million and it has nothing to do with ethnicity. In the case of a Real Estate Enterprise the annual turnover amount is R2.5 million.

EMEs automatically qualify for a level FOUR scorecard and 100% procurement.

Every EME is required to have their certificate, which acts as an affidavit, issued and signed by their accounting officer or auditor, in their bookkeeping system.

There is no submission of this certificate required to be sent to any organisation.

The certificate needs to be renewed annually.

#### **c) Amended Property Charter**

The Amended Property Charter applies to the residential and commercial property industry and to property services such as property management, broking companies, estate agents, and property valuation professionals.

The EME turnover threshold has remained at R2,5 million for estate agencies, broking companies and valuation companies. The QSE (Qualifying Small Enterprise) maximum thresholds have been adjusted to R400 million for asset-based companies, R50 million for service-based companies, and R35 million for estate agencies, broking companies and valuation companies.

An estate agency with an annual turnover of less than R2., procurement.

An estate agency with an annual turnover of R2,5 to R35 million qualifies as a QSE. A QSE must obtain a certificate and must select any 4 of the available 8 elements of the Property Scorecard when being verified. Should you reach this threshold, contact your accounting officer and have them upgrade your B-BBEE status accordingly.

A QSE needs to submit its verified BEE certificate to the Property Sector Council annually. This report will be made publicly accessible.

Remember, BEE compliance is NOT a legal requirement under the Act. However, it is necessary if you want to profit from its benefits.

**d) BEE Scorecard**

The Amended Property Sector Code does not dictate the level of B-BBEE compliance an entity needs to have in order to be compliant. As such a level 8, being the lowest level at 31 points, can also be attained and is beneficial. Black ownership is only one of the areas in which compliance is based as a fully black owned entity automatically achieves level 1 and a 51% owned entity level 2.

Other areas of assessment to qualify are:

- i. Employment Equity – management and/or employees
- ii. Preferential Procurement – securing the services of B-BBEE compliant companies
- iii. Enterprise Development – developing the professional and managerial skills of black employees

Socio-Economic Investment – Company's spend on the development of previously underprivileged communities which can be done through a Portfolio Trust Fund or some other reliable BEE social development company or non-profit organisation.

**f) How is BEE Compliance Expressed and what level is considered Compliant**

BEE Contribution Level	Scorecard Points	Procurement Recognition
1	100 or above	135%
2	85 – 99.99	125%
3	75 – 84.99	110%
4	65 – 74.99	100%
5	55 - 64.99	80%
6	45 – 54.99	60%
7	40 – 45.44	50%
8	30 – 39.99	10%
Non-Compliant	Less than 30	0%

B-BBEE Element	Weight
Ownership	20%
Management	10%
Employment Equity	15%

Skills Development	15%
Preferential Procurement	20%
Enterprise Development	15%
Socio-Economic Development	5%

**f) Level 4 is considered fully compliant.**

A QSE is not expected to be at level 4 when it begins and they have 5 years in which to reach that level, should the entity owner wish to do so.

The cost of obtaining a BEE verified certificate varies in accordance with annual turnover, number of employees and the area in which the business is situated. Based on an annual turnover of R2.5 – R35 million, 20 employees and operating in Johannesburg, the cost will be approximately R11 460 excluding VAT, and it needs to be renewed annually.

**Annexure 14 – BEE Scorecard**

**Annexure 15 – BEE Certificate SAGH – Example**

### Franchisee Business Practices

It is essential for every Franchisee to be compliant with national as well as SAGH business practices. Amongst others, the following areas need to be compliant; this is, however, not an exhaustive list and, as a business owner, it is the franchisee's responsibility to ensure that all and any regulations required by law are adhered to.

As Franchisor we will strive to keep the organisation up to date and compliant and notify you of any material changes and/or new requirements that affect us.

**1. Personal Folder Between Franchisor and Franchisee**

A personal folder for communication between the you, as a Franchisee, and the Franchisor will be opened on the HUB. All necessary and required documentation is to be uploaded for record keeping and compliance.

All updates, legal requirements and communications will be communicated via this folder or the general folder held between the Franchisor and all its Franchisees.

**2. Bookkeeping**

As per regulation made under the South African law promulgated in 2011, entities in South Africa are permitted to use either International Financial Reporting Standards (FIRS), the FIRS for SME's, or the South African Generally Accepted Accounting Practice (SA GAAP).

Section 32(1) of the Estate Agency Affairs Act requires an estate agent to open and keep one or more trust accounts, to be properly designated as trust accounts, with a bank. This

requirement remains, whether the account is used or not, and should the account be closed, the estate agent is not allowed to trade.

Every estate agent is to keep accounting records and have these audited within 4 (four) months after the final date of the estate agent's financial year.

Accounting records, for purposes of the audit, are those records as may be necessary to reflect:

- ✓ All monies received or expended, including monies deposited into trust accounts or invested in a savings or other interest-bearing account.
- ✓ All assets and liabilities
- ✓ All financial transactions and the financial position of the business

### **3. Audits**

At the end of every financial year, the PPRA requires your auditor to submit your AUDITED financials on or before the end of June each year. An extension may be granted at the PPRA discretion.

Once the financials have been completed, the auditor needs to log in to the PPRA's Auditors portal and submit the financials of both the trust account and the business account.

Non-submission of the audits will result in the disqualification of the estate agency and disciplinary measures will be taken by the PPRA.

For more information kindly visit the PPRA website, [www.eaab.org.za](http://www.eaab.org.za)

### **4. IT 34**

As a Franchisee, you need to submit your annual IT 34 tax clearance from SARS to SAGH. This needs to be uploaded to your personal folder.

The submission of the IT34 forms part of the Franchisor's monitoring compliance to assess the status and compliance of franchisees.

### **5. PPRA Self-Assessment**

Every five years the PPRA has the right to request you to do an online self-assessment as part of your FICA compliance. In order to comply you will need to answer the online questions, assessable via the "My PPRA" portal, and then upload the following documents.

The following are examples only, please update them with your own information and evidence.

**Annexure 81 – Cash Threshold Report**

**Annexure 82 – FICA agent acknowledgment**

**Annexure 83 – FICA Compliance Manual**

**Annexure 84 – FICA confirmation of registration**

**Annexure 85 – FICA estate agents memorandum**

**Annexure 86 – GH Letterhead**

**Annexure 87 – Risk management compliance program (RMCP)**

**Annexure 88 – Trust account letter**

**Annexure 89 – Suspicious transactions report**

## **6. Document Storage and Protection**

In compliance with the new POPI legislation, all documentation, emails and communications are to be stored in a place or format that protects the personal information of any person that may be involved in the transaction.

The HUB has been designed in such a way that all your documentation can be uploaded and stored in a manner that is compliant with the POPI Act. Documentation is stored in the cloud and needs to be password protected. (More on this topic is covered later in this manual)

All emails, incoming and outgoing, for all employees, agents, and principals, are set up to be compliant. The settings with which each email is set up are not to be changed or altered in any manner. As such, please be advised that all emails are monitored and archived and can be retrieved upon request from the Franchisor.

All documentation is required to be stored for a minimum of 5 years. However, anything stored on Salesforce will remain there indefinitely.

## **7. Confidentiality Agreement**

Every Principal, agent and employee of a franchise needs to sign the SAGH Confidentiality agreement.

This agreement is to be uploaded to the franchisee's personal folder.

**Annexure 3 – Confidentiality and Non-Disclosure**

## **8. Royalty Fees and Accounts**

As per the Franchise Agreement, all royalty fees payable to SAGH are to be paid via the transferring attorney. It is considered a material breach of contract for any franchisee to collect the royalties and then to pay them over to the Franchisor at a later date. The Franchisee is responsible to verify that payment has been made to the Franchisor.

Should a franchisee breach this clause in their agreement and be notified of such more than three occasions within one year, the Franchisor has a right to cancel the agreement, to exercise its step-in right, and take the matter to arbitration if necessary.

The monthly Franchisor account is due and payable on or before the 7<sup>th</sup> of each and every month. Late payment is not permissible as fees have already been paid by the Franchisor on behalf of the Franchisee to its respective service providers.



Any orders pending after the 7<sup>th</sup> of the month, where accounts have not been paid, will not be processed until the account has been paid.

## **9. The HUB**

The HUB is the central part of the Company's management and compliance system. The use of any system outside of the HUB, or other system currently employed within the organisation, such as Property 24, will not be accepted without prior written consent of the Franchisor.

All management, be it personnel, sales, orders, reports, training, etc., is to be done via the HUB. Should a particular function not be active yet, the franchisee agrees to implement it into their system once it has been activated.

The information uploaded to the HUB is protected and monitored in keeping with POPI and other legislative requirements.

Kindly refer to the HUB user manual for more information. All information within the user manual forms part of this Administration and Compliance Manual.

## **10. Internal Communications**

All communications will be done via email or the HUB or any other system implemented by the Franchisor and deemed to have been received once the communication has been sent, provided that proof of the submission can be provided by the sender.

## **11. Agent Training**

The Franchisee is responsible for the education and training of its agents and may not place this responsibility upon the Franchisor.

The Training Manual is an ongoing resource page designed to assist the Franchisee in the training of their agents. The agents have access to the information which has been designed as a blog page for ease of reference and on the go information as they can access the blog on their laptops as well as their phones.

Principals and agents are responsible for their further education and compliance; however, the Franchisor will continually update the HUB with any new information relating to the industry and its legal requirements.

The Logbook and RPL pages are provided to assist the agent and the principal in regard to the PPRA qualifications and should not be relied upon as a completed product. It is merely a guide instructing what a completed logbook and RPL course should look like. These sections will only be opened up to an agent once permission has been requested from the principal. These requests can be emailed to [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za).

Rental and commercial and industrial training notes have been included in the training manual on a very basic level as neither fall within the structure of the franchise organisation until these departments have been finalised and incorporated into the system. Should an

agent want to develop their skills as a rental or commercial agent, the Franchisee will be responsible to assist their agent in this regard.

Rentals are permissible within the Franchisee's zone only. All rentals sourced outside of their franchise zone are subject to the approval of the Franchisor or the Franchisee in whose zone the rental listing falls. SAGH does not supply advertising of rental listings on the P24 website. All rental listings on the Golden Homes website are included in the monthly fee but are included in the 300 listings allocated to each franchisee.

Should a franchisee wish to do advertise rentals on P24 they will need to sign a separate agreement with P24 for this service.

## **12. Information Technology "IT" (incorporating The HUB)**

The company IT infrastructure provides shared applications and resources which are used by the whole Company. You are therefore expected to appreciate that any actions in contravention of the IT policy will have a detrimental effect on the whole organization.

You are required to safeguard the company's information process, data base and client particulars, and you are required to take all reasonable steps to ensure that such information is not divulged to any person outside of the Company or to any other employee of the Company who does not require such information in the performance of their regular duties.

The company IT policy will be reviewed periodically and amended due to the constant technological evolution of the Company's IT infrastructure, IT infringements and legislation generally.

## **13. Email Security and Setup**

### **a) Security**

All email correspondence must be sent and received through the company's email system, which contains the information and disclaimers that the company requires on all emails and telefaxes.

The company shall not be held liable if you store or use confidential information such as passwords and credit card information on the company email and computer systems which results in you suffering loss for any reason whatsoever.

Email use, and indeed the use of all company resources, is restricted to work-related issues and may not be used in the commission of any unlawful activity whatsoever, whether of a civil or criminal nature, or in any way calculated to overburden the resources of the company.

Any resource owned or licensed by the company may not be copied, emailed or removed without prior written agreement.

All emails have security encryptions and should not be changed to a format that is not compliant with the Company's email setup process.

### **b) Setup**

All emails are to be used in conjunction with a signature together with our disclaimer, your privy seal and FFC, which are imbedded in the email signature.

There is a standard choice of email signature for use and no signatures outside of the design and approval of the Company may be used.

For any help and assistance in email setup and signature design, contact [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za).

### **c) Signature maintenance**

On a yearly basis each agent is required to update their signature with their latest FFC. The procedure is as follows:

- i. Open the email sign attached in Microsoft word.
- ii. Edit document (enable editing)
- iii. Right click where it says **EEAB registered agent**. then choose or click **edit hyperlink/ Hyperlink if no hyperlink was added**
- iv. On your keyboard press the button **Ctrl** then letter **A** (this will highlight all words for the previous link used) then press delete or space bar to remove all link info.
- v. Then paste your link for FFC then click okay.



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## **14. Monitoring**

Kindly note that the Company has unlimited access to everything you do in connection with the IT system and you cannot refuse the Company such access for any reason whatsoever, especially if you are engaged in behaviour that is unlawful, contrary to your franchise agreement with the company or in any manner effects the company's interests.

Additionally, you cannot object if private or embarrassing material comes to the knowledge of the Company, as such material should not in any event be dealt with within the framework of the organisation.

## Legal Compliance

There are several Acts that directly affect the operations of businesses as well as Real Estate. As such, it is mandatory that we comply with the legislations that affect us.

Salesforce has become a necessary feature to our business to assist us in becoming fully compliant with the relevant Acts that affect our businesses.

### **1. POPI – Privacy of Personal Information Act**

POPI was enacted on 26<sup>th</sup> November 2013, and certain sections came into effect in April 2014. It is proposed to be fully implemented in 2018. Our constitution makes specific reference to the rights to privacy and includes everyone's personal right to that privacy.

POPI is meant to promote transparency in terms of how personal information is collected, processed and archived.

The Act also calls for a penalty or fine and/ or imprisonment of up to 10 years in some cases.

#### **a) Duties placed on Estate Agents/Agencies:**

- ✓ Must have permission to collect information from the client.
- ✓ Information must be stored in such a way that only 'authorised persons' have access to the information. Electronic record keeping, and storage will become crucial.
- ✓ Adaptation of email protocols and monitoring to protect clients' information in transit.
- ✓ Permission to send marketing material. Must have an "opt-out" option.

***b) Duties placed on Business Owners:***

- ✓ information may only be accessible to authorised personnel.
- ✓ Such information may not be shared or revealed to other staff members.
- ✓ Such information may only be accessible to authorised personnel.

The HUB CRM has been introduced into the Company to bring the Company into the various compliances required by the POPI Act. Some, but not all, of these include:

***c) Email monitoring and computer system storage***

- ✓ All email correspondence must be sent and received through the Company's system, which contains the information and disclaimers that the Company requires on all emails and faxes. These would include all @goldenhomes.co.za email addresses created within the organisation.
- ✓ SA Golden Homes and its subsidiaries shall not be held liable in the event that a user stores or uses confidential information such as passwords, credit card or banking details, etc., through its email and computer systems, should the user suffer loss for any reason whatsoever.
- ✓ SA Golden Homes reserves the right to block any site it deems to be inappropriate.
- ✓ The use of all resources of SA Golden Homes and the resources of its subsidiaries is restricted to work-related issues and no such resource may be used in the commission of any unlawful activity whatsoever, whether of a civil or criminal nature or in any way calculated to overburden any such resources.

***d) Information storage and resources***

- ✓ All users are encouraged to save work regularly. Users are prohibited from storing personal information on the network and/or any IT device/s belonging to SAGH.
- ✓ Users may not remove or copy any resources owned or licensed by SA Golden Homes.
- ✓ All mandates, Offers to Purchase, Fica documents, lease agreements and any other document used in the real estate course of business are to be uploaded and stored on the Salesforce system where their storage is secured and protected. Information will only be accessible by authorised personnel with password access.

***e) Monitoring***

- ✓ Please note that every database contained on or connected with Salesforce, IT systems, internet and email, (including the information stored on any PC or laptop used by a user to perform their duties for the company) is the property of

SA Golden Homes. SA Golden Homes has the express right to monitor the use of all IT and telephone and other communication systems and related resources, and a user may not, for any reason whatsoever or in any other manner whatsoever, refuse access.

- ✓ SA Golden Homes reserves the right to test and monitor security, and to review any files or information resident on any systems allegedly related to unacceptable use.
- ✓ SA Golden Homes shall have the right (including in the users absence), to access any user's files, folders and/or messages in its sole and absolute discretion.
- ✓ SA Golden Homes' business is highly confidential in nature and every user is expected to maintain the strictest confidentiality regarding all systems and information connected with its operation.

## **Annexure 16 – POPI Act**

## **Annexure 17 – POPI Manual External Guide**

### **2. CPA – Consumer Protection Act**

#### **a) Estate Agents**

This Act came into being on the 1<sup>st</sup> April 2011 and has bearing on property transactions. One of the key definitions in the Act is that of “supplier”. Estate Agents are suppliers and their services fall within the provisions of the Act.

Estate Agents are not responsible for any ‘goods’ relating to their service. As Estate Agents we offer a service relating to the marketing of properties and the subsequent conclusion of an offer to purchase. Thereafter, the contract is a legal and binding agreement between the Seller and the Purchaser who are responsible for the fulfilment of the terms and conditions thereof.

#### **b) Sellers**

Most sellers are **NOT** suppliers.

Contrary to many interpretations of the Act, estate agents and conveyancers are not responsible for the condition of the properties they are selling or transferring, only their services.

A **consumer** is someone who is dealing with a supplier of goods ‘in the ordinary course of the suppliers’ business.’ This means that ALL sellers of properties are excluded from the definitions unless they are selling properties in the normal course of their property business.

#### **c) Marketing**

An agent may not, by word or conduct, 'directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer.' In terms of the agent's service the buyer enjoys the protection offered to consumers.

Section 44 says that it is false, misleading or deceptive to say of any property that it has 'characteristics that it does not have' such as special facilities, amenities or natural features, or that it is near to them when it isn't. Be very careful with your advertising and marketing.

Many provisions in the Act affect direct marketing. This is defined as **approaching someone** personally, or by mailings, or by any form of electronic communication (such as emails, fax, SMSs, etc.) to promote any goods or services in the normal course of business.

#### **d) Landlords**

A normal landlord renting out one or more properties is not a supplier in terms of the Act and the tenant does not enjoy the rights of a consumer against him. Section 14 deals with any **consumer agreement** that covers a fixed term. The Act defines an agreement as any agreement between two parties, which would include lease agreements, however, but the definition of a consumer only refers to people dealing with suppliers who are acting in 'the normal course of their business.'

However, the Act clearly directs our courts to interpret its provisions broadly and in terms of covering the interests of consumers generally, so it would in that sense cover leases as well.

Consumer agreements may not be for longer than 24 months (Regulation 5.1) and without any justification or cause the consumer may cancel the agreement at any time by giving 20 business days' notice. The Landlord has the same right in return, but only if the tenant materially breaches the contract and fails to remedy this within the 20-day period.

No company, trust or close corporation is protected by the provisions of Section 14.

Rental agencies are considered suppliers in terms of their service to both landlords and tenants. The provisions of the agreement must be explained to both parties. Written records of all verbal transactions reached through the services of an agent must be kept by the agent and supplied to the parties when required to do so. (Section 26, 50)

#### **e) Other obligations**

Section 22 provides that all documents be in plain language so that consumers can readily understand them. Sale agreements must be in simple language.

An agent calling on a client at his place of residence or business must be prepared to provide proof of identification.

### **Annexure 19 – CPA Act**

#### **3. FICA – Financial Intelligence Centre Act**

In terms of Section 1 of the Financial Intelligence Centre Act (FICA) 38 of 2001 an 'accountable institution' means a person referred to in Schedule 1. Schedule 1 lists an estate agent as defined in the Estate Agents Act, 1976 (Act 112 of 1976) as an accountable

institution. Therefore, all estate agents are obliged to comply with the FICA rules as set out in the Act and the regulations.

**a) Identity verification and establishment**

In terms of Section 2 of the regulations to the Act, “no accountable institution may knowingly establish or maintain a business relationship or conduct a single transaction with a client who is entering into that business relationship or single transaction under a false name.”

Verification entails comparing the documents provide by the person with the person. It is imperative that estate agents verify their clients. This would apply to all employees as well.

**b) Required Documentation**

Different documentation is required depending on the type of client an estate agent is dealing with, whether natural or legal.

**Natural persons:**

- ✓ ID – including photo, name and surname, id number, date of birth
- ✓ Date of birth – as per above
- ✓ ID number – as per above
- ✓ SARS verification – registration document verifying registration with SARS. (If not registered, at least an explanation as to why they are not registered. SARS requires all persons earning R70 700 annually to be registered for tax.)
- ✓ Proof of residence

**Legal persons:**

- ✓ Certificate of Incorporation – CM1
- ✓ Notice of Registered Office and Postal Address – CM22
- ✓ If a CC most recent Founding Statement and Certificate of Incorporation – CK1
- ✓ Or Amended Founding Statement – CK2
- ✓ Registration number of Company or CC
- ✓ Registered Address of the Company or CC
- ✓ Trading name
- ✓ Address from which the Company or CC conducts business
- ✓ Income tax and VAT numbers
- ✓ Persons holding a 25% or more voting right must supply FICA documents

**c) When must documents be acquired?**



According to the internal rules of the Estate Agency Affairs Board, these documents must be obtained by the agent BEFORE accepting a mandate. The Purchaser's FICA documents are required BEFORE entering into a contract.

**d) Verification of residential address and marital status**

Where natural persons are married and one party does not have verification for their address, the person with the verified address can sign an affidavit to the effect that his/her spouse resides with them.

A marriage certificate is sufficient to prove spouses are married.

**e) When a person is not physically present**

If you have never met the client you are dealing with, reasonable steps must be taken to establish or verify the identity of the natural or legal person, partnership or trust, taking into account any guidance notes concerning the verification of identities which may apply to the accountable institution.

**f) How long are documents to be kept?**

The Compliance Officer must keep the following documents for 5 years:

- ✓ Properly completed FICA forms relating to the establishment and verification of all persons as prepared by the compliance officer.
- ✓ The mandate
- ✓ The sale or lease agreement
- ✓ The verification documents listed above (or as per training manual)

**g) Reporting of Suspicious Transaction**

A suspicious transaction is one where the transaction raises questions or gives rise to discomfort. If there is reason to be suspicious of a transaction and the circumstances have been assessed, it needs to be reported.

Section 29 of the FIC Act imposes obligation on any person who carries on a business or oversees or manages a business or who is employed by a business to report suspicious or unusual transactions to the Centre.

Estate Agents must report if they suspect that:

- ✓ The transaction they are involved with has received or is about to receive the proceeds of any unlawful activity, or
- ✓ A transaction or series of transactions in which they are involved has facilitated or is likely to facilitate the transfer of proceeds of unlawful activities from one person to another or from one location to another, or
- ✓ A transaction or series of transactions in which they are involved has no apparent business or lawful purpose, or

- ✓ A transaction or series of transactions in which they are involved is conducted to avoid giving rise to a reporting duty under the FIC Act, or
- ✓ A transaction or series of transactions in which they are involved may be of interest to the South African Revenue Services in a possible investigation of tax evasion, or
- ✓ The transaction involved has been used or is about to be used in any way to hide or disguise the proceeds of unlawful activities.

***h) Time period for reporting***

In terms of Regulation 24 a report made under section 29 of FIC Act must be sent to the Centre as soon as possible but not later than fifteen days, excluding Saturdays, Sundays and public holidays, after a natural person or any of his or her employees, or any of the employees or officers of a legal person or other entity, has become aware of a fact concerning a transaction on the basis of which knowledge or a suspicion concerning the transaction must be reported. In exceptional cases the Centre may approve of the report being sent after the expiry of this period.

***i) Continuing with the transaction in question***

Generally, an estate agent may continue with a transaction from which a report emanates. Section 34 of the FIC Act empowers the Centre to intervene in certain transactions after consulting with the accountable institution, reporting institution or person required to make a report.

In such instances the estate agent may not proceed with the carrying out of the transaction. The Centre's intervention is valid for a maximum period of 5 days and is aimed at creating an opportunity for the Centre to make the necessary enquiries and to inform and advise an investigating authority.

***j) Protection of the Estate Agent's Identity***

Section 38 of the FIC Act provides for a broad range of measures to protect persons who participate in submitting reports to the Centre. It guarantees that "no action, whether criminal or civil, will be instituted against any reporter who complies in good faith with the reporting obligations of the FIC Act".

An estate agent cannot be forced to give evidence concerning such a report in criminal proceedings arising from the report. However, the agent may choose to do so voluntarily. If the agent elects not to testify, no evidence regarding their identity is admissible as evidence in criminal proceedings.

***k) Reporting Cash Threshold***

Section 28 of the Financial Intelligence Centre Act, Act 38 of 2001 (the FIC Act) makes it obligatory for all estate agents to report cash transactions above the prescribed limit to the Centre in the prescribed format. The prescribed limit will be R25 000.00. Estate Agents are

obliged to report all cash transactions of R25 000.00 and above to the Centre in the prescribed format within two business days of the transaction.

***l) Internal Administrative Duties***

- ✓ Keep records of staff, clients and transactions
- ✓ Formulate and implement internal rules to ensure compliance with the Act.
- ✓ Train staff
- ✓ Appoint a compliance officer to monitor compliance with the Act
- ✓ Submit reports

An estate agency mandate is given to the estate agency firm and not to the individual estate agents working for the firm. As such, the responsibility to establish and verify the firm's clients lies with the **Principal** of the firm. To discharge this responsibility the principal may need the assistance of the salesperson or letting agent who obtain the mandates for the firm. Principals should take great care in training their staff to obtain the prescribed information and documentation from clients.

**Annexure 19 – FICA Compliance Manual**

**Annexure 20 – FIC Act with 2017 amendments**

**4. PAIA – Promotion of Access to Information Act**

In 2000, the Promotion of Access to Information Act (PAIA) came into law, fulfilling the provision of section 32 of the Constitution which requires the enactment of legislation relating to access to information. The purpose of PAIA is to promote the right of access to information.

It is important to note that PAIA cannot be used to obtain records for use during civil or criminal legal proceedings after the commencement of such proceedings if the production or access to records for this same purpose are provided for by law (see Section 7 of the PAIA).

In addition to the Section 10 Guide on PAIA compiled by the SAHRC, PAIA also requires every public body, as well as private bodies, to produce a manual which contains information on how to use PAIA to access their own records.

A private body is not obliged to publish their PAIA manual; however it must be available and easily accessible in the office for all staff to read. It also needs to contain a 'Form C' which is a request for information.

***a) Grounds on which information can be refused by the Information officer:***

- ✓ The privacy of a third party, unless there is consent or is already public information
- ✓ Protection of commercial information of a third party

- ✓ Protection of confidential information
- ✓ Protection of the safety of individuals and property
- ✓ Protection of information in legal proceedings
- ✓ Protection of research information
- ✓ Operations of private bodies

The Estate Agency Affairs Board requires all estate agencies to comply with the following:

Private bodies or juristic persons include natural persons carrying on any trade, business or profession; partnerships which carry on any trade, business or profession; or any former or existing juristic person excluding a public body. Juristic persons, therefore, include companies, close corporations, non-profit organizations and trusts. Holding companies and each subsidiary company must prepare and submit separate information manuals.

***b) The PAIA prescribes that the head of a private body must:***

- ✓ Compile a Section 51 manual which is a roadmap of the enterprise
- ✓ submit that manual to the South African Human Rights Commission (SAHRC);
- ✓ effect material changes, if any, each time such changes occur and, thereafter, resubmit the amended manual to the SAHRC;
- ✓ update any material changes to the manual on a regular basis;
- ✓ make the manual available as prescribed by the PAIA at the company offices as well as on the relevant internet website;
- ✓ annex a request form to the manual and make request form available on the internet website.

***c) The section 51 manual must, among others, contain the following information:***

- ✓ details of the company's postal, e-mail and street addresses and facsimile and telephone numbers;
- ✓ a description of available records generated by the company stating those which are automatically available and those that are available on request;
- ✓ an outline of the request procedure in terms of PAIA;
- ✓ who the head of the company is, namely, the chief executive officer or the appointed information officer;
- ✓ the fees payable for the furnishing of the requested information;
- ✓ remedies available to requesters should a request for information be refused;
- ✓ details to facilitate requests for access to records.

The section 51 manual must be initialed on every page and signed by the head of the organization on the last page. The manual should then either be e-mailed or posted to the PAIA Unit of the SAHRC at [dmalesa@sahrc.org.za](mailto:dmalesa@sahrc.org.za). or Private Bag X2700, Houghton, 2041.

It is imperative that all estate agency enterprise comply with the requirements of the PAIA since penalties are applicable for any instances of non-compliance with its provisions.

The following PAIA template is available for every franchisee to adapt to their organization.

### **Annexure 13 – PAIA Manual**

### **Annexure 21 – PAIA Act**

The SA Golden Homes PAIA manual is not currently available on our website. However, information may be requested via Form C from the Chief Executive Officer which will be processed in accordance with the PAIA regulations and fees.

## **5. Competition Act**

The Competition Act 89 of 1988 contains certain prohibitions to business practices that restrict competition as well as the abuse of a dominant position.

### **Practices that restrict competition:**

These restrictive practices deal with the relationship between a company and its markets and are presumed to exist between two firms unless:

#### **a) Company and its competitors in the market**

- ✓ owns a significant interest in the other, or
- ✓ the firms have at least one director in common, or
- ✓ the firms have at least one substantial shareholder in common
- ✓ a company and its solely owned subsidiaries belong to an economic entity having a similar structure.

The following practices are outrightly prohibited and do not require any effect on competition to be proven.

- ✓ Directly or indirectly fixing a selling price or any other trading condition. (This does not refer to the price a property is being marketed for).
- ✓ Dividing markets by allocating customers, suppliers, territories or specific types of goods and services.
- ✓ Collusive tendering

An agreement between firms is prohibited if the agreement has the effect of substantially preventing, or lessening, competition in a market unless it can be proven that a technological, efficiency or other pro-competitive gain outweighs the anti-competitiveness effect of that agreement.

- b) A Company and its suppliers, or customers, or both,** (This relationship does not apply to a relationship between competitors)

The following practices are prohibited outright and do not require any effect on competition to be proven.

- ✓ The practice of resale price maintenance.
- ✓ An agreement that has the effect of substantially preventing or lessening competition in a market
- ✓ It is proven that a technological, efficiency or other pro-competitive gain outweighs the anti-competitive effect of that agreement.

**c) Abuse of a dominant position**

A firm is considered dominant if it possesses the ability to act independently of its customers, suppliers or competitors.

If a firm is dominant it may not:

- ✓ Charge an excessive price to the detriment of consumers
- ✓ Refuse to give a competitor access to an essential facility when it is economically feasible to do so
- ✓ Engage in any acts that impede or prevent a firm from entering into or expanding within a market (unless the competitive effect is pro-competitive)
- ✓ Require or induce a supplier or customer not to deal with a competitor
- ✓ Refuse to supply scarce goods to a competitor when supplying those goods is economically feasible
- ✓ Engage in conditional selling that is unrelated to the object of the contract
- ✓ Force a buyer to accept conditions unrelated to the object of a contract
- ✓ Sell goods or services at below their average or marginal variable cost
- ✓ Buy up scarce supply of intermediate goods or resources required by a competitor.
- ✓ Engage in any other act not listed above that impedes or prevents a firm from entering into or expanding within a market, and which act on balance has a provable anti-competitive effect.

**d) Price Discrimination**

The action of a dominant supplier, as a seller of goods or services, is prohibited if:

- ✓ It is likely to have the effect of substantially preventing or lessening competition.

- ✓ It relates to the sale of goods or services of like grade and quality, in equivalent transactions, to different purchasers and it involves discriminating between those purchasers by way of price, discount, allowance, rebate or credit, the provision of services or payment of services in connection with the goods and services sold.

There are certain provisions in the Act which do not qualify as price discrimination if the supplier can prove so. These are listed in the Act.

Regarding the Competition Act the PPRA has issued the following notice to estate agents and their relationship with HOA's (Homeowners Associations).

#### **Annexure 22 - Practice note HOA revised 8 Sep 2014**

#### **Annexure 23 - Competition Act**

### **6. Companies Act**

The new Companies Act came into effect on 1<sup>st</sup> May 2011. The Act affects every company in South Africa. Some changes to make note of are:

- ✓ Liability rules for directors
- ✓ New rules for the incorporation, registration, organisation and management of companies in South Africa
- ✓ New registration process
- ✓ Defines the relationship between companies and their respective shareholders (or members) and directors.
- ✓ The 'Memorandum and Articles of Association' were renamed the Memorandum of Incorporation (MOI)
- ✓ No longer possible to register a Close Corporation
- ✓ The shareholder agreement changed its position of importance from being the primary document to a lesser position. The documentation order of importance is Companies Act, Memorandum and lastly shareholders agreement.

All Franchisees/Principals or branches are responsible for having their respective entities properly registered in accordance with the new Companies Act as well as the Estate Agencies Affairs Act, which requires audited financials, of both the trust accounts and the business accounts, of the entity to be submitted to the PPRA on or before the 30<sup>th</sup> June annually.

Even though the new Companies Act and SARS may not require audited financials of an entity whose turnover is less than R5 million annually, the PPA makes the audits for estate agencies compulsory.

#### **Annexure 24 – Companies Act**

## **7. Employment Equity Plan**

We have consulted with the Department of Labour and can confirm that only Estate Agencies who employ more than 50 people (including admin, intern agents and full status agents) or employ less than 50 people but have an annual turnover of more than R30 million, must by law complete and Employment Equity Plan. Check their website for their annual reporting period and deadline.

If you are unsure of any requirements concerning your business, you can call the Employment Equity helpline on 0860 101 018 or 012 309 4122/4634.

## **8. Other Organisations**

Other organisations that the franchisee and its agents may become members of are:

1. **REBOSA** – Real Estate Business Owners of South Africa

Rebosa primarily looks after the interests of Real Estate Business Owners/Principals.

2. **IEASA** – Institute of Estate Agents South Africa

The institute primarily looks after the interests of estate agents (employees), even though principals can also join.

The need for two bodies is in alignment with the expectations of Services SETA, the PPRA and the Department of Human Settlements.

Membership is voluntary. For more information visit their websites:

1. [www.rebosa.co.za](http://www.rebosa.co.za)
2. [www.ieasa.co.za](http://www.ieasa.co.za)

More information regarding the above is found in the Training Manual. Franchisees are expected to adhere to the full extent of each Act and acknowledge that the above is only a guideline. The Acts have been incorporated in the manual for compliance purposes.



## Agents and Employee Contracts

The internal employment policies are the responsibility of each Franchisee and we encourage you to seek the advice of your bookkeeper and/or auditor.

**The only exception is the Code of Ethics and Business Practices, which may not be altered and needs to be signed by every employee and placed on record, in Salesforce, together with any agent's FFC.**

The employee handbook is a necessary tool for all business owners, and we recommend that you implement it with your staff. There are clauses in the handbook which may not be relevant to your business and we recommend that you change them as necessary or delete them entirely.

The following information regarding employment is a guideline only.

### **1. Internal Staff**

The following contracts have been designed for the employment and administration of internal staff members. Internal staff members are required to sign the Code of Ethics.

You will need to form your own job description according to the position and responsibilities the person is employed to do.

### **2. Agents**

There are two choices for the employment of your agents, namely as a “full employee” or an “independent contractor.” Kindly consult your Bookkeeper or Auditor for further information and compliance.

### **3. Full Time Employee**

An agent employed as an employee is subject to all the terms and conditions you would have with your internal staff, with some changes where working hours and remuneration are concerned.

The following contracts are given as guidelines.

### **4. Independent Contractor**

For an independent contractor you cannot dictate work hours, leave, etc. However, the administration and compliance requirements of the company are part of their conditions of service.

The job description is more clearly defined in the training manual.

### **5. Agents and Employee Contracts**

The internal employment policies are the responsibility of each Franchisee and we encourage you to seek the advice of your bookkeeper and/or auditor.

**The only exception is the Code of Ethics and Business Practices, which may not be altered and needs to be signed by every employee and placed on record, in Salesforce, together with any agent's FFC.**

**All staff members, regardless of their designation, are required to sign the Golden Homes Code of Conduct and Business Practices.**

The following information regarding employment is a guideline only.

***a) Internal staff***

The following contracts have been designed for the employment and administration of internal staff members.

- ✓ GH Employee Information Form
- ✓ Employment Agreement agent/internal staff
- ✓ Code of Ethics
- ✓ Employee Handbook

You will need to formulate your own job description according to the position and responsibilities the person is employed to do.

***b) Agents***

There are two choices for the employment of your agents, namely as a “full employee” or an “independent contractor.” Kindly consult your Bookkeeper or Auditor for further information and compliance.

**6. Full Time Agents and Independent Contractors**

An agent employed as an employee is subject to all the terms and conditions you would have with your internal staff, with some changes where working hours and remuneration are concerned.

For an independent contractor you cannot dictate work hours, leave, etc. However, the administration and compliance requirements of the Company are part of their conditions of service.

The following contracts are given as guidelines.

- ✓ GH Employee Information Form
- ✓ Commission policy
- ✓ Job description
- ✓ Employment Agreement agent/internal staff
- ✓ Service agreement agent
- ✓ Code of Ethics

✓ IT Policy

**a) Agent Masterfile Information Form**

Form accounting and human resources administration each employee/independent contractor should fill in and complete this form. You can upload the documents and complete their personal information on the Hub for easy access as well as legal compliances.

**b) Commission Policy Example**

The commission policy is drafted as a template which you are free to use or amend as per your employment agreement with each individual staff member.

Each Franchisee has the freedom to incentivise their agents commission structure. Below is a chart which can be used as a point of reference when commissions are below your commission threshold.

COMMISSION CALCULATION FOR COMMISSIONS LESS THAN 4% ONLY										
Price	Commission R's	Commission %	Franchise Fee	5% bottom line at 20%	Agents portion before franchise fee	Agent Portion %	Agency Portion %	Agents portion after franchise fee	Agency portion after franchise fee	QC
1215000	40000	3.29%	3074	12150	27850	69.63%	30.38%	25709.76	11216.29	40000.00
Fill in the red areas to get the numbers This is only works if the commission charged is 5% or less										
Price	Commission R's	Commission %	Franchise Fee	5% bottom line at 30%	Agents portion before franchise fee	Agent Portion %	Agency Portion %	Agents portion after franchise fee	Agency portion after franchise fee	QC
1215000	40000	3.29%	3074	18225	21775	54.44%	45.56%	20101.62	16824.43	40000.00

**a) Job Description (agents only)**

The job description is drafted as a template which you are free to use or amend as per your employment agreement with each individual staff member. This document is further discussed in Section 7 of this manual.

**b) Employment Contracts and Service Agreement**

The Employment Contracts included in this manual have been drafted as templates for you to use and amend according to your personal employment terms and conditions. We advise that you consult with your own bookkeeper and auditor with regards to any changes you wish to make.

**c) Code of Ethics and Business Practices**

The Code of Ethics and Business Practices may not be altered in any way whatsoever and forms part of the Franchisor's Intellectual Information. Every employee, regardless of their designation, is required to sign the Code of Ethics and Business Practices. This document is to be uploaded to the employee's folder which must be created in the SAGH Hub together with their personal information.

***d) Employee Handbook***

The employee handbook is a necessary tool for all business owners, and we recommend that you implement it with your staff. There are clauses in the handbook which may not be relevant to your business and we recommend that you change them as necessary or delete them entirely.

***e) Information Technology ("IT") Policy***

This policy document must be made available to all staff and should be included in their "welcome" package together with a copy of their employment/service contracts, job description, commission policy, etc.

**Documentation**

**Annexure 2 – Code of Ethics and Business Practices**

**Annexure 25 – Agent Masterfile Information Form**

**Annexure 26 – Employment contract agent / internal staff**

**Annexure 27 – Employee Handbook Example**

**Annexure 28 – Service Agreement Agent – Independent Contractor**

**Annexure 29 – Commission Policy Example**

**Annexure 30 – Job Description Example**

**Annexure 31 – SAGH IT Policy**

**Annexure 32 – Commission Payment Calculator**

## Recognition Awards

Appreciation is a fundamental human need and as such we place great value on recognising the hard work of the agents within our organisation. Praise and recognition are essential to building a fantastic company culture.

As a Franchisee you are encouraged to adopt your own internal recognition and awards system to encourage and motivate your agents and staff.

From a Franchisor level we recognise those agents that have attained various levels of achievement, known as our achievement awards. These awards are recognised as follows:

**1. On a trimester basis which then culminates at the year-end awards function:**

First trimester achievement is from 1<sup>st</sup> November to 28<sup>th</sup> February

Second trimester achievement is from 1<sup>st</sup> March to 30<sup>th</sup> June

Third trimester achievement is from 1<sup>st</sup> July to 31<sup>st</sup> October.

The year-end achievement awards are taken from the achievement of individual agents and franchisees from 1<sup>st</sup> November to 31<sup>st</sup> October annually.

*(Awards are at the sole discretion of the Franchisor who has the right to change the values and targets as well as the trimesters if or when these awards will take place. These changes will be in line with any market changes or fluctuations.)*

**1. The awards are based on the following criteria:**

Award	Rands Sales in Millions	Number of Sales	
Emerald	8,500	6 - 10	
Sapphire	12,750	10.5 - 15	
Ruby	17,000	15.5 - 20	
Diamond	21,250	20.5 - 25	
Gold	25,500	25.5 +	

Rand sales are calculated in millions, i.e. Emerald = R8 500 000.00

**2. Number of sales are calculated as follows:**

Every sale that has been listed and sold by a particular agent counts as one point.

Every sale shared with another agent or another agency counts for half a point. The half point is awarded regardless of the percentage commission received by the agent.

These figures are subject to change depending on the increase of market conditions and will be adjusted as and when necessary.

**3. Sales that do not qualify for incentive:**

- ✓ Referrals do not qualify towards points (i.e. any commission received being 20% or less by agent or company does not qualify towards the incentives. The full point will go to the selling/listing agent/agency where the 80% plus was earned.)
- ✓ Commercial and Industrial sales. These will qualify under Commercial and Industrial. (The incentive for Commercial and Industrial is still to be determined and will be updated once finalised)
- ✓ Farms over R3 000 000.00 (These will qualify under Commercial and Industrial)

## Branding

The Golden Homes brand is a foundational part of our business as it is our face and identity. Our brand is what separates us from our competitors and is the first representation of who we are to our clients.

The brand creates the perception that a client has when they think or hear the name “Golden Homes.” In today’s market, branding is no longer just a static image. Today, branding is a moving target that evolves with the behaviour of the market. Staying fresh and relevant is crucial to our success and is influenced by the elements, words and creativity that surrounds it.

The goal is to get our target market to choose us as the sole provider of a solution to their problem or need. Our objectives are to:

- ✓ Clearly deliver our message
- ✓ Confirm our credibility
- ✓ Emotionally connect our clients with our service
- ✓ Motivate our buyers and sellers to transact through us
- ✓ Create user loyalty
- ✓ Create loyal employees
- ✓ Have the brand live in the minds and hearts of our clients

As stated earlier, the Golden Homes logo is trademarked and the slogan “If it’s gold it’s sold” is registered. When using the trademarks, they should be reproduced accurately and exactly and in accordance with the specifications and directions laid down by the Franchisor. All advertising design should be approved by the Franchisor before going to print.

Advertising design is a service offered by the Franchisor to its Franchisees. Currently there is no charge for this service. The Franchisor will also assist with obtaining quotes and services from suppliers and offer these at the best price available.

The Franchisor does the following branded items in-house; however, the Franchisee may use the services of other suppliers provided that the branding standard of the Franchisor is not compromised:

- For sale and sold boards
- Show house boards
- Specially designed boards
- Office/billboard signage
- Stickers
- Magnets

- T-shirts/Golf shirts
- Pamphlets
- Contracts

A full range of branding supplies together with the price can be requested at [support@goldenhomes.co.ca](mailto:support@goldenhomes.co.ca). and will eventually be made available on the Salesforce system.

**Ordering of Stationery and Supplies:**

All orders should be processed through [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za) or the Salesforce system.

All orders are subject to a **two-week** turnaround time, barring unforeseen circumstances.

The Franchisor will endeavour to dispatch orders as soon as possible; however, the Franchisee is to provide for the two-week period and order well in advance.

All postage is for the Franchisees account.



## Business Premises

One of the most essential aspects of the Golden Homes organisation is that of its branding. An established brand identity is important for becoming a recognisable, unique and engaging business to all our current and future clients.

Modern offices are very different from what they were a decade or so ago and there have been changes in many attitudes and business practices. In keeping with the Golden Homes vision of maintaining a “local” rather than a “corporate” real estate business, we have opted to allow our franchisees to determine whether they would like to operate their business from home or from a business premise. Being a real estate organisation, we desire to see a warm and comforting, “homely” feel to the business operation.

Consideration has also been made for the fact that the majority of smaller businesses have less resources available and cannot afford to implement high start-up branding costs. Our vision is to empower small to medium businesses and assist them in becoming successful real estate enterprises. However, building brand awareness and showcasing our vision and values is still of top priority.

The workspace and office space of our franchisees says a lot about our organisation, who and what we are and what we stand for, and it gives our clients a better picture of our quality as a whole structured organisation. It is more than just putting the company name and logo on the walls but reflects the character and personality of our brand throughout our whole workplace.

The office design should make people feel comfortable, amused and vibrant. The interior design of the home or business office should have a well thought out interior office design that improves the workforce morale and greater job satisfaction. When an office is neat, clean, bright and comfortable, the Golden Homes values, goals, vision and mission are easily and clearly communicated.

The following rules and regulations are applicable to the Golden Homes office branding:

While we do not force a specific ‘branding’ design and structure on our franchisee’s office design, basic rules and regulations are applicable.

- i. A home office needs to be a separate room and should not form part of the “home environment.”
- ii. The office must be able to accommodate all the necessary equipment and furniture required to run an office, i.e., telephones, computers, printers, faxes, filing cabinets, office furniture.
- iii. The office needs to have its own bathroom facility.
- iv. The office must be easily accessible to staff members and clients.
- v. The Golden Homes vision and values, featuring the logo, needs to be displayed in the office/reception.

- vi. Interior and exterior paint can be a variety of whites to autumn colours, yellow, black, or red, in keeping with the Golden Homes brand colours.
- vii. It is not permissible to display the branding or marketing materials of competitors and/or other companies.
- viii. The office/s need to be kept neat, clean and tidy.
- ix. If there is a garden, the garden should be well maintained and inviting.
- x. Billboards and flags need to be kept clean and in good condition.  
They should also be approved by head office before being displayed.

## PPRA Registration and Qualification

All agents, principals and directors of a company need to be registered with the PPRA and have a Fidelity Fund Certificate in their possession if they want to trade as an estate agent. Failure to comply with the registration carries a fine of up to R25 000.00. An agent that is not registered is also not entitled to commission.

### **Registrations:**

#### **1. Registration of an Estate Agency**

This section is covered under clause 13.

Once you have obtained your company pin, beginning with an “F” you can register your agents. We suggest that the principal handles the entire registration process, initially using their own email address. Once the registration is complete the email address of the agent should be updated.

All FFCs (Fidelity Fund Certificates) automatically expire on the 31<sup>st</sup> December annually and payment for the following year’s certificate needs to be made by the agent on or before the 31<sup>st</sup> October annually. Failure to register by that date results in the PPRA charging a late payment penalty. The renewal fees are available on the PPRA website.

#### **2. Registration of an Estate Agent**

All registrations shall be performed on the MyEAAB Agents Portal accessible through the PPRA website at [www.eaab.org.za/myffc](http://www.eaab.org.za/myffc).

- ✓ The following documents are required BEFORE beginning the registration process.
- ✓ Certified copy of Identity Document – (South African citizens and permanent residents)
- ✓ Certified copy of Passport and work/business permit issued by the SA Department of Home Affairs – (Foreign Nationals)
- ✓ Letter of Employment signed by the Principal (see attached example)
- ✓ Firm Pin Number – the firm must be in possession of a valid FFC
- ✓ Seven-digit PPRA reference number of the principal or full status agent overseeing an intern
- ✓ Payment of the application fee of R529.80 (currently) to the PPRA using ONLY THE AGENT’S SEVEN-DIGIT PIN NUMBER ISSUED TO THEM UPON REGISTRATION.
- ✓ PPRA Bank details are as follows:

ABSA ACCOUNT NAME: Estate Agency Affairs Board

ACCOUNT NO.: 405 203 3310

BRANCH NAME: Universal

BRANCH CODE: 632005

- ✓ Email the certified ID, letter of employment and proof of payment to [registrations@eaab.org.za](mailto:registrations@eaab.org.za)
- ✓ Regularly check for the new certificate or follow any procedures the system is requesting.

Should an agent previously registered with another company join you, the agent (preferably the principal) should login to their profile and under “Manage your Employment” do the following:

- ✓ Change your employment
- ✓ After 48 hours link a new employer and upload the new employment letter
- ✓ Make payment of the transfer fee of R345.00 (currently – please check the PPRA website for confirmation)
- ✓ Once completed, follow up on the site and download the new certificate.
- ✓ Should you experience any problems kindly contact Head Office for assistance.

For more information please see insert below:

### **Annexure 10 – How to register and estate agent**

#### **3. Qualifications:**

The following notes have been taken from the PPRA website:

#### **Intern Estate Agents**

In terms of the Standard of Training of Estate Agents Regulations, 2008 (“the Education Regulations”), all persons seeking to enter the estate agency profession are required, as from 15 July 2008, first to serve as intern estate agents, acting under the supervision of a principal estate agent, for a continuous period of twelve months calculated from the date of the first issue to those new entrants of intern fidelity fund certificates by the Estate Agency Affairs Board (“PPRA”). This requirement applies to all new entrants, or intern estate agents, regardless of any academic, professional or other qualifications which they may hold.

To accommodate the peremptory internship requirements of the Education Regulations, the PPRA has introduced a mandatory one-year programme for intern estate agents effective from 02 January 2013. The programme has been specifically designed to facilitate and monitor the induction of intern estate agents into the estate agency profession and applies to all new entrants, or intern estate agents, regardless of the future status to which such persons aspire and/or of their current academic, professional or other qualifications.

The maintenance of a mandatory workplace learning programme logbook and workplace portfolio of evidence (PoE) constitutes an integral component of the entire programme. The

PPRA has, to this end, compiled a draft logbook for use by both intern estate agents and their principals (or mentors).

In terms of the Education Regulations, only persons who have held three consecutive FFCs and still hold the current FFC may be appointed and serve as mentors for intern estate agents. This means only full status estate agents at principal and non-principal status are allowed to play the role of the mentor.

The Mentor will be responsible to monitor intern performance and learning throughout the prescribed 12-month internship period and sign-off the intern Logbook and evidence accordingly.

The intern estate agent is expected, during the course of the twelve month internship period, to complete and maintain a logbook in which accomplished activities are not only fully recorded but, also, signed-off by the principal/mentor/coach/supervisor (“the principal”) assigned to assist and provide the intern estate agent with logistical support during the internship period. It is anticipated that this requirement will ensure that the intern estate agent is provided with a personal record of all practical tasks completed and experience gained at the workplace.

It is important to note that all interns are required to upgrade from intern estate agent to full status within a 24-month period. No intern is allowed to remain an intern past this period. Therefore it is important to ensure that the Intern Logbook and the prescribed qualification is complied with within the first 12 months of the internship period and focus is on PDE 4 thereafter, in order to upgrade to full status by end of the 24<sup>th</sup> month. No intern estate agent will be allowed to renew their FFC beyond the 24<sup>th</sup> month. Disqualification of the intern will be effected at month 24, to ensure the intern is compliant before allowed to re-register as an estate agent.

For more information please see inserts below:

There are many FET colleges that offer the SETA qualifications and agents are free to choose who they would like to qualify through.

We aim to upload various completed NQF 4 qualifications on the training site. This is still in the planning stage and will be uploaded when ready. The notes will be available for viewing only, as agents are encouraged to do their own work and submit their own understanding of the questions asked in their study material.

NQF 5 completed manuals being made available for view is still under consideration.

For further information kindly view and familiarise yourself with the information given by the PPRA on their website.

### **Support and Information Technology (IT)**

All communications relating to the Franchisor and the Franchisee do not form part of the general support system. These queries and issues are handled privately between the two parties via their respective email addresses.

Any verbal communications that have not been agreed to or formulated in an email will be considered binding on either party as these communications cannot be verified. Only emails and/or formal written notices or agreements will be considered as a valid form of communication.

All orders, IT related queries, advertising designs, emails and signatures, etc., are to be communicated through [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za) and not to the Franchisor's direct email.

No agents or employees within the Franchisees organisation may request assistance, place and order, etc., until it has first been approved by the Franchisee or its nominated representative. Any nominated representative must have been formally appointed to do so and notification must have been given to and approved by the Franchisor.

We will endeavour to assist you with any IT technological issues within our scope of expertise. Should we not be able to assist you then we will recommend you contact an external IT service provider. We are not an IT Company and our support is limited in this regard.

#### **1. Stock and Orders**

All orders need to be placed through to Support through the SAGH portal. Once received the order will be processed accordingly. Should there be any queries regarding your order, we will contact you via email to clarify.

All communications must be done via email or the Portal. Any verbal or telephonic communications cannot be verified and any disputes regarding orders will be dismissed and treated as not requested.

Should the items you have ordered be in stock then you can expect delivery within 3 (three) to 5 (five) working days. Any other orders will be dispatched within 14 (fourteen) days unless the order is subject to an external supplier that is unable to deliver within our specified terms. Any delays will be communicated to you via email or the SAGH portal.

Prices listed on the stock items are subject to increases without notice. Such increases will only be made should our suppliers have increased their costs to us.

It is our aim to always supply stock to you at the lowest and/or best rate we can obtain.

#### **2. Returns:**

Should you not be satisfied with an order you can raise this with Head Office within 3 (three) days after date of delivery. Thereafter it will be treated as having been delivered in a satisfactory condition.

If Head Office does deem the return to be valid the items in dispute will be redone and delivered as per the above terms and conditions at no extra cost to you. Head Office will determine whether the goods need to be returned to it.

### **3. Storing Goods:**

Boards and stickers use ink and vinyl and we recommend that you check the following to help preserve them while in storage.

- ✓ Store in a cool dry place and avoid sunlight
- ✓ Avoid water contact – any water contact, including humidity, will cause damage to the product. Paint on the boards can fade and flake off; stickers become warped and difficult to use.
- ✓ Avoid surface pressure – do not store on top of one another and do not stack other goods on top of your boards and/or stickers.
- ✓ Store boards and stickers on their sides to avoid pressure damage.
- ✓ **Stock invoicing**
- ✓ All stock items supplied and delivered to you on or before the 25<sup>th</sup> of each and every month will be billed on your monthly invoice and payable together with any other charges, costs, and fees applicable.
- ✓ Stock will be billed at the price displayed on the portal at the time of the order.

### **4. Postage and Delivery**

All items posted to you will be subject to postage costs which will be added to your invoice. The cost of the postage slip can be requested from [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za).

Delivery in and around Gauteng will incur a R100.00 (excluding VAT) delivery charge provided that it is within a 40 (forty) kilometre radius from the Head Office.

Goods can be collected from the Office should you wish to do so.

### **5. Cloud Storage**

All documentation related to your business as a Franchisee will have access to cloud storage through the SAGH portal. This fee is included in the monthly administration fee and will not incur any extra cost to you.

All data storage on the SAGH portal is compliant with South African laws and regulations. Any storage you choose to use outside of the portal is done solely at your own risk and any theft, loss, or damage will be your responsibility. SAGH will not accept any liability outside of its own CRM.

It is imperative that you carry Cyber Crime insurance as part of your business insurance policy. Please speak to your insurance broker in this regard, as SAGH does not enforce use of

their insurer. Should you wish to receive a quote from the SAGH insurer please email your request to [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za) and we will send you their details.

The Cloud Storage and usage is subject to the following terms and conditions:

- ✓ No data other than that which is relevant to the business of SAGH and its Franchisees may be stored in the Company's cloud storage facility.
- ✓ No personal data not related to the business of the Franchisee may be stored on the Company's cloud storage.
- ✓ Franchisees and their employees/agents may not share log-in credentials with co-workers or any persons outside of the Organisation. The IT department will keep a confidential document containing account information for business continuity purposes.
- ✓ The IT manager decides what data may or may not be stored in the Cloud.
- ✓ Personal cloud service accounts, i.e. Google, etc., may not be used for the storage, manipulation or exchange of company related communications or company owned data.

As a Franchisee it is advisable that you monitor what personal information regarding clients your employees/agents are allowed to store on their laptops or personal computers. Any violation of the POPI, FIC and CPA Acts by an employee/agent within the services of the Franchisees will be for the Franchisees responsibility.

Once any employee/agent has provided and processed the necessary FICA information required as part of their job description to the administration department within the Franchisees business, they should remove all such information from their personal computer and/or laptops. This is for both their safety and that of the Franchisee and that of SAGH.

The SAGH cloud storage is for business related storage and no private or personal documentation, photos, etc., is to be uploaded to the SAGH cloud storage facility. The Franchisor reserves the right to remove all items not relating to its business system without notification to the principal and/or agent.

## **6. Email Policy**

All new employee/agent emails are generated through [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za) upon request of the Franchisee. All such requests will be processed within 24 hours of the request being sent, excluding weekends and public holidays.

Upon request an email setup will be sent to the Franchisee or its nominated agent together with setup instructions. Emails are to be setup as per instruction and no changes may be made to the setup formula, as the emails fall within the scope and security requirements of the SAGH organisation. Any changes will be considered a material breach of trust, whether it be the Franchisee itself or any person within its employ.



An email signature will also be provided. Such signature may not be changed unless agreed to by Head Office as the email signature forms part of its branding. All Franchisees, employees and agents are to use a SAGH signature with their emails. This maintains the professional image and branding of the Company.

No franchisees, employee, or agent may use their @goldenhomes.co.za for personal use. Neither may any personal email addresses be used for business purposes. Should any franchisee, employee, or agent use their email for personal use they acknowledge that such emails become the property of SAGH and are no longer considered personal and may be used in any legal proceedings, should any occur.

For further information please refer to the employee handbook and/or the Company's Information Technology ("IT") Policy Document.

## **7. Websites**

There are two websites connected directly to the HUB, namely Golden Homes and Property24.

All listings are to be loaded onto the Hub together with all their respective information and documentation (if applicable). The Principal or nominated administrator (who would have to have signed the Confidentiality and non-Disclosure document) are the only persons that will be able to activate listings onto the website.

The Principal is to first check the quality of the listings and the photos BEFORE activating them on the website/s. Each Franchisee has 300 listings included in their franchise account. Thereafter each additional listing will cost R30.00 (excl VAT).

Every listing loaded will have an automatic expiry date of 90 days. Thereafter the listing will have to be reactivated by the Principal. This is to avoid the website becoming cluttered and it also aids the Principal as well as SAGH in keeping their own costs in check and not losing money due to expired or obsolete listings.

Any other listing portals that the Principal would like to list (e.g. Private Property) will be for the Franchisee's own account. The Franchisee is free to enter into any contracts they desire and hereby indemnifies the Franchisor from any involvement or responsibility.

Listings placed onto Property24 will automatically feed from the HUB to P24. P24 rules and regulations will be applicable to all listings placed on their website. The Property 2 listing ID is the same as that for Golden Homes and trying to deactivate and then reactivate the property for better exposure will not work. If any Principal is found guilty of trying to circumvent that rules it could be deemed as a breach of the franchise agreement and the Franchisor reserves the right to take whatever action they deem necessary to prevent any further contraventions.

A Principal will be given training on the system, however, thereafter it will be the Franchisee's responsibility to train their respective staff members. Any additional training can be requested, however, the expenses incurred by the Franchisor will be billed to the Franchisee.

All training is made available on the HUB and in the admin system.

Banners can be selected which will appear on the listings first photo. Featured listings that are activated on P24 will incur a cost of R300 (excl VAT) per month that the property is featured and billed to the Franchisee. This cost will change as per Property 24's cost billed to the Franchisor have been increased. All featured properties on the Golden Homes web are not charged, however, each Franchisee has a maximum of four featured listings per month.

### **Annexure 31 – IT Policy**

#### **8. Disclaimer**

Any policy or document within the Admin and Compliance Manual may be updated and/or upgraded by the Franchisor whenever it finds it necessary to do so, without the consent of the Franchisee. All such updates will be communicated to the Franchisee via the portal and will be deemed to have been received by the Franchisee at the time the notification was communicated.

The Franchisee hereby agrees to uphold any and all such changes and will ensure that all its employees and/or agents are correctly informed and trained accordingly.

## Sales and Rental Documentation

The following documentation is available to the franchisee which has been drawn up in accordance to our attorney's satisfaction.

Should you wish to amend or add to your contracts you are free to do so, however, you do so at your own risk and we advise that you do it under the guidance and supervision of your attorney.

All related sales and rental documentation will be available for download on the Sales and Rental Documentation Blog

### **1. Sales Documents**

Offer to Purchase – Gauteng

Offer to Purchase – KZN

Offer to Purchase – Western Cape

### **2. Rental Documents**

Rental Mandate

Residential lease agreement

Inspection sheet

Tenant application

Inspection sheet

Landlord legal disclaimer

Landlord legal acceptance

Surety

Letter of demand template

Letter of demand email

Notice to vacate

Landlord welcome email

Tenant welcome email

Rental letterhead

### **3. Commercial Documents**

Commercial lease agreement

Commercial property sales checklist

FICA declaration – Seller

FICA declaration – Purchaser

Commercial Offer to Purchase

**4. Mandates**

Sole mandate

Shared mandate

Listing sheet

Disclosure Document

Evaluation 1

Evaluation 2

Listing presentation

**5. Addendums**

Bond date extension

Building plans

Deposit paid in instalments and occupational rent

Guarantee date extension

Lower bond amount and deposit

Occupational rent – Purchaser

Occupational rent – Seller

**6. Other**

Bottom logo blank page

Blank letterhead

Transfer Instruction

Afrikaans OTP

## Section 3

### TRAINING MANUAL

#### *Dear Agent*

As an estate agent you are first and foremost a salesman or saleswoman. Sales representatives in any field need, perhaps more than anything else, to develop ***selling skills*** if they are to ever be truly successful. The ability to market a product effectively has to be matched by a similar expertise in close a sale. As a result, numerous programs, books and the like have been compiled concentrating on the proficiency required to see a sale through from start to finish. Your training as an estate agent is therefore often focussed on such skills and rightly so.

As a new estate agent it can be intimidating, however, by the numerous *laws* that apply to the field of property sales and you can become quite frustrated at times by the seemingly endless technicalities, prescriptions and rules that affect this profession. These functions can be aggravated when it is compared with other fields of selling which appear to be generally free of such obstructive hurdles.

You will begin to appreciate how extensively property laws affect estate agents when you realise what an attorney has to learn to become a conveyancer, more correctly known in modern terminology as a property lawyer. It takes at least four years of study at a university to obtain a law degree, a period of clerkship with a qualified attorney and passing the oft-dreaded Attorney's Admission Examination before one can even become just an attorney. The conveyancing examination is generally regarded with even greater horror as it is notoriously difficult and covers all aspects of property law and procedure. Prospective conveyancers have to learn such laws as the Alienation of Land Act, Deeds Registries Act, and Regulations, Sectional Titles Act and Regulations, the Transfer Duty Act, Provincial Township Ordinances as well as numerous other statutes before they can ever hope to become qualified to handle the field of property law. As a result, only a small minority of attorneys ever become conveyancers.

Some estate agents would accordingly rather leave the legal side of property sales and transfers to the conveyancer and get on with the simple task of applying their selling skills to finalising sale contracts. Once the necessary signatures have been obtained and a contract has been concluded they believe their job is done and the rest is up to the conveyancer who often has the unenviable task of sorting out a tangled mess that results from poorly concluded sales.

Anyone truly wanting to become a professional and skilled estate agent, however, will seek to learn as much as can be learned about every aspect of the laws affecting the property market and it is for such agents that these notes have been compiled. I am sure you are one of those who really wants to succeed in this field. I have sought to contribute as much as I can of my own personal knowledge and experience towards this end, together with the attorneys that have assisted with their time and expertise.

As a principal of a local estate agency I often find that new estate agents are filled with enthusiasm and almost unlimited resources of willingness to learn all they can to become successful agents. After a while, however, many seem to think they have been taught all they need to know and often drift away from basic skills and techniques until they wonder why they are not selling as regularly as before.

The learning-curve never reaches the ceiling. Never think you have 'made it' and that there is nothing new to learn. It has correctly been said that ***knowledge is power***, and this applies as much to selling properties as to any other career. The more you learn, the more effective and polished you become. All the fanciest of marketing skills and sales gimmicks cannot substitute for the tested and proven values of ***knowledge and experience***.

A knowledgeable estate agent is likely to be far more successful overall than an ignorant one. We live in an age where the general public is well informed and aware of the basics of most professions. The influences of TV, other media agencies, and social media, have educated the average person in the basics of most fields and if you are untrained in the legal factors affecting property sales the potential Seller or Buyer will soon pick this up. Once he loses confidence in you as his agent, you will lose a prospective sale.

#### **There is no substitute for sound knowledge.**

People instinctively trust others who are self-confident. The ability to speak with authority is gained purely from a self-confidence that grows out of an increasing wealth of knowledge, skills, and experience. When Gary Player won one golf tournament after another some other golfers and a few journalists complained that his success was often achieved by good fortune as much as by good plan. He replied, "It's funny, but the harder I train, the luckier I get". Many successful agents appear to be fortunate in selling consistently but, when you watch them closely and observe how they effectively handle legal problems related to property sales you can soon see a self-assurance that attracts sellers and buyer and give them great confidence in the ability of the agent to deal with every aspect of a sale.

It is also a true statement that a ***little knowledge of the law is dangerous*** and, to become a truly good agent, you should be willing to learn more and more about the legal and other factors that affect and often disrupt property sales. It is also true that well-informed people *enjoy* their work far more than those who just drift along content with only a superficial knowledge of their occupations. The adrenaline often begins to pump when a keen sense of self-satisfaction flows from being highly respected for one's knowledge and expertise! Success breeds success but it rarely breeds itself from chance ignorance or pure good fortune (or, for that matter, bold ambition alone).

One of the great dangers in learning more about your chosen profession is the temptation to move away from what may now appear to be simplistic basics to more sophisticated and innovative methods of practice. It is a Biblical truth that no house will stand unless it is built on a sound foundation and, in the field of selling, success can only be achieved and maintained by ***never losing sight of the basics***.

Whether you are new to Golden Homes or an old timer I pray that your time with us will be fruitful and rewarding.

***Warm regards***

***Yvonne***

## **ACKNOWLEDGMENT**

It has been a huge task putting this training manual together and I would like to give a word of thanks to my faithful and willing attorney, Wilma Ewest, for all her patience, writing and advice. What an honour it is to work with someone so competent and willing.

I would also like to give credit to John Gilchrist for all the years of training and material he has made available to us as real estate agents. Much of this manual is attributed to his hard work and love for the real estate industry.

## **DISCLAIMER:**

This training manual is made available by Golden Homes for educational purposes only as well as to give you a general information and a general understanding of the laws pertaining to real estate in South Africa, and not to provide specific advice. The intention is to equip you so that you can 'red flag' items of concern. By using this manual, you understand that it cannot be used as a substitute for competent legal advice from a licensed professional attorney.

## **GENDER:**

In this training manual, the words signifying the singular number shall include the plural and 'vice versa' and words importing the masculine **GENDER** shall include the feminine and the neuter gender.

## **ONGOING PROCESS:**

This training manual, while being comprehensive, is by no means complete and further additions and amendments will be ongoing. The agent is encouraged to also source information from other sources when looking for information on a particular subject.

## Agents Conduct and Obligations

### **Golden Homes - Mission Statement**

To become an industry role model by providing a real estate service to our buyers and sellers, with the highest level of integrity and exceptional service that adds value to the industry i.e. to be the change in the industry that we want to see, and to play an important role in the growth of our agents and the SA Golden Homes Property Group

### **Our values are**

- ✓ Honesty above all, to all, including self
- ✓ We are giving, generous and thankful
- ✓ We are ever encouraging and supportive
- ✓ We value integrity, openness, and constructive criticism
- ✓ We have big goals and pride ourselves on seeing them through
- ✓ We hold ourselves accountable to our buyers, sellers, agents, and head office
- ✓ We may not always do things right, however, we will always endeavour to do the right things
- ✓ We will not tolerate any disrespect shown to us, to our colleagues or the industry in general



## Agent Basics

*Every agent within the organisation of Golden Homes is required to sign the SA Golden Homes Code of Conduct and Business Ethics and familiarise themselves with it. Training on the Code of Conduct is to be done with the agents respective Principal before signing the Code of Conduct and the signed document is to be upload to the agents HUB profile.*

*The following explanations are to be read in conjunction with the Code of Conduct.*

### **1. What is the purpose of our Code of Conduct and Business Ethics?**

The purpose of our internal code of ethics is that it gives all agents a set of ground rules in which to operate. It also reinforces our moral principles and commitments of Golden Homes, by setting out acceptable and responsible behaviour that is in line with:

- ✓ The Estate Agents Board Code of Conduct
- ✓ The Institute of Estate Agents Code of Conduct

It is only by setting high ethical standards will we become respected by all in the industry and by enforcing these high moral standards of honesty and integrity will our clients begin to respect our profession.

The image of Golden Homes depends greatly on the ethical standards followed by our Agents.

### **2. Industry codes of ethics and conduct**

Be familiar with, and adhere to all conditions as laid out in the above codes of ethic/conduct

### **3. Legislation compliance**

Be in the possession of a valid Fidelity Fund Certificate at all times

Be in full compliance at all times with the provisions of the Estate Agents Affairs Act, and all other Statutes.

The agent must be aware of his/her responsibilities under the Consumer Protection Act, and must at all times abide by his/her obligations under this Act.

The Agent is to ensure that he/she is familiar with all legislative Acts, and their contents, that affect property and property sales.

### **4. Franchise zones**

Agents are to focus their efforts on the pre-determined zones of operation in which Golden Homes Boksburg operates. Should they 'cross border' they will then automatically be governed by all conditions of that specific area Branch.

e.g. Should you list/sell a property in Primrose, your commission split will be dictated by Germiston's commission policy and not Boksburg' commission policy.

### **5. Mandates**

### **a) General**

All signed mandates are the sole property of GOLDEN HOMES. No agent may see their mandate as being theirs exclusively. No agent may further withhold *any* information pertaining to their mandates.

*(see further conditions in the employment contract and commission policy)*

Agents are required to check the validity of the parties signing the contract and to ensure that all FICA documents are obtained. If the property is a deceased estate or held by a trust, a copy of the resolution giving the party the authority to sign on behalf of the trust/estate must be obtained as well.

If an agent opts to work an 'open mandate' the agent is to ensure that they have permission from the owner to advertise his property at an agreed price.

At all times is the agent to ensure that he/she is working in the best interests of the SELLER. E.g. to not hold a seller to a sole mandate if the property is not selling – rather multi list it.

All mandates are to be saved on the network together with a detailed listing sheet, which MUST include any known defects, all fixtures, contact details etc. together with good quality photographs. No agent within Golden Homes Benoni may be 'excluded' from working a sole mandate.

The Agent is to make sure that the mandate has been explained in detail to the Seller, specifically any clauses that bind the seller during and after the mandate period – under no circumstances may the agent make any misrepresentation to the seller with regards to the validity of the mandate, conditions therein, marketing obligations etc.

The agent must always enquire from the Seller if he has any serious potential buyers before the mandate is signed – these buyers must be specified in detail and excluded from the mandate.

At all times is the Agent to ensure that he/she is protecting the Seller from a potential double commission claim.

Boards in the marketplace are to reflect the image of the company! Check your boards regularly and ensure that they look good at all times.

- All local municipal by-laws must be adhered to at all times!

### **b) Multi Listing**

All of the above conditions apply to multi listing mandates as well as all the rules under the RNS Code of Conduct

## **6. Sales – offer to purchase**

Note: all Offers to Purchase are to be 'managed' as per our internal procedures

The agent is at all times to ensure that the offer taken is a 'bona fid' offer i.e. that the parties purchasing the property are able to do so.

No offer may exceed a 30-day period for bond grant for employed persons or 45 days for self-employed. At no stage may the agent extend this period at their own discretion.

Under no circumstances may the Agent allow either the Seller or Buyer to delete ANY clauses in the offer specifically to payment of the purchase price, bond application, voetstoots, fixtures, defects, breach or agent protection under the CPA Act.

The agent is to actively use the Property Field Guide for guidance on additional clauses that may be needed.

## **7. Administration and cost control**

Agents are to ensure that their admin is up to date at all times – this includes, but is not limited to:

- *Web listings*
- *FICA Documents*

*Property week adverts*

Whilst every effort is made to minimize your costs as an agent with respect to advertising, stationery, telephone calls, office infrastructure etc. however, any 'abuse' of these privileges will result in disciplinary action.

## **8. Commission**

The Agent may not challenge the Principal on any rulings with regards to payment of commission.

## **9. Open hours, staff meetings, teambuilding**

Attendance of open hours is compulsory.

It is compulsory for all agent to attend all staff meetings, franchisor meetings, training sessions, as well as any other mandatory training sessions – e.g. multi listing induction. Only written apologies will be accepted.

## **10. Agent behaviour / managing conflict**

Agents are to refrain from making derogatory remarks about ANY property that is for sale via Golden Homes or RNS, whether during open hours or otherwise.

Agents are always to co-operate with their colleagues. Never withhold information on a property listed, knowledge gleaned over the years, or any other reasonable request for assistance.

Always walk away from conflict, whether with a colleague, buyer or seller.

Refrain at all times from criticising fellow colleagues within Golden Homes or the industry as a whole to buyers, sellers, other colleagues etc.

NEVER be the cause of strife in the office as this will result in immediate termination of service. Specifically gossiping, criticism, anger, racism, or intolerances of any nature.

#### **11. Golden Homes brand**

Under NO CIRCUMSTANCES may the Golden Homes Brand be altered in any way. Only the approved logo may be used on any Golden Homes branded material (flyers, adverts, flags, shirts etc.)

Wherever possible, all branding to be approved by both the principal and head office prior to printing.

Never compromise the name of Golden Homes in any way.

#### **12. Confidentiality**

The agent binds themselves unconditionally to preserve the integrity and confidentiality of the information given to them by Golden Homes. This includes, but is not limited to:

Training material, presentation material, business strategies, marketing plans etc., as this is the intellectual property of Golden Homes.

*Note to interns....*

It is possible that during your training (NQF4, PDE4 etc.) you will liaise extensively with agents from other agencies to complete projects or assignments. Under no circumstances may you copy or forward any information given to you by Golden Homes as an 'example',

Failure to comply with the above conditions under 'confidentiality' will result in immediate termination of service.

# Golden Homes Disciplinary Procedure

## 1. What is the purpose?

This procedure is in place to regulate standards of conduct and performance within Golden Homes. The aim is to correct unacceptable behaviour and encourage a positive approach in the workplace

## 2. Obligations

### a) Employees / agents / independent contractor'

- ✓ Understand and comply with our Code of Conduct
- ✓ Ensure all your actions are in line with our Code of Conduct as well as the Estate Agents Affairs Board Code of Conduct and the RNS Code of Conduct
- ✓ They have the right to object, in writing, to any warnings issued

### b) Employers Obligations

- ✓ To ensure that the intern is familiar with the required work standards
- ✓ To ensure that the intern be given the opportunity to defend their actions in a 'nonbiased' environment

## 3. Procedure:

### a) Counselling

Counselling will be done where an intern is not performing to a required standard or is not aware of a rule regulating conduct and/or where the breach of the rule is relatively minor and can be condoned

This is usually accompanied by a verbal/written warning if the offense is a first-time offense or the offence has not directly impacted the integrity of Golden Homes. These warnings are valid for 3 – 6 months, depending on the breach

### b) Disciplinary Action

Disciplinary action will be taken when a breach of a conduct rule cannot be condoned or where counselling has failed to achieve a desired effect

#### Procedure:

- i. The breach of a conduct rule is to be explained to the intern
- ii. The intern is to be given an opportunity to explain why they breached the rule
- iii. The parties to agree on whether there is a remedy for the breached rule and if so, what action needs to be taken to correct the breach

This is usually accompanied by a suspension or dismissal in the case of serious misconduct

#### **4. Forms of Discipline**

The following action will be taken in accordance with the seriousness of the offence and whether the intern has breached the particular rule before

- i. Verbal warning
- ii. Written warning
- iii. Final written warning
- iv. Suspension pending a management decision
- v. Dismissal

##### ***a) Examples of minor breach of conduct rules***

- ✓ An intern signing documents without the presence of a qualified agent
- ✓ Canvassing over someone else's listing (within the office)
- ✓ Negotiating commissions below 4% without prior consent of the Principal

##### ***b) Examples of serious breach***

- ✓ Cause of continuous strife in the office
- ✓ Bringing Golden Homes into disrepute within the industry
- ✓ Compromising our RNS membership in any way due to agent actions – poor ethics, sharing of RNS stock with non RNS agents etc.
- ✓ Non-compliance of SARS regulations
- ✓ Any serious breach of any Code of Conduct or Act that governs the property industry

#### **Note to interns:**

This document is a working document and is therefore subject to continuous changes.

Should the employee/agent/independent contractor not be satisfied with the outcome of the internal disciplinary procedure he may call for a hearing as per the Code of Conduct and Business Ethics.

# Contracts

## 1. Mandate Basics

### a) What is a mandate?

An estate agent is said to have a mandate when he accepts an instruction or authority from a client to render a particular estate agency service for a client. On acceptance of the mandate, a legally binding contract is established between the estate agent and his client.

Essentially a mandate is an exclusive contract between a seller and an estate agent that allows the agent to market a specific property and to find the right buyer for the house at the highest price in the shortest amount of time. This agreement gives the agent the right to deal with all of the legalities that are involved in the sale of the property.

### b) How is a mandate given?

Generally, a mandate need not be in writing but can be verbally. The following two mandates must, however, be in writing:

- i. A sole mandate including a sole and exclusive mandate
- ii. A mandate, which embodies a power of attorney to include certain transactions on behalf of the client

These written mandates must contain a description of the property, a description of the mandate period, state that it is a sole and /or exclusive mandate and be signed by the owner or owners.

It is nevertheless always sound business practice to record all mandates in writing as this avoids disputes about the existing terms.

A seller is entitled to appoint as many estate agents as he wishes, *unless he has given a sole mandate to a specific estate agent.*

### c) Validity of a mandate

A mandate stays in effect until it is withdrawn or until the expiry of a stipulated period.

A sole and/or exclusive mandate can be withdrawn at any stage, unless it states clearly that it is irrevocable. A sole and/or exclusive mandate also only stays valid for the duration of the mandate period. When the mandate period lapses, so does the sole and/or exclusive mandate

*For any mandate to be valid, whether an open, sole, or exclusive mandate, there is a requirement that the mandate grantor must have intended to give that mandate.*

### d) Legalities and wording

- a) Must contain a description of the property.
- b) State that it is a sole and / or exclusive mandate.

- c) In writing (clause 3.3.1 of the Code of Conduct)
- d) Expiry date as a calendar date (clause 3.3.2)
- e) Legal implications of sale of property during currency of mandate (and sometimes thereafter) by seller or third party to the exclusion of the agent (clause 3.10.1) Font cannot be smaller than balance of terms.
- f) Marketing obligations assumed by the agent in performance of the mandate (clause 3.10.2). Font cannot be smaller than balance of terms. The suggested wording is:
  - g) The seller must confirm that he/she is the sole owner of the property and if he/she signs in a representative capacity he/she warrants that he/she is duly authorised to do so.
  - h) Clause dealing with effects of removing property from market during the mandate period.
  - i) Recommended that incorporate listing of defects in the property to be filled in and signed by seller.

***e) Sole mandates***

This mandate gives only one estate agency the right to sell a property. This agency also becomes entitled to the commission – unless the homeowner sells the property himself.

Many sellers tend to shy away from a sole mandate fearing that they would lessen their opportunity for a fast and great deal by signing one. However, signing a sole mandate is actually more beneficial than they think.

If you desire to be a successful real estate agent, then you need to be sure that you believe that a sole mandate is in the best interest of your seller. In the end you will successfully negotiate what you yourself believe. When you have the argument in favour of a sole mandate settled within your own mind first then you will be able to convince your seller too.

A sole mandate, which is not exclusive, allows the seller to still market and sell it himself personally, but excludes other agencies. However, there may then be a fee payable to the agent for their marketing and exposure of the property to the market.

***f) Sole and exclusive mandate***

A sole and exclusive mandate is a legally binding document, which must be in writing. This mandate gives exclusive authority to one agent (the agent always meaning the agency) to market and sell the property within a specific time frame. During this period the seller may not appoint another agent, including himself in a private capacity, to market and sell the property. Once the time frame of the mandate has ended, and the seller does not wish to continue working with the agent, he can then approach another agent to market his property and the first agent has no further recourse or claim against him for commission.



One of the optional terms of an exclusive sole mandate is that the seller may authorise the agent to accept or reject an offer on their behalf. This is not an option in the Golden Homes standard sole and exclusive mandate; however, it can be added when you are negotiating your mandate and added in under special conditions.

The reason for a sole and exclusive mandate is to create efficient marketing and to maximise the benefit for all those involved in the property transaction. It is for this reason that the majority of financial institutions and estate agencies will recommend that the seller has one in place. Several benefits are created by having one in place, which will ensure more effective marketing of the property and an orderly conclusion of the sale. A sole agent would also be aware of any disclosures which would be pertinent to the sale.

Logistically, a sole mandate makes more sense in that the seller only has to deal with one agent and not several. This simplifies the process and less time is spent coordinating the seller's schedule with the various agents.

It is also better from a safety perspective to only have one agent that has access to the property.

#### Advantages:

- ✓ One agency representing your best interest and control over buyers visiting your home.
- ✓ No commission disputes as this is negotiated upfront and settled at the time of listing.
- ✓ Sole mandates receive the agencies highest priority offering true value as time & marketing budget allocation is the highest.
- ✓ Regular communication and updates between Seller and Agent.
- ✓ Motivated agent will give high energy, focus and take more responsibility to market and sell the property.
- ✓ Comprehensive CMA's are available to the Seller to establish a fair market value.
- ✓ Viewing times regulated and managed to avoid unnecessary disruption to the household.

#### Disadvantages:

- ☒ Concern that other agents may have buyers. However, a good agent will collaborate with other professionals that genuinely have an interested and qualified buyer.
- ☒ Perception that more is better. Opposite is true: more dilutes the effort - everyone thinks 'everyone else' will do it.

#### ***g) Open mandate***

In the case of an open mandate the seller has more than one agent or agency working on finding a buyer for the property. Although open mandates allow the seller to work with

other agencies and their agents it can cause complications and there is always the possibility of a double commission claim. While it may seem to be the best option to the seller in opening his home up to greater exposure in the market, it also increases the scope for confusion as to which agent was the effective cause of the sale.

For example: One agent may have signed the offer to purchase with the buyer but it might have been another agent's advertising and marketing that brought the buyer to the property in the first place. If the second agent can prove that their marketing was the effective cause, both agencies could then claim commission as both parties fulfilled their obligations in terms of the mandate given them by the seller. Such a matter could end up in court and cost the seller legal costs as well as having to pay both agencies if the court finds that both parties fulfilled their mandates.

Because an open mandate does not have to be a written agreement there is always a chance that there will be miscommunication between the seller and the agent. Having a clear, written contract in place, such as a sole mandate, will protect the seller and minimise the chance of any misunderstandings.

An open mandate could also restrict the amount of time and money an estate agency will spend on marketing the property, which will reduce the home's exposure to the market. A written mandate, however, ensures that an agent gives their maximum effort towards achieving their goal to sell the property.

#### Advantages:

- ✓ No contractual commitment.
- ✓ Available to all agents.
- ✓ May sell privately and avoid paying commission.

#### Disadvantages:

- ☒ Agents reluctant to work the property as no guarantee of return for effort. (ie the business has the highest risk of no return for time/money investment - hence the business cannot afford to invest as much)
- ☒ After the initial 6-week period, agents tend to forget about the property resulting in limited exposure
- ☒ All unscrupulous agents may work your property.
- ☒ You open yourself up to liability of 'double commission' as effective cause of sale can be argued.
- ☒ Too many "For Sale" boards, gives the perception of either being overpriced or that there is something wrong with the property. The consequences are numerous and unpleasant

#### ***h) Multi-listing mandate***

Advantages:

- ✓ Maximum exposure to the market, channelled through one agency.
- ✓ Agents work together to the benefit of the Seller.
- ✓ Open hour exposes the property to the rest of the agents in one simple step.
- ✓ Open hour gives the Seller multiple valuations to establish unbiased fair market value of the property.
- ✓ Possible reduction of market time.
- ✓ Agents usually have existing buyer base.

Disadvantages:

- ☒ Same buyer viewing the property through two different agents which results in cancellations or
- ☒ Double commission claims.
- ☒ Disputes between agencies and agents.
- ☒ Price cutting to get the quickest deal.
- ☒ Unqualified and inexperienced agents have access to the property.
- ☒ Agents frequently have their buyer's interests at heart and not the sellers.
- ☒ Lesser commission earning leaves agents less motivated to find the best deal for the seller.

***i) Shared/dual mandates***

A shared mandate, or dual mandate, is a mandate that the seller gives to two separate agents to market and sell his property. This mandate could be a sole mandate to the two agents, which still allows the seller the option to sell it himself, or it could be a sole and exclusive mandate which would prohibit the seller and other agents from selling the property.

In a shared mandate the commission is either shared between the two agents regardless of who sell the property, or it could be 100% to whichever of the two agents successfully sold the property. It is important to state in the mandate what the commission percentage is as well as how the commission is to be paid to the agents.

***j) Competitive mandates***

A competitive mandate is effectively an open mandate whereby:

- ❖ All agents may work the property – i.e. not exclusive to one agency or network.
- ❖ The seller typically has a net price and agents add their commission on top of that to obtain a market price.

- ❖ The agent has no obligation to the seller with regards to marketing or advertising the property
- ❖ the seller may sell the property privately.
- ❖ The seller will typically negotiate a lower commission rate with the agent.

There is always potential to convert these mandates into sole mandates provided we have a good competitive advantage.

#### ***k) Private Sale***

As the name suggests a private sale is a sale that excludes an agent and is concluded privately between the seller and the purchaser. The seller is responsible for his own marketing and selling of his property which often leaves him at a disadvantage as he does not have access to the marketing budget and No contractual commitment.

- ✓ No commission payable.

#### **Disadvantages:**

- ☒ No support network as far as the sale is concerned. Estate agents network regularly with other agents, bond originators, bank officials and attorneys.
- ☒ Typically, no access to property statistics which may lead to fixing a wrong price.
- ☒ Limited exposure to potential buyers, which theoretically means your home will take ten to fifteen times longer to sell as agents usually have access to an existing buyers base, private sellers don't.
- ☒ Typically, the critical buyers you will encounter have not been qualified as far as finance is concerned.
- ☒ The longer the home is on the market, the lower the selling price.
- ☒ Perception by buyers of "private sale" is a overpriced property or there is something wrong with it/agents won't touch it.
- ☒ Typically, the selling/buying process begins AFTER the buyer leaves your home. I.e. contract negotiation, liaison with attorneys etc. SO much can (and will) go wrong if this is not managed by experienced professionals
- ☒ Most buyers find it extremely awkward to negotiate or even talk directly with sellers & therefore avoid private sale properties.
- ☒ The majority of qualified buyers are working with experienced real estate professionals.

- ☒ Only Estate Agencies may advertise in local property finders and normal advertising costs in local papers are high.
- ☒ Security and Safety: YOU ARE OPENING UP YOUR HOME TO ANY STRANGER OFF THE STREETS.

Sellers have the option of using any of the above mandates when appointing an agent, however, you as the agent also have the right to choose which mandates you are prepared to work under. No seller can insist that you accept a certain mandate and at the rate of commission he is willing to pay. As an agent you need to have decided your own worth and value before entering into an agreement to market a property.

Other *possible* terms to be included in the mandate: *(not included in a Golden Homes mandate)*

- Acknowledgement that the agent acts for and on behalf of the seller.
- The agent will keep confidential information which the seller requires to be withheld from potential buyers (like the fact that the seller is emigrating and is desperate to sell).
- The agent will submit all offers to the seller.
- The agent has valued the property.
- The agent submits the proposed marketing and advertising strategy to the seller.
- The agent submits proposed marketing and advertising strategy to the seller.
- The agent submits proposed advertisements to the seller for approval.
- The agent will furnish the seller with a weekly written progress report and a list of prospective buyers and also their comments.
- the agent will, after the conclusion of the agreement, submit the document to the conveyancer and furnish the seller with a weekly written progress report on the transfer procedure; and
- The agent shall make good any damages which were incurred by the seller with the seller's property was under the custodianship of the agent (for example on show days).

***Important to note:***

If a seller has given an "open mandate" to any agent/agency he needs to cancel this (even verbally) if he then signs a sole mandate with another agent.

## **2. Mandate Management**

Mandate management encompasses every aspect of the mandate from:

- ❖ The strategy implemented to get mandates

- ❖ The signing up and legalities of a mandate
- ❖ Obligations to the seller with regards to marketing during the mandate period
- ❖ Advertising – profiles, web listings, property week listings etc
- ❖ The listing on a multi listing network
- ❖ Appointments and client feedback during the mandate
- ❖ To the final analysis of the mandate within the management of all mandates i.e. days on market, number of appointments, listing price vs selling price, commission earned etc

Mandate management will allow agents to monitor the progress of the property and allow for changes based on buyer feedback.

**a) Identifying your seller**

Before signing a mandate, it is important for you to determine who the seller is, as only the true owner of the property can be your seller.

**i. Natural sellers:**

A natural entity is any person or persons operating in their personal capacity. The seller can be more than one person, i.e. a husband and wife, or two single people, etc. In each case it becomes important for you, as the agent, to correctly identify the parties signing the mandate.

You will need to establish, via a deeds search, who the legally registered seller is. Whoever is registered on the title deed as the owner is the person/s who needs to sign the mandate. A seller can nominate someone as their agent (not an estate agent) to act on their behalf. If this is the case, then you would need to obtain a copy of the agreement authorising the agent to act on behalf of the party. A Power of Attorney agreement is an example of such an agreement.

The person reflected as the owner on a deed search might not always be the only owner. If a party got married in community of property subsequent to acquiring the property, then by operation of law the new spouse will also be a seller.

Once you have established who the seller/s are then you need to do a further identity of the party to verify who they are. The FIC Act requires you to get a copy of their identity document. Other documents you could obtain under the “know your client” requirements by FICA would be a copy of a proof of residence, income tax number, rates account, etc.

When completing the details in on the mandate the seller must be clearly identified by their names. We advise that you use their first name, initials and then surname (i.e. Susan JPL Snyman). This is applicable to all parties to the contract. The FICA information form at the back of the mandate is part of the mandate and needs to be comprehensively filled in as this fully identifies the seller.

## ***ii. Legal Entities:***

A legal entity consists of either a trust, close corporation, or company.

The legal entity's registration documents would be required to identify the entity. If there are more than one directors/members/trustees then a resolution permitting the person signing on behalf of the legal entity must be obtained before completing the OTP. If you do not have this resolution then your OTP would be considered null and void as the entities signatures would not be valid and your OTP would not have been signed by both parties.

The person signing on behalf of the legal entity must be correctly identified and a copy of their ID and other "know your client" details would be applicable.

Any legal entity that does not want to give you their FICA documents is considered suspicious under the FIC Act. Continue with the transaction, however, it would be your responsibility to do an anonymous report thereof to FIC. Consult your FICA training notes.

Another thing to check for when identifying the parties is their marital status. If any parties are married in community of property, then their spouse would have to give consent. You would need to obtain a copy of this consent or have the spouse included in the contract. In the event of a trust, I strongly recommend that you get a copy of the trust deed, as well as the Letter of Appointment to ensure that the trust can act and can purchase or sell the property. In the event of a company or a close corporation I suggest that you conduct a deeds office search to ensure that the person signing is indeed a director of the company.

**Note: The Agent is ALWAYS the agency and/or its principal. The agent is NEVER the person facilitating the mandate. An estate agent is a representative who represents the AGENT being the Company and the principal they work under.**

### ***b) Identifying the Property:***

In real estate, an erf is the legal term used to describe a piece of land registered in a deed's registry as an erf, lot, plot, stand.

Check carefully that the property description does not include "a portion of" or "a portion of or a portion of" as it will result in an amendment to the bond if it was recorded incorrectly.

Every property has an erf description which you would find on the title deeds as well as the local authority rates account. Properties are classified as freehold erf, sectional title, lot, plot, or farm.

It is important to correctly identify which piece of property the seller is selling, and that the description is correct. The seller may live in a different property to the one he is selling, and you need to identify the property and the seller respectively. Every property, even sectional title properties, are situated on a piece of land that has been zoned by the local authority through the zoning and subdivisions of land the local authority gives a legal description to that piece of land for future identification. This is then registered in the deed's registry.

In the mandate you will see the word erf and a space for the erf and portion numbers, situate in the Township (this is the suburb in which the property is situated) and then situate at for the actual street address. This will complete your property identification.

***c) Determining the Selling Price***

Agents and Sellers often have a different understanding of what the “selling price” really is and you need to confirm that you and the seller are on the same page. Seller’s always think of the price as the amount they will get in their pocket and agents think of the price as having their commission included.

Never discuss the selling price what the seller before you have inspected the property and done your own valuation first, and ***NEVER ask the seller what he wants for his property!*** He called you because you are the one who should be able to assess the value according to how the property relates to the current market conditions.

As soon as you ask the seller what he wants for his property you are no longer in charge of your business, the seller is. This is bad real estate business practice.

If you are not sure about the valuation, then complete your inspection and set up another appointment with the seller once you have done a proper CMA (Comparative Market Analysis) for him. Do not give into the pressure to release a price. If you have done a CMA and you are confident of the market related price, then it is time for you to present yourself and your marketing proposal to the seller. If he is willing to “employ” you as his agent and to sign your mandate, then you can move on to disclosing your valuation and the reasons for your valuation.

Negotiating a mandate at a fair market value is what you are contracted by your principal to do. This is your job. You are by nature of the industry a salesperson and need to have good sales skills. There are many sales related video’s available to you for you to develop your sales skills. Practice doing listing presentations and signing of mandates with those around you until you are confident in your own presentation skills. This will give you a great advantage over your competition.

***d) Signatures to the mandate:***

The mandate must be signed by the seller/s. if there is more than one seller then all must sign or there needs to be a consent or a Power of Attorney giving consent to the person signing the mandate.

The agent also needs to sign the mandate as it is an agreement between the seller and the agent. If the estate agent is an intern, then the mandate must be signed in front of a full status agent or principal.

All sole mandates, sole and exclusive mandates, shared mandates, and multi listing mandates need to be reduced to writing and signed by all parties and is binding on those parties. An open mandate can be verbal and is not binding on either party.



***Suggestion:** If you are taking an open mandate it is advisable that you get some sort of written agreement to what the commission will be should you sell the property. Commission should always be agreed to BEFORE you take on the responsibility of selling the property. You and the Company are going to spend money BEFORE you have received anything placing you at greater financial risk than the seller. You want to know what you are working for before you start.*

**e. Seller check list**

Bond Cancellation	Contact your bank and advise them that the house is on the market. Ensure the notice period is kept current (i.e. Keep your Bank informed – consult the 90 Day Notice period on page ____
Electrical Compliance and other certificates	Contact an electrician, plumber, gas or beetle company to issue the relevant certificates required for your property.
Conveyancer	Decide which Attorney you would like to use, check that they ARE CONVEYANCERS and get their contact details
Municipality	Settle or resolve any outstanding debts, if any, and ensure that your account is current.
SARS	Ensure your taxes are up to date as SARS will not issue a clearance certificate if money is owed to them
Sectional Title Units Homeowner's Associations	Obtain a copy of the rules and regulations and latest financials. This will be required by the Agent, Financial Institutions and Conveyancer.
FICA Documents	Make copies of ID's, proof of residence (not older than 3 months) latest levy and rates accounts, divorce settlement agreements, latest bond statement and income tax numbers
Telephone/Alarm Contracts	Arrange to cancel or transfer into the Purchaser's name
Property Checklist	Inspect the property thoroughly and list any defects that need to be disclosed in the contract

De-clutter	Pack and store as much as possible – get the property ready to be viewed
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# Seller and Agent Relationship

## 1. Code of Conduct

Under the PPRA code of conduct, an agent is obliged to:

- To protect the interests of their clients at all times
- To avoid misrepresentation
- To disclose all facts
- To avoid bringing discredit to the industry
- To adhere to legal requirements in contracts
- To avoid undue influence (i.e. prevent him from appointing his own conveyancers)
- To avoid unethical marketing tactics
- To receive remuneration in exchange for service provided

Therefore, once a mandate has been signed you need to:

### **a) Explain the mandate terms**

- a. Ensure that the seller is 100% comfortable with the terms – specifically the length of the mandate, the commission, what he can and can't do etc.

### **b) Explain the marketing process**

- a. i.e. what we undertake to do during the mandate period and what they should expect with regards to appointments, if offers are not forthcoming etc.
- b. Once the listing agreement has been signed, you should spend some time with the sellers explaining how their home will be shown and what will be done to find a buyer for their property.
- c. By explaining the marketing process with sellers, anxieties they may have, such as concern over invasion of privacy, disruption of lifestyle, lack of buyer traffic, lack of offers, and unexpected or inconvenient showings, can be alleviated before they become major.

### **c) Give advice on preparing their home for viewing**

Avoid any unnecessary expense but point out anything that is reasonable!

There are many things you can ask sellers to do to prepare their home for viewing by potential buyers. In making these suggestions, caution should be used so that you are not

suggesting expensive repairs of decorating that will not provide an adequate or reasonable return to the seller in money or quickness of sale.

Such things as burnt-out light globes, leaking faucets, collections of items in cupboards, garages and other areas, dirty windows and doors, cluttered yards, and loose gutters are all things that the sellers fix with a little expense or time. Suggesting repair beyond things such as these will require a careful evaluation on your part

Normally, there are two ways to cover the above suggestions. One is telling the sellers what they think they could do to help their home show better. In doing so, be sure to stress the potential benefits they can receive. Two is to give them a pre-printed list of things they might consider doing

Finally, you should make suggestions for the actual showing. Lights on, walk and drive clear, and soft music are just a few of the suggestions you might make.

***d) Give advice on viewings***

- ❖ Neat, clean (especially bathrooms, kitchen etc)
- ❖ Make home feel warm and inviting
- ❖ Allow agent to take control – keep out of the way
- ❖ Do not allow people in without appointments etc

Many agents recommend to their sellers that, if possible, the sellers should try to be away during the showing. This will help the potential buyer to relax and allow the agent showing the property more flexibility.

If the sellers cannot leave when there is a show day scheduled, you should suggest to them that during the showing, they continue their activities to one area of the house. If television or stereo is on, the volume should be kept low and if the buyers have questions, as the sellers to look to the agent for guidance. Above all, ask your sellers to allow the agent to control the showing and to provide information only when asked for it.

Do not arrive at your seller without an appointment. Ensure you have your seller's contact details on you at all times and phone them on their cell phones if necessary.

If you cannot keep your appointment for whatever reason, make sure you phone the seller or send a SMS explaining reason for cancellation and if necessary, phone him later to again apologise.

While this rarely happens, there are times when people will come to the seller's door and ask to see the house without an agent. You should inform your sellers that it is in their best interest NOT to allow these people in. Rather have your seller call you or someone in the office so you or he can come out. Or, at the very least, have the people to call you to see the house. In all cases, you should have your sellers get the names of the agent requesting appointment and/or showing the property so that you can follow up.

Another area to mention is the number of showings the sellers can expect, especially during the first couple of weeks. Many times, due to the mechanics of exposing the property, not many agents or potential buyers will be aware of the property for the first few days. In addition, there are not usually hordes of people just waiting to see that property.

Along with this, you should discuss the possibility and importance of an early offer, one received in the first few days or the first couple of weeks of the listing term. Indicate to the sellers that many times people will reject a first offer only to find that they may not receive additional offers for some time. Thus early offers should be given serious consideration by the sellers, even if they do not match exactly the terms of the listing.

***e) Keep the seller informed***

- ❖ Give feedback on appointments
- ❖ Keep in constant contact

One of the most frequent complaints from sellers is that the agent did not stay in contact with them. According to the sellers: The Agent took the listing, and the next time we heard from him is when he had an offer or 'when the listing was about to expire'

Sellers should hear from you personally at least once a week by telephone and you should visit them at least once or twice a month. In addition, you can use the mail to send them copies of ads on their property, progress reports, and so on. Always call. This is a good idea just be sure to call when you said you would. If you can't because of other business, call as soon as you can afterwards.

Remember to ask who has shown the property, and then call these other agents to find out their buyers' reaction to the property, price, terms and other conditions of the listing

By staying in touch, you will make the sales process easier and smoother, be able to solve problems before they arise and if necessary, build the need to changes in price or terms and demonstrate your desire to do the best job possible for the sellers

***f) Explain the transfer process***

- ❖ From offer acceptance through to handover to new owner
- ❖ Lower offers, obligations etc

Finally, briefly explain to the sellers what will happen once a buyer is found, and an agreement has been reached resulting in a sale. The steps necessary to consummate a sale can vary with different types of financing and local requirements. A more detailed explanation should be made to the seller once a buyer has been found and a purchase agreement written and agreed to.

By covering all these points at the time of the listing, many questions and potential problems can be handled leading to a smoother marketing and sales process. The sellers will know what to expect, will understand the benefits to be gained, and will be more confident in your ability to do a good job for them.

## 2. What is required from a seller?

### ✓ Establish the Seller's needs

This is primarily to determine how genuine the seller is – i.e. does he want to seriously sell or is he only thinking of selling. This will determine how to approach the particular seller

### ✓ Determine the Seller's selling options

	<u>Pros</u>	<u>Cons</u>
<b><i>Sell the property privately</i></b>	<ul style="list-style-type: none"> <li>✓ No contractual commitment</li> <li>✓ No commission payable</li> <li>✓ Have access to buyers via internet advertising</li> </ul>	<ul style="list-style-type: none"> <li>✓ No support network as far as the sale is concerned. Estate agents network regularly with other agents, bond originators, bank officials and attorneys</li> <li>✓ Typically, no access to property statistics which may lead to fixing a wrong price</li> <li>✓ Limited exposure to potential buyers, which theoretically means a home can take ten to fifteen times longer to sell as agents usually have access to an existing buyers base, private sellers don't.</li> <li>✓ Typically, the buyers they will encounter have not been qualified as far as finance is concerned</li> <li>✓ The longer the home is on the market, the lower the selling price</li> <li>✓ Typically, the selling/buying process begins AFTER the buyer leaves the home. I.e. contract negotiation, liaison with attorneys etc.</li> <li>✓ Most buyers find it extremely awkward to negotiate or even talk directly with sellers &amp;</li> </ul>

		<p>therefore avoid private sale properties</p> <ul style="list-style-type: none"> <li>✓ The majority of qualified buyers are working with experienced real estate professionals.</li> <li>✓ Notably, they are opening their home to any stranger off the street</li> </ul>
<b><i>Sell by giving an open mandate</i></b>	<ul style="list-style-type: none"> <li>• No contractual commitment</li> <li>• Available to all agents</li> <li>• May sell privately and avoid paying commission</li> </ul>	<ul style="list-style-type: none"> <li>• Agents reluctant to work a property that has no guarantee of return for effort</li> <li>• After the initial 6-week period, agents tend to forget about the property resulting in limited exposure</li> <li>• A seller open himself up to liability of ‘double commission’ as effective cause of sale can be argued</li> <li>• Too many “For Sale” boards give the perception of either being overpriced or that there is something wrong with the property.</li> </ul>
<b><i>Sole Mandate</i></b>	<ul style="list-style-type: none"> <li>• Total control through one Agent of buyers visiting the home</li> <li>• Commission structures are more easily negotiated</li> <li>• Sole mandates typically receive agencies highest priority</li> <li>• Comprehensive CMA’s are done to ensure property is priced right</li> </ul>	<ul style="list-style-type: none"> <li>• Perception that sole mandates bind too tightly legally</li> <li>• Concern that other agents may have buyers</li> </ul>

<p><b><i>Give exclusive RNS mandate</i></b></p>	<ul style="list-style-type: none"> <li>• Maximum exposure to the market, channelled through one Agency</li> <li>• Agents work together to the benefit of the seller</li> <li>• Agent controls the selling process</li> <li>• Open hour allows the property to be 'exhibited' to as many agents as possible, thereby establishing a market related selling price</li> <li>• Reduces marketing time</li> <li>• Agents usually have access to an existing buyer base</li> </ul>	<ul style="list-style-type: none"> <li>• Possibility of same buyers being brought to the home more than once which results in last minute cancellation of appointments</li> <li>• Overpriced listings are not worked by other agents and seller may get perception that system does not work</li> </ul>
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✓ **Inspect and faults**

Even though the Seller is not required by law to complete a defect list, it is advisable for him to do a brief one just to ensure that he is aware of all defects, especially latent defects that can cause issues later on.

✓ **Seller actions needed**

The seller will be required to prepare himself as well as the property to for sale. Things he would need to consider are: -

✓ **Bond cancellation**

Advise bank that the property is on the market and that the bond will be cancelled. The banks require 90 days' notice (up to 180 days)

Example

**Attention: Home Loan Cancellation Department**

**RE: BOND ACCOUNT NUMBER:** \_\_\_\_\_

To Whom it may concern,



We hereby wish to advise you that we are intending to sell our property and would like to give the requisite 90 days notice on the bond account noted above to ensure that there is no penalty interest raised on the cancellation of this bond.

Kindly confirm once this notice has been noted on your systems.

✓ *Electrical Compliance Certificate*

Contact an electrician to issue an electrical compliance certificate

✓ *Nominate a Conveyancer*

Decide which conveyancers you wish to use. Get contact details

✓ *Rates & Taxes*

Get up to date account for the Council and settle all or any queries on the account.

✓ *Sectional title units*

Obtain a copy of the house rules and latest financials (this will be needed by the attorney as well as the banks)

✓ *SARS*

Ensure there are not taxes owing to the Receiver – also get tax numbers for all parties (even if the spouse is not working, she will still require a tax number)

✓ *Documents*

Make copies of documents – see below

✓ *Telephone*

Get transfer documents from Telkom or cancel line

✓ *Security / Alarm*

Get transfer documents or make arrangements to cancel the alarm

✓ *De-clutter*

Pack up and store as much as possible – get property ready to be viewed

✓ **Important points a SELLER should consider when selling/marketing a property**

✓ **Price to SELL!**

- Marketability of a property is improved by pricing correctly
- Price is the most important negotiation factor to the buyer
- Price compensates for a property's shortfall or inadequacies
- Interest sells houses – not time

- Realistic pricing creates interest
- Initial marketing time is crucial
- Buyers buy by comparison and elimination
- Buyers compare price and value for money

#### **Do's.....**

- ✓ Combine realistic asking price with initial surge of interest
- ✓ Maintain negotiation advantage and realistic pricing
- ✓ Avoid overexposure from unrealistic pricing

#### **Don't....**

- ☒ Eliminate buyers by out pricing them
- ☒ Choose an agent on 'promised price' but on competence
- ☒ Spoil your single chance to make a 'first impression' on a buyer
- ✓ **Correct Pricing**

#### **Benefits....**

- ✓ Creates impression of comparatively good value
- ✓ Increases advertising response
- ✓ Stimulates buyer interest
- ✓ Achieves maximum exposure at optimum time
- ✓ Maintains negotiation advantage

#### **Consequences....**

- ✓ Maximum price achieved
- ✓ Marketing period minimised
- ✓ Disappointment and haggling reduced
- ✓ Least disruption and fewer show houses
- ✓ **Overpricing**

#### **Disadvantages**

- ☒ Loses interested buyers
- ☒ Extends marketing time
- ☒ Attracts lower offers

- ☒ Reduces advertising response

### **Consequences**

- ☒ Buyers are reluctant to make offers
- ☒ Competing properties become more attractive
- ☒ Property becomes over exposed
- ☒ Lack of buyer interest
- ☒ Seller loses best marketing time – first six weeks

### **3. Seller Documents**

The following documents will be required by the Seller. It is a good idea to ask the Seller to prepare these documents in anticipation of a sale

- ✓ Clear copies of their ID's
- ✓ Proof of residence – latest rates account is the best (not older than 3 months)
- ✓ Copy of marriage certificate / divorce settlement (where necessary)
- ✓ Tax numbers
- ✓ Details of existing bond holder, account number and balance outstanding (ideally a copy of their bond statement)
- ✓ Company registration or trust registration documents if the property is registered in a company or trust (including resolution)
- ✓ Original title deed – if there is no bond on the property
- ✓ Sectional title body corporate details, copy of house rules and latest financials

### **4. Appointments**

Besides show houses, which are open to the public at large, you will hold “private showings” to individual prospective purchasers - also known as ‘view by appointments’

Aim to have as many appointments as possible each week – the more you show, the more you can sell!

#### ***a) Before showing:***

##### ***Pre- condition the seller***

- ✓ Make appointment
- ✓ If you do not have a sole mandate, ask if they have had any offers since you last spoke to them
- ✓ Warn the seller that you may be a few minutes late for the appointment

***Plan the appointment***

- ✓ If you have a selection of properties in a similar price range within an area, plan your sale
- ✓ Select 3 or 4 properties for demonstration of which one will be the most likely for the purchaser to buy – the target property
- ✓ Show the least likely first, and the target property last
- ✓ Plan your routes to the properties carefully

***Meet the purchaser***

- ✓ Meet the purchasers at the office or a central point whichever is easier for them to find

(See showing property under Buyer / agent relationship)

***Arrive at the property***

- ✓ First impressions count – if the property is not attractive from the outside, try and approach it from the direction that presents its best face
- ✓ If the purchaser says ‘I don’t like that property – I don’t want to see it’ point out that there is a special feature/area that you particularly want him to see. He will usually comply

***b) During the appointment***

Adopt and adapt whichever of the following techniques suit your personal style and work best for you and/or your purchaser

- ✓ Take control – take the lead and guide the purchaser into the room you wish to demonstrate
- ✓ Do not allow the purchasers to go on “treasure hunt” and leave you standing alone
- ✓ Get the purchaser involved
- ✓ Talk benefits, as seen through their eyes, not facts

Avoid pointing out features i.e. new cupboards – ask QUESTIONS i.e. what do you like about this room.

- ✓ Get them to visualise their possessions in the home
- ✓ Allow them to appreciate the atmosphere of the home
- ✓ Get them emotionally involved i.e. never refer to it as a house – rather a home

- ✓ Point out as many positives as possible and have solutions to the negative aspects of the property
- ✓ Be enthusiastic, but remain on the same emotional level as the purchaser
- ✓ Don't talk too much
- ✓ Don't crowd them – they need time to identify with the property – it will be their home
- ✓ Demonstrate the garden and allow them to appreciate the property from all angles
- ✓ Constantly make use of TRIAL CLOSES: answer questions with questions

Note: code of conduct (clause 4 & 5)

***c) Preparing for the appointment***

Always have the following available and up to date when taking a client to view a property

- ✓ Offer to purchase
- ✓ Cost sheets & calculator
- ✓ Listing sheets of other properties in same/similar price range
- ✓ Other options to view (not necessarily price but perhaps area or features)
- ✓ Diary – to schedule next appointment

***d) Taking the offer***

If a purchaser shows interest in the property, take the offer then and there (even if on the boot of your car!!). The longer you give the purchaser to “think about it” the greater your chances of losing the deal.

Ideally, if you have met at your office and travelled in one car, then the best is to go back to the office into a ‘professional environment’ to take the offer. It is important to note special features etc during the viewing so that nothing gets left out.

**5. Management of the OTP and Buyer / Seller liaison**

In summary

- Pre-qualify buyer to ensure a bona fid offer
- Complete the offer with purchaser
- Compare offer with seller needs i.e. price, occupation etc
- List benefits of offer and plan how to address any objections
- List recent market activity – what's new on the market, what has sold, what has not sold etc

- Schedule appointment with seller to present
- Negotiate offer (seller will either reject, counteroffer or accept)
- Work out seller estimated costs
- Get disclosure on all property defects
- On acceptance, assist buyer with bond application
- Collate all FICA documents
- Instruct attorneys and give seller copy of offer
- Update seller through entire transfer process
- Assist in key handover on registration
- Add to client base and schedule for future contact

## 6. **Information Management**

- Give copies of all mandates, offers etc to client
- Ensure all FICA documents in order
- Attach all correspondence between parties, attorneys, banks etc
- Scan & file all hard copies
- Back up

## 7. **Seller needs assessment**

8.

Your name

9.

Your spouse's name

10.

Street Address

11.

Best time to reach  
you

Day	Evening	Anytime
-----	---------	---------

12.

email

13.

Tel numbers (land)

14.

## Cell Numbers

--

15.

16.

Is this your primary residence?

Yes

No

How long have you lived here?

--

17.

Are you a first-time home seller?

Yes

No

Do you have a sale price in mind?

Yes

No

--

18.

Are you moving out of the area?

Yes

No

Where would you like to move to?

--

19.

Why are you wanting to sell?

--

20.

How soon do you need to have sold your home by?

Less than 1 month

1 – 3 months

3 months +

--	--	--

21.

What is the approx. square meter of your home?

--

Base line calculation

Sqm x 5000

--

22.

When was your home built

--

What improvements have you made

--

23.

What do you love most about your home?

--

24.

Which features do you think may be of concern to buyers?

--

25.

How much to you think your home is worth?

--

Do you need assistance finding another home

--

26.

Are you currently working with an Estate Agent

Yes

No

Have you had other evaluations done

Yes

No

--	--	--	--

27.

Are there any questions  
you still have? Can we get  
started?

A large, empty rectangular box with a thin black border, intended for a response to the question.



# How to Complete a Golden Homes Sole Mandate

## AGREEMENT GRANTING A SOLE

### AND EXCLUSIVE MANDATE

entered into between

Seller (1) \_\_\_\_\_ Seller (2)

\_\_\_\_\_

*Insert the names of the Seller, e.g. David Charles van Wyk or David C van Wyk – always use full first name and surname. The second name can be either the full name or initials. If there are more than two sellers then all their names need to be inserted or a written resolution authorizing one seller to sign on behalf of all the others can be used. This resolution must include all the names of the sellers and must be signed by each one. Consult the notes in the training manual on identifying the seller.*

and GOLDEN HOMES – hereinafter referred to as ‘the Agent’

**The Agent is ALWAYS the agency and/or its principal. The agent is NEVER the person facilitating the agreement. An estate agent is a representative who represents the AGENT being the Company and the principal they work under.**

1. The Seller hereby irrevocably appoints the Agent who hereby accepts such appointment as the **sole and exclusive agent** for procuring the sale of the property known as Freehold/Sectional Title Erf \_\_\_\_\_ in the township of \_\_\_\_\_ Situated at

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Once this mandated has been signed and dated by the seller and the agent, the seller cannot revoke, which means withdraw or cancel, the agreement without the agent’s consent. The seller is also appointing the agent as the sole and exclusive agent and the seller may not appoint any other agents (agencies) to market the property.*

*The Erf number and township would be as per the municipal rates account or title deed of the property. This is the legal identity of the property and not the street address. By situated at you give the street number and name as well as the unit number and name of a complex if it is in a sectional title scheme.*

2. The gross price required by the Seller for the property is R \_\_\_\_\_  
( \_\_\_\_\_ )  
\_\_\_\_\_

or such other price as may be agreed upon by the Seller and the Agent.

*This would be the price at which the property will be marketed and MUST include the agents commission. Complete it in numbers and in words.*

3. This **mandate** hereby granted shall commence on signature of this agreement and deemed to be placed on the market forthwith and shall remain in force from \_\_\_\_\_ until \_\_\_\_\_

*Determine the time frame of the mandate. The dates must be specific calendar dates determining the start and end dates of the mandate. The start date may be different to the date of signature. Never use words like, "to be determined" as this will render your mandate invalid. It is also advisable to do 3-6 months and not longer. Rather re-negotiate the mandate at that time so that you can determine whether or not you want to renew the mandate and continue with the responsibility of fulfilling the mandate.*

4. The Seller shall pay to the Agent a gross commission of \_\_\_\_\_% (\_\_\_\_\_ percent) of the purchase price.

*The commission is something negotiated upfront and should NEVER be negotiated after you have done your job as an agent! Remember, this is your salary, and no one negotiates their salary with an employer after they have worked for them, neither should you. Neither do contract workers, doctors, lawyers, etc., negotiate their fees. Why should you? Make sure your seller understands that this is effectively an employment or contract agreement price which has no bearing on the actual price the seller chooses to accept.*

**NEVER, NEVER, NEVER, tell a seller that the commission can be negotiated once you bring them an offer! When you bring an offer to a seller and he accepts you have fulfilled your part of the agreement. Now it is his turn to fulfil his and to pay you what agreed to before you started spending your money on marketing his property.**

5. The Seller acknowledges that the agent has explained the meaning and consequences of the material provisions of this exclusive mandate and the specific obligations in respect of the marketing of the property which will be assumed by the Agent.

*As an agent you should have explained the term and conditions of the mandate to the seller. Through this clause the seller acknowledges that he understands the material clauses, being the clauses above, and that the understands what you are going to do in regard to the marketing of the property.*

*You should have provided him with a "Listing your property to sell" booklet which explains the marketing process the agency does. Note: The agency and its agents are not obligated to do anything more than what has been stated in the marketing booklet.*

6. The Seller undertakes that he shall not during the mandate period sell the property himself or grant to any other estate agent the right to sell the property. Should the Seller do so,

the Agent may cancel this mandate and claim damages from the Seller in the amount equal to the commission stipulated in clause 4.

*If the seller gives another agency the right to sell the property or he sells it himself during the mandate time, the agent then has the right to cancel the mandate and claim their commission stipulated in clause 4. The agent must first cancel the mandate and notify the seller that they have cancelled it and are no longer liable to continue marketing the property. Thereafter the agent (Principal) can sue for the commission.*

7. If the property is sold by the Agent, the Seller or any other person, within the mandate period or within 30 (thirty) days after termination of the mandate period to any person who was introduced to the property during the mandate period, the common law principle of effective cause shall apply.

*Sometimes a buyer that viewed the property during the time of the mandate comes back after the mandate has expired and then makes a decision to buy the property. In this case, whether they come through the agent, or go privately to the seller, or come through another agency, within the mandate period or within 30 days after the mandate has expired, the agent (Golden Homes) is still entitled to their commission – regardless of who sold the property!*

8. No variation, waiver or consensual cancellation of this agreement shall be valid and binding, unless reduced to writing and signed by both parties.

*No changes can be made to the mandate, nothing can be deemed not applicable, and no cancellation of the mandate shall be valid unless it was put down in writing, either on the mandate or in an addendum, and signed by the seller/s and the agent.*

9. The Agent may put up a “for sale” and “sold” signs during the term of this agreement and for 1 (one) month after the sale.

*You for sale board is an important part of the marketing process as it alerts potential buyers to the property when they are driving through the area they are looking at buying in. Very often someone will buy the home because they have already accepted it from the outside. They already have an emotional “yes.”*

*Remember, your board would in this case be the effective cause should a sale take place.*

10. The Seller indemnifies the Agent for any damage suffered as a direct or indirect result of the Property being marketed or shown to prospective purchasers. The Seller shall inform its insurer that the property is on the market and that show days will be held.

*In today’s world you as an agent have no way of knowing who you are dealing with when someone calls you for an appointment. If you take a buyer to a property and they end up stealing goods from the seller, the seller cannot hold you liable. The seller needs to notify his own insurance broker that his house is on the market and that it is open to risk. This will indemnify him with his insurer.*

*At all times the property belongs to the seller and he is responsible in regard to whom he gives access to, including you as the agent.*

11. The Seller shall inform its bond holder that they have placed the property on the market for sale.

*To avoid the possibility of paying early cancelation penalties to the bank the seller needs to advise them of his intent to sell the property and cancel the bond. Early cancelation means cancelling the bond before the end of its full term of 10, 20, 30 years that the contract was signed for. In most mortgage bond agreements, they have a clause that gives the bank the right to claim penalties because of the interest they are losing due to the bond being cancelled early. This penalty is legal and is generally not more than three months. If three-month pass between the date they notified the bank and the date of transfer, then there are no penalties payable.*

12. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Any additional clauses that are pertinent to the sale of the property can be listed here. Especially if there are things the seller will be removing from the property when it is sold. For example, a generator, or chandelier, or gas stove, etc. You also need to note any latent defects the seller is aware of.*

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_  
 20\_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

(the Seller/s who declare/s that he/she is authorized to do so) (for and on behalf of the Agent)

*Signed at means the town or suburb in which the agreement was signed and the date on which it was signed.*

*The seller/s all need to sign as well as the agent. If the agent is an intern, then this agreement needs to be done in the presence of a full status agent and signed by the full status agent.*

*The following details page needs to be comprehensively completed by and signed by the seller. This information forms part of your FICA "know your client" responsibility and also for the purpose of effecting transfer. This page is the same as that on the OTP.*

**See the following documents under resources:**

- ✓ Sole Mandate
- ✓ Shared Mandate
- ✓ Seller disclosure document
- ✓ Listing sheet
- ✓ Property Evaluation 1 and 2

**Annexure 53 – Sole Mandate**

**Annexure 54 – Shared Mandate**

**Annexure 55 – Listing sheet**

**Annexure 56 – Seller Disclosure**

**Annexure 57 – Evaluation 1**

**Annexure 58 - Evaluation 2**

## Contract Basics – Offer to Purchase

### 1. Accuracy in completing contracts

When it comes to property contracts, they need to be *clinically accurate* in completing all formalities to ensure watertight contracts.

Many are the proverbs that promote this precept, for example a *stitch in time saves nine* and *an ounce of prevention is worth a pound of cure*. Many sale contracts, once they are in a conveyancer's hand, become highly complicated and tangled, not because he is inefficient, but because he has been given a poorly drawn agreement with numerous defects. Often such sales collapse completely, and the agent's commission disappears.

Time and time again seller's or buyer's remorse cause them to look for every possible loophole to get out of a contract. If there is a fatal defect in it, a clever attorney consulted by one of the parties will soon help them to lapse the sale. Not only will the agent lose his commission, but the other party's wrath will soon descend.

Accuracy in knowing property laws and applying them carefully is essential to prevent such losses. One principle applies here – ***get it right the first time***. It has been said that the wisdom of hindsight is the only exact science! People should indeed learn from their mistakes, but well-trained agents will benefit most by avoiding such mistakes altogether. Much of the information in these notes is geared towards helping you prevent painful complications and losses later by getting it right when the contract is actually signed.

One of the most common complaints against estate agents is that, once a contract has been signed, the agent shows no further interest in it, claiming it is now the conveyancer's full responsibility. Such agents who do not care to follow up their sales are forgetting one of the basics of long-term successful selling – ***after sales service***.

***Ultimately the greatest of all marketing methods is one that cannot be publicly advertised by can only be gained by consistent service.***

It is the quiet, **oft-ignored principle of referral** – still the greatest of all marketing tools. It feeds on a healthy image created by a good reputation gained over a long period of time.

### 2. Basic formalities of a contract of sale

Before 1981 two major Acts of Parliament covered the essential formalities of contract relating to the sale of immovable property. A very short Act, known as the *Formalities in Respect of Contracts of Sale of Land Act*, was passed in 1969 and prescribed one simple principle: that all such sale contracts ***had to be reduced to writing*** and had to be ***signed by both parties***. In 1971 another much more comprehensive Act was passed known as the *Sale of Land on Instalments Act* which dealt with the commonly-called 'deed of sale' contracts whereby a Seller sold a property to a buyer on terms and did not give immediate transfer.

In 1981 a new Act was passed to incorporate both of these laws into one document and it is known as the ***Alienation of Land Act, No 68 of 1981***. It is the most important law covering the sale of immovable property and it repealed both of the former Acts, incorporating them into one new Act. Most of the new Act incorporates the Sale of land Instalments Act and deals with the terms “deed of sale” but it also prescribes the basic formalities of any contract of sale.

It should be obvious, from an early stage, to the new estate agent that the most important factor relating to any contract of sale is to ***ensure it is properly signed and completed*** and that it complies with all the basic laws covering the validity of immovable property law sales. **Any fatal defects in the contract can give either the Seller or Buyer the right to withdraw from the sale with the result that the Agent will lose his commission.**

The *Alienation of Land Act of 1981* deals mainly with instalment-contract sales but its first chapter is the most important of all laws dealing with any contract whereby immovable property is alienated (transferred) from one person to another. It is therefore important to quote the relevant section in full and it reads as follows:

**a) Formalities in respect of alienation of land**

- i. *No alienation of land after the commencement of this section shall, subject to the provisions of Section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.*
- ii. *The provisions of subsection (1) relating to the signature by the agent of a party acting on written authority of the party, shall not derogate from the provisions of any law relating to the making of a contract in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered.*

The most essential feature, therefore, of a contract of sale is that ***it must be signed by both the Seller and Buyer*** before a valid contract exists. In fact, ***no agreement exists until this is done***. It does not matter what negotiations have been conducted between the parties and the agent nor how much has been verbally agreed to. No contract whatsoever exists in any form until *both* parties have signed a written contract of sale. If a property is owned by two people separately and only one signs the contract of sale and purports to sell the whole property thereby, the Buyer – even if he has signed the contract – can withdraw from the deal by notice in writing at any time before the other owner signs. The contract is not valid until *all* parties have signed (although, if the part owner makes it clear he is only selling his part-share in the property, the sale will be binding to this extent)

The key question arises: *Who* may sign a contract of sale? In terms of the definition given above the following not only may but *must* sign in their respective capacities:

- The **Seller** or the **Buyer** in person.
- Any **agent** acting *with written authority* on behalf of either party. This can include any person who has a *Power of Attorney* issued in his favour authorising him to sign on behalf of the respective party.

- A **Nominee** for a Company or Close Corporation to be formed. (Once the Company is formed, the sale to the nominee must be cancelled and a new sale to the juristic person must be substituted for it)
- A **Representative** of an existing juristic person, such as a *Trustee* of any Family Trust, *Director* of a Company or *Member* of a Close Corporation. In such a case it is essential at the time the contract is signed to have a **written resolution** signed by all the Trustees / Directors / Members appointing the relevant signatory to sign on behalf of the juristic person.

In passing it is important to mention that, where a Trust, etc., is still to be formed, the **nominee** must be bound in this personal capacity until formation takes place, otherwise there is no actual Buyer against whom you can act in the meantime if a breach of contract takes place or if occupation rental or any other payment due is not paid timeously.

In terms of **Section 1** of the Alienation of Land Act a *deed of alienation* (or in our language a normal contract of sale or “offer to purchase”) means a *document or documents under which land is alienated*. The use of plural here means you can use more than one actual document to finalise a sale. For example, your Seller in Johannesburg can sign the original while your Buyer can sign an exact copy faxed/mailed to him in Durban. As long as both parties sign the same contract it does not matter if they sign separate documents. A faxed/mailed copy in the Agent's possession bearing the Buyer's signature and origin of fax/email is proof that a sale has been concluded even if the original is still in the Buyer's possession.

#### **b) The parties to the contract**

It is not only essential to ensure that both parties sign a contract but also that the **correct parties** do so. The following are the essential features of any contract of sale to make it valid.

- ✓ Both the **Seller** and the **Buyer** must be clearly identified, and both must sign the contract.
- ✓ The Contract must clearly state the **Purchase Price** to be paid by the Buyer to the Seller.
- ✓ The **Property** sold to the Buyer must clearly be identified.
- ✓ The **Date of Signature** of the contract by both parties respectively must be stated on the contract.

It will interest you to know that *no further formalities have to be complied with for the contract to be valid. If no details are provided regarding the terms of payment of the purchase price it is presumed that the price will be paid in cash against registration of transfer.* Likewise, if no mention is made of occupation or possession it is presumed that both will pass on registration or, if registration is unduly delayed, within a reasonable period. Nevertheless, inclusion of each of the above four formalities is *essential* to make the contract valid. **Omission or a defective statement of any of them will render the whole contract invalid.**

To prove **agent's commission**, it is important to include this in writing in the contract, otherwise a dispute can arise. *The agent must sign the contract* to accept the benefit



conferred on it, otherwise the Agent cannot enforce any clause in the contract awarding commission to it. The undertaking to pay Agent's commission becomes purely a term of the agreement between the Seller and Buyer alone. A **mandate** signed prior to the sale inclusive of commission payable by the Seller would, however, suffice to prove the amount or percentage of commission due to the Agent.

It is *absolutely essential* to establish who the actual Sellers and Buyers of a property are – especially the Sellers. Only the following people can sign a contract of sale or offer to purchase on behalf of the Seller:

- i. The **Owner/s** of the property,
- ii. Any person who has acquired the property from the owner and has the right to resell it, namely the **holder of a right** to take transfer into his own name – this includes any heir in a deceased estate, donation, subsequent purchaser etc.
- iii. A **nominee** duly authorised by a resolution for an existing juristic person or on behalf of a juristic person still to be formed; likewise any person acting under a **power of attorney** actually signed in his favour by the actual Seller.
- iv. A **Trustee, Executor** or other person duly appointed to act in his fiduciary capacity as such. **Note well** – such a person cannot sign **until officially appointed**. It does not help if an executor has been appointed in a will – Letters of Executorship must have been issued before the executor can sign.

It is *essential* to establish the actual parties. If the Seller states he is the owner of a property, you need to know exactly who the owner really is. This can be established by accessing Deeds Office records showing precisely who the actual owners are. This will also show how many bonds are registered against the property, what interdicts or attachments may be recorded against it, and when transfer took place plus the original purchase price.

If your Seller says he is not the registered owner of the property but is entitled to resell it because he purchased it from the owner or acquired it in some other way, make sure you get proof from him of his right to the property. You can be in trouble with your buyers if your Seller is not actually authorised or entitled to sell it. The same goes for Trusts, Deceased Estates, Companies and CCs – get copies of the Trust Deeds, Letters of Executorship, Articles or Founding Statements respectively to ascertain who can sign either the contract or a resolution appointing the actual signatory.

**Finally make sure the person who signs the contract is the same as the person mentioned by name as the Seller or Buyer. A recent case will show you the need to be cautious here.**

The Buyer was named as a particular single woman, but her father signed the contract because he was putting up the money for it. The Seller in the meantime wanted to get out of the contract and, on discovering his good fortune, did so because the signatory was not the Buyer named in the contract. Caution and preciseness here are essential.

### ***c) The property***

It is essential, likewise, to describe the property sold correctly. Negligence here can lead you to selling the next-door neighbour's property, a non-existent property, a portion of a whole erf, or only a part share in a property. Once again, the deeds access system is a crucial source of information to establish the actual property being sold. In the case of **Sectional Title** flats it is especially important as the flat numbers often do not correspond with the actual Unit numbers on the Sectional Plan. Once again you can end up selling a neighbour's flat if you confuse the flat number and the Unit number on your contract.

It is not essential to state the *actual Erf number* on a contract or the Township it belongs to but, in the interests of professional selling, this should be done. A correctly-stated *street address* is sufficient or, in fact, any other means of actually identifying the property. If you are selling a portion of an erf still to be subdivided it is not necessary to attach an actual diagram surveyed by a land surveyor. A sketch-plan clearly demarcating the property, stating the exact distance between boundary points and the full extent of the portion, will be sufficient but nothing less will suffice to make the sale valid.

However, for the purposes of transferring a property the full Erf description and the Township are essential. It is also an essential requirement for the listing of properties on the SAGH Hub and for sale purposes. It is a requirement in all Golden Homes mandates and sale agreements.

### **3. Amendments, Alterations and Omissions**

It often happens that either or both parties require amendments to a contract before it is finalised. This is quite admissible provided the agent is fully aware of the implications and what has to be done. The following formalities must be observed in such circumstances.

#### **a) Changes to the contract**

It is quite in order to cross out a clause or other portion of a contract and insert a change above it *provided both parties initial the alteration together with the initials of anyone else who signed it such as witnesses or sureties.*

It is a common practice with many agencies to get the parties to initial every clause in the contract even if nothing has been included or altered in writing in contrast with the printed portions of the contract. *This is, in my view, a very dangerous practice.* The initialling alongside any portion of the text except at the bottom of any page in law *verifies anything crossed out and amended at that point.* It is presumed that initialling certifies such changes and any party disputing an alteration will have trouble explaining why he initialled at that point. It is better, once each party has signed a contract, to give them a photocopy of the exact agreement they have attested under cover of a letter confirming their participation in the contract. This prevents disputes later about changes and amendments. Only such later alterations should be accompanied by the initials of the parties.

Where a Buyer signs and Offer to Purchase in good faith containing all the terms upon which he is prepared to enter the contract and the Seller is willing to accept but changes any part of it and initials the same, ***this constitutes a counter-offer*** and it is not a valid contract until the Buyer accepts the change and initials it.

Be very careful – this goes for even the slightest amendment of any actual term of the contract. The parties must have agreed to, signed and initialled at every point on the final contract.

It occasionally happens that a *written* portion of the text contradicts the *printed* terms. Where there is a hopeless, irreconcilable contradiction the contract may be void for vagueness and incapable of being rectified. Where the contradiction does not affect the essential terms of the contract, the *written portion will overrule the printed section* because it is presumed that the former expresses the actual terms of agreement between the parties.

***b) Irreconcilable differences***

If the *printed* contract says “it is expressly agreed that there are no suspensive or resolutive conditions affecting this contract” while a written portion says “this contract is subject to the Purchaser’s property being sold in 30 days, the cost of transfer to come out of such subject-sale”, the contradiction cannot be reconciled. Be careful to avoid such problems in practice.

***c) Reconcilable differences***

If the contract says “The buyer will be liable for all costs of transfer as well as all bond costs: while a written section says “The Seller will be liable for the costs of transfer up to R7000, the balance thereafter to be for the Buyer’s account”, the second clause will be deemed to supplement the printed section which will be read in harmony with it.

***d) Addendums and Amendments***

**Addendums** to sale contracts, often drawn up some time after the original sale, specifying certain new points of agreement, can also cause trouble where they tend to contradict the original. In this case, however, an embarrassing addendum cannot affect the validity of the original contract and if its terms are so vague as to render the whole contract unintelligible or unenforceable, the addendum will be invalid while the original contract will stand. Otherwise the effect of an addendum is as follows:

- i. It is presumed to *supplement* the original contract and its terms will be read in harmony with the original terms where there is any confusion.
- ii. If it obviously *contradicts or overrules* the original in any respect it is presumed that the parties have elected to change the original and the terms of the addendum will prevail. For example, where an original says “Occupation will be given to the Buyer on registration of transfer” while a later addendum says “Occupation will be given on the 1<sup>st</sup> May” the addendum will prevail even though nothing is said to explain the contradiction.

This is often referred to as an **amendment** (*changes*) to the contract rather than an **addendum** (*supplements*).

It is important to know that an addendum is regarded as a **separate contract** between the parties and can be separately enforced. Nonetheless it is subject to the terms of the original so that, if a breach is committed solely of a term in the addendum (such as the failure to pay

an occupational rental), the Seller will nevertheless have to give written notice to rectify the breach within 7 days (or whatever period the contract allows) before he cancels or acts to recover it if the original contract contains such a breach clause.

Addendums should be carefully drawn and must be signed by both parties.

#### e) Omissions

What of **omissions** in the original contract? Here one has to distinguish between two types, namely actual terms that have not been completed and portions that have simply been left blank. The implications are as follows:

##### i. **Incomplete terms of a contract**

It is highly dangerous to leave out essential terms of a contract. If your agreement says "Occupation will be given to the Purchaser on ..... with occupational rental being payable monthly in advance until registration of transfer in the amount of R..... per month" and you fill in the date as 1<sup>st</sup> May but leave the rental blank, *your whole contract can become invalid*. Details of occupation as such are not necessarily an essential term of a contract but, once a date has been given and provision has been made for the rental, *this must be included*.

If, however, non-essential details have just been left out, the contract will not be affected. For example, where a clause says, "The following movables are included in this sale" and nothing has been inserted, it will be assumed that *no* movables are included. The important thing, to be on the safe side, is obviously to fill in all open terms. If the provision doesn't apply it is wise to state 'not applicable'. Alternatively, the whole clause, where applicable, should be deleted.

If your contract states on page 1, say, that the purchase price of R600 000 will be paid in full in cash by a certain date while a printed clause says "this contract is subject to a loan being granted to the Purchaser by the .....for the sum of R ..... to be secured by way of a mortgage bond against the title deed of the property and, should such loan not be granted by the said date, this sale will immediately become null and void" it is *essential* to cross out this clause. If it is left in and the blank portions are left blank, *the contract can become invalid for vagueness* irrespective of the clause on page 1.

Once again, be careful to complete the contract fully and to delete printed portions not applicable to it.

##### ii. **Blanks in a contract of sale**

What of pure blanks in a contract, such as sections in a printed contract which allow for extra clause that have simply been left open? In such cases the validity or interpretation of the contract is unaffected, *but the practice is poor and negligent*. Delete carefully such blank sections as clauses can be written in afterwards on the original contract which were not there in the beginning and proving they have been unlawfully added may not be easy.

Every estate agent should exercise great care in ensuring all the essential terms of a contract are completed and complied with and that no spaces are left open which can invalidate the sale or give room to insertions later without the consent of one of the parties.

#### ***f) Cash Deals***

There are many sales where no bond is required, either because the full purchase price is being paid in cash or the Purchaser is using the proceeds of the sale of his property to fund the purchase price of his new property.

A common mistake made by estate agents is to simply put the initials "N\A" in the bond clause where the amount of the bond is usually filled in.

***Avoid this- the contract still states that the sale is subject to the suspensive***

***condition that the Purchaser obtains a bond from a registered bank and this remains a specific clause and suspensive condition. By leaving the amount out or by filling in "N\A" your sale can be declared void for vagueness.***

*There is a High Court case where this very decision was made, namely to*

*rule the whole sale too vague to be interpreted. It doesn't help to show that the contract elsewhere provides for payment of the full purchase price in cash or by way of guarantees. It still contains a specific clause stating that the contract is subject to the Purchaser obtaining a loan. Leaving the amount unspecified just aggravates the oversight.*

***Cross out the bond clause completely if no bond is required! Delete it!***

***It's a good rule of thumb to delete all clauses that are not applicable to the sale. By leaving them in they become material conditions of sale, even if the details required are not filled in. It is also important to ensure that *all* blanks in clauses are properly filled in. Far too often these are left incomplete, exposing the sale to being declared void for vagueness.***

## **4. Legal and Binding Contracts**

To be legally binding, a contract needs two essential components:

- a) agreement, and
- b) consideration.

Within the agreement and consideration lies an assortment of provisions that add to the legality of a contract. These include the offer, performance, terms, conditions, obligations, payment terms, liability, and default or breach of the contract.

### **Agreement component of a contract**

The agreement component involves offers, counteroffers, and eventually what contract law calls the "meeting of the minds." An agreement can be either oral or written, depending upon the contract. If you hire a taxi to drive you to the airport, then it is an oral agreement that you will pay the driver a certain sum when you reach your destination.

However, in South African law all real estate contracts must be in writing and signed by all parties.

The agreement process involves one party offering terms and conditions that are either accepted or rejected by the other party. If the other party changes any term or condition of the offer, then the offer becomes a counteroffer. At this point, each party negotiates the terms and conditions of the offer until they have a meeting of the minds. This is when an agreement has been met and a contract can be drawn up.

### **Consideration component of a contract**

For an agreement to be legal and binding, it must have some form of consideration. This means that all parties involved must receive consideration or something of value. Otherwise, it is considered a gift rather than a contract. The promise of a gift is not necessarily binding, depending upon the circumstances. Usually consideration involves one party giving something such as a product or service, and in exchange the second party gives some form of monetary compensation.

The consideration component of the contract brings up several other provisions that should be addressed. These provisions include:

- **Obligations and Conditions of the Contract**

What each party needs to do to fulfil the terms of the contract.

- **Performance**

How well each party performs the terms of the contract.

- **Payment Terms**

A schedule that specifies when all payments are to be made.

- **Liabilities**

Define the liability of each party in terms of the contract.

- **Breach of Contract**

What will happen should either party fail to fulfil their part of the agreement.

When compiling the agreement and consideration of a contract, the agreement, must be clear as to what is specifically expected of each of the contracting parties. An ambiguity or confusion in any part of the contract can lead to problems when trying to enforce the provisions of the contract.

## **5. Identifying the Parties**

### **a) Marriage Types**

One of the most important aspects of concluding valid and effective sale is the need to properly identify and qualify the respective parties to the contract. Mistakes at this point can render the whole sale invalid and will often have severe repercussions for the estate agent. This section deals with the fundamental facets relating to the identity of Sellers and Buyers respectively.

#### **i. ANC Contracts (Antenuptial Contract)**

The Matrimonial Property Act first introduced the concept of the Accrual System to marriages with prospective spouses having the right to choose whether it will apply to their marriage or be expressly excluded from it. This, however, will never affect their signing capacity when it comes to sales of immovable property or any documents relevant thereto. They are *two separate persons* with entirely separate estates to the outside world.

It often happens that spouses married out of community will purchase property in both names in equal shares. In such cases the signature of *both* will be required when selling or purchasing a property. In cases where just one will be purchasing a property in his/her own name alone, or where just one is the registered owner and is now selling, the signature of that person alone is required.

Marital power no longer applied in South African law, having been entirely abolished by Section 29 of Act 132 of 1993, and all women married out of community have the right at all times to contract on their own account in matters relating to immovable property. Any matrimonial power a husband has over the person and property of his wife is repealed. It remains her property and he has no jurisdiction over her estate.

Either a husband or a wife married out of community of property has full contractual capacity to register immovable property in his/her name and to register a mortgage bond over such property. The spouses act totally independently of each other, and each one signs documents pertaining to the registration process completely independently from the other.

The debts incurred by one spouse do not place the estate of the other at risk from creditors. Should the parties get divorced, each party will retain their own assets and liabilities, as no provision was made for sharing. The party's contractual capacity remains unaffected.

ANC contracts need to be drawn up between the two parties wishing to get married before the wedding. The contract must be signed before a notary and two witnesses. This contract then needs to be lodged with the relevant Registrar of Deeds. The marriage officer will require a letter confirming the agreement from the Registrar before conducting the marriage ceremony. Failure to do so before the marriage date will render the agreement null and void and the marriage will be considered to be that of a COP (Community of Property) contract.

Where there is any doubt, however, as to whether just one of the parties is the owner of the property (or *which* of them actually owns it) it is wise to get both signatures. The signature of both will not affect your contract even if just one is the actual owner.

*The sound principle in all cases where you are uncertain as to the full identity of the Sellers of a property is always to get both parties to sign your contract and mandate.*

## ii. ANC with Accrual

An ANC with Accrual marriage contract gives the parties the advantage of keeping separate their individual estates at the time of marriage, but also allows for a form of sharing and redistribution should the parties get divorced.

The parties can exclude certain assets from the joint estate, however these must be specifically excluded and listed in the ANC contract. An initial sum of money can also be stipulated as a separate asset, should there be a death or divorce, which each party is entitled to.

At the point of death or divorce, the accrual, or growth of each person's estate, is determined. The joint estate is then divided between the two parties.

## iii. Community of Property (COP)

By law a couple so married are, to the outside world *one person* and possess a joint estate. In terms of Section 15(2) of the *Matrimonial Property Act of 1984* it is necessary for **both** spouses to sign all documents relating to immovable property including contracts of sale, mortgage bonds, and in particular, mandates to sell or let property. In every transaction, therefore, where a couple is married in community, you will need the full signatures of both husband and wife to validate your agreement of sale, whether signing as Seller or Buyer.

It is important to note that *both* spouses must also sign any *bond application* form as the practice of allowing just one party to register a bond with written consent of the other (Section 15(2)(a) of the Act) has fallen away in local deeds offices.

*It is a simple rule of thumb that spouses married in community must sign each and every document together.*

A community of property marriage contract is the easiest and cheapest marriage contract in South Africa. No contracts need to be drawn up before the wedding and the marriage office will lodge the marriage certificate with the Registrar of Deeds, after the conclusion of the marriage.

In a COP agreement, both parties' estates, their assets and liabilities, become part of the joint estate. There are a few exceptions to this rule, where certain assets may not form part of the joint estate. An example would be when a deceased person stipulates that an inheritance, they have left to a person may not become part of a joint estate. In such a case, the other spouse has no jurisdiction over that estate that now belongs to their spouse.



All debts incurred by a party before the marriage and after the marriage become part of the joint estate and each party is equally responsible for the debts of the other. This would also include any maintenance due to a previous spouse and any children of such previous marriage.

Each spouse has the capacity to bind the joint estate through their actions. For example, if a spouse has his/her own business and applies for an overdraft, and the business fails to pay the overdraft, a claim can be made against the joint estate. However, there are circumstances where a spouse must first obtain the consent of the other spouse before he/she can bind the communal estate. Where a spouse binds his/her separate estate, such as a car or business in his/her name, through a debt, the creditor can lay claim against the private estate of that spouse. Only if that spouse's private estate has insufficient assets to satisfy the creditor's claim, can the creditor lay claim against the communal estate.

One of the most devastating consequences of a marriage in community of property is when one spouse becomes insolvent (cannot pay his/her debts), then both spouses will be declared insolvent as there is only one communal estate. If there is a court order against either one of the spouses, the communal estate can be lost.

#### ❖ ***Managing the joint estate***

Each spouse has equal management of the joint estate; however, the consent of the other spouse is needed for certain transactions. Although you have to acquire the consent of the other spouse to alienate joint assets of the estate, written consent is only required in certain instances.

Examples of instances where no consent from the other spouse is needed, i.e. where one spouse may act independently, to perform acts binding on the joint estate, include:

- ✓ Making deposits at a banking institution.
- ✓ Making donations to third parties that do not prejudice the other spouse.
- ✓ Forming a company or trust.
- ✓ Entering into a transaction on the stock exchange.
- ✓ Entering into a contract in the ordinary course of his/her business.
- ✓ Selling certain movable assets, such as a car.
- ✓ Performing transactions in the course of his/her business, trade or profession.

The Matrimonial Property Act categorises acts where a spouse needs the consent of the other spouse to enter into a valid transaction under the following types of consent:

#### ❖ ***Informal consent***

In certain instances, only informal consent from the other spouse is required. In these instances, oral consent is sufficient. The following types of transactions fall into this category:

- ✓ Receiving money that is due to the other spouse, from sources such as:
  - An inheritance, donation or prize.
  - Remuneration, bonuses, allowances, earnings, a pension, a gratitude for services rendered or by virtue of their profession, trade or business, or damages awarded for the loss of income from any of the aforementioned sources.
  - Income from his/her separate property, for example rent money earned from renting an immovable property.
  - Dividends or interest on investments in their name.
  - The proceeds of an insurance policy.
- ✓ The alienation or burdening (i.e. selling and pledging) of common household furniture, such as washing machines, stoves, bicycles or pets.
- ✓ Donating from the joint estate where the donation unreasonably prejudices the interests of the other spouse, such as donating furniture from the common household.

#### ❖ ***Written consent***

The following acts may only be performed with the written consent of the other spouse:

- ✓ Alienating or burdening assets of the joint estate kept mainly for investment purposes, such as stamps, works of art, jewellery or coins.
- ✓ Alienating, ceding or burdening insurance policies, mortgage bonds, fixed deposits, shares, stocks or any of the other spouse's investments at any financial institution.
- ✓ Withdrawing money from any account held in the name of the other spouse.

#### ❖ ***Written consent with two witnesses***

The following acts may only be performed with the written consent of the other spouse, signed by two witnesses:

- ✓ Alienating immovable property, such as a house, townhouse or farm, belonging to the joint estate.
- ✓ Entering a credit agreement in terms of the National Credit Act 34 of 2005.

- ✓ Entering into a contract to purchase immovable property.

❖ ***Prior written consent with two witnesses***

In some instances, a spouse must give his/her consent prior to the transaction. It cannot be ratified later. The following acts may only be performed with the prior written consent of the other spouse, signed by two witnesses:

- ✓ Entering into a contract of surety, where one spouse binds the communal estate as a surety for debt of a third party.
- ✓ The actual alienation or burdening of immovable property belonging to the communal estate or the actual granting of the rights (selling or giving a third party a share in the property) over such immovable property.

When a spouse enters into a transaction requiring consent without the consent of the other spouse, our law favours the rights of the third party with whom the spouse contracted. If the third party doesn't know, or can't reasonably have known, that consent wasn't given, then the transaction is valid. The innocent spouse is, however, given some protection. When the communal estate is divided at the end of the marriage, the court will make an adjustment and the innocent spouse will be compensated accordingly.

❖ ***Suing for damages***

Spouses married in community of property cannot sue each other for damages. This would be pointless, as money taken from the joint estate to pay the one spouse will simply fall back into the joint estate.

There is however an exemption to this rule. A spouse can sue the other for non-financial loss arising out of bodily injuries caused by the other spouse. For example, if the wife is a passenger in a car driven by her husband, and because of his negligent driving they are involved in a car accident, she can sue him for her pain and suffering because it is a non-financial loss. She can't sue him for her medical expenses, since they are considered a financial loss. Damages that she recovers in respect of the non-financial loss (damages paid to her for pain and suffering) will fall into her own estate, outside the joint estate.

iv. **Customary Marriage**

In South Africa, a customary marriage is understood to be one entered into in accordance with the traditions and customs of indigenous African customary law. This type of marriage does not require the approval of a marriage officer in order to be regarded as valid.

Customary marriage is different from communal marriage in that it allows for polygamy. A customary marriage is not only concluded between two people, but also extends to their respective families.

Unlike civil marriages, customary marriages occur gradually and are not concluded by a single event like a ceremonial signing of an official document.

It is the duty of the spouses to register the marriage with the Registrar of Deeds.

#### The RMCA Amendment Bill

The Bill brings Section 7(1) and (2) of the Recognition of Customary Marriages Act (RCMA), 1998 (Act 120 of 1998) in line with the judgments of the Constitutional Court, which declared the sections constitutionally invalid. The sections discriminated unfairly against women in customary marriages.

The Bill provides for the equal treatment of women in pre-act, monogamous and polygamous customary marriages. The amendments eliminate the former gender-based discrimination against women in such marriages entered into before the commencement of the RCMA of 1998. Spouses will now have joint and equal proprietary rights over matrimonial property.

Women married by customary law will now have equal rights over the matrimonial property, and husbands will no longer have exclusive proprietary rights over marital property to the detriment of their wives. Children can also benefit as they will be able to inherit from the mother's estate as well.

#### v. Foreign Marriages and Property Ownership in South Africa

Literally tens of thousands of people living in South Africa are married in another country. It is useful to know both the law and Deeds Office procedures relating to such marriages to avoid making mistakes at this point.

Even if a couple has lived in South Africa for thirty years, but at the time of their marriage the husband was from England and regarded it as his permanent home, the marriage is *governed by the laws of that country*. It all depends on the domicile of the husband at the time of marriage – even if the couple was married in South Africa where the wife was resident. Throughout the world the principles of marriage in or out of community of property apply though South Africa is a notable exception to most in allowing both types.

When it comes to sales and transfers of immovable property in this country, however, the question of in or out of community *is totally irrelevant*. Title Deeds, mortgage bonds and the like simply describe foreigners as *married, which marriage is governed by the laws of Portugal*, or whatever country applies.

**Once again, where people were married outside South Africa, it is wise when they are the Sellers to bet *both* to sign your mandates and sales contracts.**

It is not essential if only one is known for certain to be the sole owner of the property but it is still recommended as the other spouse will have to sign relevant Power of Attorney in assisting the owner to authorise transfer to the Buyer. When only one of the parties wants to be the Purchaser of a new property only this party must sign your

contract but the other spouse will have to sign any Power of Attorney to assist him in registering a bond over the property.

*Once again, the same fundamental principle applies to Sellers in such cases – where there is any doubt get both parties to sign your documents.*

It is a safety-first tactic that can be applied to all marriages, whether in or out of community or according to the laws of another country. If the parties are separated and only the sole owner lives in South Africa, the local Deeds Office will probably allow the Power of Attorney to pass transfer to be signed by that party alone.

The Deeds Registry treats all foreign marriages as potential “in community of property” marriages as they cannot recognize or apply foreign laws. This means that when parties are married by foreign law, the one spouse must assist the other spouse. In practical terms, when dealing with immovable property the following rules apply:

#### Selling:

If the property is registered in only one spouse’s name, the other spouse will have to assist the selling spouse. i.e. the spouse who is not an owner of the property will have to sign the transfer documents to enable the transfer of the property to be achieved. It is preferable that they also sign the agreement of sale so that there is no uncertainty. Note that this does not mean that the assisting spouse is entitled to any of the proceeds of sale, but rather that the assisting spouse is made aware of the sale.

In addition to the above, if the property is registered in the name of both spouses they will need to “assist” each other.

#### Buying:

No assistance is required where the property is purchased for cash (i.e. no bond is registered). Where the purchasing spouse purchases property and wishes to take a bond to pay the purchase price, the non-purchasing spouse will have to assist the purchasing spouse in taking the bond. Note that this does not mean that the non-purchasing spouse becomes a co-owner, nor do they become liable under the bond. It means that the non-purchasing spouse signs documents to show they are aware the bond is being taken out.

### **vi. Common Law Marriage**

In South African law, cohabitation does not have any special legal consequences. Generally, the rights of ownership and rights flowing from a marriage are not available to unmarried couples, regardless of how long they have been living together.

If there is a breakup, or when one party dies, the other does not have any of the automatic rights over the possessions and property of the other that are afforded those in a civil union or marriage.

Cohabitation between two people is not automatically seen as a “universal partnership.” This partnership must be proved in a court of law and the grieving party must prove what they brought into the partnership, whether it be money or skills. They must prove that the business had been carried out for the benefit of both parties, with the intent to make a profit.

The only way couples can protect themselves without getting married, is through a formal cohabitation/life partnership agreement.

#### **b) Minors, Executors, and Insolvents**

By law **minors** are all people under the age of eighteen years with the exception of any married person under this age who automatically acquires the rights and powers of majors.

*Minor buyers* have to be assisted by their legal guardians (either of their parents) in writing to *purchase* a property though no such consent is required by the Deeds Office when *transfer* is passed to a minor. In all cases of *Minor Sellers*, however, the consent of the Master of the Supreme Court is required to the sale of a property where the purchase price is R100 000 or less, otherwise a Supreme Court Order must be obtained. It is appropriate, in such cases, to get the legal guardian to sign your sale contract on the minor’s behalf with the following clause included in it:

*This sale is subject to the consent of the Master of the Supreme Court in terms of Section 42(2) of the Administration of Estates Act, No.66 of 1965, the Purchaser acknowledges that he is aware that such consent is required by law.*

It is commonly believed that unrehabilitated **insolvents** can neither own nor mortgage immovable property. They can in fact do both with the written consent of their Trustees. When a person who has been sequestered and is a declared insolvent wishes to sell his property (which must have been acquired *after* his insolvency or exempted from his insolvent estate), or where an insolvent wishes to purchase and mortgage a new property you need to insert a clause similar to this one in your contract.

*This sale is subject to the consent of the Trustee/Liquidator of the Seller, the Purchaser acknowledging that he is aware that the Seller is an unrehabilitated insolvent.*

Where the Purchaser is the insolvent, the terms Seller and Purchaser in this clause would simply be reversed. Your conveyancer needs a Letter of Authority from the Trustee consenting to the transaction.

*e.g. In my capacity as Trustee of the above-mentioned insolvent I hereby consent to the acquisition by the above named of the following property: ..... for a purchase price of .... And do further consent to the registration of a first mortgage bond of the property in the favour of ...bank, for the said sum of ....*

A fully rehabilitated insolvent can sell, purchase and mortgage without anybody’s consent but your conveyancer will require a copy of his rehabilitation order if his insolvency is still recorded in the local deed’s office.

### **c) Aliens and Illegal Immigrants**

The Aliens Control Act of 1991, which restricted the right of foreigners to own property in South Africa, was repealed a few years ago. There is no prescribed legislation inhibiting foreign ownership at present in South Africa, though the Government has, at time in recent years, suggested it may have to produce this kind of legislation at some time in the future.

No one who is illegally in South Africa may purchase property here, but this is the only prohibition presently on the statute books. There are, however, a few exchange control regulations affecting investment by foreigners in property here and every estate agent concluding a deal with a “buitelander” (foreigner) needs to know what they are.

Actually, these conditions apply to all **non-residents**, whether they are citizens of another country or South African citizens living abroad. For the purpose of foreign property purchases, all foreigners fall within the definition of a non-resident. The key issue is payment of the purchase price. Note the following

- i. If the foreigner is paying the *full purchase price in cash*, no restrictions apply. You can simply sign the sale contract up as a normal cash sale and the property can be transferred to the foreign purchaser without further ado.
- ii. If, however, the purchaser needs a *mortgage loan* to make up the purchase price, he may only take up to 50% of the purchase price (or whatever the current lending rate is). He must pay at least half the purchase price in cash and the balance must be paid with funds transferred from a recognised foreign bank.
- iii. If the foreigner intends moving to South Africa, he can take out a loan for up to 100% of the purchase price provided he is in possession of a temporary work permit (which incorporates temporary residence) or has completed the required Declaration and Undertaking form (obtainable from any local bank) that he intends applying for permanent residence within a reasonable period thereafter.

Regulation 3(1)(e) and (f) of the Exchange Control Regulations of 1961 prohibit the granting of financial assistance without the prior written consent of the Treasury in certain cases where non-residents are involved. Your property sale transactions can be affected by these restrictions. If your purchaser is a non-resident, no one locally may lend him the funds he needs to make up the cash portion of the purchase price, even if the non-resident intends repaying him with funds guaranteed from a foreign bank. Be careful here – the cash portion must be coming directly to the purchaser from funds held in a foreign bank.

### **d) Divorcees and Pending Divorces**

Numerous problems are often experienced with **divorcees** or people in the process of getting divorced. Very often the two spouses are at loggerheads with each other over just about everything and are determined to spite or frustrate each other in any way they can. It then becomes very difficult to obtain their co-operation in concluding a sale of their property.

What often happens in pending divorces is that one of the spouses comes to you to sell the property owned by both of them and assures you it is their joint wish to dispose of it. When

you find a prospective buyer, however, you may find they are still in the throes of protracted negotiations to settle their differences and interests. The months can go on before they come to an agreement and the other party will invariably insist on signing nothing until their written Settlement Agreement is fully signed and completed. *Be very careful not to act on the written mandate of just one of the parties*, nor conclude a sale with just one of them with a view to getting the other to sign later when he/she is ready to do so. You may be in for a long wait before matters are finalised while your buyer becomes increasingly frustrated.

It also often happens that someone in the process of a divorce will approach you to purchase a property as the sole buyer. The parties may still be married in community of property and, if in your haste to conclude a sale, you get your Buyer to sign a contract alone with the intention of taking transfer only once the divorce is finalised, *you are almost certainly in for a rough ride*. Once again, the other party to the contract may be prejudiced.

Firstly, your Buyer, if still married, cannot legally sign a binding sale contract unless his spouse does so as well and your Buyer can, at any time, simply walk away from the sale. This holds true *even after the divorce is granted* if the original date of signature remains prior to the divorce. Secondly your Buyer, if it is a woman, probably requires a cash settlement out of her divorce to put up the finance for the sale and protracted delays in finalising the divorce will delay the transfer considerably to the Seller's disgust.

If either your seller or buyers claims to be divorced, *make sure he really is* as there are many people in the process of divorce actions – usually the defendants – who may believe that they are already divorced after just having received a summons. You should always insist on a copy of the Divorce Order to prove your client is really divorced, otherwise you could again finalise a defective sale where someone else's signature is legally required to make it valid.

#### ***e) Juristic persons***

### **Companies, Close Corporations and Family Trusts**

#### **i. Private Companies and Close Corporations**

When it comes to sales of immovable property there is not much difference between Companies and Close Corporations. It is important to know that each is known as a *juristic person* and is a separate entity from its shareholders and is capable of holding a property in its own right. The basic differences between a Company and a CC are the following:

- *A company has a number of shareholders whereas a Close Corporation has a number of members. Each can have as few as one shareholder/member only, but a CC may not have more than 10 members.*
- *A Company has to comply with numerous laws regarding the operation of its business. The laws affecting a CC are far less imposing. A CC is, in reality, a very simple company which places very few obligations on its members.*
- *The shareholders are largely exempt from any liability for the Company's debts whereas a CC's members are more vulnerable towards the CC's debts. A CC has to*



*be described as such with its CK number on all its invoices, etc., otherwise its members can be held personally liable for its debts.*

- *A loan may not be taken out by a Company to assist a prospective shareholder to purchase any of its shares (Section 38 of the Companies Act) but, in terms of Section 40 of the Close Corporation's Act, a CC may give such a loan provided it does not inhibit the CC from its ability to pay its debts and provided its other members consent to the transaction.*

There are a number of advantages in having a property registered in the name of a Company or Close Corporation instead of the name of a private individual. If the member (Company shareholders will also here be referred to by this term for easy reference) has a property registered in his own name and he gets into financial difficulties he will have no protection against his creditors. If the property is registered in the name of a juristic person, however, his creditors will not be able to attach the property to liquidate his debts. This protection usually only exists against *third parties*, namely suppliers, contractors and other such parties or people with delinquent claims, such as those who have suffered damages as a result of any action taken by a member or employee of the CC, etc., on behalf of the corporation. *Second parties*, such as the CC's bank or other immediate financial subsidiser, will invariably require a persona suretyship from all the CC's members for the CC's debts and they will be personally liable to this extent. The CC's protection is in the world of daily business, not in the acquisition of capital to sponsor its activities.

A *Company* is registered by what is known as a *Certificate of Incorporation* while a *Close Corporation's* registration is confirmed by its *Founding Statement* commonly known as a CK1 or CK2 documents. When selling property to such a corporation it is essential to obtain a copy of its respective registration document. This establishes its existence and correct identity (banks, when giving loans, even require an accounting officer's certificate that it has not been liquidated or deregistered at any time).

Your sale agreement will also not be valid unless the signatory is properly authorised by a *resolution* of all the shareholders/members who must sign it in full to confirm the signatory's right to execute the sale. The provisions regarding the authority of a member to sign on behalf of a CC are much more relaxed than those for a Company but, to be sure you will face no problems later, it is wise to get *all the members* to sign your sale contract or a resolution authorising just one of them to sign it.

One of the problems frequently encountered in selling properties to Companies is the need for the Company still to be registered. Often your buyer wants to sign as *nominee for a Company to be registered*. This can delay your transfer as most banks will not entertain an application by a Company for a loan until they are furnished with a copy of the Founding Statement which will only be issued when the Company is registered. Also your Buyer may drag his heels in getting the Company registered. (Close Corporations can no longer be registered with CIPIC)

The real danger here is the possibility of liability for *double transfer duty*. In times past the Receiver used to allow a nominee 30 days to nominate the relevant Company but this was changed when the Transfer Duty Act of 1949 was amended in 2003. Section 16 of the Act now

provides that the nomination of the juristic person must be made, and written ratification of the nomination by the Company must be furnished, *on the same day* that the offer to purchase is accepted or a sale agreement concluded. This is very impractical, but it is the law and, if the confirmation takes place even a day or two later, *both* the nominee *and* the juristic person will become liable for transfer duty. It is best to conclude your final sale contract with the Company as the actual purchaser.

### **Avoid nominee transactions.**

#### **ii. Deeds of Sale of Member's Interest**

On the resale of any property the member need not give actual transfer of the property by can simply transfer his shareholding or member's interest, as the case may be. In the case of a CC it is not necessary to draw a normal sale agreement of the property. An agreement known as a Deed of Sale of Member's Interest will be drawn. The great advantage here is that *no transfer duty need be paid by the Buyer*. Please note, however, *that this does **not** apply to residential property*. In 2002 the definitions of "property" and "transaction" in the Transfer Duty Act were amended to include what is now defined as a "residential property company", that is a CC or Company in which at least 50% of the value of its assets constitutes residential property. *You can no longer transfer the share in such a company and save transfer duty*. What follows in this section applies *only* to business, industrial and agricultural properties owned by CC's or Companies.

A disadvantage of originally having such a property registered in the name of the CC is that transfer duty has to be paid at a flat rate of 8% of the purchase price. The property thereafter, however, can be sold by itself again and again without duty being payable provided it is the only asset of the CC. A transfer of the *member's interest* (the shareholding in the CC) alone takes place. This document should only be drawn by an attorney or the CC's accounting officer. It is essential that it be properly drawn as it takes the place of a normal sale contract and you will know how important it is that it be fully correct.

In a normal transfer it is very easy to synchronise registration on the same day that payment is made of the purchase price and any new bond is registered. They all take place simultaneously. This is not so easy with a sale of member's interest, however. The reason is that the transfer of member's interest takes place in the office of the *Registrar of Close Corporations* while the registration of any new bond is recorded in the office of the *Registrar of Deeds*. Simultaneous lodgement and registration cannot be arranged in such circumstances. It is important therefore to know how the transaction can and should be properly concluded.

Your conveyancer in this case will, as in normal transfers be faced with the probably registration of a *new bond* in the name of the CC applied for by its new members. It often happens that the parties agree that the new members will simply take over the liability under the existing bond and, perhaps, pay a further consideration as the balance of the purchase price. Some banks, however, frown on this practice as it does not give them the opportunity to properly sound out the new buyers. They will usually require any existing bond to be cancelled and a new bond applied for by the new members as if a normal transfer was taking place. This gives the bank an opportunity to enquire as to the financial stability, etc. of the

new members who will become, effectively, the new beneficial owners of the property. Their creditworthiness and viability as sureties will be fully investigated.

Officially the prospective Buyers cannot apply for a loan in the CC's name until they actually receive transfer of the member's interest. Such a loan will be essential, however, and in all cases where a cash sale cannot be arranged, to get around this they are allowed to apply as the *beneficial owners* of the member's interest in terms of the Deed of Sale, alternatively as *successors in title* to the member's interest. A copy of the sale agreement will have to be supplied to the relevant bank and you will also have to furnish its normal requirements such as the proof of income of the new members.

Furthermore, a Conveyancer cannot transfer the member's interest until the purchase price is fully secured. For this reason, it is common practice to *register the mortgage bond first* and, as soon as possible thereafter, the cession of member's interest. To protect all parties the guarantees to be issued will be made payable on the Conveyancer's advices, not only that the bond has been registered, but also that the transfer of member's interest has taken place. This may all sound highly complicated if not confusing, but if you are not certain about the procedure, your Conveyancer will be able to handle the matter on your behalf.

*It is not wise to draw a normal sale contract selling the property with a provision that a Deed of Sale of Member's Interest will supplement it as is often the case.*

What if one of the parties later refuses to sign the second contract? If your Sellers and Buyers want to transfer the member's interest and not the property it is better to draw a property Deed of Sale of Member's Interest right from the start.

A clearance certificate will not be required but some provision will have to be made to ascertain the date of the Buyer's liability for assessment rates, etc. Your conveyancer will charge a substantial fee for all his work which will supplement the transfer fee and normal mortgage bond fees will also apply. The Conveyancer's fee should not be more than the normal transfer fee which would otherwise be charged for the transfer of the property.

*A word of extreme caution, however, is needed here. When you transfer a property it is easy to ensure that nothing but the property is being transferred. A close corporation, however, can have other assets and liabilities. A transfer of a member's interest also transfers each and every debt of the CC. You have to be very careful to ensure that the only asset the CC has is its property and that there are no other debts for which the CC remains responsible. When you transfer a property through a Deed of Sale of Member's Interest, you effectively transfer all the baggage that goes with it. Unknown creditors of the CC can still thereafter attach the CC's property to settle their debts. The moral of the story? You need to advise your Buyers against taking transfer of the member's interest alone unless you can be certain that the CC has no hidden debts.*

The Deed of Sale of Member's Interest can contain a normal clause making provision for the payment of Agents commission in the same form as in a normal sale contract. It will be payable on execution of any bonds to be registered together with the registration of the relevant CK2 form.

### iii. Trusts and other Juristic Persons

Trusts are similar to CC's in that they are treated generally as separate juristic persons (although, strictly speaking, a Trust is not a "person" – only its beneficiaries are). Once again, a Trust can only be held liable for its own debts and the personal creditors of the creator of a trust cannot attach the Trust's property to liquidate the founder's debts. The same protection against creditors applies to prospective Buyers here.

Some of the differences between a Trust and a Close Corporation as far as immovable property is concerned are the following:

- *The Trustees of a Trust act only in a fiduciary capacity for the beneficiaries of the Trust whereas the members of a CC act directly in their own interests.*
- *The Trustees do not own the Trust which exists for the benefit of its beneficiaries. (The founder of the Trust and its Trustees can be nominated as beneficiaries, however, although the trustees may not be the sole beneficiaries as then no actual fiduciary capacity exists). The members of a CC are, however, its owners and the CC exists for its own benefit.*
- *Transfer duty for Trusts is currently the same as for a natural person*
- *If a member of a CC dies, his interest in the CC and therefore in any property the CC owns will become liable for estate duty as if he owned it himself. If a trustee passes away, however, the value of any property in the Trust will not become liable for estate duty*
- *Trusts also attract a high capital gains tax*

When selling to a nominee for a trust to be formed you are faced with the same potential delays and problems as mentioned for Companies as well as the danger of double transfer duty mentioned earlier. Avoid nominee sales.

There are other associations which are similar to CCs and Trusts, such as churches, welfare organisations, Rotary clubs, etc. Many of these are registered as associations not for gain, commonly known as Section 21 Companies. These do not have shareholders or members holding percentage shares like those of normal companies and CC's. Their members are only numbers for voting purposes and other similar functions and, if the association was ever to be disbanded, its assets would have to go to a similar association and cannot be awarded to its members. Most of these are exempt from transfer duty in cases where property is purchased purely for ecclesiastical or other gratuitous purposes. Much more could be said here about juristic persons, but the aspects mentioned here are those you will usually be faced with when selling property to CCs, Trusts and other organisations.

## **6. Purchase Price**

### **a) Evaluation Methods**

The Purchase Price is usually determined when taking a mandate which is then used for marketing a property for sale or for rent. This amount can vary once an offer is made by a prospective buyer or tenant.

There are three main methods used when conducting a property evaluation. The most prominent and preferred method to use is the comparison method, as it's directly linked to current market transactions.

✓ **Comparison Method**

The comparison method is used to value the most common types of property, such as houses, shops, offices and standard warehouses. Ideally the market should be stable and there should be multiple, recent lettings/sales of comparable properties (same size, location, condition etc). The best comparable factors should be selected and analysed, and thereafter adjustments can be made for their differences. Finally, an estimated market value can be created.

✓ **The Residual Method**

The residual method could be used to value property with development potential or vacant land that is having its current use changed to something more profitable.

✓ **The Investment Method**

The investment method can be applied to determine the market value of a freehold or leasehold interest in property from its potential to generate future income. It is typically used for the main forms of properties where a tenant is providing the landlord with an investment return on his capital cost (purchasing the building). Using this method, the comparable property transactions of sales and lettings are analysed to find the revenue.

The profit is thereafter applied to the future rental income, which is discounted back to the present day giving the net present value (NPV). This is finally used as an indicator of how much the building is presently worth.

**b) The Purchase Price**

The purchase price is determined with all of the above taken into account and the purchase price is pre-determined with the seller, however, this might be an overpriced property and it is the agent's duty to do price council with the seller.

The buyer will have his own price determined on the information given to him as far as the property advertisement as well as the guidelines from the agent.

It is imperative that the seller and buyer make use of all available tools to price the property and to offer the seller a purchasing price that is based on facts and not just an offer to see what he can get away with.

All amounts stipulated as the purchase price in a mandate or sale agreement need to be in numbers as well as written out, this alleviates discrepancies on a legally binding contract.

The **Gross Purchase Price** is the purchase price which is inclusive of commission. When concluding a mandate or a sale the gross or full purchase price is always the Purchase Price noted on the agreement which is always inclusive of commission, unless stated otherwise.

## **7. Deposits**

The conclusion of every sale depends to a large extent on the purchaser's ability to finance the purchase of the property. Although there are numerous variations in the methods used, the ones you will encounter most often are:

- a) Cash transactions
- b) Part cash, part mortgage bond transactions; and
- c) 100% mortgage bond transactions

### **a) Cash transactions**

This means that the Purchaser has enough cash available to pay the full purchase price plus costs. He doesn't need a home loan and he doesn't need to sell another property. This is the ideal Purchaser.

However, you need to make sure that he *does have* the cash, and that he knows when it must be available. When qualifying this purchaser, find out:

- ✓ how the money is invested e.g. in fixed deposits, and
- ✓ how much notice must be given to release it.

Using an estimate of how long transfer will take, the agent must agree with the purchaser the approximate date when he must be able to pay the purchase price over to the conveyancer.

### **b) Part cash / part mortgage bond transaction**

This is the most common method of payment. The Purchaser has a certain amount of cash available and qualifies for a home loan to make up the difference.

Commonly the cash available is used to pay the deposit and some or all of the costs, and the home loan is used for the balance.

### **c) 100% mortgage bond transaction**

This means that the purchaser has no cash and is wholly dependent on a home loan to pay for the property.

## **8. Guarantees**

### **General**

Once a property has been sold the seller's Conveyancer is appointed to attend to the transfer of property. One of the functions of a conveyancer is to secure the purchase price of that property.

To secure the purchase price, the conveyancer must either have received payment of the purchase price in cash and have the actual funds in his trust account. Alternatively, the

conveyancer must have received a **guarantee** for the payment of the purchase price issued by a registered South African Financial Institution.

All standard offers to purchase a property contain a clause that obliges the purchaser to either pay the purchase price in full in cash or to secure the purchase price by means of a guarantee issued by a registered financial institution. The guarantee must set out the value of the guarantee and must be payable upon the registration of the property from the Seller to the Purchaser on the date it is registered in the deeds office.

The guarantee is normally to be delivered within a specified period of time which is usually stipulated in the offer to purchase.

***a) What is a guarantee?***

A guarantee is a document issued by a registered South African Bank or Financial Institution that guarantees the payment of funds upon the happening of certain events.

Guarantees are signed by a representative of the issuing bank, or an authorised agent who signs the guarantee by virtue of a power of attorney.

On registration of transfer of the property from the Seller to the Purchaser in the Deeds Registry, the conveyancer will notify the financial institution that the property has been registered and call for payment of the guarantee. The guarantee is then paid over to the conveyancer in terms of the guarantee into the attorney's nominated trust account.

***b) The source of the guarantee***

The source of the guarantee depends on the terms of the individual agreement entered into. If the purchase price is to be secured by a mortgage bond, the guarantee will be issued by the bank that granted the mortgage bond. This is done with the assistance of the attorneys appointed to register the mortgage bond.

If the purchase price is to be secured in cash, there are two ways to issue the guarantee. The first method would be for the purchaser to pay the funds into the conveyancer's trust account and allow the attorney to issue the necessary guarantee. Most attorney's do not charge for the issue of this guarantee. The Purchaser will further receive interest on the funds in the conveyancer's account.

Alternatively, the Purchaser can leave the funds in his banking account and request his bankers to issue the required guarantee. The conveyancer would provide the guarantee requirements to the bank. The disadvantage in this method is that the banks do charge a fee for the issue of this guarantee. The fee varies from bank to bank.

***c) A matter of trust***

Purchasers often enquire whether they can effect payment of the purchase price on registration, without the issue of a guarantee. The answer to this question is **no**. The reason is that the conveyancer has a duty to the Seller to secure the purchase price, so that on

registration the payment of that purchase price is guaranteed. This is not possible without a valid guarantee.

This is not a matter of trust but rather one of practicality and contractual compliance.

## **9. Mortgage Bond**

Because home loans and mortgage bonds play such an important part in your work as an estate agent, you need to understand what they are and how they work.

### **a) A mortgage bond is a LEGAL DOCUMENT in which**

- i. The LENDER e.g. the financial institution, agrees to lend the BORROWER (your purchaser) money to buy the property, and
- ii. The BORROWER pledges the property as security for the loan – should he default on repaying the loan, the lender can repossess the property and sell it to recover its money.

If the applicant does not qualify in terms of his income earning capacity he may provide someone (usually a close relative) to stand SURETY for his loan – the financial institution will ADD the surety's income to the purchaser's income when qualifying him.

### **b) Why is a Mortgage Bond Registered?**

A bond is registered with the Title Deed in the Deeds office for the following reasons:

- ✓ To make its existence public knowledge.
- ✓ To prevent the mortgagor (purchaser) transferring the property to someone else without settling his debt to the mortgagee (bank).
- ✓ To protect the mortgagee in the event that the mortgagor becomes insolvent; if that happens, the mortgagee normally has first claim against the proceeds of the insolvent estate when it is wound up.
- ✓ To protect the mortgagee in the event that the mortgagor defaults on repaying the loan; it can repossess the property and sell it to recover its money.

### **c) More than one mortgage bond**

There is no limit to the number of bonds that may be registered with the same property as security. It often happens for instance, that a purchaser takes out a bond to finance the purchase of the property and later – maybe several years later – takes out a second bond to finance alterations to the property. They need not be with the same bank. If the mortgagor becomes insolvent, the mortgagee on the first bond has the first claim on the estate.

Normal bond registration costs must be paid for each additional bond.



***d) The Mortgage Bond***

A lender (bank etc.) lends money to the purchaser of immovable property, who registers a mortgage bond over his immovable property in favour of the lender.

The borrower grants the bond (mortgagor) and the lender hold the bond (mortgagee).

The property mortgaged is usually the purchased property, but it can be another property owned by the purchaser.

***e) The Mortgagee's (lender's) right***

The bondholder is entitled to have the mortgaged property sold in execution if the mortgagor fails to fulfil his payment obligations.

A Court Order must be obtained, unless the debtor consents to the sale in writing.

The bondholder has a preferential claim to the proceeds of the sale if it is sold subsequent to the insolvency. Only if any proceeds remain after the bondholder's claim will the other concurrent creditors receive payment.

The bondholder does not own the property – the purchaser does.

***f) The Mortgage Loan***

The amount of a mortgage loan usually constitutes a percentage of the value of the property (as determined by the bank's valuer).

He will take the purchase price by a bona fide seller into account.

An estate may never be party to increasing (fraudulently) the purchase price on the contract of sale in order, so by doing, to enable the purchase to obtain a larger loan.

There is no limit on the number of bonds that can be registered over a property. The first bondholder has a preferential claim (first in time, first in rights) if the property is sold in execution.

If there is a shortfall in the purchase price, the seller may be willing to grant the purchaser a loan for the outstanding amount against registration of a second bond over the property (called a 'kustingsbrief')

A "second bond" clause in an agreement of sale must be carefully worded.

A property cannot be transferred to a purchaser unless the existing mortgage debt has been paid in full and the bond is cancelled.

A purchaser can 'take over' the seller's bond, but this requires the written consent of the bondholder (not common practice).

***g) The practical implications of a mortgage bond***

The offer to purchase must be made subject to the condition that a mortgage loan be approved by a certain date.

The purchaser must apply for the loan as soon as his offer has been accepted.

Once the loan has been approved, the contract becomes binding.

The seller receives the full purchase price on date of transfer.

Simultaneously with transfer, a mortgage bond is registered in favour of the bank and the amount is paid to the purchaser and by the purchaser to the seller.

The conveyancer sees that bank guarantees are issued prior to registration of transfer.

The purchaser will probably have to pay the financial institution an Inspection fee as well as bond registration expenses.

Bond registration costs have to be paid to the conveyancer attending to the registration of the bond (fixed tariff).

#### ***h) Mortgage bond clauses***

The mortgage bond clause usually takes the form of a suspensive condition.

The amount of the loan and the approval date must be added.

#### ***i) Other costs***

If a buyer makes use of bond financing, the attorney will charge a bond registration fee. This figure is based on the bond amount and is subject to VAT.

The bank that grants the loan will also charge a valuation fee, which is also subject to VAT.

#### ***j) Securities***

##### ***➤ General***

- ❖ If a property transaction is not done on a cash basis, the buyer will have to borrow money and offer security to the creditor.
- ❖ Security is required to ensure the repayment of the debt.
- ❖ The two main types of security are personal and real security.

##### ***➤ Personal Security***

- ❖ Someone binds himself personally to the creditor for the repayment of the borrower's debt.
- ❖ The most common form of this is surety. A surety agreement must be in writing and signed.

- ❖ The agreement must contain the identities of the creditor and the surety, the debtor, the nature of the debtor's obligations and the extent of his liability.
- ❖ If the debtor does not pay his debt, the creditors can claim from the surety. The creditor must first claim from the debtor.
- ❖ Should a surety bind himself as 'surety and co-principle debtor', the creditors can claim directly from the surety without first claiming from the debtor (the surety then has a right of recovery against the debtor).
- ❖ A spouse married in community of property cannot bind himself as surety unless the other spouse has given written consent, which has been signed by two witnesses.

#### ➤ **Real Security**

- i. A real security is a limited real right which a creditor has over the property of another to secure the repayment of the debt.
- ii. This right is established by means of an agreement (pledge, mortgage bond) or tacitly by the operation of law (tacit hypothec, e.g. a builder's lien).
- iii. On insolvency the tacit hypothec ranks directly after the first bondholder.

#### ➤ **Pledge**

- ❖ A pledge is the right a creditor has over the movable property of another to secure repayment of the debt.
- ❖ It can be in the form of pawning an article or pledging of shares or insurance policies.
- ❖ On non-payment, the pledged property is sold to settle the debt.
- ❖ The creditor must return the pledged property when the pledge is extinguished.

#### **k) Notarial bonds (not for property transactions)**

A notarial bond is a bond registered over the movable property of a debtor.

The property does not have to be delivered to the bondholder.

Notarial bonds are used mainly for financing of farms and industrial properties (farming equipment, machinery, etc)

### **10. Subject to the Sale of Another Property**

Sellers often have to accept 'subject to' offers on a property. What does this mean for the buyer and seller?

In any sales agreement, there are some clauses that can cause a certain amount of confusion.

In terms of property sales, a common clause that is included in many agreements is that the sale of the property is subject to the sale of another property. This is a suspensive condition, meaning that the sale of a property is subject to the sale of another property the purchaser owns, which simply means that if that sale of the purchaser's property does not take place the sale lapses and therefore no cancellation of such a sale is necessary.

When selling a home on the condition that the sale is subject to the sale of the purchaser's property, it merely means that the purchaser needs to sell his property in order to raise funds to pay the seller. Should the purchaser not sell his property, it means that the seller has, technically, not sold his property.

Things go wrong as they sometime will, which is why the "subject to the sale of another property" clause in any offer to purchase should include a condition to protect the seller.

The intention of any seller when they put their home on the market is to sell the house and get the money as soon as possible. When accepting a "subject to" offer which includes only a simple term such as "this offer is subject to the sale of the purchaser's property, Erf 333 Homestead, within 60 days " will mean that the seller is bound to this one purchaser for 60 days and that he cannot sell to another buyer within the 60 day period. Should the purchaser not sell his property within the allotted time, the seller's home is placed back on the market."

In order to protect the buyer and the seller, the terms and conditions in the offer should state that the "subject to the sale of another property" clause is limited to a certain period of time, which needs to be realistic. The seller should also be able to keep on marketing his property within this period. Should the seller receive another offer within the period he needs to give the existing buyer an option to eliminate the subject to condition. The seller should also have the right to accept an offer with better terms and conditions. This way both parties' intention is clear and both parties are protected and will not waste each other's time."

The advantages of the "subject to" clause for the seller would only really apply if he is still allowed to market the property and if he is able to maintain control over which offers can be accepted. The agent should look after the seller's interest in regard to a 'subject to' sale.

"Subject to" clauses can be much more advantageous for the buyer in that if the purchaser is not in a position to pay for the home without receiving funds from the sale of his current home, the clause will protect him. But, the purchaser should not at any time eliminate this clause unless he has other means to pay for a property.

A disadvantage for the purchaser is that another buyer who has sufficient funds available immediately may come along and buy the property. But if procedure is followed properly and if all parties abide by the clauses of selling a home "subject to the sale of another" it should be easy, but there are a few golden rules which are important to remember in the process:

- i. The purchaser, who needs to sell his property say within 60 days, needs to put his property on the market at a realistic market value in order to sell within the given period. The estate agent selling such a property should give the purchaser ample information to establish a realistic market value.
- ii. The buyer should not blame anyone if he is not able to compete with a cash offer. The purchaser should then accept that they have not sold their home and the intention of the seller is to get the money from the sale of his home as soon as possible.

Another point of importance for sellers is to note that it is common practice, especially in cities where people move from one suburb to another to be closer to schools etc., that most purchasers are not in a position to purchase other than with a "subject to" condition.

In general, we have noticed that a "subject to" offer normally comes in higher than a cash offer. The reason for this seems to be that the purchaser always thinks that he can get more for the property than what it is worth, only to find out later that the unrealistic price cannot be achieved.

## **11. Voetstoets, Latent and Patent Defects**

Section 4.1.1 of the Code of Conduct + CPA =

Questions about the appropriateness of the "Voetstoets" clause =

the "birth" of the "Property Condition Report" =

### **a) Introduction**

Section 4.1.1 of the Estate Agents Code of Conduct provides that an estate agent who has a mandate to sell a property shall:

*"convey to a purchaser .... all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge **and** which are or could be material to a prospective purchaser."*

Add to this the Consumer Protection Act, and the confusion it has caused to some players in the market place with regards to the extent of its application, and the result is doubt about the validity of the inclusion of a 'voetstoets' clause in a sale agreement, and the birth of a "Property Condition Report".

The "Property Condition Report" - How practical and appropriate is it to obtain one? What reliance should be placed on it?

Some estate agents have gone so far as to have ***sellers forfeit their right*** to sell their property 'voetstoets' and are attaching a copy of the "Property Condition Report" as a disclosure of the defects in the property and ***including a warranty*** by the seller to the effect that these are in fact the only defects in the property.

### **b) What is an estate agent to do?**

Before attempting to answer this question, several issues require consideration; these are:

- ✓ Who is the estate agent's client?
- ✓ Who does the Consumer Protection Act apply to?
- ✓ What is the meaning of 'voetstoots'?
- ✓ What are latent and patent defects?
- ✓ How and when does the 'voetstoots' clause protect a seller in respect of latent and patent defects?
- ✓ What are the obligations of an estate agent to the Seller, the Purchaser and his profession?

**c) Who is the Estate Agent's client?**

The Estate Agents Code of Conduct defines the estate agent's client as: - "a person who has given an estate agent a mandate ...."

An estate agent can be given a mandate by either a seller or purchaser, but generally the mandate is given to the estate agent by the seller and this article will limit itself to such sellers' mandates.

Assuming it is the seller of a property who gives an estate agent a mandate then the Seller is the principal of that estate agent. It is to the seller that the estate agent owes the utmost duty of care.

*It is the seller that employs the estate agent and pays the estate agent his commission.*

There ought to be no confusion by an estate agent as to who his client is.

Any confusion that exists is caused by section 4.1.1 of the Code of Conduct.

Section 4.1.1 of the Code of Conduct ***imposes upon the estate agent*** a duty to disclose facts concerning the property that he may or should have personal knowledge of and which could be material to a purchaser. ***That is, an estate agent cannot keep information he is aware of away from the purchaser if he believes that that information is, or could be regarded as, material by the purchaser.***

***There is however no obligation on an estate agent to carry out an investigation in respect of a property so as to place himself in a position to make representations regarding that property or to carry the burden of inspecting the property for patent defects which can easily, and which should, be ascertained by the purchaser for himself.***

The obligation to convey facts concerning the property that are or should reasonably in the circumstances be within the personal knowledge of the estate agent, ***does not mean that the purchaser becomes the client of the estate agent.*** What it means is that the estate agent cannot withhold information, that he has, or should have knowledge of, ***to the detriment of***

the purchaser. That is, the agent has to conduct himself honestly and openly in his dealings with the Purchaser.

**d) Application of the Consumer Protection Act**

It is by now accepted and understood (hopefully!) that the Consumer Protection Act ***does not apply*** to the once-off private transaction between a seller and the purchaser of a property, irrespective of whether or not the services of an estate agent are engaged by the seller in procuring the purchaser.

Where the services of an estate are utilised, the Consumer Protection Act applies to: -

- i. The Mandate Agreement between the seller and estate agent; and
- ii. The marketing service that the estate agent supplies to the purchaser, which means that there must be:
  - Responsible marketing
  - Honest dealings
  - Equality and privacy
  - Full disclosure of information

However, this is nothing new to estate agents – all these requirements have always been imposed on estate agents by their Code of Conduct.

So why the confusion? Why the perceived need by some estate agents to limit their client, the seller's right, to avail himself of the protection of selling his property 'voetstoots'?

**e) The meaning of "Voetstoots"**

'Voetstoots' is a Roman Dutch term used to describe, in one simple word, the action of buying something "as is," as it now stands and in whatever condition it is.

It is essential that all sales of properties purchased second hand, which properties are expected to have deteriorated through normal wear and tear, or which may be defective to some extent as a result of constant use, or through natural decay over a period of time, be sold "as is".

The basic purpose of the 'voetstoots' clause is to shield the seller from any action by the purchaser on discovering any defects he was not aware of when purchasing the property and from doing anything which will jeopardise the transaction. The 'voetstoots' clause also draws a line in the sand as to when the seller's responsibility for the property terminates.

The 'voetstoots' clause completely absolves the seller from any ***patent*** defects. However, the exemption is not absolute in respect of ***latent*** defects.

**f) What is a latent and patent defect?**

A **patent defect** is a defect that is **clearly visible on a normal inspection** of the property.

*It is a purchaser's duty to acquaint himself with the general condition of the property on purchasing it as he cannot later claim that he did not see such defects.*

A **latent defect** is a defect that **cannot be seen or ascertained** upon a normal inspection of the property.

**g) What protection does the "voetstoots" clause provide?**

The 'voetstoots' clause protects the seller from all patent defects as well as latent defects, which he, the seller himself, was **not aware of** at the time of the sale.

**If the seller knowingly conceals, or does not disclose a latent defect which he is aware of, the seller will be liable to the purchaser for the repair of that latent defect provided the seller can be said to have believed that a disclosure of the defect could affect the purchaser's perception of the property negatively.**

**h) The Seller, Purchaser & Estate Agent's Obligations**

So, would a "Property Condition Report" setting out what the seller knows about the property not be an ideal solution?

Such a report would "remind" a Seller to disclose all he knows about the property; assist the purchaser in ascertaining the condition of the property; and absolve the estate agent from any allegation of any non-compliance of Section 4.1.1 of the Code of Conduct. The seller can after all, still avail himself of the protection of the 'voetstoots' clause in respect of any other defect that he does not disclose because he is not aware of it, right? NO!

The "Property Condition Report" is generally obtained at the time the mandate is granted. The average time it takes to sell a property is reported to be just over 105 days. A lot can happen to a property between the grant of the mandate and the sale. The list could very well be inaccurate by the time of sale, and any reliance placed thereupon would be ill-placed.

Furthermore, what if the estate agent who obtained the mandate is given an authority or instruction to appoint sub-agents, or to multi list the property with a multi listing organisation? What happens if the sub agent does not pass the information or the details on the report to the purchaser or if the condition of the property has changed since the report was made, or the sub-agent fails to make any reference thereto in the Sale Agreement? After all, the seller having disclosed and given such a list to the listing agent, would be entitled to expect his listing agent to assume responsibility for passing this information on.

***If any sub-agent of the listing agent does not do his job properly, the listing agent will be answerable to his client, the seller.***

Why would an estate agent take on the seller's duty to disclose any latent defects he may be aware of?



In order to avoid any arguments between the seller and the listing agent after conclusion of a sale with regards to what was and was not disclosed by the seller to the estate agent, we would suggest that it be recorded in your mandate agreements that the seller accepts and acknowledges that it is his duty and responsibility to disclose any latent defects that he is aware of, and/or any issue regarding the property which may be of relevance to the Purchaser in any sale agreement that he may conclude, and that the Seller therefore absolves the estate agent from any liability arising from any claim wherein it is alleged that there was a duty on the estate agent to disclose such defects to the eventual purchaser of the property.

Most, if not all, sale agreements, contain an acknowledgment by the purchaser to the effect that the purchaser has inspected the property and accepts it together with its fixtures and fittings in the condition that he saw them at the time of conclusion of the agreement – that is a voetstoots clause.

We suggest that purchasers be asked to place their initials next to this section of the sale agreement i.e. the clause that refers to the fact that the purchaser is buying the property in the condition that he saw it, and where he acknowledges having inspected the property and its fixtures and fittings.

Having clearly advised the Seller of his obligations (by the inclusion of our suggested clause in the mandate agreement) and the purchaser of his acknowledgements with regards to the condition of the property (emphasised by the purchaser initialling the acknowledgements and 'voetstoots' clauses in the agreement), the estate agent will have taken adequate care of both parties and ensuring that they know exactly what their rights and obligations are.

What about the estate agent taking care of himself by ensuring that he has at all times complied with Section 4.1.1 of the Code of Conduct?

***The estate agent would have inspected the property for purposes of listing it and advising the seller as to what purchase price the property should be marketed at.***

In making his assessment, the estate agent would have noted the existence of any **patent** defects which would have affected the valuation of the property and in all likelihood the estate agent would have, or should have, enquired of the seller whether there is anything about the property that could possibly affect its nature or value which is not readily visible.

The estate agent can then use these notes taken at the time of the inspection of the property to disclose any facts that could be material to a prospective purchaser. There is however no need for the estate agent to take over the seller's obligation to disclose these facts himself to the purchaser or to create any impression to the purchaser that a thorough inspection of the property is unnecessary as the seller has signed a "Property Condition Report".

***If the estate agent takes on the obligation of disclosure from the seller, then the estate agent bears the responsibility for the disclosure to the purchaser. And if the estate agent makes any representations about the property and its condition to the purchaser, the estate agent runs the risk of the purchaser not inspecting a property properly and placing reliance on the estate agent – exclude or limit the operation of the voetstoots clause and a can of worms is opened.***

Furthermore, issues can also arise regarding the defect disclosed and the extent of it. If the agent is going to take on the responsibility of disclosing defects, he will need to be adequately informed of the nature and extent of the defect, for rest assured, having taken on the responsibility of disclosing a defect from the seller and having passed on the information regarding the defect to the purchaser, arguments will arise regarding representations made as to the severity or extent of the defect at a later date.

### *i) **Summary***

So, to recap:

- ✓ The estate agent's client is the seller. The estate agent's mandate is to procure a willing and able buyer. There is no need for the estate agent to take on the responsibility from the seller of disclosing defects in the property.
- ✓ The Consumer Protection Act does not apply to sales of property where the seller's ordinary course of business is not that of selling property.
- ✓ The 'voetstoots' clause has a relevant part to play in the sale of "second hand" property and any agent that removes it from the Sale Agreement is doing his client, the seller, a disservice.
- ✓ The seller is the party with the best knowledge about the nature and condition of the property. The estate agent should not take over the responsibility of disclosing any patent or latent defects which are known to the seller.
- ✓ Similarly, the estate agent should not take on the purchaser's duty to inspect the property. The purchaser must view the property and inspect it and the purchaser must then either buy the property, warts and all or not at all.
- ✓ If the estate agent has any personal knowledge about any fact concerning the property that could be **material** to the purchaser, he is required to disclose it in order to comply with Section 4.1.1 of the Code of Conduct. Remember, a cracked tile in the bathroom, a broken hinge in a cupboard door etc. is not a material fact. Those are patent defects which are easily discoverable by a simple inspection of the property by the purchaser. However, if you know that half of the property is subject to any municipal bylaws or rezoning etc., you need to disclose this to the purchaser as you have knowledge of it, and it would be deemed by any reasonable person as being material to the purchaser.
- ✓ Be honest and truthful in your dealings with the Seller and the Purchaser – but do not take on their duties and obligations

## **12. Fixtures and fitting**

### *a) **The basics principals of determining a fixture***

A common term of any property sale contract is the one dealing with fixtures and fittings. The clause will read something like this:

*The Property is sold inclusive of all existing FIXTURES AND FITTINGS of a permanent nature which the Seller warrants are his exclusive property and fully paid for. These together with the following movable items which are separately included, are sold voetstoots: Including but not limited to:- Stove/oven \_\_\_\_\_ (make) in working order, TV aerials, DSTV dish and mount, wall to wall carpets, curtain rails, light fittings, built-in cupboards, kitchen units, keys and remotes, municipal bins, pool pump and equipment and gas bottles for gas installations.*

It is quite obvious that items such as all buildings and outbuildings, walls, gates, driveways, etc., are fixtures and go with the property. Problems sometimes arise, however, where the nature of an object is not that easy to establish. Do television aerials, curtain rails, loose water features and the like constitute fixtures or not? These are often the subject of dispute between the parties after a sale especially where the Seller has removed items the Buyer considers part of the property. It is important to know how to determine what a fixture is and to also know how to anticipate and prevent later disputes between parties.

#### **b) The legal definition of fixtures and fittings**

It would seem obvious that anything attached or affixed to the property would automatically constitute a fixture or fitting and that all loose items that are movable are not included in the sale unless otherwise agreed. To a large extent this is true but there is a slight distinction in law as to how to define fixtures and it is essential to know this as it leads to various exceptions. The 'threefold test' was set out in a Supreme Court Case as follows:

- ❖ *The **nature** of the particular article;*
- ❖ *The **degree** and **manner** of its annexation; and*
- ❖ *The **intention** of the person annexing it*

The object must, by **nature**, be capable of becoming part of the property itself and have the character of belonging essentially to immovable property. There must be an *effective attachment*, either by sheer weight or by physical connection, and there must be an **intention** that it be a permanent feature of the property. The key question here to ask is *whether it is intended to be permanently annexed to the specific property or not*. This is the fundamental principal to apply in each case to determine if something is a fixture or fitting or not.

#### **c) How the principle is applied in practice**

All **essential** items which make a home what it is are **fittings** and belong to the property as permanent fixtures. This means all *wiring*, for example, which service any plug points, light fittings or other similar connections is part of the property. If a previous owner has taken an extension wire along a skirting board from an original plug point to service another plug point and has screwed in to the skirting board on the opposite side of the room, the whole apparatus becomes part of the property and may not be removed.

It can therefore be argued that as a stove connection is part of a fitted wiring, the stove itself had to be considered a fitting – this decision has only ever been applied in “Gauteng” but in KwaZulu Natal, for example, a Seller has always been allowed to remove his stove.

This case applies too strongly the principle that anything largely used in any home and generally popular must be regarded as a permanent feature and be provided to the new buyer. If this is true then other items such as fridges, microwave ovens, washing machines and other similar appliances logically also become permanent fixtures.

*Ultimately it is always sound rule to regard most things bolted, screwed in, nailed, hooked or otherwise attached to the building or features of the property as fixtures and fittings which cannot be removed.*

(a note on stoves... in Gauteng, a stove is considered a fixture – however, a Seller has the right to remove an expensive stove and replace it PROVIDED that it is stipulated in the contract. If the purchase price is presumed to be so because of, for example, a Smeg gas stove valued at R50k, then make sure you specify the type, make and model of the stove as often these are removed and replaced with much cheaper stoves – ideally get your Seller to *replace these items before putting the house on the market* – same applies to light fittings, where often a property is purchased with ‘stunning’ light fittings, only for the Purchaser to realise afterwards that they were never part of the sale).

#### **d) Specific exceptions: Movable and immovable**

If the test was simply whether an item was affixed to the property or not, it would be easy to settle disputes between Sellers and Buyers. Remember, however, that the basic test is *whether the object is intended to be permanently attached to the property or not*. The principle leads to certain exceptions and it is very important to know how to determine these in each particular case. The method to determine such matters is as follows:

*If what were formerly movables are joined to buildings not for temporary but for perpetual use, whether they are beams or columns or marble pieces, they begin to be part of the building, and thus to be immovable.*

*..... these become permanent fixtures.*

There are a number of objects, which, by nature, are **movables** but which have the essence of permanent features and which may not be removed by the Seller on transfer of the property.

Applying the above principle, the test here is simply to ask if *the movable is specifically intended to be of permanent service to the property or not*. Under this heading all **accessories** to actual fixtures and fittings, which are essential to the make-up of the object as a whole, belong to it and are part of the property. Specific examples are:

#### **✓ Bar Stools**

Where a bar has been built into a lounge or some other part of the property and it includes certain loose bar stools which are an integral part of the structure being

made, for example, of the same type of wood as the bar counter, *these become part of the bar and are considered as fixtures*. They are considered as part of the unit as a whole because they were intended to be of permanent service to it and necessary for its use and exploitation.

✓ *Curtain Rails*

Where brackets belonging to a curtain rail structure have been affixed to the wall, the *rails* as well as any *rings* become part of the whole fixture as they are essential accessories without which the brackets serve no purpose. The whole structure must remain.

✓ *Swimming Pool Nets*

Any net which is especially designed to cover the actual pool on the premises and is held in place by *hooks* which have been affixed to the paving surrounding the pool becomes part of the structure. A loose net, which can cover any average pool, cannot be regarded as a permanent feature.

✓ *Fitted Carpets*

All carpets glued to the floor or otherwise actually affixed to it are permanent features. What of *loose* carpet which have been specifically cut to be a fitted carpet, exactly covering the floor throughout the room? Even though it is not stuck down to the floor it must be regarded as a fixture because *it is specifically intended to service that particular room and no other*. A regular carpet, however, that almost covers the whole floor is not a fixture as it can be used in any suitable room elsewhere.

Other similar items, such as the average lampshade in any room, will also be regarded as permanent features unless, for example, the lampshade matches the curtains exactly and is part of a décor the Seller will obviously want to remove. Prefab units, Zozo huts and Wendy houses are often used these days as servants' quarters and must in such cases be considered fixtures.

There are other movable items which are also to be included here simply because they are essential to make something immovable *function* which cannot be operated unless the accessories are handed over to the new Buyer. The principle again applies that items which form a unit of various components must remain in their entirety. Examples are:

✓ *Keys*

A Seller is obliged to hand over *all keys* which are required to make any of the locks on the premises work. If he doesn't have some of them, he will be required to get duplicates made. **This is one of the exceptions to a general principal that a Seller is not obliged to deliver things that don't exist.** For example, if a swimming pool is only half completed, a Seller is not obliged to finish it (unless otherwise agreed in the contract). Anything which is intended to *function*, however, must be accompanied by whatever movables are needed to make it operate.

✓ *Water Features / Pools*

Any special feature, such as a water feature in a home or garden, must include all movables which are needed to make it work properly. A loose triton placed above a pipe through which water flows is such a fixture if the water thereafter flows through the trumpet he is blowing into a pool below. Anything which constitutes part of the functioning unit must remain. A Kreepy Krawly unit will not be part of a swimming pool, however, unless it is either part of a specifically designed pool feature or is expressly included in the contract. A pool can be cleaned by other means.

✓ *Light Fittings*

All plug fittings, light fittings, light bulbs, and fluorescent tubes are fixtures because the lights or other electrical objects cannot *function* without them.

***e) Immovables that are not permanent fixtures***

While some movables are fixtures, many immovables are paradoxically not under the principle of what is *intended to be a permanent part* of the property. Such immovables can be defined as anything which is not of a permanent nature that will not damage the structure if it removed.

A typical example here is DSTV dish and bracket. The bracket is affixed to a wall and so becomes a fixture or fitting. The dish, however, can be comfortably removed without the bracket or the wall itself being damaged. It dish is obviously *not intended to be a permanent feature* as the owner will wish to remove it with his decoder when he leaves. In this case the *movable DSTV decoder*, which is being removed *cannot* function without the accessory, namely the dish. Unless the contract stipulates that the DSTV dis is to reman, the Seller is at liberty to take the dish with him when he vacates.

What of a normal TV aerial, however? Here the answer is not so easy to give because the average TV will operate off *any* aerial. If the principles as discussed above apply here, a TV aerial will be a permanent fixture because a vast majority of normal homes in SA have them and the popularity of TV generally implies that a Buyer will expect to find an aerial on his property. The wisdom of this reasoning has already been questioned and that it is implied that a normal aerial *cannot automatically* be said to be a permanent fixture. It is true that it is usually affixed in a more deliberate manner than a DSTV dish.

There is only one safe recourse here – *you must deal with the TV aerial on any property in your contact and either specifically include or exclude it*. The same applies to a security system control unit which the Seller may think he is entitled to unplug and remove on vacation of the property.

Another example of a fixed feature that is obviously not intended to be a permanent feature is a signpost, plaque or other form of decoration with a *family inscription* or motif such as “welcome to the home of John and Joan Smith”. In such cases the Seller will be entitled to removed them if they do not damage the structure. If, after unscrewing a plaque or removing a signpost, there are holes or other eyesores, the Seller is entitled to simply fill them in and restore the wall or ground (as the case may be) to its original state.

***f) Fixture, the Agent and the Buyer***

There is one simple remedy to any confusion about everything that has thus far been said. ***Deal with any uncertain or specific objects in your sale contract.*** Items that can be added to the printed section of the contract can include: cycads, koi fish and number, generator, but be careful not to include too many items that can be misleading if not specified and then excluded when concluding the sale. Rather use the contract and handwrite specific items. It is important to protect the Buyer at this point as there are many couldn't-care-less Sellers out there who will summarily remove everything they want to take with them when leaving the property. All items that could be disputed over should be specifically mentioned in the contract so that the Buyer does not find himself in an unfortunate legal wrangle after taking occupation.

It is also important to delete any items specified in the printed section that are not applicable to the sale, for example, fitted carpets when the property only has tiled floors. Be alert and check your contract reads according to the specific fixtures and fittings within the property.

In suitable cases the estate agent's mandate should make provision for the basic items that will go with the property so that there will be no dispute later. Your potential Buyer, when viewing the property, will presume that such items are included in the purchase price. As far as possible you need to protect the Buyer as, in so doing, you are actually protecting yourself from any unpleasant comebacks later.

**13. Occupational rent**

Paying occupational rent and the consequences of failing to do so should be as simple as paying your bond every month, but all too often other issues arise to complicate matters, usually because buyers and sellers have all sorts of preconceived notions about the laws governing occupational rent which invariably works in their favour alone. It is important to know what the myths are in this field and what the proper course of action must be in any given situation. It is always better to anticipate potential problems than to try and solve them later when they inevitably cause major headaches.

***a) Buyers Refusing to Pay Occupational Rent***

This is a common problem when the transfer is being delayed through circumstances on the seller's side. So often one hears buyers saying: 'I was told this transfer would be registered within three months. I would not have taken occupation if I had known it was going to be delayed because of some problem on the seller's side. So, I am refusing to pay any further rental and the seller must get his act together.'

Are they allowed to do this? Most sellers still have to pay their bond instalments monthly and, if the buyer defaults on his rental payments, the seller will be severely prejudiced financially. It will not help the buyer to say he could have obtained a cheaper rental elsewhere pending transfer of the property.

***Most importantly, however, is the law in this case. Anyone occupying another person's property on an agreed monthly rental is paying it because he is enjoying the full beneficial use of the property.***

Defaulting buyers think they can continue benefiting from this use without having to contribute towards it. **No law exists to allow them to do this just because the transfer is being delayed.** If buyers don't want to pay occupational rent, then they mustn't take occupation of the property. They have no legal right to stay in the property at no expense to themselves. It's a typical *quid pro quo* situation – I pay you a rental relative to the value of the property for the privilege of beneficially occupying it prior to transfer.

Our courts have consistently held that if the seller can resolve any delays in his transfer within a reasonable period of time without any real prejudice to the buyer (*and paying extended occupational rental is not regarded as prejudicial*), the buyer is not entitled to cancel the sale or deny his occupational rental obligations. In one case the transfer had already been delayed for nine months and, as the buyer could not show any real prejudice to himself, the Court decided that the sale remained valid with all its terms and conditions.

#### **b) Cancelling the Sale Because of Non-Payment**

***Most sellers, attorneys and estate agents believe that, if the buyer defaults on occupational rental, the seller can automatically cancel the sale if the buyer fails to remedy his breach of contract once he has been placed on terms to do so.***

A court decision said that a failure to pay occupational rental may well be a material term of a contract, but unless it strikes at the root cause of the contract (which is highly unlikely in most property sales), the sale may not be cancelled if the buyer has complied with all his other terms and conditions to ensure that transfer can still go through smoothly. The Seller retains the right to sue for the outstanding rentals at any time and he will know where to find the buyer's property if he needs to attach it to gain security for his claim.

***Sellers need to be cautious in allowing buyers to take occupation prior to transfer.***

As a rule of thumb, agents should do all they can to make sure that occupation may only be taken earlier in exceptional cases. Early occupation always gives the buyer time to discover all the latent defects on the property and buyers often react by threatening to cancel the sale or to use the next month's rental to pay for the necessary repairs.

***Even when occupation will only take place on transfer, your sale agreement should state what the rental will be if the parties agree to earlier occupation.***

This often happens when the sale is delayed for any reason and the parties have already made arrangements to move in and out by the anticipated date of registration. Too often they come to a private agreement about this without determining what the rental will be, creating problems when the seller wants to know when his first month's rental will be paid!

#### **c) Evicting the Defaulting Buyer**



What happens when a buyer is in occupation of the seller's property prior to transfer and the seller takes steps to cancel the sale because the buyer is in serious breach of contract for other reasons?

Even if the breach strikes at the root cause of the contract (a failure to pay the agreed cash deposit, for example), the seller cannot simply force the eviction of the buyer from the premises. It is true that an obligation to pay occupational rental does not create a tenancy if the contract stipulates this (this can even be argued without that stipulation), but this will not automatically allow the seller to sue for any outstanding rental and for an eviction order solely on the grounds that he gave the buyer sufficient notice to remedy his breach of contract and, when he failed to do so, also gave him written notice that he was cancelling the sale.

***If the buyer contests the seller's right to cancel, the seller will have to make an application to the High Court for an order declaring the sale properly cancelled.***

Only if he succeeds may he also proceed to get an eviction order. He can make a single application for both the declaration of the sale's cancellation as well as an order to evict the buyer, but he must get this order before he can boot the defaulting buyer out of his property.

In the interim, however, the buyer will remain liable for the full amount of occupational rental payable monthly if he chooses to remain in the property.

#### ***d) VAT and Interest***

Two other matters, affecting other amounts that may be payable, need to be covered as well. Firstly, if the sale is of a business, industrial or other type of property other than a residential property and the seller is a VAT vendor, he will probably have to pay VAT on the rental coming to him each month. This includes occupational rental. The test is whether the property is part of the seller's business enterprise, and in most cases it will be deemed to be so, especially if the seller is a juristic person (company, trading trust, etc). **VAT is payable on business rentals and you may need to make provision for this when concluding a business (or industrial) property sale.**

Secondly, sellers cannot summarily claim interest on occupational rental if it is not paid timeously and the contract makes no provision for this (and that is the case with most property sale contracts). Only when the seller issues a summons can he claim the current prescribed rate of interest over and above the rental outstanding. The interest obligation commences on the date when the summons is served on the buyer.

All these issues serve to back up the basic principle regarding early occupation mentioned earlier. It should only be agreed to by the seller when it is crucial to the conclusion of the sale. In all other cases the seller's best interests will only be looked after if occupation is to be taken no earlier than registration of transfer into the buyer's name.

## **14. Appointing Conveyancers**

***It remains a fixed principle in law that the conveyancer represents the seller no matter who appointed him.***

This is because the seller authorises the transferring attorney, by way of a power of attorney, to transfer the property to the purchaser.

The parties may agree to use the purchaser's transferring attorney, however, should the seller refuse, the transferring attorney of the seller must be used. Sometimes the agent insists that their attorneys on panel are used. Regardless of who requests the transferring attorney THE SELLER has the final decision.

This has been confirmed in a number of High Court decisions.

It is the purchaser's responsibility to pay the transfer fees and therefore they often feel that they have the right to appoint the attorney. However, the purchaser is responsible to raise the finance and to pay the full purchase price and costs, often by way of a bond, and the seller is generally more protected by his attorney managing these important elements and to ensure that these funds are received in order to effect an efficient transfer into the name of the purchaser.

The transferring attorney has to ensure that the purchase price is secured and available and a purchaser's attorney may be persuaded to rely on the assurances of his client, the purchaser, that the money is available. This could result in dire consequences for both the purchaser and the attorney should this prove to be incorrect. It is generally regarded that the seller, as the owner of the property, stands to lose more than the purchaser and therefore has a stronger claim to the appointment of the conveyancer.

Should the parties agree to use the purchaser's attorney it would be advisable to include a clause to such effect in the offer to purchase as well as the reasons for the appointment of such attorney.

#### **Agent's beware:**

These days it is increasingly common for buyers to try to enforce their own choice of conveyancer, especially those shopping around for discounts.

Some agencies have been guilty of aggravating the problem. Attorneys have personally experienced cases where the seller specifically intends to appoint them as their conveyancer, only for both of them to find that the agency has already engaged a conveyancer of its own choice to issue a quotation for the buyers fees with a 20% discount automatically included. The quotation is presented to the buyer before the seller is even aware that an OTP exists!

This is highly unprofessional conduct on the part of the agent and the buyer, and one can only guess at what the 'relationship' between the agency and the quick-fire attorney is. This is also a direct violation of the PPRA Code of Conduct, and should the agent/agency be found in contravention to the code of conduct a fine and/or other penalties will be levied against the offending party.

This sort of conduct is highly prejudicial to the interests of all parties to a sale.

#### **Examples:**

A purchaser, while still compiling his OTP, recently contacted an attorney and demanded a 25% discount on his fees as a right. The reason? Other conveyancers had done this for him before. When it was pointed out that the **seller had the exclusive right** to appoint the transferring conveyancer, who likewise had the right to charge a reasonable fee, he retorted, “why can’t buyers put up the transfer to any three conveyancers of their choice and accept the lowest quote?”

Another purchaser of an East Rand property, who had known for some time that a certain attorney was the nominated conveyancer, promptly (on bond grant) approached another firm in Nelspruit (!) for a reduced rate and, on obtaining a 25% discount, told the attorney he would no longer be using their services. The Nelspruit firm was originally unaware of the seller’s attorney being appointed and immediately withdrew its quote. Why would the seller want to use an unknown firm in Nelspruit?

These are only a few examples of buyers who think that, because they are paying the transfer fees, they should be entitled to shop around and engage whichever conveyancer offers the fattest discount.

Just one matter in which John Gilchrist Attorneys were involved should be sufficient to convince any seller that it is not in his interests to allow his purchaser to appoint a conveyancer of his choice. The seller here let his purchaser choose the conveyancer who soon advised the seller in writing that the full purchase price (R2.4 million) had been paid to him in cash. When some months later the seller enquired why the transfer was taking so long the conveyancer replied that he had been obliged to refund the deposit to the purchaser in full because he had instructed him to repay it! The conveyancer justified his action by saying he had been appointed as the purchaser’s conveyancer and had to act on the purchaser’s instructions. At the same time the seller discovered that the purchaser had totally demolished the seller’s home as well!

Fortunately, but only after some time and much sweating on the seller’s part, the situation was eventually resolved, but be warned!

***It is rarely in the seller’s interests to allow a purchaser’s conveyancer to do his transfer.***

When things go wrong, the conveyancer will shield the purchaser.

So, we’ve moved from the days where conveyancers were only allowed to market their services professionally so that the highest standards would be maintained and competition was based on service delivery alone, to a new era where the goose goes to the highest bidder (more correctly here, the *lowest* bidder!) For those who think the buyers have a point, it must be remembered that every buyer will one day become a seller and will then be the one needing the most protection.

***The only way we, as estate agents and other role-player can restrain property buyers from thinking everything must go their way is to maintain our own standards and to avoid yielding to demanding buyers.***

## **15. Agent’s Commission**

## An Explanation of the “Effective Cause”

### **a) Commissions Due in Terms of a Contract**

It is very important for estate agents to know precisely what they have to do to secure their commission in a sale as disputes often arise after a sale is concluded or, commonly, where Seller have deliberately or innocently avoided their agents when finalising sales with prospective Buyers.

The law at this point has been defined principally by South African case law as no specific law exists on the subject – only by referring to these cases will you know how to ensure your commission is fairly due and payable.

If you negotiate and conclude a sale between a Seller and Buyer and your contract clearly states that the Seller will be liable for commission on registration of transfer, or on the happening of some other event, or that the Buyer will be liable if he defaults, repudiates the sale, or causes it to be cancelled through his own fault, *your commission is secure as it has been contractually negotiated*. In the case of the average sale, once all the parties have signed and *provided the agent has signed to accept the benefits of the commission clause*, the commission becomes automatically payable. Your contract should, in fact, have a clause irrevocably authorising the conveyancer handling the transfer to pay you your commission, either out of the deposit paid or out of the proceeds on registration.

**Note: ensure you get an undertaking out of the Conveyancer to pay your commission on registration of transfer.**

Wherever a **sole mandate** is obtained which includes a clause stating that commission is due to the agent if the property is sold within the mandate period, whether by the agent or by anyone else, commission again becomes payable in terms of the mandate contract.

*Once again, the agent must sign the mandate himself to accept the benefit conferred.* It is also important here to be sure that your mandate is worded effectively as Sellers have been known to escape liability in some cases. In *Mendes v Ermelo Eindomme end Verhurlingsagente 1995(4) SA 821(T)* an agent sued for commission after an owner of a property sold it privately to a Buyer despite a clause in a lease agreement drawn by the agent giving him “an irrevocably sole right” to sell the property at any time during the lease “whether or not the owner wishes to sell it.” Despite the obvious effort made to tie the owner up in the contract, it made no mention of what would happen if the owner sold it privately and the agent’s claim for commission failed. The court held the agents “sole right” was to the exclusion of other agents alone.

In another case however, namely *The First Investment v Levy Bros Estates 1984(2) SA 881 (AD)* an agent’s mandate gave him “the sole irrevocably authority” to effect a sale on the Seller’s behalf and the Court interpreted this to mean that the Seller had deprived itself as well as anyone else to sell the property during the mandate period. The judge stated that “the estate agent was not merely given the sole mandate to find a purchaser, he was also vested with the sole authority to sell the property on the principal’s behalf. There appears to be little to choose between the two cases, the one speaking of a *sole right* and the other of a *sole authority* but, in the light of the outcome, it seems you need to be sure your mandates give

you an 'irrevocably sole authority' to sell each property you are given to sell. (In the *first* case the Court upheld an Agent's right to commission when he duly found a purchaser even though the Owner had changed his mind since signing the mandate and had decided not to sell his property).

## ii. **Causa Causans: The Effective Cause of a Sale**

What about other situations, however, where you do not have a signed contract, but you believe you are entitled to commission? There are numerous cases where this can occur, such as the following:

- Where another estate agent has hijacked your deal and signed a contract after you had done all the hard work and were about to conclude it.
- Where the Seller has concluded a private deal behind your back with the Buyer to expressly squeeze you out of your commission.
- Where your prospective Buyer has not signed your contract but has got a close relative or friend to sign another one mainly for his own benefit.
- Where a third party puts up part of the purchase price to secure a deal sometime after you have been left out of it.

In all these cases the most important question is whether you were the effective cause of the sale. The expression used here in Latin is *causacausans*, meaning simply: were you the "causing cause" of the sale?

A judge once defined effective cause in these words: "The Agent's instrumentality must have been in all the phases from the introduction to the sale consistent, uninterrupted, and a major positive force working towards the successful conclusion of the transaction. In other words, an agent had to be the dominant influence, or what the judge called the *overriding factor* in the sale. In a recent case an Agent introduced a prospective Buyer to a Seller but at the time the Buyer could not really afford the property. Nine months later, however, after the Buyer's financial situation had substantially improved, he again approached the Seller and a private sale was concluded. The Agent was not found to be the effective cause even though he had initially introduced the Buyer to the Seller and the property. This was indeed a factor without which no sale would have been concluded but it was not sufficient to determine the issue. The law looks at the subject like this:

## iii. **Causa Sine Qua Non**

This simply means what was discussed above – a *cause of sale without which the sale could not have been concluded*. It is *not enough*, per se, to earn your commission. However, an *introduction* of a Buyer to a Seller is *causa sine qua non*, a 'cause without which no' sale could take place but it must be accompanied by further causes, such as fixing the purchase price and settling the terms of payment. There must be an unbroken chain from the introduction to the conclusion of the eventual sale. The law does not recognise an "introducing agent" as a specific category. In *Aida Real Estate*

*vs Lipschitz 1971(3) SA873(WLD)* the judge stated that the law is usually framed as follows:

The duty of the estate agent, if he is to earn remuneration by way of commission for selling property, is to introduce to his principal (the Seller) a purchaser who is willing and financially able to buy the property, and he earns the commission if a sale is concluded with that purchaser at a stipulated price or price ultimately proved to be acceptable to the seller.

If a *new factor* intervenes and is the making of the sale but was not effected by the agent the test is simply, the judge goes on to say, whether the introduction was the *overriding factor* of the sale. He added:

The mere furnishing to the prospective buyer of the principal's address or the location of the property offered may be sufficient to entitle him to claim commission from the seller, provided a line of cause and effect can reasonably be traced from the introduction to the conclusion of the sale.

In *Joubert and Others v Coster 1982(4) SA 547(CPD)* the presiding judge defined *effective cause*, the *causacausans* of a sale, very comprehensively. In this case the prospective Buyer was a woman who had very much wanted the Seller's farm and had been involved in lengthy negotiations with the relevant Estate Agent to finalise the sale. She could not finance it herself, however, and so got her father to purchase the farm in his own name. In this case the judge decided emphatically that the Agent had been the cause of the sale, in particular as her original introduction to the property had remained the motivating force which spurred her on to find someone to finance the farm so that she could carry out on it the work she had envisaged. In his final judgement the presiding judge defined *causacausans*, the 'causing cause of a sale,' in the following words.

In order to become entitled to commission, the agent must establish that he has introduced a purchaser able and willing to buy his principal's property and that a contract of sale has been concluded between such a purchaser and the principal and that the introduction was the effective cause of the sale.

In *Edwards v Wynberg Club 1990(2) SA 429(CPD)* it was again decided that it is not enough for an Agent to introduce a Buyer to a Seller and his property. This may well be an incident without which the sale may not have taken place (*causa sine qua non*) but may not be the real and effective cause (*causacausans*) which brought about the sale.

**In conclusion, therefore, it can be said that an Agent will be the *effective cause* of a sale where he introduces the parties to each other and the property and they thereupon conclude a sale without any other independent factors being the chief cause of the sale.**

The principal can be applied as follows:

**i. Private sales**

Where a Seller and Buyer negotiate a private sale after a mandate period has expired, *even if many months later*, and the terms are basically those which were negotiated by the Agent during the mandate period although the parties in all sincerity did not agree to the sale at the time, the Agent will be the *overriding factor* in the sale and will be entitled to commission.

Where, however, an Agent introduces a Buyer to a Seller who makes an offer unacceptable to the Seller, and it appears the Buyer is neither willing nor able to pay more for the property, no deciding cause of sale exists. If at a later date the Buyer returns and now agrees to the Seller's price, having obtained a third party who will subsidise the balance of the purchase price on the strength of a private bond in favour, the Agent is *not* the effective cause of sale and cannot claim commission.

## ***ii. Leased premises***

An Agent may introduce a prospective Buyer to a Seller but, for various reasons, the sale may not materialise even though the purchase price, occupational rent, etc. were fully negotiated. The Buyer may separately agree to *lease* the premises, say, at the same amount as the occupational rent and, nine months later, the parties may finally agree to the contract. Even if the final purchase price and terms of payment are slightly different the Agent will be entitled to commission, being the *dominant and overriding factor* in the whole transaction. This is the test that will determine the issue in each respective case.

## ***b) Effective cause and other estate agencies***

There is one last instance where the issue of effective cause may arise, however, and that is where two agencies compete for the same sale, particularly where one Agent has done all the work in introducing the parties and negotiating the terms, only for another to nip in and close the deal. In such cases there can be, and there were quite often in times past, claims for *double commission*. The first agency would sue on the ground that it was the *effective cause* of the sale while the second would sue on the *contractual obligation* of the Seller to pay commission. In such cases a Seller could well be liable for double payment of commission if both sides succeed in proving their case.

The Courts will not interfere in such cases to determine the morality or otherwise of the outcomes. The issue here is purely one of *law* and it will be faithfully applied. Any Seller who commits himself to an Agent in a sale contract to pay commission will be obliged to do so irrespective of whether the Agent or another Agent is the overriding cause of the sale. The Agent closing the sale can confidently expect to be protected at law. A case on this point decided that it does not matter how unjust, imbalanced or even ridiculous the consequences may be – the *law of contract* obliges any party to a written agreement of sale to perform all his obligations in term of it. Very often, when such disputes arise, the offending Agency which hijacked the deal either pleads its right to commission in terms of the contract or argues that the other did not finalise all the terms thereof and so was not the effective cause.

It can be very difficult in such cases for the aggrieved Agency to prove it was the overriding factor in the sale. The matter was dealt with in *Wakefield & Sons (Pty) Ltd v Anderson 1965(4)*

SA 453(N) where it was stated that the first agent will have to show a balance of probabilities in his favour, in particular that the sale was attributed mainly to his efforts. The judge expressed his opinions as follows:

Where one agency has introduced the property to the purchaser and another agent has finally negotiated the transaction and produced the written offer which the seller accepted, the question whether the first or second agent's efforts were the effective cause of the sale is often difficult to answer, but it is obvious that, save in exceptional cases, the first introduction would necessarily be an important factor.

**c) The estate agents code of conduct**

Because of the injustices that occur in such cases, especially where Sellers find themselves facing double commission cases which automatically bring the estate agents' industry into disrepute, the *Estate Agents Board* has specifically dealt with the matter in its *Code of Conduct for Estate Agents*, making the offending agency liable to disciplinary proceedings on the grounds of unprofessional conduct, no matter how legally "correct" its claim for commission may be. The issue here becomes, not one of legal right, but of *ethical practice* and, if the offending agency is found to have prejudiced and embarrassed the Seller, severe action will be taken against it. The clause states:

*8.3 No estate agent shall introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that such person has already been introduced to such property or to the seller or lessor thereof by another estate agent and that there is a likelihood that his client may have to pay commission to such other, or to more than one estate agent, should the sale or lease be concluded through intervention; provided that the foregoing shall not apply if the estate agent has informed his client of such likelihood and obtained his written consent to introduce such party to the property or the seller or lessor thereof.*

It is the duty of every estate agent, on introducing a prospective Buyer to the Seller or his property, to enquire whether he has been introduced to either of them by another agent beforehand. If the client confirms that he has, it is the Agent's duty to immediately notify the other Agent.

**16. Breach of Contract**

The sale or purchase of a property is for many people one of the most important transactions that they will enter into in their lifetime. The parties to a Sale of Land Agreement will inevitably enter into a contractual relationship which will have legal consequences for both the purchaser and the seller. It is often the case that contracts are cancelled and this is when an understanding of certain clauses and their meanings becomes very important.

**a) Non-refundable or forfeiture clause**

Sellers are sometimes sold on the idea of including a non-refundable deposit clause in the Contract of Sale. More often than not, sellers are under the impression that they will be entitled to all of the non-refundable deposit or monies already paid to the conveyancer on



account of the purchase price if the purchaser breaches a Deed of Sale and such breach results in the cancellation thereof.

The seller will, however, then find out that after cancellation of the contract due to breach, that not all amounts may be retained as liquidated damages or as a non-refundable deposit.

In terms of our case law, *Matthews v Pretorius* (1984) (3) (SA547W) and the Conventional Penalties Act 15 of 1962 ("the Act"), any penalty or liquidated damages contained in a contractual obligation shall be subject to the provisions of the Act which affords the Court the discretion to, on hearing a claim for a penalty or a non-refundable deposit, find that it might be out of proportion to the prejudice suffered by the creditor and the Court may reduce the penalty to such extent as it may consider equitable under the circumstances, taking in due consideration the interests of all concerned.

This means that any forfeiture stipulation resulting from the cancellation of an agreement, including non-refundable deposits, as well as the retention of certain monies already paid by a purchaser as liquidated damages, will be subject to the measurement as described in the Conventional Penalties Act.

Estate agents should be very careful not to create an expectation with the seller that he or she will be entitled to all of the non-refundable deposit or monies already paid to the conveyancer on account of the purchase price if a purchaser breaches a Deed of Sale of immovable property and such breach results in the cancellation thereof.

The role of conveyancers is important to understand as well. It is not expected from conveyancers to act as a Judge and Jury when dealing with monies in their trust account when a dispute arises about who should be the rightful recipient of such monies once the Deed of Sale is cancelled. Unless and until such time as an agreement has been reached between the parties or a competent Court has made an order, it cannot be expected of conveyancers to pay the monies to either party.

### **Breach of contract**

The relationship between a purchaser and seller is governed by the Contract of Sale. The breach of contract occurs generally when a party to a contract without lawful excuse fails to honour his or her obligations under the contract.

When a contract is cancelled in terms of the breach clause of the said contract, the aggrieved party would normally have the right to claim damages from the guilty party. When claiming damages, the aggrieved party must note that the Conventional Penalties Act will also be applicable to the amount of damages that may be claimed.

In the instance of the seller, the seller's damages will often only be liquidated once the property is resold and the seller's claim will only be for the deficit between the amount of resale and the original contract sum of the cancelled agreement.

### **Rouwkoop**

A rouwkoop clause in its pure form comes from our common law. It is derived from the Dutch words meaning “regret and purchase.” Such a clause entitles a party to a contract to pay a sum of money in order to be allowed to withdraw from the contract. It essentially sets a purchase price for freedom from the contract payable by the purchaser. If the purchaser then withdraws from the contract and pays the agreed rouwkoop amount, he will be acting in accordance with the terms of the agreement and his withdrawal will not constitute a breach of contract. (It is not regarded as a penalty.) This is clearly very distinguishable from a penalty clause which would come into operation only where there was a breach of contract.

Unfortunately, many sale agreements confuse the position in law whereby the forfeiture clause is merged with a rouwkoop clause, which provides that if the purchaser breaches the agreement and the seller cancels the agreement as a result thereof, the purchaser will forfeit his or her deposit as rouwkoop.

In a decision of Royal Anthem Investments 129 (Pty) Ltd v Yuen Fan Lau and Shun Cheng Liang (941/2012) (2014) (ZASCA 19) (26 March 2014), the Court had to interpret a rouwkoop clause in a Deed of Sale which read as follows: “Will have the right to cancel the agreement and to keep other amounts payable as rouwkoop, or by means of any pending decision by a Court of the real damages suffered”.

The Court in this instance found that the deposit was not an amount as envisaged by the rouwkoop clause in the true intention of the rouwkoop clause history. A penalty clause will only come into operation when there was a breach of the contract.

### **Conclusion**

From the said case law and the provisions of the Act above, it is clear that:

- Non-refundable deposits are a myth and together with forfeiture clauses, subject to scrutiny by the Courts. Unless the parties to the agreement can come to an agreement regarding the penalty, the Court must be sought to quantify the amount payable as a penalty.
- A rouwkoop clause in a Deed of Sale must be clearly distinguished from the penalty clauses above as it is not subject to the provisions of the Conventional Penalties Act.

## **17. Compliance Certificates**

### **a) Electrical Certificates**

There is an obligation in Law that when property is transferred, that there is in existence a valid electrical compliance certificate or the obligation to obtain an electrical compliance certificate.

This onerous obligation is most often placed on the Seller and is one that extends beyond a mere contractual obligation, as it is governed by statute, namely, the Occupational Health and Safety Act of 1993 (as amended) (hereinafter referred to as “The Act”) and the Electrical

Installation Regulations of 1992 (hereinafter referred to as “the regulations”. The relevant regulations when dealing with immovable property are as follows:

- ✓ Subject to the provisions of sub-regulation (3), **every user or lessor** of an electrical installation, as the case may be, shall have a valid certificate of compliance in respect of every such installation:
- ✓ Provided that where any addition or alteration has been effected to an electrical installation for which a certificate of compliance was previously issued, the **user or lessor** of such and installation shall obtain either a certificate of compliance for such and addition or alteration or a new certificate of compliance for the whole installation: Provided further that such certificate shall be transferable.
- ✓ Every user or lessor of an electrical installation, as the case may be, shall on request produce the certificate of compliance for that installation to an inspector or the supplier.
- ✓ Sub-regulation (1) shall not apply to electrical installations existing prior to the coming into force of these regulations: Provided that,
  - ❖ if any addition or alteration is effected to such an installation; or
  - ❖ if there is a change of ownership of the premises on which such an installation exists after 1 January 1994, the user or lessor of the electrical installation, as the case may be, shall obtain a certificate of compliance for the whole installation, where after the provisions of sub-regulation (1) shall be applicable to such installation.

#### **Commonly asked questions:**

##### ➤ **What is a valid electrical compliance certificate?**

A valid electrical compliance certificate is a certificate issued by an electrician who is accredited by the Electrical Board, who after having inspected the premises issues a certificate confirming that the electrical installations, alterations or additions on the said premises comply with the requirements as is set out in the Act and regulations.

##### ➤ **Who needs to obtain an Electrical Compliance Certificate when transferring property?**

It is the general practice that an owner before transferring property, obtains the necessary electrical compliance certificate or has one in his possession which is capable of being transferred. However, there is no provision in the regulations to force an existing owner to hand over or to transfer the electrical compliance certificate to the new owner. The new owner is, however required in terms of the regulations to have in his possession an electrical compliance certificate which he needs to provide if required to do so by an inspector appointed in terms of the regulations. This is irrespective of whether one was supplied to him at registration of transfer. It is therefore advisable that an offer to purchase contains a clause that **places the onus**

**on either one of the contracting parties** to obtain the said certificate. Should there be no clause in the contract of sale, then the Act and the Regulations will apply.

➤ **When does an Electrical Compliance Certificate expire?**

The Act is silent as to what the validity period of an Electrical Compliance Certificate is, and it can accordingly be concluded that the said certificate would be valid indefinitely. However, the Act does state that if any additions or alterations have been carried out on the installation or on the electrical works on the property, the owner would have to obtain a new Electrical Compliance Certificate or Compliance Certificate that covers the necessary changes to the property. A new owner cannot insist, in the absence of a contractual obligation that the existing owner obtains a new electrical compliance certificate unless of course there were additions or alterations done to the installation.

➤ **Does a new owner have any recourse if he finds himself in possession of an electrical certificate even though the electrical work is defective?**

A new owner who finds himself in this unfortunate predicament may lodge a complaint with the electrical board who will then send out an inspector to investigate the complaint, and if it is established that the electrical compliance certificate is defective, they will declare the said certificate invalid. The person who is contractually liable for furnishing a valid electrical compliance certificate will then have to effect the necessary repairs and obtain a new electrical compliance certificate.

➤ **Is there any duty on conveyancers who are transferring property to a new owner to ensure that the electrical compliance certificate is available?**

This is a frequently asked question by many new owners, especially in circumstances where an electrical compliance certificate has not been provided for one reason or the other. In answering this question, one would have to look at the contract. The Law Society of the Northern Provinces has stated that:

“The Regulations place no legal or professional duty on a conveyancer to ensure that a valid Certificate is issued or an existing one is transferred, during the registration of transfer procedure in the deeds office unless it specifically stipulated in the contract that the conveyancer must supervise the situation.

In such case it will be the professional duty of the conveyancer to ensure that the Certificate is obtained before registration.”

➤ **What is the position if one were to lose, damage or destroy and Electrical Compliance Certificate?**

The Regulations make provision for one to apply for a duplicate copy of the Electrical Compliance Certificate from the Chief Inspector. An application would have to be made to the Chief Inspector where after he would determine whether the electrical certificate was indeed lost, damaged or destroyed and based on his finding, he will then issue a duplicate electrical compliance certificate.

➤ **What is the position in respect of units in a Sectional Title Scheme?**

When transferring a unit in a Sectional Title Scheme the Act and the Regulations do not require that an electrical compliance certificate be supplied for the entire scheme, but merely for the said unit being transferred.

➤ **What are the implications of non-compliance?**

Any person who contravenes the provisions of the Act or the Regulations shall be guilty of an offence and if convicted be ordered to pay a fine or sentenced to imprisonment.

In conclusion, an electrical compliance certificate is most definitely a legal requirement. It is accordingly advisable that one deals with the Electrical Compliance Certificate in the Agreement of Sale and further advisable that one has an electrical compliance certificate in his possession prior to transfer.

It's more than twenty years since property owners accepted the responsibility to be in possession of an electrical compliance certificate in terms of the Occupational Health and Safety Act. Sellers now, almost as a matter of course, accept the obligation to pass on to their buyers a proper Certificate of Compliance at their own expense. Recent amendments to the law provide that the new user must be in possession of a certificate **not more than two years old**.

***The law, however, has never burdened sellers with this responsibility and to this day it provides only that, on change of ownership of a property, the user (that is, the buyer) shall be in possession of the required electrical certificate. If the sale contract says nothing about whose responsibility this will be, it will remain the buyer's responsibility to obtain the required certificate of compliance.***

**b) Gas Certificates**

In more recent times the Act has been amended to include gas appliances in addition to electrical systems. With load-shedding a constant threat and with Eskom constantly seeking price increases around 16% per annum (to compensate for the company's failure to extend its power stations to meet increased demand even after it was warned many years ago to develop its power supply immediately), many South African homeowners have elected to install gas appliances instead, guaranteeing power at all times.

These systems, however, carry similar risks to electrical appliances and new laws have been brought in to control gas appliances as well. The risk here is far greater than it is with a property's electrical supply – gas appliances can explode and cause massive damage and loss of life when they do.

Regulation 17(3) to the Healthy and Safety Act introduced in July 2009 is the legal prescription that covers gas appliances. **Regulation 17(2) provides that 'after installation or re-installation, and before commissioning a gas system, the user shall ensure that an external inspection and a leak test are performed by an authorised person or approved inspection authority.'** The next regulation, the crucial one, only provides that an 'authorised person or

approved inspection authority shall issue a certificate of conformity after completion of a gas installation, modification, alteration or change of user or ownership.'

It says no more, making no reference to or provision for appliances and gas installations introduced to a property prior to 2009. The effect of all this is that the only installations covered by the Act are new ones, or reinstallations, introduced since the promulgation of the amendments to the Act in 2009. The law makes no provision for installations done prior to this date.

Like normal electrical certificates, if the sale contract does not bind the seller to provide a valid gas certificate to the purchaser, the latter must assume the responsibility to acquire one at his own expense. Estate agents are, as a rule, not fully informed on these matters and most sales of properties with gas appliances are being concluded without any attention being paid to their gas installations. If these predate 2009 on any property sold, the seller will have no responsibility to the purchaser to provide the required certificate. The problem will be the purchaser's alone.

Installations since the inception of the amendments to the Act are heavily controlled by law. The amended regulations covering recent gas installations prescribe fixed standards affecting the design, use, production, repair, replacement, and modification of any gas system on a residential or industrial property. These regulations came into effect on the 1<sup>st</sup> October 2009. The law requires the user of a property to arrange an internal inspection and leak test by an authorised person of a new installation before that system can be put to use.

***Contrary to many website and media advices in this respect, the law only obliges a new user of a property to acquire such a certificate and, if the sale contract does not bind the seller to comply with the law, the buyer will assume full responsibility to do so.***

#### ***c) Electrical Fence Certificate***

The Electrical Machinery Regulations, which are also part of the provisions of the Occupational Health and Safety Act of 1993, have recently been amended to include electric fences as well. It is standard practice these days for an owner of a newly built home, or a seller of an existing home, to acquire a standard electrical certificate of compliance covering all the installations on the property. Regulation 12.4, which came into operation in October 2012, however, provides that any owner of a property with an electrically controlled fence around the property must have a separate electrical certificate in addition to the normal one to cover the electric fence as well. Once again, however, the law only applies this prescription to electric fences introduced since December 2012.

Older electric fence installations only need to conform to the required SABS standards in this respect. Many homeowners will have to upgrade their electrical fencing to comply with the Act as they can be held accountable for any fencing failing to meet these standards.

***They are not, however, obliged to obtain a valid certificate of compliance in this respect or hand one over to their buyers on the sale of their properties. Any failure, once again, to mention this requirement in a deed of sale will leave the buyer with the obligation to comply with the law himself.***

All property purchasers need to be aware that there are no laws obliging sellers to furnish them with the required gas or electric fencing compliance certificates when the existing installations on the property were present before the amendments to the Act came into effect.

Most **agency contracts, and not the law**, place the burden on sellers to furnish their buyers with normal electrical certificates at their own expense.

#### ***d) Entomological Certificates***

An entomologist certificate certifies that the property in question is free from wood-destroying insects. The entomologist certificate, also sometimes referred to as a pest or beetle certificate, must be issued by an entomologist registered with the South African Pest Control Association. The certificate is not a statutory requirement but, over the years, it has evolved into somewhat of a standard practice. Parties to a property sale agreement can elect to contract out of this requirement **but insurance companies and financial institutions** usually require this certificate as a condition for the granting of finance or insurance cover for the property.

Again, the seller is only responsible for obtaining the certificate as well as paying all costs for the certificate and work to be done should any infestation be found, if it is a provision in the offer to purchase. The parties may however agree in the sale agreement that the certificate is not a requirement for the sale. In such a case and should the financial institution or insurance company require it for the purchaser's bond or insurance cover, then the purchaser should be responsible for the cost of the certificate.

The certificate does not cover pest control, normal degradation of wood or swelling of wood due to moisture. It only certifies that the property is free from insects that destroy or bore through wooden structures. The entomologist will inspect the property and issue the certificate if no infestation is found. If there is an infestation, the entomologist will submit a quotation for work to be performed and once the problem is eradicated, they will issue the certificate. The certificate is only valid for three months, where after a new one must be obtained.

#### ***e) Plumbing Certificate***

The City of Cape Town gazette a new Property Sales by-law that is now in effect. Just like the Electrical Certificate of Compliance (COC), a Plumbing COC is now needed when a property is being sold in the City of Cape Town Metropole.

#### **Reasons for the new by-law:**

- i. Cape Town lies in a water-scarce region where, while it is a winter rainfall area, most of the demand is during the summer.
- ii. The City's new Water By-Law provided an opportunity for the municipality to be proactive and introduce water conservation and demand management measures to ensure the sustainability of water supply to consumers.

- iii. The by-law enforces the installation of a hot water cylinder, in accordance with SANS 10254.

The Water By-Law was promulgated on 18 February 2011 and all requirements must be complied with from that date.

**What the by-law applies to:**

One of the important changes is that a Certificate of Compliance of water installation must now be obtained and submitted to the City upon the transfer of a property to a new owner. This applies to domestic, commercial, and industrial properties, and includes sectional title units.

A plumber who is suitably qualified and accredited in terms of the South African Qualifications Authority must certify that the hot water cylinder complies with SANS 10252 and 10254, that the water meter registers, that there are no water leaks, that water pipes and terminal fittings are correctly fixed in position, that no stormwater is discharged into the sewerage system, and that there is no cross connection between the potable supply and any grey water or groundwater system which may be installed.

The conveyancer, on behalf of the seller or owner, needs to submit the signed form to [CertificateOfCompliance@capetown.gov.za](mailto:CertificateOfCompliance@capetown.gov.za).

## **18. Homeowner's Associations and Body Corporates**

### **a) The Homeowners Association (HOC)**

With security a factor that is influencing home-buying decisions in South Africa, many buyers are choosing to purchase homes within boomed-off areas or secure lifestyle estates.

Unlike a body corporate which manages a sectional title development, in a homeowners' association each member owns the house and the erf or plot on which the home is situated.

Usually established by the residents within a community, an HOA is formed to ensure that the infrastructure of an area is maintained. Another major role of an HOA is ensuring the safety of those who live within the community.

As a homeowner in an estate or boomed-off area, the buyer may be required to join a Homeowners' Association (HOA), which means adhering to numerous rules and regulations stipulated by the HOA.

The rules and regulations laid out by an HOA can address numerous aspects such as the colour that a homeowner is allowed to paint their home or whether pets are allowed on the premises.

The stipulations can be restrictive, which is why those who want to buy a home within a community that is governed by an HOA should ensure that the regulations don't conflict with their lifestyle.



Before purchasing such property, buyers need to do their research and delve into the details of the HOA regulations.

### **Frequently asked questions:**

As an agent it is your responsibility to have a copy of the rules and regulations on hand for any prospective buyer when they are signing an offer. You should also be familiar with the rules and regulations yourself so that you are aware of any restrictions that may help your buyer make an informed decision.

#### **✓ Are members required to pay a fee?**

It is not uncommon for members of an HOA to pay a monthly premium or levy towards the association. Compare how the monthly fees match up against other similar developments in the surrounding suburbs.

#### **✓ How are the fees allocated?**

It is important for homeowners to know where their money is being used and allocated. Most of the time, HOA fees are allocated to the maintenance of common areas and amenities, such as landscaping, the swimming pool, gym or clubhouse. Potential buyers should find out what is included in the fee and what is not.

#### **✓ Have rates been hiked recently?**

While doing their homework on the HOA, buyers should get the history of how much and how often the rates have increased over the last ten-year period. Looking at the past will provide a window into what to expect in the future. Another important aspect to enquire about is whether any additional fees have been charged to homeowners when the HOA lacks the reserves to cover a big project.

#### **✓ What are the community's priorities?**

Reading the minutes of the last few HOA Annual General Meetings will give potential homeowners a clear idea of the community's priorities and what issues and topics keep rearing their heads.

#### **✓ Pay attention to the fine print**

Don't neglect any aspect of the document and read through all regulations, restrictions and conditions before committing to buying the home. It will take some time to read the documentation in its entirety, but it is better for a buyer to do it beforehand than to move in and find out that they are unable to park a second car outside the property or store a caravan in the garden. Rather know up front, than be caught unaware with little recourse.

#### **✓ Penalties**

It is essential for buyers to be aware of the penalties for non-compliance.

Before purchasing any property, governed by an HOA or not, it is vital that the buyer understands all aspects of the purchase and to know what they are getting themselves into. Having a clear idea of the regulations and rules an HOA has in place will provide a buyer some insight when choosing to buy a home to in a particular estate.

### ***b) The Body Corporate***

What many buyers do not realise when signing an offer to purchase a sectional title unit is that in doing so they are agreeing to the conditions of buying into that scheme and they become members of a group, the body corporate, who are responsible for the day to day running and financial management of the scheme.

The body corporate is the collective name given to the owners of the units and common property within a sectional title scheme and this comes into being when the developer transfers the first unit to its new owner. The developer, in fact, needs to call a meeting within 60 days of the body corporate being formed and at this inaugural meeting, according to the Prescribed Management Rules, will hand over the sectional plan and a certificate from the local authority indicating that all the rates due by him have been paid. In addition, the body corporate should receive paperwork pertaining to the income and expenditure regarding management of the scheme and any money received in the time between the first handover of a unit and the formation of the body corporate.

The body corporate's function is to manage and maintain the property, which includes the common property (the driveways, common green spaces, swimming pool clubhouse, etc.) and exclusive use areas. To do this they will appoint trustees to act on their behalf and the trustees' duties will include:

establishing a fund via levies paid by the owners for maintenance, management and administration of the common property and payment of taxes, water, electricity, insurance and other necessary services:

- opening a bank account.
- insuring the buildings.
- maintaining the common property.
- arranging repair of any damage caused once insurance has paid out or has been covered by whoever responsible.
- informing the Registrar of Deeds and local authorities what the official address of the body corporate will be; and
- maintaining all the instruments and machines that form part of the common property.

Initially, the key role-players in a sectional title scheme would be the developer, body corporate, trustees and management agents. The developer forms the company who has built the scheme and he (or the company) will cease to be a member once he no longer has a share

in the common property. What some developers do is hold onto the ownership of some of the land and retain the right to develop at a later stage, **which is what buyers should watch out for**. If this is the case, buyers should ask questions as to what the developer intends to build there and whether there is a limit as to how long he can take to develop the land and height restrictions etc.

Sectional title schemes have many benefits in that expenses are shared between the owners, which allows residents many “extras” that they might not be able to afford if living in a freestanding home. Many schemes have full security, and often have amenities such as swimming pools, gyms, tennis courts, laundromats, clubhouses, and large green communal gardens, all of which cost extra to maintain.

This is why sectional title property has become so popular. The convenience and the communal living often offer a higher standard of living at a lower cost. Owners, however, just need to be aware of what their responsibilities are when deciding to buy into a scheme.

### ***c) Sectional title scheme levies***

They are normally higher than those of a homeowner’s association. Levies are collected from owners and put towards the maintenance of buildings, common property and insurance cover of the scheme.

Also, owners in a sectional title scheme can further own an area in the scheme, which is seen as common property, known as **Exclusive Use Areas**.

These areas remain common property within the scheme, but the owner has the exclusive right to use the area for the duration of their ownership. A common example of an exclusive use area would be a parking bay that forms part of the common area but is set aside for the exclusive use of one particular unit owner.

### **✓ Pro Rata and Participation Quota**

The **participation quota** is the formula used to calculate an owner's levy that needs to be paid in a sectional title scheme. Dividing the number of square metres occupied by the owner's section by the total floor area of all sections is calculated to get to the levy amount.

Payment of levies is the backbone of any sectional title scheme.

The management of levies and awareness of how levies can be charged is vital to the managers and owners of sectional title units, including what can happen if levies are not paid.

### **✓ What are levies?**

Purchasing a sectional title unit in a sectional title scheme, you will be required to pay a certain monthly amount, this is called a levy, to the body corporate of the sectional

title scheme. This will be used for the maintenance and day-to-day management of the scheme.

According to the Sectional Titles Act the owners have to pay levies and the body corporate is required to collect such.

✓ **What are levies for?**

- Levies can be used for a number of purposes, most prominently being:
- Repair, upkeep, management, and administration of the scheme's common property.
- Payment of taxes (if units are not taxed separately) and other local authority charges for electricity, gas, water, etc. of the common property.
- Fulfilment of an obligation incurred by the body corporate.
- Complex security.
- Maintenance.
- Insurance.
- Capital projects.
- Salaries of staff (cleaners, gardeners etc.) employed by the body corporate.
- Payment of contractors, etc.

The body corporate has meetings every year and at these annual general meeting determines the levies for the year based on the budgeted expenditure of the scheme for the following year. Owners may sometimes also be required to pay a special levy to cover a certain project such as the instalment of an electric gate or swimming pool for the complex or to cover unseen expenses such as essential repairs and maintenance.

✓ ***The importance of paying levies***

When the owners do not pay their levies, income required to operate the scheme is not obtained, affecting the value of each owner in the scheme due to necessary maintenance and upkeep not being done, security being compromised and the overall respectability of the complex being tarnished.

In the case of a seller selling his unit, the Act determines that if he wish to sell his sectional unit, the transferring conveyance attorney is required to certify that the body corporate has confirmed that all monies due to it in respect of that particular unit have been paid or has been secured to the satisfaction of the body corporate.

If an owner in arrears wishes to sell his unit, he will first have to obtain a 'levy clearance certificate' from the managing agent or trustees before the unit can be legally transferred to the buyer.

If levy payments have fallen behind, this can become a major cash flow concern for an intending seller as the trustees or managing agent will refuse to issue such a levy clearance certificate until all arrear amounts owing to the body corporate have been paid.

The levy is based on participation quota whether it is large or small, another method of calculation, the continued payment of the levy is essential to the continued success of the scheme.

The involvement of a sectional title owner in the annual budgeting and levy allocation of the scheme is encouraged.

In this regard, the assistance of a property specialist can be obtained to help clarify any uncertainties that may arise.

#### ✓ ***How are levies calculated?***

Levies can be calculated:

- Based on measured floor area (participation quota).
- Based on an equal pro rata basis; or
- Based on the value of each owner's investment in the scheme.
- Equal pro rata basis:
  - The equal pro rata payment of the said levies is where each owner pays the same amount each month. It does not matter what the size of the owner's unit is, or which unit is responsible for the most expenses, as all units are treated exactly the same. This approach can be used for all the expenses of the scheme or only for certain specified expenses. This can be appropriate where the units are broadly similar but can also be very unfair where units differ dramatically in size and contribution to expenses.
  - Each owner's investment in scheme basis:
    - In this instance levies are calculated based on what each owner's investment in the scheme was. This formula is not frequently used and is not very popular as the investment value can become dated and can differ from unit to unit as units are resold.

## **19. General and Special Clauses**

### ***a) Legal Domicile***

A legal domicile address is the address where the seller or the purchaser currently resides and where the sheriff of the court can deliver any notice to. These details must be comprehensively filled in on page 7 & 8. As an agent you are responsible to make sure all parties have completed these pages in full. If there is missing information, then obtain the information and complete your OTP. Also, if you are not filling in the details yourself then make sure you can read what they have written before submitting it to your principal. Please note that it is not a postbox address. The courts require a physical address where the party can be found.

***b) Sold Board***

For as much as is possible you as an agent want to display a sold board. Sold boards are part of the company's marketing tools and are very important for market exposure. Exceptions do arise when this becomes a threat to the wellbeing and safety of the occupier.

***c) Tax Issues***

If either party's taxes are not in order the deal will be held up by SARS when the conveyancers call for their transfer duty receipt. SARS will require the taxes to be sorted out before issuing the receipt for the deal to proceed.

***d) Sufficient Funds to effect transfer***

The cost summary included in the offer to purchase should help the seller determine whether he has sufficient funds available to cover the commission, cancellation of any mortgage bonds together with interest, outstanding municipal accounts and clearances, cancellation attorney costs, as well as other incidental costs. It is the seller's responsibility to make sure he can cover all this cost and/or to be able to make arrangements for the payment of these costs.

**IT IS NOT THE AGENTS RESPONSIBILITY TO ENSURE THAT THE SELLER HAS SUFFICIENT FUNDS AND IS NOT, AND SHOULD NOT, FEEL OBLIGED TO SACRIFICE HIS COMMISSION BECAUSE OF A SELLER'S FINANCIAL SITUATION.**

***e) Boundaries and Servitudes***

It is the responsibility of the purchaser to find out about the any municipal servitudes over the property and on the title deeds. While it is a good thing for you as an agent to obtain these things and to know if there are any issues that could arise, it is not within the duties of your mandate. These are legal issues and the purchaser needs to be satisfied that he will take care of these things should he wish to know about them.

***f) Gender***

Any words in the offer that imply a singular pronoun such as "I" also include, we, us, them, they, etc. Any words on the contract using the word "he" includes she and any other gender someone may wish to be referred as.

***g) Personal Information – POPI***

With the new POPI Act you are not allowed to give or send someone's personal information to someone else. In our line of business, it is necessary for us to send personal information to

third parties involved in the fulfilment of the contract. With this clause each party is giving us as agents the right to transmit their personal information to the parties stipulated above. However, any other person outside of the above, it is not permissible for you, as an agent, to transmit or give this information to any other persons.

Take note of the SAGH Code of Conduct and IT policy.

#### ***h) VAT***

If the Seller is a VAT vendor then there are special clauses that need to be included in the agreement dealing with the payment of the VAT. If there is no stipulation regarding the VAT, then the law assumes the VAT is INCLUDED in the purchase price. Consult your special clauses notes for the correct wording.

See additional training notes.

#### ***i) Indemnity***

The word indemnity means security or protection against financial liability. In our case it is specifically to indemnify the agent from any responsibility for any information supplied to the party on behalf of a third party regarding their banking details. Contractually neither the seller nor the purchaser should be accepting any banking details from the agent. If they do so and the information is incorrect and they suffer loss, they cannot hold the agent or agency responsible.

This is generally where fraud takes place as clients are given false bank accounts, either by an agent committing fraud, or an external hacker falsifying emails and diverting banking details.

Should you, as an agent, give details to either party for the payment of monies, you have committed a breach of your employment/service agreement and can be held liable by the Company for fraud.

#### ***j) Be precise with dates and amounts***

Often one or both of the parties to a sale have not agreed on a date or amount and the agent has to find suitable words to postpone the issue until later.

A typical example is in the occupational clause which, when it says, '*occupation will be given to the Purchaser on \_\_\_\_\_*', is filled in with the words '***to be agreed***'. Fortunately, here the law agrees that occupation will be on transfer if the parties have not specifically agreed otherwise.

But in many other cases serious problems can arise. If the buyer says, 'I will only pay the balance of the purchase price in cash not more than a week before lodgment and you write in '***balance payable 7 days before lodgment***', your conveyance will have a problem. He can't tell what those 7 days will be at any time and will have to wait until he is actually ready to lodge before he gives his Purchase 7 days' notice to pay.

'Deposit payable on bond grant'- that's fine, the date can easily be ascertained once the bond is granted.

But '**Purchase price payable on transfer**' is disastrous - it means the Purchaser is only obliged to pay it *once transfer has taken place*. **That is intolerable.**

**Be careful not to leave dates of payment of any amount uncertain, and this applies to the amount as well.**

The same is applicable where the **date of acceptance** is concerned. The purchaser has the right to give the seller a certain amount of time in which to accept the offer, where after the offer will lapse and be of no further force or effect. If no date has been inserted then the seller has "forever" to make a decision, leaving the purchaser bound to the contract indefinitely, while the seller looks for a better offer.

Finally, make sure the date of signature for all parties is filled in as often other clauses, for example a bond due date, are determined by this date. If there is no date, then the purchaser could end up having all the time he wants to obtain a bond. Furthermore, it validates when the parties made their decision to enter into the agreement.

**Last but not least – most important!!**

**Make sure that the principal dates and signs accepting the benefits of the agreement. This is acceptance of the commission and failure to sign this could be interpreted as a waiver of your commission!**

## **20. Witnesses and Signatures**

Getting an offer to purchase signed may seem like a simple matter but issues arise from time to time and they need to be addressed. In this letter I will deal with witnessing an OTP, initialling on each page, and whether an OTP can be signed electronically.

### **a) Witnessing a Sale Agreement**

When conveyancers draw private sale agreements, they usually make sure that two witnesses sign the agreement for both the seller and the buyer. Alternatively, the signature and stamp of a commissioner of oaths suffices for this purpose as well.

Is it necessary for estate agencies to do the same? Traditionally most estate agencies do provide for the signature of one witness to attest each party's signature, but this is not a universal practice and many sale agreements are concluded without any corresponding witnesses.

**Legally no sale agreement needs to be witnessed.**

Any power of attorney arising out of a sale (to register a transfer or a bond) does have to be signed before two witnesses but the contract itself can be concluded without any witnesses and be perfectly valid even though it contains only the signatures of the seller and buyer. Section 2(1) of the Alienation of Land Act No.68 of 1981 provides only that no alienation of land shall be valid unless it is contained in a deed of alienation and is signed by the parties or their agents or their agents acting on their written authority. **There is no provision for witnesses being obliged to sign it as well.**



***Nonetheless in recent times some commercial banks granting loans have begun insisting on a sale contract being witnessed by at least one other person.***

This is the result of the extent of fraudulent practices in South Africa and the unpleasant discovery now and then that the signatures of the original contract have either been forged or have not been signed by one of the parties purporting to sign it. Banks stand to possibly lose millions of rands in mortgage loans in such cases if a High Court in South Africa declares the contract invalid.

***Estate agencies are accordingly advised to get the signature of both the seller and the buyer witnessed separately by at least one witness on each sale agreement.***

It is not essential for the witness to initial each page, but this should also be done so that individual pages of the sale contract can be proved to have been part of the original contract. **Local banks** are making it clear that home loan applications will not be considered unless the contract has been properly witnessed and, even though this is not a requirement in law, agencies are strongly urged to get their OTPs witnessed by at least **one witness for the seller and a separate witness for the buyer.**

#### ***b) Initialling Sale Contracts***

Legally it is also not necessary for a party to a sale agreement to initial each page of the contract, but this has become a universal practice and should be continued. The only exception is a single page document which many agencies use where four pages constituting the contract are incorporated into one single 4-page A5-sized contract. In such cases it is not strictly necessary for each page to be initialled.

***What has been a common practice for many years and which I must expressly discourage is the initialling of each and every written portion of a sale contract.***

The logic behind this is that each party is confirming the written portion in each case, but in law whatever is written into a blank section of a contract is presumed to be the terms of agreement between the parties. The problem with initialling every instance where something has been inserted in writing is that the contract ends up looking like a lit-up Christmas tree with initials virtually everywhere down the right side of each page. In this event it is difficult to determine exactly what the purpose of the initials is in each case.

***All alterations must be initialled by both parties and the ideal practice is to ensure that nothing else is initialled other than the initials at the bottom of each page.***

Then there can be no doubt as to what the initials are representing – each party is confirming the alterations in each case. By alterations we mean principally anything on a contract which has been crossed out and replaced with other details.

Some contracts have many alterations on each page and clauses which have been crossed out and, if there are initials all over the side of each page for everything written into blank spaces or altered in any way, it can become almost impossible to determine exactly what each initial actually covers.

***Keep all initialling to actual alterations of any clause.***

***Agents are also urged to delete in their entirety all printed clauses not relevant to the contract they are concluding (such as suspensive conditions which do not apply to the present sale) and to have these clearly initialled as well.***

Don't leave suspensive conditional clauses in a sale contract when they do not apply to it – they will still be valid, and the sale could be declared void for vagueness (e.g. when the redundant clauses contradict the terms of a sale, such as a 100% cash sale unintentionally still made subject to the acquisition of a mortgage loan). It is also crucial to complete any blank sections in clauses which are left in – far too often OTPs are concluded with portions left blank and this can cause problems later as well.

### **c) Can Offers to Purchase be signed Electronically?**

I have been recently asked whether parties to a property sale contract can insert their electronic signatures on it rather than signing it with their original signatures. Would the sale still be valid? Let me give a bit of background here before giving a final answer.

Electronic signatures are covered by the Electronic Communications and Transactions Act No.25 of 2002, more commonly referred to as ECTA. The Act provides for the legality of the use of electronic signatures and their binding effect on the deponent and generally allows for this practice in the cases of most commercial agreements, provided the provisions of the Act for the inclusion of an electronic signature are properly followed. The Act also provides, however, that only accredited signatories as defined by the Act, or others who have applied for accreditation and have duly received approval for their appointment, may use electronic signatures on general agreements.

There are, however, some exceptions to this rule and Section 4(4) of the Act provides that 'This Act must not be construed as giving validity to any transaction mentioned in Schedule 2.' The very first exception recorded in Schedule 2 is 'An agreement for alienation of immovable property as provided for in the Alienation of Land Act 1981 Act No.68 of 1981.' This means that all property sale contracts must incorporate the original signature of each party.

***Electronic signatures on sale contracts (and contracts incorporating cessions of exclusive use areas, property donations, etc) are accordingly unlawful.***

The common practice, especially where one or both of the parties lives in some distant city, of getting the buyer to sign an OTP and the seller to sign a copy of the same contract (either with the copy of the buyer's signature or just a separate blank duplicate original which is the same as the one signed by the buyer) remains perfectly valid. The definition of a 'deed of alienation' in the Act (meaning your normal OTP) includes a document *or documents* under which a property has been alienated and it is perfectly acceptable for the original signatures of the buyer and seller to be on different copies of the same contract.

## **21. FICA information and Cost Summaries**

### **a) FICA Information**

The party's information pages are part of the offer to purchase and needs to be comprehensively completed.

In contract law it is essential to establish the identities of the parties being their full names and identity numbers as well as a residential address, email address, fax and cell numbers to which notices can be delivered, as per the contract.

The new FIC Act requires all financial accountable institutions, which includes real estate agents to comply with the terms and regulations of the Act. One such regulation is to establish and verify their clients, and this information is noted on the information pages, keeping the agent compliant with these regulations. Any client that refuses to give the information requested for any reason is to be reported to the FIC.

Additional information has also been requested for transfer purposes which have also been made applicable as part of the contract.

Each party's signature at the bottom of the page means that they have verified that the information they have provided is true and correct. If any information is incorrect the agent cannot be held responsible.

#### ***b) Cost Summaries***

The cost summaries and not a legal requirement by law, however, the contract makes it a legal requirement.

Cost summaries are only an estimate as the agent is dependent on the accuracy of the information provided by the parties. The summary is merely to educate each party as to what costs they will incur during the transfer process.

Should a client not wish for the agent to complete the cost summary they are entitled to do so, however, because it is required in the contract the page should be signed with a line drawn through the information.

## **22. Commonly asked Questions**

#### ***a) When does the sale become finalized?***

As soon as the Seller has signed the offer to purchase the sales has been finalized and becomes a valid agreement of sale. Until the seller has actually signed the offer no sale exists. If the seller makes any changes to the contract it then becomes a counteroffer and the sale will only become valid once the Purchaser has accepted the changes. Until the Purchaser signs the changes no valid sale agreement exists.

#### ***b) Can the Purchaser withdraw after signing the offer?***

The offer normally has a time period in which the seller can accept the offer. Until this period expires the Purchaser cannot withdraw and you as the agent are obligated to take the offer for the seller's decision. Remember, you are the seller's agent and you represent him. The seller may accept the offer at any time during this period. (Remember, once you have an offer

you have performed your duty and should not let anyone deny you your opportunity to earn your commission.)

***c) Can an estate agent withhold an offer?***

No! once a purchaser has signed an offer to purchase the agent is compelled to present it to the seller forthwith.

***d) What if the seller receives two offers simultaneously?***

If the seller receives two offers from two different prospective purchasers, the seller has complete freedom to either reject both offers or to accept one in favour of the other. He is not obligated to give either one preferential treatment. Neither are agents allowed to interfere or manipulate the seller's decision.

***e) Must the seller accept a purchaser's offer if he has offered the full asking price?***

No! Even if the seller gives a mandate to an agent to sell the property, he is not obliged to sell the property, even at his asking price. If he rejects it the seller may still be liable to pay the agent's commission as the agent has fulfilled his duty as per the mandate they received, but he has no obligation to the purchaser.

***f) Is a verbal acceptance by the seller enforceable?***

No! even if a seller phones an agent or purchaser informing them that he is accepting the offer and then changes his mind and does not accept, no sale exists. By law all property sales MUST be reduced to writing and signed by all parties before a valid agreement of sale exists.

***g) Can the seller accept the offer after the expiry date?***

Not unless the purchaser is still willing to buy the property and there is an addendum signed extending the acceptance date that was originally allowed in the offer to purchase. If no addendum is signed, then the offer has lapsed and is no longer of any force or effect.

***h) Can the seller reject the offer and then change his mind and accept it?***

No! once the seller has advised the agent or the purchaser that he has rejected the offer before the expiry date he cannot change his mind and accept it. Once he has said no it is a formal rejection of the offer and he cannot later accept it without the purchaser's consent to do so.

***i) Is a purchaser bound to a verbal offer?***

No! according to the Alienation of Land Act, no one is bound to any sale agreement of immovable property unless it has been reduced to writing and signed by both parties. A purchaser can change his mind anytime before signing an offer to purchase.

***j) Can a purchaser or seller compile their own offer to purchase?***

Yes! However, it is always advisable that either an estate agent or attorney draw p the agreement so that it is compliant with the requirement of the Alienation of Land Act.

***k) How binding is an offer to purchase?***

Once the offer has been signed by both parties, including the acceptance and signature of all parties to any changes, it is a legal and binding contract. A purchaser, once he has signed is not merely making an offer, he is making a firm intent to purchase the property form the seller.

***l) Does either party have any rights to cancel the contract?***

As long as both parties comply with their obligations, neither one has the right to cancel the contract. If either party does not comply with his obligations, he will be in breach of contract. Parties may agree to cancel by mutual consent, however, if an estate agent was involved the seller will be liable for the estate agent's commission. The payment of commission is not automatically cancelled, and the commission clause generally protects the agents commission in such circumstances.

## How to Complete and Offer to Purchase

For an offer to purchase (OTP) concerning the sale of immovable property to be legally valid it has to contain, at minimum, the following:

- a) Must be in writing
- b) The identity of the parties to the contract
- c) The description of the property being sold
- d) The purchase price
- e) Must be signed by the parties.

No additional clauses need to be recorded in the written document for it to constitute a valid contract of sale of land. In the absence of an agreement to the contrary, common law governs the relationship between the parties regarding those matters which the parties did not agree upon and which have been excluded from the contract. For example, the date of possession, latent and patent defect, etc. are included to avoid conflict from arising between the seller and the purchaser. OTP's are generally more detailed and include common law clauses for ease of reference.

### **Must be in writing**

(For sake of interest take note that if a purchaser is married in community of property, one purchaser can sign the offer to purchase, without the other one having signed, but it is always safe having both sign)

Unless the agreement between a buyer and seller of immoveable property has been written and signed by both parties it is an invalid agreement. No verbal communication or agreement is valid when it comes to immovable property sales. Unless reduced to writing it will not hold up in a court of law should a dispute arise between the parties.

All verbal commitments and/or promises made by a seller to a buyer, or a buyer to a seller, must be reduced to writing and must be signed by both parties. If you, as the agent, have been party to hearing any commitments or promises made it is your duty to write them into the contract and to have the parties sign where you have included these items (also comments about tenants being in occupation of the property; purchasers requiring pet friendly properties, and purchase prices which are to be paid from Road Accident Fund payouts need to be dealt with in writing). Failure to do so would constitute negligence on your part and an offended party could take you before the Estate Agency Affairs Board for damages. If the PPRA finds you guilty of wilful, unwilful or simple negligence they could order you to pay for the damages incurred by the offended party. They would also impose a fine on you for contravening the Estate Agency Code of Conduct.

No matter how trivial the promise may seem, make sure that it is recorded in writing either in the OTP or on an addendum and signed by the parties.

The following notes are guidelines only. Please consult the training material for further information and education.

Every clause has a section in bold print. This is to assist you and your clients to determine what the purpose of the clause is. When you present an offer, you should be able to scan this with your eyes, reading upside down, while it is in front of your client. You should be able to explain each clause to your client without having to read them yourself.

### **Learn and know your Offer to purchase by heart!**

Any changes or corrections you make to the contract must be initialed by all parties next to the change. Never initial next to each clause as this would leave room for someone to make a correction without the other being aware of it. Only initial next to clauses that have been inserted, changed or a correction.

**The notes in document should be read and studied in conjunction with other training notes available in the training manual for further explanation.**

**If you do not understand anything contained in these notes, then consult your Principal for further training.**

### **OFFER TO PURCHASE IMMOVABLE PROPERTY Which on acceptance hereof shall become a BINDING SALE OF AGREEMENT**

No offer is legal and binding until it has been signed by both parties. Once signed both parties are obligated to fulfil the terms and conditions of the contract.

I/We

---

\_\_\_\_\_ (the Purchaser)

Hereby offer to purchase from you

---

\_\_\_\_\_ (the Seller)

The undermentioned property through the agency of Y van Wyk t/a Golden Homes (the Agent).

In an OTP there are two parties, namely the seller and the purchaser. The parties can be either a natural entity or a legal entity.

#### **Natural entities:**

A natural entity is any person or persons operating in their personal capacity. There can be more than one person acting as the seller or the purchaser. In each case it becomes important or you, as the agent, to correctly identify the parties signing the contract.

You will need to establish, via a deeds search, who the legal registered seller is. Whoever is registered on the title deed as the owner is the person/s who needs to sign the OTP. A seller

or purchaser can nominate someone as their agent (not an estate agent) to act on their behalf. If this is the case, then you would need to obtain a copy of the agreement authorising the agent to act on behalf of the party. A Power of Attorney agreement is an example of such an agreement.

The person reflected as the owner on a deed search might not always be the only owner. If a party got married in community of property subsequent to acquiring the property then by operation of law the new spouse will also be a seller.

Once you have established who the parties are then you need to do a further identity of the party to verify who they are. The FIC Act requires you to get a copy of their identity document. Other documents you could obtain under the “know your client” requirements by FICA would be a copy of a proof of residence, income tax number, rates account, etc.

When completing the details in on the OTP all the parties must be clearly identified by their names. We advise that you use their first name, initials and then surname (i.e. Susan JPL Snyman). This is applicable to all parties to the contract. The FICA information form at the back of the OTP are part of the OTP and need to be comprehensively filled in as this fully identifies each party.

### **Legal Entities:**

A legal entity consists of either a trust, close corporation, or company.

The legal entity’s registration documents would be required to identify the entity. If there are more than one directors/members/trustees then a resolution permitting the person signing on behalf of the legal entity must be obtained before completing the OTP. If you do not have this resolution then your OTP would be considered null and void as the entities signatures would not be valid and you OTP would not have been signed by both parties.

The person signing on behalf of the legal entity must be correctly identified and a copy of their ID and other “know your client” details would be applicable.

Any legal entity that does not want to give you their FICA documents is considered suspicious under the FIC Act. Continue with the transaction, however, it would be your responsibility to do an anonymous report thereof to FIC. Consult your FICA training notes.

Another thing to check for when identifying the parties is their marital status. If any parties are married in community of property, then their spouse would have to give consent. You would need to obtain a copy of this consent or have the spouse included in the contract. In the event of a trust, I strongly recommend that you get a copy of the trust deed, as well as the Letter of Appointment to ensure that the trust can act and can purchase or sell the property. In the event of a company or a close corporation I suggest that you conduct a deeds office search to ensure that the person signing is indeed a director of the company.

**Note: The Agent is ALWAYS the agency and/or its principal. The agent is NEVER the person facilitating the agreement. An estate agent is a representative who represents the AGENT being the Company and the principal they work under.**

### **PROPERTY DESCRIPTION**



A freehold ERF no: \_\_\_\_\_ in the Township of \_\_\_\_\_  
 Situated \_\_\_\_\_ at \_\_\_\_\_  
 (the Property)

In real estate, an erf is the legal term used to describe a piece of land registered in a deed's registry as an erf, lot, plot, stand.

Check carefully that the property description does not include "a portion of" or "a portion of or a portion of" as it will result in an amendment to the bond if it was recorded incorrectly.

Every property has an erf description which you would find on the title deeds as well as the local authority rates account. Properties are classified as freehold erf, sectional title, lot, plot, or farm.

It is important to correctly identify which piece of property is being sold and that the description is correct. Every property, even sectional title properties, are situated on a piece of land that has been zoned by the local authority through the zoning and subdivisions of land the local authority gives a legal description to that piece of land for future identification. This is then registered in the deed's registry.

In the OTP you will see the word erf and a space for the erf and portion numbers, situate in the Township (this is the suburb in which the property is situated) and then situate at for the actual street address. This will complete your property identification.

## OR

A Sectional Title unit consisting of Section number \_\_\_\_\_ being unit/door number \_\_\_\_\_ in the building known as \_\_\_\_\_ situated at \_\_\_\_\_ Erf: \_\_\_\_\_ As more fully described on the sectional title plan of which the floor area is show in the plan and an undivided share in the common property of the ground and building as described in the Sectional Title Plan, in accordance with the participation quota of the section.

## Exclusive use areas comprising:

Lock up/under cover/open parking bay no: \_\_\_\_\_ and/or garden area \_\_\_\_\_ and/or storeroom area \_\_\_\_\_ and/or staff quarter no \_\_\_\_\_ Pets...Yes/No \_\_\_\_\_ And any other parts of the common property situated on the land more fully described in the said Sectional Plan.

Managing agents: \_\_\_\_\_ (Tel) \_\_\_\_\_

The section number is not the door number. Often, they may be the same but do not take this for granted. The section number is as per the description on the sectional title plan. Just like an Erf number identifies a piece of land, a section number identifies a section of the

common property in a sectional title scheme. This is usually a specific section in the building together with any exclusive use areas.

The participation quota is determined by the square meterage of the unit as per the plan. This quota is calculated according to the sizes of the units. A unit with a larger square meterage will pay more than one with less. This will then determine the amount the occupier will pay for levies.

Exclusive use areas are areas on the common property (the whole property) which the purchaser will have to himself and does not share with someone else. This could be a closed in garden, a parking bay, storerooms, etc. You will need to check whether these exclusive use areas have been allocated with a section number and include the section number above where it asks for a section number. For example, a garage may have its own section number if it is not joined to the unit. Then your section number field would read. Section 1 and 14.

The managing agent could be either a real estate company or the Body Corporate itself. In either case you need to determine who they are and their contact details as they would be the person responsible for issuing a levy clearance certificate. A levy clearance is similar to a rates certificate. Some Body Corporate's collect and pay rates on behalf of their owners and some do not. It is the purchaser's responsibility to make sure he is registered with the local authority and that his rates are paid. Check this with the body corporate and notify your purchaser accordingly.

Remember clause 10 of the OTP the wording changes to Body Corporate instead of Homeowners Association.

Sometimes, not very often, a sectional title scheme is within a development governed by a homeowners association. In a situation like that, clearance would be required by the homeowners association as well as the body corporate. The way one would identify this is by looking at the title deed, if the title deed contains a home owners association condition clause over and above the normal sectional title clauses, you would know to bring this to the attention of the attorney. You also need to request the client in a situation like this for copies of both or information on both the body corporate and home owners association.

### **1. PURCHASE PRICE**

The Purchase Price is the sum of R \_\_\_\_\_  
 ( \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ )

The purchase price is always the **gross** purchase price which would include the agents commission (if applicable) and any other amounts agreed to by the parties. This does not, however, include any of the purchaser's costs for transfer.

The amount is always to be in numbers and then described in words to avoid any misunderstandings.

### **PAYABLE AS FOLLOWS:**

a. \_\_\_\_\_ ( \_\_\_\_\_ )  
\_\_\_\_\_ )

As a **CASH PAYMENT** (i.e. not bond finance) either as:

If there is no deposit insert the words “nil” in both sections.

If there is a deposit, then insert the amount in words and then write the words out in full. Never cross this clause out as it is relevant to clause b below.

**If no deposit is payable then cross out points I, ii, and iii below and have both parties initial next to your change.**

- i. A **Deposit** payable by way of **EFT** on or before \_\_\_\_\_, or to be secured by a **bankers guarantee**, to the satisfaction of the Seller’s Conveyancer, payable on registration of the property into the name of the Purchaser. The funds for the above-mentioned deposit are emanating from \_\_\_\_\_

Deposits are never collected in cash by the estate agency. All deposits need to be paid via an electronic bank transfer to avoid and FIC reporting. All cash deposits over R25 000 (twenty-five thousand rand) need to be reported to the FIC. Once you (the agency) have reported the deposit to FIC they will take it further for investigation.

Determine the date by which the deposit needs to be paid to the transferring attorney and insert in the space provided. Should the deposit not be paid by such date the attorneys can then take further action against the purchase in regard thereto.

A banker guarantee is a document issued by a financial institution on behalf of the purchaser to the seller by way of the transferring attorney. This guarantee will be paid out by the bank upon fulfilment of the OTP which would be the date of registration of transfer. Once the funds have been received by the transferring attorney, the attorney will pay the seller, the agent and any other person to whom a financial commitment has been issued by the attorney on behalf of the seller.

Under the FIC Act, “know your client” you, as the agent acting on behalf of your seller need to know where the purchaser’s funds re emanating from. You do not need any documentation. Ask your purchaser and fill in his response (i.e. savings account). his signature to the contract confirms his word to you. This is sufficient.

**Unless part of the funds making up the purchase price are emanating from a further cash payment or from the proceeds from the sale of a property, then delete points ii and iii below.**

- ii. Payment \_\_\_\_\_ of \_\_\_\_\_ R \_\_\_\_\_  
( \_\_\_\_\_ ) being the balance of  
or **FULL PURCHASE PRICE** by way of **EFT** on or before \_\_\_\_\_, or to  
be secured by a **banker guarantee**, to the satisfaction of the Seller’s  
Conveyancer, payable on registration of the property into the name of the  
Purchaser. The funds for the above-mentioned deposit are emanating from  
\_\_\_\_\_

Same as point i. above. If there is an initial deposit less than the full purchase price, then the balance would be inserted below. It is always advisable to get an initial deposit from a purchaser when you are doing a cash transaction which would be payable upfront or soon after the date of signature by the seller. If no initial deposit is payable, then the full purchase price would be inserted in clause ii above and an amount of "nil" would be inserted in clause a.

Familiarize yourself with the different payment options so that you can correctly complete the contract.

iii. A \_\_\_\_\_ Payment \_\_\_\_\_ of \_\_\_\_\_ R\_\_\_\_\_ ( \_\_\_\_\_ ) being **the full/a portion** of the purchase price emanating from the **SALE OF A PROPERTY** (see clause 3) which is payable on registration of the said property by the Purchaser's nominated Attorney attending to the transfer of the said property. The undertaking or guarantee for the payment of the purchase price from the said sale issued by the nominated conveyancer of the transaction referred to in clause 3 is due on the \_\_\_\_\_.

If the deposit or full purchase price of the property will come from the sale of the purchaser's property (see clause 3) insert the amount in the space provided. The transferring attorney will contact the purchaser's attorney and obtain a guarantee for the purchase price from them. The purchaser's attorneys will then be obligated to pay the said amount to the transferring attorney on the date that the purchaser's property is registered into his buyer's name. thereafter, the seller's attorney can complete this transfer into the purchaser's name.

Sometimes the attorneys will do what they call a simultaneous transfer, that is they will do all their paperwork and lodge both transactions in the deed's office for registration at the same time. If this is the case the purchaser's property **MUST** always register first in order for the attorneys to make payment to the seller's attorney for the full purchase price. This may mean this transfer into the purchaser's name may be delayed by a day or two if unforeseen circumstances arise.

A due date for obtaining the undertaking or guarantee on the simultaneous transaction needs to be inserted to avoid the agreement being vague.

**All deposits and payments are to be paid to the Seller's Conveyancer** who shall hold the same in trust for investment in an interest-bearing account, which interest is to accrue to the Purchaser on registration of transfer.

While it is permissible for an estate agency to collect the deposit and later transfer it to the transferring attorney, we do not recommend this. With the amount of fraudulent transactions that take place it would be to the benefit of the purchaser to have his funds transferred to one place at one time. This would make it easier on him to confirm that his money is being paid to the correct account without having to verify multiple bank accounts.

The attorney is also then responsible to invest the purchaser's money and account for the interest earned thereon to the purchaser. Our contract states that the deposit and/or full

purchase price is to be paid to the transferring attorney and this then prohibits the estate agency from collecting these funds.

Proof of availability of funds for the deposit or in payment of the full purchase price will be provided by the Purchaser within 5 calendar days, including weekends, by way of a bank statement or a letter from a financial institution. Failure to produce the required proof shall constitute a breach of contract.

Many purchaser's make cash offers and then turn out to not have the monies they are committed to pay on hand. Proof of the availability of the funds becomes important so that the attorneys can proceed with any breach of contract and prevent the deal from dragging on for months on end. (See clause 8)

- b. **The BALANCE OF THE PURCHASE PRICE** being R \_\_\_\_\_  
( \_\_\_\_\_ ) to be secured by approved **Bankers GUARANTEES** in favor of the Seller or his nominee, delivered to the Conveyancer within 30 (thirty) calendar days of acceptance of a mortgage bond/s referred to in clause 2.

The balance of the purchase price is determined by the purchase price less any deposit stipulated in clause 1a. This balance would then be secured by a banker's guarantee by way of a mortgage bond, as per clause 2. If there is no deposit, then the amount above would be the same as the purchase price.

## 2. **BOND FINANCE**

This offer is subject to the Purchaser obtaining a BOND from a registered financial institution, by the (date) \_\_\_\_\_ of a mortgage loan of not less than R \_\_\_\_\_  
( \_\_\_\_\_ )

This offer is SUBJECT TO the purchaser obtaining finance from a financial institution. If he is unable to obtain a bond by the date stipulated, then this sale would be of no further force or effect as this is a condition of sale that was not fulfilled. The seller is free to accept any other offer after the expiry of this date, unless an extension has been granted to the purchaser by the seller. Any such extension must be reduced to writing, agreed to and signed by both parties.

The date is a variable that needs to be agreed upon by both parties. Generally, 30 days is enough time for obtaining a bond, however, if the client is self-employed or a legal entity then a longer term may be necessary. If there are multiple offers on the table, the seller may choose to reduce the time allocated for a bond. There is no hard and fast rule regarding the time stipulated.

However, leaving this date blank will render your OTP null and void as no agreement was reached between the parties.

A condition such as bond finance makes an agreement conditional in other words it suspends the operation of the agreement until such time as the bond is in place. Thus, if the bond does not get approved or is not approved for the correct amount or by the date specified, the agreement will lapse.

- a. The Purchaser hereby appoints **GOLDEN HOMES** to make application for a **Mortgage Bond**, to be registered over the property on his/her behalf, subject to the conditions currently being imposed by the Financial Institutions.

The appointment of Golden Homes as the agent that handles the bond application is crucial to you as an agent. This is not something that you want to leave in the purchaser's hands, regardless of his/her insistence that you use their originator or bank consultant. As an agent you act on behalf of the seller and as such you are responsible to update the seller regarding the purchaser fulfilling his terms and conditions. Once you allow this to become the purchaser's responsibility you have reneged your responsibility as the seller's agent. **DO NOT DO THIS!**

This clause forces the purchaser to comply with his terms and conditions and enable you to monitor and track the progress of the bond application. If you have reneged this to the purchaser, you will find yourself in a position where you struggle to get information and have no way of giving your seller any feedback. This is negligent and should the seller wish to reduce or cancel your commission for neglect, he could do so. If you are found guilty of this neglect, even if it was not intentional, can leave you in hot water. **DON'T DO THIS!**

Should the purchaser wish to use his own originator or bank consultant, he has the right to do so. You cannot force a purchaser to use your contacts of bond originators. When a purchaser wants to use his own contact then you need to request the name and contact details of the person they are wanting to use. YOU then send the necessary documentation to their appointed person who will then become responsible to you to update you on the finance application.

If a purchaser is unwilling to furnish you with this information, then you have a "suspect" purchaser and you need to become alert and vigilant. There are many scams going on where people are trying to gather personal information. They do this by making offers where after the agent sends them the OTP together with the seller's information. In turn they can use both the OTP and the seller's information for fraudulent purposes. With the new POPI and FICA laws you could place yourself and your agency in trouble for not protecting your client and for not conducting a "know your client" procedure.

If you are ever found guilty by the PPRA or a criminal court, you could find yourself paying heavy fines and/or even do jail time. **NO PURCHASER OR COMMISSION IS WORTH YOUR LIFE!**

**Make sure you enforce this clause AND NEVER CROSS IT OUT!!**

The conditions currently being imposed by the Financial Institutions has to do with their terms and conditions, lending criteria, risk appetite, interest rates and the financial behaviour of the purchaser. This is not an exhaustive list as each Institution may have other lending criteria in place as well.

- b. The Purchaser hereby undertakes to complete any loan application and supply all the **relevant documents**, including but not limited to copies of ID, antenuptial contracts, proof of residence, pay slips, proof of tax registration number and financial records. Failure by the Purchaser to do so within 5 (five) working days from acceptance of this agreement by the Seller shall constitute a material breach.

As an agent it is within your mandate as the agent to the agreement to obtain all of the above information. However, there are times where the purchaser may not want to give you his financial documentation due to sensitive information therein. Do not insist on this. They will, however, have to supply this information to the bond originator or bank consultant. This is in particular when dealing with a legal entity. However, should they refuse to supply this information to the bond originator or bank within the time specified, they would be in breach of contract. At this point the contract is no longer subject to a bond and the commission becomes payable. In this case the breach clause would make the purchaser responsible for the commission as he would be the defaulting party.

Five working days exclude weekends and public holidays. The attorney would work these days out when they prepare their "terms letter" to the purchaser. Placing a purchaser on terms means the attorneys will give the purchaser a letter to comply with the terms and conditions of the contract, in this case to supply the necessary information and/or documentation to fulfill clause 2, remember when a purchase gets placed on terms and when a transaction with a purchaser gets cancelled, we must always ask the seller's instructions preferably in writing to protect ourselves from litigation. If the purchaser supplies the documentation within the stipulated time given in the notice letter, then he will have fulfilled the terms of clause 2 and the deal will proceed. If he does not on instructions, the attorney will send out a letter of cancelation and the agent and seller can then proceed with legal action to approach a court of law for whatever legal claim they feel they are entitled to, the first step here again is a letter of demand.

A material breach means they have violated the terms and conditions of the contract and both the seller and the agent have the right to exercise legal recourse. The agent would obviously sue for their commission and the seller could sue for 'specific performance,' which when granted by a court of law would force the purchaser to take transfer. In the alternative they can approach a court for an order as to damages. Damages claimed will only be damages that can be proved that was suffered.

Remember, once your OTP has been signed by both parties it becomes a legal and binding agreement enforceable by law. May buyers and seller get away with it because a party chooses not to proceed with any legal action and not because the contract is not enforceable. The contract will stand in a court of law and as long as you have not violated the law and have fulfilled your obligations in the management of the contract, a court will award you your commission.

Note: If you as the estate agent are an intern and you do not have a principal of full status agent physically present with you, the law would not uphold any commission claim as you have violated the terms and conditions laid down by the PPRA. The PPRA is a legal body who clearly state that no internal agent may fill in, sign or complete and offer to purchase without



the physical presence of a full status/principal agent. Therefore, it is important for you to get your qualifications as an estate agent so that your commission never comes under threat.

- c. The condition, upon **approval of the loan in principle**, whether by pre-agreement, a quotation or granted in writing, issued by a bank/financial institution, shall be deemed to be fulfilled.

“The condition” in this clause refers to the whole of clause 2, being the obtaining of finance, only. It does NOT include any other terms and conditions in the contract. An “approval in principal” or AIP is a letter from the bank confirming that the purchaser’s finance has been approved.

At this point clause 2 is fulfilled, even though the bank still has to do a valuation on the property. At this point any competing offers that may be waiting for this OTP to lapse will have to wait until the bank has done their valuation and has had time to issue a final grant, even though the purchaser’s time to obtain a bond may expire on the date of the AIP. Once a purchaser has obtained an AIP his offer has become secure.

Should the bank find value in the property, then they will issue a letter of grant which the purchaser must sign. Should the bank not find value they may make a lower offer or decline the loan altogether, in which case this offer will have lapsed and a second offer that was pending would become applicable. If the purchaser has money for a deposit, he could accept the grant and pay the deposit. The deposit would, however, become payable on the date of the bond grant otherwise the terms and conditions of the contract have not been fulfilled. Even if there is no contending offer, the deposit would still become payable on the date of bond grant, provided that it is the last day stipulated above. If it is not and there is still time, the deposit would become payable on the date above or the date agreed to by both parties via an addendum to the offer to purchase.

TAKE NOTE that the condition is twofold. We need to get the amount stipulated in the agreement in terms of a bond by the date stipulated in the agreement, so there are two legs to the condition and both need to be ticked.

- d. The Purchaser may at any time prior to the fulfilment of this suspensive condition, advise the Seller or the Conveyancer, or the Agent in writing, that he **waives the benefit** of such condition, in which event, this agreement will no longer be subject to the condition.

Prior to the fulfillment of this suspensive condition again ONLY refers to clause 2 of the offer. Waives the benefit means that the purchaser is no longer making the offer conditional to obtaining finance through a financial institution and will now pay “cash” for the property.

In such a case the purchaser must advise either one of the parties mentioned above in writing that he is no longer applying for a bond and that he will issue a guarantee from a registered financial institution instead. This guarantee would become payable to the seller on or before the guarantee date stipulated in clause 1b unless amended via an addendum that has been agreed to and signed by both parties.



Any guarantee made by a financial institution will be made out in favour of the seller but will be issued to the seller's nominated attorney. The attorney handles the guarantees on behalf of the seller and will distribute all the funds to settle any debts the seller may have had over the property (i.e. a bond) before paying the seller out on date of registration of transfer.

On the date of registration of transfer the attorney will notify the financial institution that the property has registered, and the funds are now due and payable as the seller has complied with the terms and conditions to give transfer. Upon confirmation of transfer, which is a letter of confirmation issued by the deed's office, the bank will then transfer the monies into the attorney's trust account. Once the attorney has received the funds into their account, they will make payment to all the parties concerned, including the estate agent (agency).

- e. The Purchaser warrants that he is aware and understands the prevailing requirements of banks/financial institutions regarding **eligibility for finance** based on income and credit ratings and further warrants that he is eligible for the loan amount.

It is the purchaser's responsibility to make sure that they qualify for a loan and understand the financial implications thereof before making an offer and they should have checked that they qualify before making an offer. If they have not done so it still remains their responsibility and not yours as an agent. You can do an estimate for them but the responsibility for the fulfilment of this clause and the declaration they make here is theirs. Once they have signed the OTP this declaration stands, and they cannot use the excuse that they did not or do not qualify.

- f. The Purchaser hereby authorizes Golden Homes or any mortgage origination company or bank, to make enquiries to verify any information provided in this offer from the **credit bureau** in order to assess an application for a bond.

Permission must be granted by any purchaser before anyone may do a credit check against their name. This clause authorizes Golden Homes, a bond originator and a bank to do the necessary checks in order to assess their credit application. This authority is to the principal of Golden Homes or their representative and not to you as an individual estate agent.

If a person's credit history is considered too risky by the financial institutions, they will either decline the application altogether or offer an amount at which the financial institution is willing to loan.

### 3. **SUBJECT SALE**

- a. This offer is **SUBJECT TO THE SALE** and subsequent successful registration of the Purchaser's \_\_\_\_\_ property, namely \_\_\_\_\_ ERF/Unit \_\_\_\_\_ Address \_\_\_\_\_ within \_\_\_\_\_ days of acceptance by the Seller. Should an **unconditional offer**, meaning an offer that is not subject to the sale of a property or where the subsequent offer has not yet fulfilled its suspensive conditions, be made to the Seller the Seller shall give the Purchaser \_\_\_\_\_ working days' notice within which to declare this offer 'unconditional,' failing which the Seller shall be at liberty to accept the new offer and this offer will be regarded as null and void.

This clause is only applicable when the purchaser has to either sell his own house or has sold it but is still awaiting transfer. If the purchaser does not need to sell his home or has no home to sell, then this clause needs to be deleted and both parties need to initial next to the correction of change.

You will need to obtain the details of the purchaser's property and fill those details in. This will identify the property that needs to be sold and avoids any misunderstanding. A purchaser could have more than one property and one should correctly identify which property is being sold.

You need to negotiate with the seller as to how much time he would like to afford to the purchaser to sell his property and specify the amount of days in the clause above. There is no law or rule that dictates what time period is allowed, therefore you will need to negotiate this point with both parties.

This clause makes the entire contract subject to the sale of the purchaser's property within the specified time. Should the purchaser not have sold his property, which would include the purchaser of the purchaser's property having obtained a bond grant and produced guarantees, then this offer will automatically lapse on the date determined between the parties.

If the purchaser has successfully sold his property within this time the deal would be considered valid or concluded. However, the entire agreement would still be subject to the purchaser's property transferring out of the purchaser's name before this offer can register into his name. If at any time the sale over the purchaser's property lapses then this offer would also lapse. Make your seller aware of the risk he incurs as a result of accepting an offer that is subject to another property having to transfer first.

If the seller receives another offer within the time that the purchaser is busy selling his property, the seller would be at liberty to do so. However, the seller cannot cancel this offer. He has to give the purchaser 72 hours' written notice to either cancel or declare this offer unconditional, he can only do so if the second offer already has his finances in place.

Only once the second offer has fulfilled all its suspensive conditions is the seller at liberty to give the first purchaser notice to cancel or declare the purchase unconditional.

Should the purchaser declare this offer unconditional then he will need to produce guarantees by the date stipulated in clause 1. Alternately he can notify the seller that he is unable to make his offer unconditional in which case the offer will cancel, and no penalties are payable by the purchaser.

**Proof** of any such offer together with proof of payment will be sent to Golden Homes prior to any notice being issued. (See clause 8.d)

If the seller has accepted a second offer, proof of the offer together with proof of payment or a bond grant must be given to Golden Homes BEFORE any notice will be given to the purchaser. If the purchaser sells his property and has received proof that his purchaser has finance in place, then this offer will supersede the second offer and continue on to transfer.

**OR**

If the purchaser has already sold his property and the finances are in place, then this section below will become applicable. In such cases you will need to delete the clauses above and have all parties initial the change.

This offer is subject to the successful registration of the Purchaser's property, namely ERF/Unit \_\_\_\_\_ situated at \_\_\_\_\_  
 which the Purchaser warrants has already been sold and being transferred into the Purchaser's \_\_\_\_\_ name through \_\_\_\_\_  
 \_\_\_\_\_ Contact \_\_\_\_\_  
 Email \_\_\_\_\_ Address: \_\_\_\_\_

As above except that in this case the purchaser warrants (guarantees) that his property has been sold and is in the process of being transferred. In this case you will need to obtain the details of the purchaser's transferring attorney and complete the section above.

Note: Many purchasers and agents often request the seller to use the same attorney to do this transfer as it "will save time and the deals can work together smoothly." This is in direct violation of the PPRA Code of Conduct. If you are found guilty of recommending the appointment of such attorney and things then go wrong with the deal the seller will have the right to hold you liable for any damages he has incurred as a result of this.

Always make sure that you insert the date by when guarantees from the sale of the subject to must be in place. See clause 1a(iii)

**The PPRA rules and regulations still stipulate that the Seller has the right to appoint his own choice of attorney to process the transfer of his property to the purchaser. With the use of electronic devices and the internet attorneys are able to efficiently communicate with each other and to join the respective transfers as they come up for registration. See clause 6a.**

#### **4. VOETSTOOTS / FIXTURES AND FITTINGS**

- a. The Purchaser acknowledges that he has been granted a fair opportunity to inspect the Property, which he has done to his satisfaction on the \_\_\_\_\_ (date), which is sold **VOETSTOOTS**, that is in the current condition and to the extent and size as it now lies, without any warranties, expressed or implied together with its fixtures and fittings and servitudes and accepts the Property in the condition it now lies.

It is important that your purchaser has had a fair opportunity to inspect the property to his satisfaction. This means he is allowed to go into the roof should he wish to do so, to open taps and cupboards, to test pool pumps, gate motors, and anything else he would like to inspect. As an agent DO NOT discourage him from doing so and make sure you ask him if he is satisfied with his inspection as he cannot come up with excuses or faults after the agreement has been signed. Make him fully aware that he is making a declaration to the fact that he is satisfied

with his inspection. If he wants to go and do another one, then you are obliged to let him do so. The seller is also obliged to allow any prospective purchaser to do a full inspection to his satisfaction. The seller is under no obligation to fix anything the purchaser might find fault with, unless these things fall within the requirements of any certificates that the seller needs to provide. Should the seller undertake to do certain things, ensure that you include it in your agreement under “special conditions” and insert the date by which it should be done.

The word “voetstoets” means that the purchaser accepts the property in the condition that he inspected it in without any repairs, warranties (promises) whether they were implied or not as well as the condition of the fixtures and fittings. If there are any servitudes on the property or conditions on the title deeds, he accepts those as they are as well.

- b. The Property is sold inclusive of all existing **FIXTURES AND FITTINGS** of a permanent nature which the Seller warrants are his exclusive property and fully paid for. These together with the following movable items which are separately included, are sold voetstoets: Including but not limited to:- Stove/oven \_\_\_\_\_ (make) in working order, TV aerials, DSTV dish and mount, wall to wall carpets, curtain rails, light fittings, built-in cupboards, kitchen units, keys and remotes, municipal bins, pool pump and equipment and gas bottles for gas installations.

The sale of the property would automatically include all fixtures and fittings which are physically attached to the property. For example, light fittings, curtain rails, and others specified above. There could also be other items like air conditioners, fishponds with pumps, gate and garage motors, etc. As an agent make a note of what fixtures and fittings you see while doing your own inspection of the property and include them below if they are not listed above.

An easy test to determine whether something is a fixture and fitting or not is to turn the property upside down and shake it, whatever remains attached, those are fixtures and fittings, and whatever falls off are items that may be taken by the seller when he vacates the property.

PLEASE NOTE: If any of the fixtures mentioned in the clause above are NOT applicable, meaning they do not exist in the property then you MUST delete them and have the parties initial the change. If you do not, then the purchaser can hold the seller liable and the seller must provide them. The seller can then “sue” you for his damages at the PPRA or in a court of law. If you are found guilty of being negligent you will be fined and forced to pay for the seller’s damages.

Many agents have had to replace stoves, DSTV dishes, etc., because they neglected to negotiate these items properly. You are considered to be the professional person drawing up this agreement. Do not take your position lightly. Be watchful and vigilant when you are completing the offer and make sure you protect all the parties involved.

**Includes:**

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Include any other items that the seller has agreed to include in the purchase price. If the seller has agreed to leave anything for the purchaser or do anything for the purchaser, it **MUST** be included in the offer. If you run out of space to write, then do an additional clause under special conditions or draw up an addendum. Whatever you do, do not be neglectful.

**Excludes:**

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If there are items that the seller will be removing and taking with him which are of a permanent nature (fitted to a wall or floor) these items must be specified. If the seller is removing a chandelier for example, then he needs to declare it and replace the item with another. **MAKE SURE YOU DISCUSS And NOTIFY THESE THINGS IN DETAIL!** We offer encounter problems with plants, especially cycads. If the plants have been planted in the soil in the garden, then they must remain, if the seller wants to take them it has to go on the after purchase. Usually plants in pots that are standing around, they are allowed to be taken.

- c. The Seller hereby warrants to the Purchaser and the Agent that the Seller is not aware of any **LATENT** defects in the Property and which have not been disclosed, and that all buildings are erected according to the rules and regulations of the Local Authority.

A latent defect is a fault that the seller is aware of but has not disclosed to the purchaser or to you as an agent. For example, there could be damp behind a wall unit, or a hole in the floor which has been covered by a carpet, or a leaking roof. These would have to be things that would not have been visible when the purchaser did his inspection. If the purchaser can prove that the seller knew about it and deliberately withheld the information then the seller would become liable to replace, fix and repair the damage.

It is the seller's responsibility to disclose these things and it is also the seller's responsibility to make sure that the house plans are in order and that all buildings and additions are reflected on a proof building plans and that the house has been built according to the local authority's rules and regulations.

You as the agent cannot be held liable for the non-disclosure of the defects as you are an estate agent negotiating a contract, not a building inspector inspecting and verifying the condition of the property. It is not your responsibility to check that the house plans are in order.

Please also don't create the impression that you've checked everything and that all are in order.

- d. The Parties hereby declare that as per the **Consumer Protection Act**, the sale of the Property does not fall within the ordinary course of business of the Seller and thus Act No 68 of 2008, does not apply to this agreement.

Most seller's that you come across in residential property sales will not fall under the supervision of the CPA. The CPA is designed to protect the public from retailers that sell

multiple items of the same nature. These would be done under consumer agreements and are not applicable to private and personal sales where the seller only has one item for sale.

However, if a purchaser were buying directly from a property developer or a property speculator (someone whose business is to buy and sell houses for a living), then the CPA would become applicable. Purchasers are protected by other property and contract laws and regulations.

- e. The Parties further confirm that the Agent has not made any representations that are in conflict with any of the provisions in the Consumer Protection Act No 68 of 2008, or the Estate Agency Affairs Board's Code of Conduct. Furthermore, the Parties hereby acknowledge that the Agency and **Agent's function is to facilitate the Agreement** and therefore cannot be held liable for the condition of the Property being sold in the event of the Seller having omitted/misrepresented to the Agency or the Agent the condition of the Property being sold, including latent and patent defects. In the event of any disputes, the Purchaser's recourse will be against the Seller and not against the Agency/Agent.

As an agent negotiating a sale agreement the service you offer as an estate agent does fall under the jurisdiction of the CPA and either party can report an agent/agency to the CPA but only in as far as it has to do with the OFFER TO PURCHASE which they are facilitating. You cannot be held liable for the condition of the property, any misrepresentations made by either party, or for the legal enforcement of the contract. Your only responsibility is to make sure that you, as an agent, do not violate the terms and conditions of the PPRA Code of Conduct.

If the purchaser is unhappy with any defects in the property or how the agreement is being handled by the seller's attorney his recourse is against the seller and not against you as the agent. Do not take responsibility for something that is not yours. This will only get you into trouble! Refer any defect complaints etc., to the seller's attorney. The attorney is responsible for the legal enforcement of the contract. You can help and assist but it is never wise for you to give legal advice to either party, even if you know the answer.

However, if the problem has to do with the contract and its terms and conditions where an addendum has to be drawn up because of a change in the agreement between the parties, this will fall under your responsibility. Some attorneys will assist in this regard and some won't. Either way, it is part of your mandate with the seller and you should take responsibility for it.

- f. The Purchaser declares that he has been granted a fair opportunity to **inspect the Property** which he has done to his satisfaction and further that this Agreement and specifically this clause has been explained to the Purchaser who declares that neither the Seller nor the Agent has made any representations regarding the condition of the Property which are not contained in this Agreement.

*Initial .....*

This clause is crucial to you as an agent as many purchasers and sellers blame the agent when problems arise. Purchasers love holding agents responsible for the condition of the property and come after the fact and blame the agent for not disclosing the faults to the purchaser.

Again, this is NOT your responsibility. In this clause you are again making him aware of his responsibility regarding his inspection of the property and that he is happy with it. He is also declaring that you have not made any promises or representation to him about what the seller is going to do for him which has not been written into the contract. (Make sure you write everything that has been said or promised down and insert the date by which it should be done. If you don't it is not valid and will not be enforced by the law). MAKE SURE YOU GET ALL PARTIES TO INITIAL THIS CLAUSE.

## 5. **VACANT OCCUPATION**

Vacant occupation of the said Property shall be given and taken by the Purchaser on **date** **of** **REGISTRATION** **OF** **TRANSFER** or \_\_\_\_\_ (date) (delete whichever is not applicable).

Vacant occupation means that the property has to be empty of all goods and possessions of the seller, including any tenants and their goods and possessions, on the date of registration or the date specified above.

Cross out whichever is not applicable in the above clause. If occupation will be on date of transfer, then cross out from the "or \_\_\_\_\_ (date)". And have both parties initial. If the purchaser will be taking occupation on a specific date, which could be before or after transfer, then delete "date of registration of transfer or" and have both parties initial next to the change.

Date of registration of transfer means the date upon which the property is transferred into the name of the purchaser by the registrar of deeds. This is done in the deed's office. On the date of registration, the property officially belongs to the purchaser.

- a. The Purchaser acknowledges that he knows the said Property is let to **tenants**, whose lease agreement expires on the \_\_\_\_\_ (date) and that this offer is made subject to the Tenants' Rights under the Rental Housing Act. If the Purchaser requests occupation prior to this date, he shall be required to make separate arrangements for occupation with the tenants.

This clause is only applicable when there is a tenant in the property. If there is no tenant, then delete this clause and have both parties initial next to the change.

If there is a tenant in the property, then the purchaser acknowledges that he is aware that there is a tenant who would have to vacate the premises before he can take occupation. This offer is made subject to the rights of the tenant that he has at law. There is a law that states, "Huur gat voor koop" which means that the lease agreement holds a higher position of legal right than the offer to purchase. If the tenant has a current and valid lease let's say for another year, then neither the seller nor the tenant has the right to give him notice. This offer would then include the tenant and his lease which would be transferred to the tenant upon date of registration. Vacant occupation would then become the responsibility of the purchaser and not the seller.



However, if there is a clause in the lease agreement that gives the seller the right to sell the property and to give the tenant notice to vacate by terminating the lease agreement as per its terms and conditions, then the seller would remain liable to give the purchaser notice and to make sure that the property is vacant on date of registration of transfer.

Therefore, it is vital for you as the agent to establish what the terms and conditions of the lease agreement are before you negotiate the offer to purchase. If the lease is valid and the seller cannot give the tenant notice, then the purchaser may choose not to take the property. It is important for you to inform both parties of their contractual obligations herein.

Also enquire about whether the tenant paid a tenant's deposit.

- b. On taking occupation before transfer, the Purchaser shall pay **Occupational Rent** in \_\_\_\_\_ the \_\_\_\_\_ sum \_\_\_\_\_ of R \_\_\_\_\_ ( \_\_\_\_\_ ) per month, payable in advance to the Conveyancer, from the date of occupation to date of transfer. If the transfer is registered and the Seller remains in occupation, the Seller shall pay to the Purchaser the same occupational rent from date of transfer. Such rental amount is to be paid by the Conveyancer to the Purchaser from the proceeds of the sale due to the Seller.

If the purchaser takes occupation before transfer, then he will become liable to pay the seller occupational rent up until the property is registered in the purchaser's name. The amount of occupational rent is something you will have to negotiate between the parties. A general rule of thumb is 1% of the purchase price but there could be many circumstances surrounding the occupational rent being lower or higher.

The occupational rent is payable to the seller's attorney and not to the seller directly, unless this has been agreed to in an addendum to the offer to purchase. This is so that there is a proper record kept of the purchaser's money and the attorney can then refund any rent due to the purchaser once the property has transferred into his name.

Should the seller stay on in the property past the date of registration of transfer, then the seller shall become liable to pay the purchaser occupational rent to the same value as stipulated in the clause above. Whatever rental is due to the purchaser can be deducted by the attorney from any monies payable to the seller and paid to the purchaser. The clause above authorizes the attorneys to do so.

Make sure you draw up an addendum should the seller not be vacating on date of transfer and establish a date on which he will vacate. If you neglect this then the seller could stay on for as long as he likes. Do not neglect your responsibility as an agent to do your addendums.

Always ensure that you insert an amount for occupational rent even if occupation is unlikely.

- c. The Purchaser may not at any time prior to the registration, make any **improvements**, alterations or any other repairs to the property unless agreed to in writing and signed by both parties.



Should the purchaser move in before registration HE MAY NOT make any changes to the property without the signed written permission of the seller. He may not even paint!

- d. The Party in occupation of the Property whilst it is registered in the name of the other shall be liable to pay the registered owner of the Property a pro-rata share of **water, electricity**, refuse and sewage for the period of such occupation.

Whoever is in occupation, whether it is the purchaser or the seller, they will be responsible to pay the water, electricity, sewage and refuse levied by the municipality against the property, or a portion thereof, depending on how long they have been in occupation.

- e. The Seller acknowledges that there is a tenant in the Property but undertakes to give **VACANT occupation** to the Purchaser upon the date of registration or occupation, whichever is relevant, and will ensure that the Property is vacant PRIOR to that date. The Seller further irrevocably agrees that the Agent/Purchaser may delay the registration and instruct the Conveyancer to act accordingly until such time that the tenant has vacated, unless otherwise agreed to by both parties in writing. This clause will operate in favour of the Purchaser, even though the Seller has appointed the Conveyancer. The Seller agrees that the Conveyancer shall follow the Agents/Purchaser instructions in this regard.

If the seller is not able to give vacant occupation to the purchaser because of the terms and conditions of the lease agreement which prevent him from doing so the you MUST cross out this clause and have both parties initial the change.

If the lease agreement does allow for the seller to give the tenant notice in accordance with the lease, then the seller will be responsible and liable to make sure that the tenant has vacated. If the tenant refuses to vacate the seller will remain responsible for any legal cost to have the tenant evicted.

## 6. TRANSFER

- a. Transfer of the said Property shall be effected by the **Seller's Conveyancer**. All transfer costs, bond costs and VAT shall be paid by the Purchaser upon request by the Conveyancer.

While there is no law that says the seller has the right to choose the attorney (it is only stipulated in the PPRA code of conduct) the clause above makes it the seller's right. Also, remember that you as the agent have been appointed by the seller to find him a willing and able buyer, and the seller is paying your commission. This is true even when you sell another agent's listing, or they sell yours. Your mandate to sell the property has been given to you by the seller and not the purchaser.

- b. The \_\_\_\_\_ Seller \_\_\_\_\_ herby \_\_\_\_\_ nominates  
 \_\_\_\_\_ (the **Conveyancer**) to  
 attend to transfer.

Insert the name of the conveyancing attorney the seller has chosen above.

- c. The Seller shall pay all arrear **municipal charges** relating to the Property, including tenant accounts. The Seller shall further provide the Conveyancer with the details of all tenant accounts.

The seller is responsible to pay all monies due to the local municipality including any amounts owing by any tenants. Whatever is outstanding must be paid BEFORE transfer can take place and no arrears can be transferred to the purchaser. The municipality will issue the amount due to the attorney and will, once paid, issue the attorney with a clearance certificate confirming that the account has been paid. They will always add approximately three months average use on top of the amount due to cover any amounts that the seller may neglect to pay during the transfer process.

The seller is responsible to provide the attorney with all the municipal accounts registered against his name for the specified property.

- d. The Seller warrants that a Section 118 procedure in terms of the Municipal Systems Act 32 of 2000 has NOT been followed, nor has an acknowledgement of debt been signed in favour of the council for any arrear municipal charges.

This clause has been inserted to avoid a seller following an acknowledgement of debt procedure with the municipality and not disclosing it to the purchaser. Most Parties follow this process and reduced clearance figures are issued to the attorneys and the attorneys make payment thereof. Everybody assumes that all the rates including the arrear rates have been paid only for it to transpire later that the section 118 procedure was followed and there's a portion of the arrears of the seller that has not been settled. This clause has been included to prevent that from happening.

- e. **Possession** of the Property shall pass to the Purchaser on registration of transfer, from which date all benefits, risk, rates and taxes and any other imposts levied on the property, shall be for the Purchaser's account.

Possession of the property changes hands between the two parties on date of registration. Before registration the seller had the exclusive rights and benefits of the property, as well as any risk involved. A benefit would be something like rental income and a risk would be something like a geyser bursting. Whatever happens to the property, positively or negatively remains with the person that is the legally registered owner of the property.

On the date of transfer of the property into the purchaser's name, the purchaser becomes the new owner and the one responsible for any benefits and risks attached to the property. Should the geyser burst on that day it would be for the purchaser's account and he would be responsible for any damage and not the seller. However, if the geyser bursts the day before registration then the seller would remain liable, even if the property has transferred to the purchaser.

The purchaser has to ensure that the property is insured from date of registration going forward in addition to his movable items.

- f. The Parties declare that they have received an **Estimated Costs Summary** relating to transfer from the Agent. The final cost summary shall be supplied by the relevant attorneys involved. *Initial.....*

An estimated costs summary is not a requirement; however, it is a good service that we provide to our clients as it gives them a good indication of what costs each party can expect to incur in order for transfer to take place. Many agents tell their sellers that they have no other costs besides the commission, which is not true. The relevant costs incurred by each party is stipulated on the cost's summary. This avoids many misunderstandings when the parties are presented with their costs by the attorney. Neither party can blame the agent for not informing them of their costs. This clause protects you against any negligent claims.

If you are not going to do a costs summary, then cross this clause out. Either way, make sure all parties initial next to this clause. Once initialed they have no recourse against you as the agent because they hereby declare that they have received it.

Also, note that this is only an ESTIMATION as you are not the attorney. The parties will receive their accurate cost summaries from the attorney.

If a party does not want you to do a costs summary, then put a line through it and have the party initial and sign where you have crossed it out.

## **7. PROFESSIONAL FEE**

- a. The Seller shall pay the **Estate Agents Professional Fee** of \_\_\_\_\_% ( \_\_\_\_\_ ) being a gross commission calculated on the Purchase Price, which shall be paid as stipulated in the transfer instruction to the Conveyancer upon registration.

The seller is the one responsible to pay the estate agent's commission which becomes payable on the date that the suspensive conditions of the contract have been fulfilled. However, it may only be paid out on registration of transfer and it is illegal for an attorney to pay commission to an agent before registration of transfer. This is to protect either party should the sale be cancelled for any reason and monies need to be refunded to the parties.

The commission is a gross commission, meaning it is the full commission including VAT if it is applicable. This is the full amount of commission the seller will be paying to the agency for commission.

- b. Should this sale be **cancelled** by mutual consent or repudiated by the Seller, the Agent shall be entitled to the professional fee in terms of this clause.

If the seller and the buyer agree together to cancel the sale, then the commission is still payable to the agent by the seller. Once the suspensive conditions of the sale have been fulfilled then the agent has earned his commission according to the mandate given to the agent to sell the property. The cancellation of a sale does not automatically mean the agent's commission is also cancelled. The agent, if they have complied with the law and their mandate are entitled to their commission.

If the sale is repudiated, meaning one of the parties refuses to go ahead with the sale once the suspensive conditions were met, then the commission is also still payable. The breach clause below makes the party responsible for repudiating the sale the one responsible to pay the agent commission.

## 8. **BREACH**

- a. The **Seller** shall continue to be liable for the **Professional Fee** if the sale is cancelled by mutual consent or by reason of any breach of this Agreement by the Seller.

The seller is always the primary party responsible for paying the agents commission as he is the one that appointed the agent. Therefore, if the sale is cancelled by mutual agreement, then seller must still pay the agent's commission.

- b. The **Purchaser** shall become personally liable for payment of the **Professional Fee** for any default or breach by the Purchaser which results in the cancellation of this Agreement. The Purchaser hereby agrees that the Professional Fee may be deducted from any deposit held in trust by the Conveyancer on behalf of the Purchaser and irrevocably instructs the conveyancer to effect payment of the professional fee to the agent upon cancellation of this agreement as result of the purchaser's breach.

If the purchaser is the party responsible for the cancelation or repudiation of the sale, then the purchaser will be held liable for the commission. In such a case the agent can claim the commission from the purchaser. If the purchaser has paid any deposit then this clause authorizes the attorney to deduct the commission form any deposit the purchaser might have paid and is in the attorney's trust account. The purchaser gives the attorney the right to do so in this clause.

- c. Should any Party breach any provision of this Agreement and fail to **remedy such breach** within 7 (seven) calendar days after dispatch of written notice, the aggrieved party shall be entitled, without prejudice to any other rights at law, to cancel this Agreement forthwith and claim damages as determined by a court of law or any other Legal Body or enforce specific performance.

If either the seller or the buyer are refusing to comply with any provision stipulated in the contract, the other party has the right to ask their attorney to put the other party on terms, meaning to give then notice to comply. This notice would be 7 calendar days, which would include weekends and public holidays. If the defaulting party does not comply with the contract in that time the other party can cancel the contract and claim damages form the defaulting party. These damages, however, must be determined by a court of law to be enforceable. Commission would be considered damage incurred by the seller if the purchaser was the defaulting party.

- d. **Notices** in terms of this Agreement are to be in writing and delivered to either by email, or fax, or by hand, in which case it shall be irrefutably deemed to have been received when the notice was sent/delivered.

Any communication or change affecting the terms and conditions of the contract must be reduced to writing and sent out in some form of written or electronic communication. Once the notice has been sent it is deemed to have been delivered to the defaulting party provided that the communication has been sent to the address/es that have been supplied on the information page which forms part of this agreement.

## 9. **COMPLIANCE CERTIFICATES**

- a. The **Seller** shall at his expense, within 21 (twenty-one) days of all suspensive conditions being fulfilled, provide the Conveyancer with a new **Electrical Certificate of Compliance** in accordance with the Electrical Installation Regulations. If for any reason the Seller has not arranged the certificate within the 21 (twenty-one) days prescribed, the Seller gives the Conveyancer the authority to obtain the certificate at the Seller's expense, such expense shall be deducted from the proceeds of the sale.

The Law does not specify who is responsible for the obtaining of any certificates, it states that the "occupier" is required to have one. This means that either party can take responsibility for the obtaining of the certificate. However, because the above clause specifically states that the seller shall obtain the certificate and thus it becomes the seller's responsibility according to the contract.

The seller is only responsible and liable to obtain the certificate within 21 days after the purchaser has fulfilled all his suspensive conditions. This protects the seller from incurring costs and then the purchaser thereafter is not able to fulfill his suspensive conditions.

Should the seller not obtain the certificate then this clause gives his appointed attorney the right to obtaining the certificate on his behalf and to deduct the costs from the proceeds of the sale due to the seller.

- b. If applicable, the **Seller/Purchaser** undertakes at his cost to provide an **Electrical Fence Certificate** of Compliance in accordance with the regulation 12(4) of the Electrical Machinery Regulations.

As per the notes above except that you as the agent need to determine who will be responsible for the obtaining of the certificate. When you have a purchaser that is trying to negotiate a lesser price you can use this clause as a negotiating tool. The purchaser, as the new occupier, can take responsibility. This is not a legal requirement for the transfer of property, but as above, the contract makes it a legal responsibility.

- c. If applicable, the **Seller/Purchaser** undertakes at his cost to provide a **Gas Installation Certificate** of Conformity as per the regulations set out in Section 17(3) of the Pressure Equipment Regulations in or on the Property being sold. **All gas bottles to remain as part of the property.**

As per above, however, in this clause any gas bottles become part of the sale and must be left attached to the equipment.

- d. The Seller shall, at his expense, within 21 (twenty-one) days of all suspensive conditions being fulfilled, provide the Conveyancer with an **Entomologist Certificate of Clearance**. If for any reason the Seller has not arranged the certificate within the 21 (twenty-one) days prescribed the Seller gives the Conveyancer the authority to obtain the certificate at the Seller's expense and such expense shall be deducted from the proceeds of the sale.

An entomologist certificate certifies that the property is free from termite infestation. The seller must provide this certificate within 21 days of the suspensive conditions being fulfilled. Alternately, he gives his appointed attorney permission to do so on his behalf. These certificates are usually only valid for three months.

- e. The Seller shall, at his expense, submit a certificate from an accredited plumber to the City of Cape Town Municipality, certifying that the **water supply** to the Property conforms with the requirements stipulated in Section 14 of the City of Cape Town: Water By-law, 2010, namely that:-
- i. the water installation conforms to the National Building Regulations and this By-law.
  - ii. there are no defects which can cause the water to run to waste
  - iii. the water meter registers; and
  - iv. there is no discharge of storm water into the sewer system.

The Seller undertakes to submit the said Certificate to the City of Cape Town via fax or email and to furnish proof of such submission to the Conveyancer.

Insofar as the accredited plumber appointed by the Seller to provide such Certificate requires corrective work to be carried out as a precondition to the issue thereof, the Seller will procure such work to be carried out at his own cost and expense.

With the severe draught in the Cape, the City of Cape Town enforced severe water restrictions and plumbing regulations. Homeowners had to have all their plumbing checked for any water leaks etc. To ensure this the above certificate became legal requirement and they would not issue any rates clearance certificates without it. It is currently still applicable.

## **10. GENERAL**

- a. For all purposes under this Agreement, the Seller and Purchaser respectively choose their legal **domicile** address as the address given on page 7 and 8 hereof.

A legal domicile address is the address where the seller or the purchaser currently **resides** and where the sheriff of the court can deliver any notice to. These details must be comprehensively filled in on page 7 & 8. As an agent you are responsible to make sure all parties have completed these pages in full. If there is missing information, then obtain the information and complete your OTP. Also, if you are not filling in the details yourself then make sure you can read what they have written before submitting it to your principal. **Please note that it is not a postbox address. The courts require a physical address where the party can be found.**

- b. The Parties agree that a Golden Homes **"Sold" board** may be displayed on the Property for a period of 90 (ninety) calendar days after date of fulfillment of suspensive conditions.

For as much as is possible you as an agent want to display a sold board. Sold boards are part of the company's marketing tools and are very important for market exposure. Exceptions do arise when this becomes a threat to the wellbeing and safety of the occupier.

- c. The Parties warrant to each other and the Agent that all **Tax issues**, both personal and otherwise, including but not limited to tax returns and tax payments, are current and up to date.

If either party's taxes are not in order the deal will be held up by SARS when the conveyancers call for their transfer duty receipt. SARS will require the taxes to be sorted out before issuing the receipt for the deal to proceed.

- d. The Seller hereby warrants that the **proceeds from the sale** of the property are sufficient to cover the outstanding bond and disbursement costs.

The cost summary included in the offer to purchase should help the seller determine whether he has sufficient funds available to cover the commission, cancelation of any mortgage bonds together with interest, outstanding municipal accounts and clearances, cancelation attorney costs, as well as other incidental costs. It is the seller's responsibility to make sure he can cover all this cost and/or to be able to make arrangements for the payment of these costs.

**IT IS NOT THE AGENTS RESPONSIBILITY TO ENSURE THAT THE SELLER HAS SUFFICIENT FUNDS AND IS NOT, AND SHOULD NOT, FEEL OBLIGED TO SACRIFICE HIS COMMISSION BECAUSE OF A SELLER'S FINANCIAL SITUATION.**

- e. The **Purchaser** declares that he shall acquaint himself with the nature, zoning, extent, beacons, **boundaries and servitudes** as per the current or prior title deeds on the Property.

It is the responsibility of the purchaser to find out about the any municipal servitudes over the property and on the title deeds. While it is a good thing for you as an agent to obtain these things and to know if there are any issues that could arise, it is not within the duties of your mandate. These are legal issues and the purchaser needs to be satisfied that he will take care of these things should he wish to know about them.

- f. This Agreement constitutes the entire Agreement between the Parties and no terms or conditions not contained in this Agreement shall be of any force or effect. Furthermore, any amendments to this Agreement shall be of no force or effect unless reduced to **writing and signed** by both Parties. Should any of the terms of this Agreement be found to be invalid or voidable then the balance of the Agreement shall remain in full force and effect.

All the clauses in this OTP are of force, legal and binding. However, anything that has not been written in the contract is of no force or effect. Neither shall any addendums that you draw up



which are not signed by both parties be of any force or effect either unless both parties have signed them.

If there is a clause in the OTP that the law might find invalid, then only that clause needs to be sorted out and an agreement come to. It does not void any other clause in the contract and the rest of the clauses in the contract are enforceable.

In addition, emails are also not binding as addendums to the contract.

- a. The Purchaser, if purchasing a property which is being governed by **Body Corporate** or a **Home Owners' Association**, confirms that he will become a member of the said Body Corporate or Home Owners' Association on date of registration of the property into the name of the Purchaser, and agrees to be bound by the rules imposed by the Body Corporate or Homes Owners' Association. The Seller shall be liable for the payment of any special levy imposed prior to the date of registration of this Agreement. The Purchaser shall be liable for the payment of any special levy imposed from the date of registration into the Purchaser's name. Should the Seller be aware of a special levy about to be imposed, and not disclose it, this non-disclosure shall be deemed to be a material misrepresentation and the Seller shall become liable for the full payment thereof, notwithstanding the foregoing.

If the property is situated in an Estate Complex or Sectional Title Scheme, then there will be a Homeowner's Association or Body Corporate whose rules and regulations the purchaser must comply with. The purchaser must agree to these and by signing this OTP he has bound himself to them. A copy of the rules and regulations must be supplied to the purchaser BEFORE he signs this offer. It is your duty as an estate agent to obtain a copy of these rules and regulations and to have them on hand. Many agents have told purchaser's that they can have pets and then the purchaser moves in and is rid to get rid of his pets! Check the rules! Make sure that you have the newest rules which have been filed and approved by the Ombud. Rules and amendments to rules only become enforceable once they've been filed and approved by the Ombud in terms of the Community Schemes Ombud Service Act.

There are levies payable by all owners in an HOA and BC and the purchaser will become liable for this levy once he takes transfer. If there is a current special levy running, then the seller is liable for the payment thereof up until transfer and thereafter the purchaser will become responsible for the balance of the special levy until it has been paid in full. If the seller is aware that a special levy is being introduced and he declares it to the purchaser – in writing in this OTP – then the purchaser will become liable for whatever balance is owing at the time of transfer. After the new legislation became of force the special levy has mostly disappeared and usually gets shown on the levy statement and the purchaser must pay the balance. So it's no longer the responsibility of the seller to pay the entire special levy, it rather becomes shared if it continues after registration.

You can negotiate this between the parties at the time of doing the offer, just do not ignore them.



- b. In this Agreement, the words signifying the singular number shall include the plural and 'vice versa' and words importing the masculine **GENDER** shall include the feminine and the neuter gender.

Any words in the offer that imply a singular pronoun such as "I" also include, we, us, them, they, etc. Any words on the contract using the word "he" includes she and any other gender someone may wish to be referred as.

- c. The Parties acknowledge that they are aware that there will be certain **personal information** requested of them in the form of ID, proof of residence, marriage certificates and ANC contracts if applicable, income tax numbers, banking details, new or existing bond account details, and undertake to furnish the Agent and Conveyancer with such personal information upon request. The Parties furthermore acknowledge that the personal information requested from them for the purposes of the transfer procedure and confirm that the said information may be transmitted to the Conveyancers, the Banks, Bond Originators, Councils and SARS.

With the new POPI Act you are not allowed to give or send someone's personal information to someone else. In our line of business, it is necessary for us to send personal information to third parties involved in the fulfilment of the contract. With this clause each party is giving us as agents the right to transmit their personal information to the parties stipulated above. However, any other person outside of the above, it is not permissible for you, as an agent, to transmit or give this information to any other persons.

Take note of the SAGH Code of Conduct and IT policy.

- d. The Seller and Purchaser hereby confirm that they are not a **VAT** vendor's in terms of the Value Added Tax Act. Initial

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If the Seller is a VAT vendor then there are special clauses that need to be included in the agreement dealing with the payment of the VAT. If there is no stipulation regarding the VAT, then the law assumes the VAT is INCLUDED in the purchase price. Consult your special clauses notes for the correct wording.

## **11. INDEMNITY**

All monies payable in terms of this Agreement shall be paid to the Seller's nominated Conveyancer's Trust Account **ONLY**. The Parties hereby indemnify the Agent against any liability, loss or damage which may be incurred in respect of any payments made. Furthermore, the Parties declare that they shall take personal responsibility to confirm the Conveyancer's banking details directly with the Conveyancer.

*Initial ...*

Under no circumstances are you as an agent allowed to request monies to be paid to you or your company. You may not even send banking details for the attorney or another person. The seller and the purchaser are encouraged to verify the banking details of the

person they are transferring any monies to. This clause protects all parties, especially the agent, from any type of fraudulent interceptions. Make sure the parties understand and sign next to this clause!

## **12. ACCEPTANCE**

This offer shall hold good until \_\_\_\_\_ and is irrevocable until then, despite a counteroffer.

You as the agent need to determine together with your purchaser as to how much time the seller will have to make a decision to accept the offer. The shorter the better, however, sometimes your client may not be available immediately and you need to give extended time. Once the purchaser has signed, he cannot withdraw the offer until you have had time to present. This is irrespective of any counter offer the seller makes. If the purchaser does not accept the counteroffer and this date has not yet expired, the seller can still opt to accept the original offer.

Remember, you have been doing your job and you are entitled to you pay!

## **13. SPECIAL CONDITIONS**

Any additional clauses to the contract can be filled in here. Each clause must have its own number and be initialed by both parties. Alternatively, draw a line through this section and have both parties initial. This prevents anyone from adding anything afterwards. Remember, if it is not initialed by both parties you have no agreement.

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**THUS DONE AND SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES STATED  
HEREUNDER**

DATE: \_\_\_\_\_  
\_\_\_\_\_

PLACE:

WITNESS: \_\_\_\_\_  
\_\_\_\_\_

PURCHASER 1:

NAME: \_\_\_\_\_

ID: \_\_\_\_\_

WITNESS: \_\_\_\_\_  
\_\_\_\_\_

PURCHASER 2:

NAME: \_\_\_\_\_

ID: \_\_\_\_\_

**If the Parties are married in Community of Property signatories above constitute the necessary consent.**DATE: \_\_\_\_\_  
\_\_\_\_\_

PLACE:

WITNESS: \_\_\_\_\_  
\_\_\_\_\_

SELLER

1:

NAME: \_\_\_\_\_

ID: \_\_\_\_\_

WITNESS: \_\_\_\_\_  
\_\_\_\_\_

SELLER

2:

NAME: \_\_\_\_\_

ID: \_\_\_\_\_

**If the Parties are married in Community of Property signatories above constitute the necessary consent.**DATE: \_\_\_\_\_  
\_\_\_\_\_

PLACE:

**PRINCIPAL:** \_\_\_\_\_

On behalf of the Agency in acceptance of the benefits.

*If your principal does not sign this little clause above the seller has the right to reject the payment of the commission. DO NOT neglect to have this signed by your principal!**The following personal details pages are self-explanatory. Make sure ALL the details applicable are filled in. This is part of your job description as an agent and it is also your responsibility to obtain the FICA documents required for transfer. Estate agencies, and in particular estate agents, are legally responsible to FICA all their clients. If you have filled these pages in correctly and obtained the documentation requested, you will have fulfilled your responsibility as an agent***THE FOLLOWING INFORMATION IS FOR THE TRANSFER AND LOAN APPLICATION****PURCHASER**

	PURCHASER 1				
FULL NAMES					
ID NUMBER					
MARITAL STATUS	Single	COP	ANC	Traditional	Foreign
DATE OF MARRIAGE					

INCOME TAX NUMBER					
PHYSICAL ADDRESS					
POSTAL ADDRESS					
TEL NO. OFFICE					
TEL NO. HOME					
CELL NO					
EMAIL ADDRESS					
NEXT OF KIN NAME AND NO.					
COMPANY NAME					
COMPANY ADDRESS					
OCCUPATION					
PERIOD OF EMPLOYMENT					
PREV EMPLOY IF LESS 2 YEARS					
	<b>PURCHASER 2</b>				
FULL NAMES					
ID NUMBER					
MARITAL STATUS	Single	COP	ANC	Traditional	Foreign
DATE OF MARRIAGE					
INCOME TAX NUMBER					
PHYSICAL ADDRESS					
POSTAL ADDRESS					
TEL NO. OFFICE					
TEL NO. HOME					
CELL NO					
EMAIL ADDRESS					
NEXT OF KIN NAME AND NO.					
COMPANY NAME					
COMPANY ADDRESS					
OCCUPATION					
PERIOD OF EMPLOYMENT					
PREV EMPLOY IF LESS 2 YEARS					

I/We hereby certify the above information to be correct

## THE FOLLOWING INFORMATION IS FOR THE TRANSFER AND LOAN APPLICATION

### SELLER

	<b>SELLER 1</b>				
FULL NAMES					
ID NUMBER					
MARITAL STATUS	Single	COP	ANC	Traditional	Foreign
DATE OF MARRIAGE					
INCOME TAX NUMBER					
PHYSICAL ADDRESS					

POSTAL ADDRESS	
TEL NO. OFFICE	
TEL NO. HOME	
CELL NO	
EMAIL ADDRESS	
NEXT OF KIN NAME AND NO.	

	<b>SELLER 2</b>				
FULL NAMES					
ID NUMBER					
MARITAL STATUS	Single	COP	ANC	Traditional	Foreign
DATE OF MARRIAGE					
INCOME TAX NUMBER					
PHYSICAL ADDRESS					
POSTAL ADDRESS					
TEL NO. OFFICE					
TEL NO. HOME					
CELL NO					
EMAIL ADDRESS					
NEXT OF KIN NAME AND NO					

TRANSFER ATTORNEY			
CONTACT NAME			
TELEPHONE NO.		FAX:	

BOND HOLDER	
ACCOUNT NUMBER	
AMOUNT OUTSTANDING	

I/We hereby certify the above information to be correct

\_\_\_\_\_

### SELLER COSTS SUMMARY

The following is an estimation of costs involved in the sale of the property

<b>Gross Selling Price</b> – This is the purchase price mentioned in clause 1	R
<b>Less:</b> The following are deducted form the gross selling price stated above.	
Agents Commission – calculate the commission (including VAT if applicable)	R
Outstanding Bond – get this info from your seller	R
Bond Attorney cancellation fees including VAT (always about R5000) –	R
Bond Cancellation - Varies but normally about 3 months interest payments (refund) Check the bond account to see what the monthly interest payments are, times this by 3. This will give you the cancellation amount that will go on top of the outstanding bond amount. This together with the outstanding bond will make up the bond cancellation costs. The bank will recalculate this amount on transfer and refund to the seller any amounts that were overcharged.	R
Pro-rata Rates & Taxes / Levies (typically 3 months in advance) Get a copy of the rate or levy account and determine this cost accordingly.	R
Electrical Clearance Certificate Find out from your principal what the going rate is in your area	R
FICA Costs These are around R1000 but get an estimated figure from your attorney	R
Outstanding Taxes (if applicable) If applicable insert this amount as well	R
<b>NETT SELLING PRICE</b> Gross Selling Price less the above will give you your nett selling price. This is the estimated amount that the sell will receive in his pocket, provided that he has disclosed all the above information to you correctly.	R

**DOCUMENTATION REQUIRED FOR TRANSFER:** Obtain a copy of all the documents below as they become due.

Copy of ID/s – upon acceptance of the offer	
Copy of Marriage Certificate (ANC Contract) – upon acceptance of the offer	
Copy of Rates (and Levies) Account – upon acceptance of the offer	
Copy of Bond Account – upon acceptance of the offer (or within a day or so)	
Proof of Residence (not older than 3 months) – upon acceptance of the offer	
Income Tax Number/s – upon acceptance of the offer (or within a day or so)	
Title Deeds (If in Seller's possession) – if there is no bond registered over the property then the seller will have the title deeds in his possession. If he does not, then the attorneys will need to make an application for copies which will incur an extra cost to the seller. If a title deed is missing bring it immediately to the attention of the attorney as the missing title deed need to be advertised at a cost and it causes a delay.	
Electrical Certificate of Compliance – depends on the electrician.	
<b>If a Company:</b> Applicable to all Trusts, Close Corporations, (Pty) Ltd and LTD companies.	

All of the above – all documents mentioned above for the person/s signing the agreement on behalf of the legal entities	
Letter on Company Letterhead confirming person signing contract authorized to do so – A resolution will be needed if there is more than one trustee/member/director	
Company Registration Documents – Trust documents are held by the trustees, Company documents would be form CIPRO, which the company should also have in their possession.	
Deceased Estate: Letter of executorship/appointment - The will if available – If there is a deceased or insolvent estate then there would be an Executor appointed, either by the High Court or in the persons will.	

Signed: \_\_\_\_\_  
 \_\_\_\_\_  
 Seller

Agent

The cost summary pages are a requirement according to clause 6f. As such it is your responsibility to complete these pages on behalf of your clients. While it is only an estimate it assists your clients in knowing what additional costs, they will be incurring in order for transfer to take place. Practice filling in these forms!

## PURCHASER COST ESTIMATION

The following is an estimation of costs involved in the transfer of a property

<b>Purchase Price</b> – The purchase price as per clause 1	R
Transfer Duty & Conveyancing Fees (Incl VAT, deeds office, petties, FICA) – Use your Ooba App or other cost calculation App you are using	R
Rates & Taxes / Levies – 6 Months – From the seller's rates account, calculate 6 months of rates Usually the council starts billing the purchaser from date of registration going forward, however in provinces such as the Western-Cape and the Eastern-Cape , the purchaser gets billed with a balance of the rates and taxes until the end of the financial year which is usually in June. The purchaser does usually pay the application fee for the rates and taxes. As regards levies, it depends on body corporate to body corporate but usually the purchaser at least pays for the application fee for the figures as well as the insurance certificate. Some body corporates require the conveyancing attorney to apportion the levies and others instruct a conveyancer just to advise them of date of registration and they apportion it. It's always safe though to provide for an amount of R2 000 or R3 000 in case they require the attorney to apportion. Sometimes this amount can get quite big like R5 000 if it's a unit in a scheme that's more expensive.	R
Bond Registration costs, Bond Attorney Fee (Inc VAT, deeds office, Petties, FICA) – Use your Ooba App or other cost calculation App you are using	R
Valuation/inspection fee (1% of Bond) – The bond amount is the amount stipulated in clause 2.	R

<b>TOTAL TRANSFER COSTS</b> – add all the above <b>except the purchase price</b> .	<b>R</b>
<b>Plus: Deposit</b> – if there is a deposit payable include it in this field	<b>R</b>
<b>Plus: Electricity &amp; Water deposit</b> – different for each local municipality so check with your principal or local council.	<b>R</b>
<b>Total Costs</b> – add deposit and utilities deposit to the total transfer costs. This amount will then give the purchaser an idea of the total costs he will need in order to take transfer over and above the purchase price.	<b>R</b>

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**DOCUMENTATION REQUIRED FOR TRANSFER:**

Copy of ID/s – they must be clear copies.	
Copy of Marriage Certificate (ANC Contract)	
3 Months Original Bank Statements (6 MONTHS IF SELF EMPLOYED) – must be stamped by the Bank, internet statements are not accepted.	
3 Months Payslips	
Proof of Residence (not older than 3 months) – as per residential address stated in the purchaser’s details page.	
Income Tax Number/s – Not required as a physical document but is needed for your FICA “know your client” and for the purposes of transfer as per clause 10c.	
<b>If a Company:</b> - See Seller cost summary for details.	
All of the above	
Letter on Company Letterhead confirming person signing contract authorized to do so	
Company Registration Documents	

Signed: \_\_\_\_\_  
Purchaser

Agent

The cost summary pages are a requirement according to clause 6f. As such it is your responsibility to complete these pages on behalf of your clients. While it is only an estimate it assists your clients in knowing what additional costs, they will be incurring in order for transfer to take place. Practice filling in these forms!



## Special Clauses

### 1. **Suspensive Conditions**

#### **a) Estates: Master's Consent**

This sale is subject to the consent of the Master of the High Court in terms of Section 42(1) of the Administration of Estates Act No. 66 of 1965.

*This clause must be inserted whenever a property is sold out of a **deceased estate** and the Executor signs on behalf of the estate. The consent will be a formality unless there is some special reason why the Master would not grant it. (For example: the property has been sold way below its market price).*

#### **b) Subdivisions: Surveyor-General's Approval**

This sale is subject to the approval of the subdivision of the property, of which this sale incorporates a portion, by the Surveyor-General within 6 calendar months of signature hereof.

*This condition applies when a portion of an existing property is sold, and the diagrams still have to be approved. A land surveyor has to compile them and submit them to the Surveyor-General for approval before the transfer can be finalised. The time period can be changed but must never be less than 4 months.*

#### **c) Subject to first sale lapsing**

This sale is subject to the cancellation or lapsing of the prior sale entered into between \_\_\_\_\_ and \_\_\_\_\_ which agreement was dated on \_\_\_\_\_ within \_\_\_\_\_ days of date of signature hereof.

*Further details can be inserted, such as an exact definition of the parties to the previous sale and its purchase price. The time period can also be changed to fit the circumstances.*

#### **d) Minors: consent of the High Court**

As the Purchaser is still a minor this sale is subject to the approval of the High Court of the loan required to make up the balance of the purchase price. The Court's approval must be obtained within 90 days from the date of granting of the loan, failing which this sale will lapse and become null and void.

*This clause only applies when the Purchaser is under 18 years of age and a bond has to be obtained. If the purchase price is being paid entirely in cash, this clause will not apply and can be ignored.*

#### **e) Business consent use**

This sale is subject to the granting of consent use by the local authority, to be granted within 60 calendar days of date of signature hereof, to the Purchaser to use the property for business

purposes. The Purchaser confirms that he is aware of the business activities that will be allowed should consent use duly be given as well as activities that will not be allowed.

*This clause applies when a residential property is being sold and the Purchaser only agrees to the sale if it can obtain permission to use the property for small business purposes. The time period can be changed but should never be less than 60 days. I recommend that you also include who will be responsible for the cost of getting the necessary consents in place.*

***f) Rezoning of the property***

This sale is subject to the rezoning of the property for business purposes within 12 calendar months of signature hereof. The Purchaser undertakes to apply for the required consent and to pursue the application to its conclusion at the Purchaser's consent. The cost of the rezoning would be for the (seller/purchaser's) account.

*This can cover any kind of rezoning, e.g. Residential 1, 2 etc; Light Industrial, Small Business or whatever may be required. The time period should never be less than 12 months and anything up to 18 months would be fair. I would specify who would be responsible for the cost of rezoning.*

**2. Clusters and Sectional Units**

***a) No pets allowed on the premises***

The Purchaser is aware that no pets will be allowed on the premises of the complex in terms of the Conduct Rules of the scheme and agrees to abide by this provision.

*This prohibition has been upheld in law and this clause should be inserted if the Purchaser is making an issue of being allowed to have pets. The same applies to individual satellite dishes for DSTV, etc.*

***b) Developer's right of extension***

The Purchaser is aware that the Seller has a right of extension over the scheme in terms of Section 25 of the Sectional Titles Act. The Purchaser nonetheless waives his right to cancel the sale through any ignorance of the right and declares this sale valid and binding in spite of the said right.

*This clause must be inserted whenever the sale is directly from the Developer of the scheme and/or whenever he has recorded a right of extension over the scheme. In other words, even if it is a sale not from a developer, if the right of extension has been recorded, then you would include this clause as well.*

***c) Exclusive use areas***

This sale is subject to the body corporate allowing the Purchaser to continue using the exclusive use area/s granted to the Seller by written confirmation thereof being filed with the Seller's conveyancers within 30 days from the date hereof.

*In some complexes the exclusive use areas are not registered as sections or EUAs but are granted by the body corporate. Unlike the former two, in this case the right to use them does not automatically pass to the Purchaser and must be secured by way of written confirmation from the body corporate.*

### **3. Vat and Capital Gains Tax**

#### **a) Foreign resident: withholding CGT**

The Seller is aware that, being a foreign resident and selling the property for a purchase price in excess of R2 million, it is obliged to pay over 5% of the purchase price to SARS on receipt thereof for CGT purposes. The Seller hereby authorises the conveyancer attending to the sale to duly make the required payment.

*Referring to SARS Section 35A:*

*In short, this section imposes an obligation on a purchaser, who purchases immovable property for a price that exceeds R2 million from a seller who is a non-resident, to withhold part of the purchase price from the seller on registration of transfer, and pay this withheld portion to SARS.*

*Check the page in this manual for the provisions relating to this requirement. The consequences for the Purchaser can be severe if this obligation is overlooked and the conveyancer pays the full net proceeds to the Seller. The oversight may not be traced for any period up to 18 months after transfer. has taken place.*

#### **b) Zero-rating for VAT purposes**

The parties agree that this sale is zero-rated for VAT purposes as both parties are registered VAT vendors, the property is sold as a going concern, and is part of a continuing income-producing activity. In the event that SARS correctly determines that this sale cannot be zero-rated, the Purchaser shall be liable for the VAT due.

*The last sentence can be changed to make the Seller liable for the VAT depending on the agreement between the parties. If the Purchaser pays it he may be able to recover it after the transfer has been registered.*

#### **c) Payer of VAT due**

The Purchaser shall be liable for the payment of any VAT due on this sale which shall be paid to the Seller's conveyancers prior to transfer of the property. The conveyancer is expressly ordered to pay it on transfer to SARS as the Vat due on the sale and is not permitted to pay it to the Seller.

Should the agreement be silent as to who's responsible for the payment of VAT and the transaction attracts VAT, then the responsibility to make payment of the VAT shall be the seller's. The conveyancer is expressly instructed to deduct the VAT amount from the seller's proceeds and pay it over to SARS.

*This clause is rarely inserted in sale contracts but without it there can be serious complications. If the sale says nothing about VAT or says the purchase price is 'VAT inclusive,' the seller will be liable for it. If the purchase price is said to be 'excluding VAT' or 'plus VAT,' the Purchaser has to pay it.*

#### **4. Company requirements**

##### **a) Resolution and authority**

The signatory hereto warrants that he is authorised to sign this offer to purchase on behalf of the purchasing company by way of a resolution signed by all the directors (or, in the case of a close corporation, the members) thereof. In the event that such authority does not exist, the signatory shall become the Purchaser in terms of this agreement and be personally liable for the performance of all its obligations.

*Individuals often casually state that they are properly authorised to bind the Purchasing company to the agreement. This is often not the case and this clause ensures the validity of the contract where the agent has been misinformed.*

##### **b) Binding as surety**

The signatories for the Purchasing company hereby bind themselves as sureties jointly and severally for the due performance of all the Purchaser's obligations herein including any requirement by the lender granting the required loan that its directors bind themselves as sureties for the company's obligations thereunder.

*When companies or trusts are the purchasers under the original agreement, its directors or trustees often refuse to sign as sureties for their debts under the required mortgage loan. This clause binds them to those obligations.*

##### **c) Taking over the Company's shares**

If the signatories hereto should choose to take over the shares of the company rather than take transfer of the property into their names, they shall notify the Seller thereof in writing within 30 days from the date hereof and the purchaser shall be liable for any transfer duty/VAT and other cost payable to effect transfer.

*This clause should only be used when the property being sold is not zoned for residential purposes or is being used as a residence. Its is only effective when the property is zoned and used for agricultural, industrial or business purposes. In the past it was also used as a means to save transfer duty or VAT, however the laws have changed and this is no longer possible.*

#### **5. General matters**

##### **a) Blanket voetstoets clause**

The Purchaser is aware that the property is in a generally poor condition and that the purchase price is well below normal market value. The Purchaser waives all rights it may have

in law (including the right to claim damages for undisclosed latent defects) and agrees to purchase the property absolutely voetstoots.

The purchaser confirms that he had sufficient time to inspect the property and that he was afforded sufficient opportunity to appoint specialists to inspect the property and that he purchases the property fully aware of the state that it is in.

*This clause is essential whenever a **property is sold below the price** it would normally get because of its generally defective character. Without this clause the Purchaser could still claim damages for any undisclosed latent defects it may discover even though the purchase price was deliberately reduced because of the condition of the property.*

*CR: Further to clause 5 in the OTP the Purchaser/s, on taking of early occupation, waives all their rights they may have in law (including the right to claim damages for undisclosed latent defects) and agrees to purchase the property absolutely voetstoots, excluding those identified in clause 5 of this offer to purchase.*

**b) Undefined subdivision portion**

The property hereby sold is as set out on the sketch plan attached hereto marked Annexure A. The sale will be binding on the purchaser provided the final approved plans do not vary substantially from the attached plan.

*This clause is required (and the sketch plan) when the portion to be subdivided has still not been defined. It is vital for the sketch to show the general outline of the portion's boundaries and measurements of each boundary section.*

**c) Existing tenants**

The Purchaser is aware that the property is presently let to tenants under a continuing lease agreement and that he will become the new landlord by taking an automatic cession thereof on registration of transfer. The Purchaser confirms that it has made itself acquainted with the terms and conditions thereof.

*This clause stops the Purchaser objecting to the property being let to tenants and alleging he was unaware of that. This clause must be included when the existing tenancy will still continue for a number of months after transfer.*

**d) Seller's right of acceptance**

The Seller retains the right to continue marketing the property while the period for acceptance of this offer is still operating and, should the Seller receive a further offer/s during this period, then the Seller agrees to accept the offer which becomes unconditional first.

*This clause requires an extended period of acceptance (up to 15 days after the first offer was made) to allow the Seller to accept the first offer in which the required loan is granted or the full purchase price becomes available from another source. It's a case of first dressed, first served.*

**e) Entomologist's certificate**

The Seller shall, at the Seller's expense, provide the Purchaser with an entomologist's certificate within 7 days of date of request from the conveyancer confirming that the buildings on the property are free from woodborer, termite or other insect infestation or any serious damage as a result thereof.

*This clause is usually mandatory in coastal areas, but some purchasers in highveld and bushveld areas also require it in their contracts (usually as a result of some prior adverse experience or because they previously lived at the coast and are familiar with it).*

**f) Mora interest**

In the event of there being any delay in connection with the registration of transfer for which the either party is responsible, the defaulting party undertakes in addition to any payment due in terms of occupational rent (if any), to pay interest on the purchase price at the rate set out in the Schedule per annum calculated from the date that the defaulting party has been notified in writing by the innocent party, CONVEYANCERS or the AGENT as being in mora (breach), to the date upon which the defaulting party has ceased to be in mora.

*The Prescribed Rate of Interest Act, 55 of 1975 ("the Act"), sets the maximum rate of interest that can be charged on mora interest. Mora is a Latin term which denotes the elapsing of time or a delay. Mora interest accrues the moment the debtor becomes obliged to pay. The obligation to pay interest on the amount owing therefore arises from the moment the debtor is in mora. This rate of interest as set out in the Act is also used in court orders relating to damages claims.*

*If a debtor is late with payment of a money obligation under a contract, the creditor is entitled to claim mora interest on the outstanding debt due to the debtor's failure to make payment on the due date.*

*The creditor is entitled to claim this interest even without a specific contractual provision to pay interest.*

*If the contract fixes the time for payment, no demand is necessary to place the debtor in default and interest is payable from the date on which payment was due.*

**g) Alien Invasive Species**

The Seller does not guarantee or has no personal knowledge of any invasive plants or vegetation on the Property, as well as but not limited not to be the holder of any required or issued permit or authorisation by any Government Department for the possession of any protected plant or CITES listed vegetation and will not be held liable and/or responsible, either to identify these plants (invasive and/or protected) as such and not to remove them from the Property or to obtain any licence or permission for the possession and keep of such plants and vegetation in general.

*This clause is used predominantly when selling a plot, farm, or any other agricultural land such as forestry, nursery, etc. any normal residential landowner is only responsible to declare such*

*plants if he is aware of them on his property. If he is not, then the government first has to educate and assist him in the removal of these plants if necessary. Should he then refuse he will become liable for any contraventions of the laws and applicable penalties.*

#### **h) Cycads**

The seller confirms that there are Cycads in the garden. He will remove them and take them with him when he vacates the property. He will remove \_\_\_\_\_ (insert number) cycads from the garden. Should the seller be leaving any cycads he agrees to give the purchaser the relevant permits.

*Most cycads are a protected species and the owner of such cycads must have a permit to keep them. If there is not permit there as serious legal consequences for the person in possession of the cycads.*

#### **i) Cool off Right**

The Purchaser has the **RIGHT TO REVOKE** this offer to purchase as provided for in Section 29A of the Alienation of Land Act of 1981, which is solely applicable on a purchase price of R250 000 or less.

*The cool off right is applicable only the purchaser and not the seller. The cool off right period is 5 (five) working days, excluding weekends and public holidays. It is only applicable to contracts where the purchase price is less than R250 000.00 (two hundred and fifty thousand rand)*

*This clause must be inserted into the contract as a special condition in such cases.*

#### **j) Plumbing Certificate (City of Cape Town only)**

The Seller shall, at his expense, submit a certificate from an accredited plumber to the City of Cape Town Municipality, certifying that the **water supply** to the Property conforms with the requirements stipulated in Section 14 of the City of Cape Town: Water By-law, 2010, namely that:-

- i. the water installation conforms to the National Building Regulations and this By-law.
- ii. there are no defects which can cause the water to run to waste
- iii. the water meter registers; and
- iv. there is no discharge of storm water into the sewer system.

The Seller undertakes to submit the said Certificate to the City of Cape Town via fax or email and to furnish proof of such submission to the Conveyancer.

Insofar as the accredited plumber appointed by the Seller to provide such Certificate requires corrective work to be carried out as a precondition to the issue thereof, the Seller will procure such work to be carried out at his own cost and expense.



*This clause must be inserted into any sale agreement where the property being sold falls within the City of Cape Town municipal district. This became a municipal bylaw due to the severe water restrictions the City experienced due to drought.*

**k) House plans**

The Seller warrants that the plans lodged with the local Municipality are correct and are a true reflection of the existing buildings erected on the property.

*House plans are connected to SPLUMA and are only a necessity when a particular Municipality requires them. House plans are not a legal requirement unless your contract makes them a requirement.*

**l) Surety**

I, \_\_\_\_\_ the \_\_\_\_\_ undersigned  
\_\_\_\_\_, (full  
name), ID: \_\_\_\_\_ hereby bind myself jointly as **SURETY** and co-  
principal debtor with the Purchaser to the provisions above. I specifically renounce the  
benefits of excussion, division or error in calculation.

*This clause is necessary when the purchaser is being assisted by someone else because they don't qualify financially with this person's support or if the purchaser is a minor.*

**m) Capacity of Purchaser – Trusts and Companies**

Should the SIGNATORY sign this Agreement in his capacity as a Trustee for a Company to be formed, then the PURCHASER shall be personally liable in terms of this Agreement should a Company not be formed within a period of thirty days of the date of signature hereof or if the Company fails to ratify and adopt this Agreement within a period of seven days of date of registration or incorporation, by his signature hereto the PURCHASER binds himself as surety and co-principal debtor in solidum with the Company for the due fulfilment of all of the obligations of the Company in terms of this Agreement.

*This clause is used when the purchaser plans on owing the property in the name of a company and the company still needs to be registered with CIPRO.*

**n) Company Representative**

Should the SIGNATORY sign in a representative capacity then he warrants that he has the necessary authority to act on behalf of that entity/person. Should he breach this warranty then he shall be personally liable for the obligations set out herein.

*This is used in conjunction with clause (m) as well as anytime the purchaser is a legal entity. This clause makes the person signing on behalf of the legal entity personally responsible, and should the company not get a loan or take transfer, then the representative has to take transfer in his own name.*



## **Other Legal Information**

### **1. Changing the purchaser's identification**

Often buyers want to change their identification, or they have to make changes to make the sale valid.

Quite often the director of a company will

- want to change the actual Purchaser afterwards to another company of his
- and the usual procedure is simply to redraw page 1 of the sale contract and
- change the Seller's name to another company.

Changing a contract to validate it occurs when it turns out after concluding

the sale that:

- ✓ There is more than one owner of the property who has to be added as an additional seller: or
- ✓ The Seller is married in community of property and his spouse has to added as a co-seller; or,
- ✓ The Purchaser wants to add another party to the sale or needs to do so to get the bond he requires.

Care is needed here - in the last case SARS can interpret the addition of another purchaser as an actual sale from the original buyers of a share to the extra purchaser, attracting separate transfer duty. It may be a long way

around, but it is always safer to draw a new contract rather than making changes to the existing sale agreement.

The key issue here, however, is when the buyer wants to *substitute* someone else as the Purchaser, usually a different company or a company in place of himself. Here trouble can arise if deposits have already been paid. Make sure that either you or the conveyancer provides that the deposit

paid by the original purchaser is to be used for the new company's purchase.

***An addendum will be necessary, and it must be signed by both the original and the new Purchaser.***

Also, rather draw a new contract of sale and declare the first officially cancelled, or double-transfer duty may again become payable. What if, after finalizing the transfer, the original Purchaser comes along and says 'I want my R500 00 deposit back. You had no right to use it for the new purchaser'?

## **2. The CPA and Residential Property Sales**

Residential property buyers are being led to believe more and more that their interests in their sales are fully covered by the Consumer Protection Act and they are boldly challenging their sellers to conform to the provisions of the Act. They have been spurred on by certain sections of the media and releases by the Estate Agency Affairs Board which have both promoted the view that the Act covers all normal property sales. Are ordinary sellers of residential homes now obliged to provide full disclosure certificates of all defects on their properties and can their buyers hold their agents accountable for undisclosed defects? Has the voetstoets clause become redundant?

### **a) Disclosure Certificates and Other Encumbrances**

The PPRA has sent a disclosure form to all its registered agents, compelling them to use these in all property sales. In articles enclosed in its Agent magazine at the time the CPA was introduced, the PPRA strongly promoted the view that voetstoets clauses no longer had the relevance or effectiveness that they used to have and that all property buyers were now protected by the provisions of the Act. Coupled with this is the similar viewpoint that all residential property leases also fall within the ambit of the Act and that tenants are entitled to cancel their leases without offering any justification at any time on twenty working days' notice to their landlords.

The vast majority of conveyancers, however, who are fully qualified property lawyers, believe the PPRA and all other role-players promoting the same line have got it horribly wrong. What the Board seems to have failed to realise is that, by prescribing to their agents that their disclosure certificate must be used in every sale, it is actually obliging every seller represented by an agent to do likewise.

**Irrespective of whether the Act covers normal sales or not, the Board has no authority, power or control over individual sellers and cannot force them to use its certificates.**

### **b) Who Exactly is Bound by the CPA's Provisions?**

The definitions at the beginning of the Consumer Protection Act define a consumer as someone who deals with a supplier *in the normal course of the supplier's business*. One has to do no more than apply the simplest principles of interpreting the English language to realise that this definition has two immediate implications. The consumer must be dealing with a supplier who provides goods for sale *on an ongoing basis* and that this must be done not just in the normal course of business, but in the course of the *supplier's* business. This means that the transaction must have the essential characteristics of a normal business sale.

It is not easy to draw the dividing line here, and the Act does not even remotely attempt to define its implications for property sales, but by applying certain basic principles it is not hard to see where the plumb line should be. **One-off sales of any residential property would not fall within the provisions of the Act or its supplier-consumer definitions.** An elderly couple living in the same home for forty years, who finally decide to sell it so that they can move into a retirement home, obviously are not engaging in an ongoing business transaction! No definition of a business sale can possibly be applied to such a sale.

But even people who invest in four or five homes which they intend to hold onto until retirement, selling them off then to acquire capital for retirement income, are also not engaging in a business enterprise.

***Property developers, however, and owners of many properties who buy and sell on a regular basis for profit-making purposes as well as landlords who do likewise in letting out a series of homes, will fall within the Act as these can clearly be defined as enterprises of a business nature.***

#### **c) Distinguishing Residential and Business Properties**

What is particularly important here is the well-defined distinction in legal practice between residences and businesses. Firstly, properties zoned for business purposes are rated on a higher scale than normal residences. The same applies when consent use is given to run a business from a residence – higher assessment rates will be imposed. Private property sales just do not have the same character as business sales and many laws recognise this. There has to be something public about a venture for it to be identified as a business enterprise. Private sales between parties just will not fall within this range unless the seller markets his properties regularly on a public basis.

The ordinary sale of a property also does not have a supplier-consumer factor. The CPA sees suppliers as conductors of business ventures which can victimise unwary consumers. The Act clearly treats the two as operating on different levels of influence. Consumers can be disadvantaged by suppliers who market and produce brand new products that are defective. **An average property sale, however, is between two people who are invariably negotiating on the same level.** The buyer has the means to purchase the seller's asset. It's a simple *quid pro quo* situation. Once the buyer takes transfer of the seller's property, he *substitutes* himself as its new owner and assumes all the powers of ownership and ancillary rights which the previous owner enjoyed. There is no supplier-consumer disadvantage here. This is more like a sale where the buyer purchases *the seller's actual business* rather than products which the seller is selling in the normal course of his business and from his business.

***The Act was not intended to cover situations where the buyer is in the same position as the seller and is taking over the seller's product (thereby becoming a supplier himself) and is being placed in the same position the seller was in beforehand.***

#### **d) How our Tax Laws Distinguish Residences from Businesses**

The Value-Added Tax Act clearly distinguishes business properties from residential properties.

**No Vat is payable on rentals accruing from the latter no matter how many an individual owner may be letting.**

VAT only applies to business properties. Here it is quite clear that ownership of a residential property does not constitute a business enterprise. The VAT Act draws this distinction in other areas as well. If an individual person conducts a business from his private home, he will only be liable for VAT if he is using more than 50% of his property for this purpose. Otherwise, if he for example is only running his business on 40% of the property's area, the property itself is still treated as a residential property. Once again residential properties are clearly excluded in such cases from any form of 'business' definition.

When it comes to Capital Gains Tax, primary residences enjoy a R2 million abatement which is never applied to business properties. Our tax laws clearly do not regard ownership of a normal residence as in any way having a business character unless the owner buys and sells properties on an ongoing basis as a clearly defined business enterprise.

Hopefully, when our High Courts finally have to make a decision in cases like these, they will have the good sense to realise that normal property sales were never in their legislator's minds when distinguishing and protecting consumers from business-operating suppliers.

Once the new Property Practitioners Bill comes into effect then the seller will be obliged by law to produce a disclosure document. While this Bill has been signed by the President it has not yet been Gazetted. Only once it has been Gazetted will the relevance of a disclosure document be enforceable.

### **3. Cycads and Alien Species**

#### **a) Cycads**

South Africa has a strong national market for cycads with a high demand for large cycads that make prominent features in a garden. The harvesting of wild cycads is prohibited in South Africa. Due to the high demand for large cycads the illegal market has increased to such an extent that nearly 70% of all South African cycad species have become threatened with extinction.

A purchaser of a property has the responsibility to ensure that they know exactly what cycads are in the garden they are purchasing and must be able to prove where they have come from. If caught with a wild cycad or a non-permitted cycad a purchaser will be deemed to have committed a crime and can face up to 10 years in jail or have a heavy fine imposed upon them as well as having their cycads seized.

It is important to note that all indigenous *Encephalartos* cycad species are protected in South Africa and require permits for one to be in possession of them.

For more information and a list of permitted cycads please visit the CITES website at <https://www.cites.org/>.

Should a purchaser suspect that they have a cycad in their garden that does not have a permit they should contact their provincial conservation department.

#### ***b) Alien Plant Species***

A great deal of South Africa's water is used by plants that do not belong here. They are called invasive alien plants. These plants are invasive because they spread and displace our natural trees and plants.

Invasive alien plant species (IAP) are species whose introduction and/or spread outside their natural distribution threaten biological diversity. They are non-native to an ecosystem and may cause economic or environmental harm. They impact negatively on biodiversity, including decline or elimination of indigenous species – through competition for water and the disruption of local ecosystems and ecosystem functions. IAPs, introduced and/or spread outside their natural habitats, have affected natural biodiversity in almost every ecosystem type on earth and are one of the greatest threats to biodiversity.

Without natural enemies, these plants reproduce and spread quickly, taking valuable water and space from our indigenous plants. Many alien plants consume more water than local plants, depleting our valuable water resources. Thick alien vegetation can also provide fuel for veldfires, making them exceptionally hot, which damages the burnt areas soil structure. IAPs cost South Africa tens of billions of rand annually in lost agricultural productivity and resources spent on removing or managing them. IAPs are a major threat to biodiversity in catchment areas, potentially disrupting the delicate natural balance in ecosystems. As we depend on biodiversity for water, food, wood, clean air, medicine and much more, it is vitally important that we protect this resource.

The regulations identify a total of 559 alien species, including 383 plant species as invasive in four different categories, and a further 560 species listed as prohibited and may not be introduced into the country. Visit <https://www.environment.co.za> for a list of AIPs and their categories.

#### **✓ IAP categories**

- **Category 1a and 1b:** Must be removed and destroyed immediately.
- **Category 2:** May be grown if a permit is obtained and the land owner ensures that the invasive species do not spread beyond his/ her property.
- **Category 3:** May not be planted.

It is interesting to note that some invasive plants are categorised differently in different provinces.

### ✓ **Alien vegetation management**

There are a number of ways to control the growth and spread of alien invasive plants. The 'treatment' would depend on the species being controlled.

#### ***Biological***

Some alien plants have natural enemies, such as insects and diseases that only affect a specific species. The controlling agents (beetles, viruses) are sourced from the country of origin and released here among an invasive species to control it.

#### ***Manual***

Young or small invaders can be manually removed from the soil. The plants should be stacked and disposed of responsibly to prevent regrowth.

#### ***Mechanical***

Larger plants and trees can be chopped or cut down. Trees can also be killed by removing a 30 cm - 40 cm strip of bark around their trunks (known as 'ring-barking'). This prevents food going to the leaves and kills the tree.

#### ***Chemical***

Two or more methods can be used at the same time e.g. ring-barking and then spraying herbicides on the stump.

### **How can you help?**

- ✓ Learn how to identify, control and remove invasive alien plants.
- ✓ Educate others.
- ✓ Join or form a hacking team to control alien plants in your area.
- ✓ Remove the IAPs when they are still small.
- ✓ Replace alien plants with indigenous ones.
- ✓ Plant indigenous, water-wise plants in your garden.

### **IAP's and the Law**

The task of managing alien vegetation lies mainly with landowners. In August 2014, the Minister of Environmental Affairs published the 'Alien and Invasive Species Regulations' to limit the negative effects of IAPs. The regulations call on landowners and sellers of land to assist the Department of Environmental Affairs to conserve our indigenous fauna and to foster sustainable use of our land.

Nonadherence can result in a criminal offence punishable by a fine of up to five million rand (ten million if a second offense) and or a period of imprisonment of up to ten years.

This law is applicable to all landowner's which would include residential properties; however, it is mostly applicable to nurseries, forestation, nature conservation, and the like. When a purchaser is buying a large property such as a plot or farm, an alien species clause should be inserted under special conditions to protect the interests of both parties.

Most residential property owners are not aware of this law and the law stipulates that the government must assist and educate the public accordingly. They cannot just fine homeowners they must assist them in the removal of such plants and educate them regarding the upkeep of their properties. If a homeowner chooses to disregard the law thereafter fines and/or prison sentences can be imposed.

#### **Top 5 IAPs per province**

- ❖ **Gauteng:** Balloon vine, Black wattle, Bloodberry, Bugweed, Castor oil plant.
- ❖ **KwaZulu-Natal:** African tulip tree, Ash leafed maple, Balloon vine, Bloodberry, Bugweed.
- ❖ **Limpopo:** Black locust, Bugweed, Butterfly orchid tree, Castor oil plant, Kudzu vine.
- ❖ **Mpumalanga:** Coral creeper, Moth catcher, Yellow flowered Mexican poppy, Butterfly orchid tree, Camphor tree.
- ❖ **Northern Cape:** Blue leaf cactus, Castor oil plant, Chinese tamarisk, Common thorn apple, Giant reed.
- ❖ **North West:** Bird of paradise flower, Boxing glove cactus, Canary bird bush, Common dodder, Four o'clock.
- ❖ **Western Cape:** Rooikrans, Black wattle, Port Jackson, Silky hakea, Long leafed wattle.

#### **4. Selling with a tenancy**

Selling a property presently let to tenants can be very difficult. Buyers often lose interest very quickly when they hear a property is occupied by tenants. They've read scary stories in newspapers and magazines of property buyers who have struggled for up to a year to evict existing tenants. There are a number of things agents can do in assisting sellers to sell rented properties and, needless to say, will make it easier for them to get the properties sold.

##### ***a) When is the Best Time to Sell a Rented Property?***

There is very little wisdom in trying to sell a property more than three months before the existing lease expires. Most landlords try to synchronise selling with the termination of their leases in such a way as to have occupation available to their buyers at the same time as their tenants vacate the premises. This is not easy to achieve as there are so many factors that can slow down the sale but, without some special foresight as to when occupation will be needed,

most sellers have to guess their sale dates and a three-month period from first marketing the property is usually the best option.

A difficulty arises when the property is left vacant for a while. Putting short-term tenants in is usually unwise, but the dangers of having an empty home is that its condition may deteriorate, maintenance will be necessary, squatters may move in, the premises may be vandalised, and monthly rental will be lost in the meantime. It is not easy to find the perfect fit, especially in times when the market is depressed, and homes can take any number of months to sell.

Another potential problem is that some buyers will be looking for early occupation fairly soon after a sale and may walk away if the tenant is going to remain in the property for a few months. Getting a sale of a rented property right, especially its vacation and occupational time frames, is never easy. Agents know all too well what the problems are with rented properties and their sellers need to be encouraged to get their act together upfront as far as possible to prevent tenancy hassles later.

#### **b) Huur Gaat Voor Koop – the Tenant's Privileges**

***It is also very important to know what the legal rights of tenants are before rushing into the selling market. A Roman-Dutch legal principle, huur gaat voor koop, still applies in our law and it gives tenants a few advantages.***

When selling a property an owner cannot summarily decide to cancel or shorten the existing lease simply by giving notice of the sale to the tenant. A buyer also cannot do this when he becomes the new owner of the home. The tenant's rights take preference over any new buyer's rights to occupy a property – this applies to sales of repossessed properties as well. The buyer takes an automatic cession of the existing lease and becomes substituted as the new landlord on registration of transfer of the property, but he remains bound by the lease and the tenant can sleep peacefully, knowing his rights take preference and his lease will not be affected by the sale.

Then there is the possible problem of having to evict a tenant who refuses to vacate when his lease expires. About sixteen years ago a decision of the Appellate Division, the highest Court in the land, decided that the Prevention of Illegal Eviction Act (commonly known as 'the PIE Act') applies to normal landlord and tenant lease contracts. Legal analysts have long argued that the decision was wrong, but it has stood and no new legislation has been introduced to remedy the errors which imbalanced the rights of landlords and tenants when the latter decide to stay on unlawfully. The landlord has to institute a normal action for eviction and must first give the local authority 14 days' notice before doing so. Landlords may no longer take the traditional shortcut route of going to the High Court on motion for an immediate eviction order.

#### **c) Other Issues Affecting Tenancy Sales**



***Most agents wouldn't think to check a seller's existing contract to see if there might be any conditions in it restricting his right to sell.***

If the landlord granted an option to purchase the property to the tenant, or a right of first refusal, these take preference over any sale to a third party. If the right is overlooked, it can cause huge problems when the property is prematurely sold to another person. In Washington DC tenants have an automatic right of first refusal, but that right does not exist here (except in the sale of rented flats and apartments newly sectionalised).

***It is always wise to exercise caution when selling properties currently occupied by tenants and all agents should check the existing lease agreement first to ensure that they can freely put the property on the open market.***

An inspection of a lease will also disclose if there are any other preferential rights in the lease agreement, **such as an option to renew the lease which the tenant could still exercise.**

***Agents should never just take their seller's verbal assurances for granted.***

Often a seller will confidently confirm that there are no ancillary rights in the lease restraining his right to sell, and he may innocently believe this to be the case, but all too often property owners are blissfully ignorant of rights that were given to the tenant when the lease was originally concluded. It is crucial to check all lease contracts before marketing a tenanted property for sale. The consequences of ignoring tenants' rights can, as said before, create headaches for the agent and the landlord later.

#### ***d) How can Sellers Improve their Selling Prospects?***

***The most important issue here is to gain co-operation from the tenant.***

The seller needs to ensure his tenant will be willing to vacate when his lease terminates. Alternatively, he may need to approach his tenant to see if he is willing to reduce the period of his lease so that the seller can proceed to sell his property. There are a number of ways of achieving this. Firstly, a good relationship must be maintained with the tenant throughout his tenancy. When the tenant genuinely reports property defects or other issues like burst pipes to the landlord, the latter must take steps to ensure that these are attended to quickly and properly. It helps to maintain the goodwill of the tenant.

When an agent does send potential buyers around to view a tenanted property, the rights of the tenant must be respected, especially his right not be disturbed at inconvenient times or too often in a short period of time. The landlord should advise the tenant well in advance that he intends to sell his property so that the tenant can make adequate provision for this and will not assume he can vacate at his leisure. In the USA some landlords even offer their tenants a 50% discount off their last monthly rental payment just to secure their co-operation, but this practice is not recommended here. It may have the reverse effect by making the tenant feel he does not have to comply with all his obligations when the landlord wants to sell the property.

Landlords learn the hard way that the tenant is likely to do more damage to the property when preparing to vacate it than he has done at any time during the lease. By building a good relationship with the tenant during the tenancy landlords are likely to find that the tenant will reciprocate the goodwill when the time comes for the landlord to sell his property.

## **5. Fractional ownership**

Fractional Ownership based on the ownership of undivided shares in a property as opposed to shares in a company or member's interest in a CC (which may be in contravention of the Share Blocks Act) can be bonded in the Deeds Office, as the **share in the property is a registered real right** for which a separate Deed of Transfer can be created for each fractional owner in the property as opposed to one Deed of Transfer containing the percentage share of each owner of the property in the Deed.

In essence, it is a normal standard transfer, but the purchaser is always more than one person or entity. Should there be only one Title Deed, you can register only one Bond, but should there be numerous Deeds, each one can be bonded separately. The trick is to sell the concept to the Banks as they are not willing at this stage to bond them separately as they feel that it is difficult to sell a share in a property in execution. This problem should hopefully be overcome by the Management of the use of the property by a Property Association in terms of a use agreement as explained below.

### **Property Association**

The owners govern the use of the property in terms of a separate use agreement which is agreed upon when the Deed of Sale is concluded and which similar to a Home Owner's Association regarding the maintenance of the common areas in cluster Developments. The management is however more involved, as the whole property and not only portions thereof are managed.

The use agreement establishes a Property Association to fulfil this management role, and the owners pay levies towards the maintenance of the property to the Association. The use agreements stipulate the periods in which the owners can occupy the property and it is suggested that two weeks are kept aside for maintenance.

Every owner can deal with his share as he pleases, and when he sells his share, the share is transferred into the name of the next purchaser, which transfer is again registered in the Deeds Office. The next owner will become a member of the Property Association and will be required to sign the use agreement.

## **6. Share Block Sales**

There is really no good reason now for any block of flats or group housing scheme to be run as a share block company, and those that are should be converted to sectional title.

The tax advantage of purchasing in a share block instead of a sectional title scheme was eliminated by SARS in 2002. Share block companies are tricky to run in terms of the requirements of the new Companies and Intellectual Property Commission (CIPC).

Conversion is a relatively simple process, especially if the share block company has an experienced managing agent and an attorney on hand to assist with the legalities of drawing up sectional plans, opening the sectional title register, transferring the new sectional title units to their owners and then removing those owners as shareholders of the share block company.”

Some shareholders may be reluctant to embark on this course because there are certain legal fees and costs involved. However, many laws and regulations have changed since share block was introduced to SA, and these shareholders should be aware that they could shortly come up against some very real – and possibly very expensive – problems if they stay as they are.

**These problems could include:**

- No separate accounts from the local authority for rates or refuse removal. The share block company gets one municipal account to pay and must then recoup its expenses via the levies on shareholders, and if it fails to pay the council, then all the shareholders are in trouble.
- No home loans for potential buyers. At the moment only two banks will grant loans for the purchase of share block units, and they charge higher interest rates than on normal home loans. They also require these loans to be paid back in shorter periods than the usual 20 years. This can make it very difficult to sell share block units as most potential purchasers would need a home loan.
- No actual ownership of your unit. Share block ownership is not actually property ownership. When you buy a share block unit, you are really only buying the right to use it, which is linked to your purchase of shares in the company that owns and runs the building. Your “proof” of ownership is a share certificate issued in your name. When you buy a sectional title unit, on the other hand, you get a title deed that is registered at the Deeds Office.

## **7. Basic Terms in Property Law**

### **a) Immovable property**

Is land, whether unimproved (i.e. vacant) or improved (i.e. land with permanent improvements such as a house). A piece of land and all the permanent improvements constitute a single entity, namely one immovable property. This means that the permanent improvements cannot be sold independently of the land. It is also not possible to transfer ownership in portions of a building to different persons unless the building forms part of a sectional title scheme in terms of the Sectional Titles Act 95 of 1986.

Included in the sale will be the land, the house, all surface and subsurface soil and water as well as all the trees and plants on the land as well as all movable items that have been permanently affixed to a house or other building on the land

***b) Fixture***

Movable item that have been permanently affixed to the property.

***c) Title deed***

Every piece of land that is privately owned in South Africa is shown on a diagram or a general plan of the land, drawn up by a land surveyor and approved by the Surveyor-General, with the details recorded in a document called a title deed. There are a number of deeds registries in SA and the title deeds of properties in the areas under the jurisdiction of a particular deed's registry are filed in that registry. Anyone can view this information either by going to the deeds office or requesting a copy on-line. If the property is not bonded, then the owner will hold his title deed otherwise it will be held with the financial institution who has granted the bond.

The title deed will contain the following information

- ✓ The names of both the previous and the existing owner of the property
- ✓ A full description of the property, including its measured size
- ✓ The purchase price which the existing owner paid for the property
- ✓ Whether there are any conditions restricting the use or the sale of the property
- ✓ Whether any limited real rights are registered in respect of the property and if so, what their nature is

Note: an agent is not legally or ethically obliged always to examine a title deed of a property before he markets it, however it is sound practice to do so especially agricultural, commercial, or properties in an estate development, if a purchaser wishes to rezone (i.e. start a business) etc.

***d) Rights over immovable property: servitudes***

A person who is not the owner of an immovable property normally has no rights in respect of that property. For example, he cannot build on the property, use the water on it or drive over it. However, the owner may grant to someone else the right to do so. This right can be registered on the title deed and are then referred to as **limited real rights** (a right which one person has over another person's property). This can limit the owners' rights over his property.

Note:

- a real right registered in transferred from one owner to the next
- it can only be cancelled by the holder of the real right
- a purchaser of a property with a registered real right is legally bound to observe and honour the right registered whether he knew of its existence at the time of sale or not
- a registered limited real right can potentially de-value a property (as a new purchaser may not want to buy a property with a real right over it)

#### i. Servitudes

A servitude is a specific type of limited real right. It usually entitles the holder to exercise some right in respect of someone else's property, but it can also empower him to prohibit the landowner from exercising one or other normal ownership rights

There are two types of servitudes

- ❖ **Praedial servitude** – accrues to a person in his capacity as owner of a specific property which the servitude intends to benefit
  - right of way over a property
  - height restriction of a building
  - transferrable
- ❖ **Personal servitude** – personal right in favour of a specific individual
  - access to water given to a specific individual
  - e.g. a usufruct
  - not transferrable

Servitudes are typically registered over farms and smallholdings. Residential servitudes are typically subject to drainage and sewerage servitudes in favour of the local authority.

You do not need to get permission from the person that has a right to exercise servitude over your property if you want to sell it, however the new owner will have to comply with the servitude.

#### ii. Usufruct

This is commonly used in wills: the owner of a property bequeaths the property to certain persons (e.g. his children) subject to a usufruct in favour of another person (his wife). The

latter may then occupy the property and enjoy the fruits thereof (i.e. rental income) till the death of the person in whose name the usufruct is registered in.

- ❖ The property may be sold by the heirs, provided the new purchaser agrees to the terms of the usufruct

By law a property is always sold subject to the servitudes and other limited real rights contained in the title deeds.

A servitude can be cancelled by agreement between the holder of the servitude and the owner of the property

Task: obtain a copy of a title deed – preferably on a complex/estate which may have servitudes registered over it and review

### **e) Property ownership**

Ownership is a right which, in principle, confers on the owner complete and absolute control over his property. An owner cannot, however, do as he pleases with his property, because his rights as owner are restricted by both common law and legislation.

An owner has the right to:

- ✓ Sell the property
- ✓ Improve it (subject to municipal bye laws)
- ✓ Destroy it (i.e. demolish it – provided he has not bond on it)
- ✓ Bequeath it to his heirs

An owner however is obligated to pay rates & taxes, bond repayments etc.

There are instances where a property can be owned totally or partly by someone (e.g. the government) notwithstanding the fact that the property is not registered in his name.

Example

#### **i. Prescription**

This is where a person can become an owner by prescription – this means he has been in possession of the property for an uninterrupted period of 30 years openly and as if he were the owner

Examples:

- If a boundary fence between two properties has been incorrectly placed, the land included by the incorrect fencing can be acquired by prescription

➤ A tenant – however this is rare

Note though that the Deed office will not amend the ownership details unless the claim has been awarded in a Court of law.

## **ii. Expropriation**

Expropriation is where the State or other authorised institution may acquire ownership through expropriation (see the Expropriation Act 63 of 1975). Notice of expropriation is noted against the title deed and cannot then be transferred to a new owner.

Typically, this happens if a property has mineral rights, falls in the path of proposed development (i.e., the Gautrain) etc.

## **iii. Insolvency of the registered owner**

See the Insolvency Act 24 of 1936 for detailed information.

The owner of immovable property is divested of his property upon his insolvency. The property is vested in the Master of the High Court until a trustee is appointed to oversee the insolvency. The insolvency is registered against the title deed which will prevent transfer to a new owner unless authorised by the trustee.

Furthermore, an un-rehabilitated insolvent cannot let out his property, sell it or purchase another property without written consent of the trustee.

## **iv. Joint ownership**

Property owned by two or more persons (two or more individuals, or parties married in community of property). Joint property or any portion of it can be sold or mortgaged only with the consent of ALL the joint owners – a majority decision is insufficient. Therefore, a mandate or offer to purchase needs to be signed by all parties to be valid (or in the case of trusts/companies a signed resolution is sufficient).

## **v. Transfer of ownership**

This process is governed by the Deeds Registries Act 47 of 1937. In terms of this Act, transfer only passes to the purchaser on registration of the property into his name in a deed's registry.

## **vi. Appointing a conveyancer**

Typically, the conveyancer is appointed by the Seller. If the seller does not have a conveyancer, an agent can recommend one but be sure to observe clause 7.1 of the Code of Conduct.

## **vii. Transfer documents**

In order to pass transfer to a purchaser, the current owner's copy of the title deed needs to be lodged with the Registrar of Deeds. This must be accompanied by a number of other documents including:

**viii. The transfer duty or VAT receipt**

This is issued by the Receiver of Revenue and confirms that all taxes and duties payable on the property have been paid. Transfer duty is calculated as per the terms of the Transfer Duty Act 40 of 1949

- Rates clearance certificate and/or body corporate levy clearance certificate

This certificate is issued by the local municipality and body corporate/HOA to confirm that all outstanding rates/levies etc. have been paid

- The consent of the bond holder (mortgagee)

If the property is mortgaged, the property cannot be transferred unless the mortgagee consents to the cancellation of the bond. This consent is only given if there are sufficient funds in the proceeds of the sale to settle the outstanding bond.

If there is a shortfall, and in certain circumstances, the bank will agree to the transfer if the existing owner signs an acknowledgement of debt to settle the shortfall.

- Consents required in terms of the conditions of the title deed

This is if there are conditions contained in the title deed restricting the transfer of the property. Proof of these conditions having been met must be lodged in order to proceed with transfer.

**ix. Transfer costs**

When must transfer duty be paid?

See Transfer Duty Act 40 of 1949....

Transfer duty must be paid within 6 months of the sale of property (this date is effectively when all suspensive conditions have been met). After this, penalties can be charged by SARS.

The amount payable is based on the value of the property – i.e. the full purchase price (including commission). It is fraud to enter into a disguised contract of sale at a lower price than the actual price in order to avoid transfer duty.

An exception is if the property is sold in execution – then commission can be deducted and transfer duty paid only on the price paid to the seller – in this case, the purchaser typically pays the commission.

VAT – see “Laws Affecting Real Estate”



***f) Land use control***

**Task: visit the local municipality town planning department and view various maps/schemes etc.**

Apart from specific common law and statutory restrictions, control measures may also be contained in the title deed of a property, as well as in the relevant guide plan, structure or development plan and town planning scheme.

***What is meant by restrictive condition of title and how these and other title deed restrictions affect the use of a property?***

Restrictive conditions of title are conditions registered by township developers against the title deed of all the erven within a township, restricting the use of each of the erven in a particular manner.

- ✓ To create neighbourhoods with specific character (i.e. a specific style of building)
- ✓ To restrict use in a specific area (i.e. exclusively residential, industrial etc.)
- ✓ Other Prohibitive conditions can include
- ✓ Conditions in a will – i.e. if the heir is a child and the property can only be sold when he reaches a certain age

These though can be lifted if application is made to the High Court

***What must be done if a purchaser wishes to buy a property provided certain title deed restrictions are removed?***

Restrictive conditions of title can be removed in terms of the Removal of Restriction Act 84 of 1967

***What is a guide plan, structure plan and town planning scheme?***

***i. Guide Plan***

These are drawn up to determine a broad land use pattern for the development of a region. These plans specify areas set aside for township establishment, industrial and commercial development, rural development, open spaces, etc.

Property may not be used for any purpose that will conflict with the guide plan

***ii. Structure/development plans***

Many local authorities have structure, development or policy plans for either the entire town or city or parts of it. A structure plan lays down specific land use patterns (i.e. the plan will show areas to be used for housing, shops, schools etc)

### iii. Town planning schemes

A town planning scheme is a document created by a local authority in order to regulate the protection of public health, safety and welfare.

It consists of a scheme map and scheme clauses. It shows the uses to which the land may be used.

These can vary from town to town

#### ***What are the typical control measures contained in a town planning scheme?***

A town planning scheme contains the following basic information

- ✓ *Use zones*: this indicates the purpose for which the land may be used
- ✓ *Density zones*: identifies the number of dwellings that may be erected on a property with minimum erf size
- ✓ *Floor area ratios (FAR)*: identifies the total floor space that may be built on a property
- ✓ *Height*: this refers to the number of story's that are permitted on a property
- ✓ *Coverage*: this is the amount of land that may be covered by the buildings
- ✓ *Building restriction areas*: this refers to the distance from the street boundary or the distance from the side and rear boundaries that may not be built upon
- ✓ *Parking*: identifies the number of parking bays required – specifically townhouses etc.

### iv. Residential use zones

This refers to the purposes for which a property may be used as a primary right (without obtaining the city council's specific consent), and which uses are prohibited.

See attached scheduled of zoning

Any application for re-zoning is done through the town planning department of the local authority

### v. Density zones

subdivision potential of a property i.e. Residential 1 = 1 dwelling per unit per 1500sqm

### vi. Floor area Ratio (FAR)

The floor area ratio (FAR) is the ratio which is obtained by dividing the gross floor area of any building, existing or proposed, by the area of the property on which the building has or will be constructed. This will be needed in order to determine the development potential of a vacant piece of land

**vii. Height**

Height refers to number of story's – typically in Res 1 there is a 2 or 3 story limitation

**viii. Coverage**

This is expressed as a percentage of the total area of a piece of land which may be covered by buildings seen vertically from the air. If, for example, a 1000sqm property has a coverage of 30% then 300sqm may be covered by buildings.

**ix. Building restriction areas**

This is commonly known as a building line and refers to the distance from the street and other boundaries that a building on a property must be set back. These will affect ANY construction on the property including swimming pools, tennis courts etc.

***What does subdivision of a property entail and how can a portion of land be sold before the land has been formally subdivided?***

A piece of land (erf, smallholding or farm) constitutes one single property and it is not possible to sell and transfer portions of the land to different persons, unless the property is subdivided, each subdivision having its own title deed.

Note: an OTP taken on the condition that the property is to be subdivided, must provide a clear drawing of the portion of the property being subdivided.

Applications for subdivisions are dealt with by local authorities in accordance with the provisions of the town planning scheme

***What does rezoning of a property entail and what must be done if a purchaser wishes to buy a property subject to rezoning?***

Often property is purchased with the intent to rezone i.e. change is made in respect of one or more of the control measures contained in the town planning scheme.

This can be to re-use a property for business purpose (however for small business only consent needs to be applied for). These applications are dealt with by an attorney or a town planner.

**g) Subdivision**

**Subdivisions**

There are several potential benefits associated with property subdivisions, but before moving ahead with plans to subdivide a property owner need to take into account a number of factors.

The subdivision of land, where one property is divided into two or more portions, is often something that owners consider in order to benefit financially from selling off these divided portions, or perhaps building additional houses on each portion and selling these off at a profit. There are also many other [reasons to subdivide a property](#) that may come into play, such as dividing a property and selling a portion to a developer for town planning purposes.

Regardless of the reason, the appropriate steps need to be followed and relevant legislation complied with in order to effect a property subdivision.

#### **i. Legislative considerations**

Depending on the type of land to be divided, certain [legislation](#) may have an impact on the process. For example, the [Subdivision of Agricultural Land Act, 70 of 1970](#) regulates the subdivision of farmland and requires the consent of the Minister of Agriculture before the requested subdivision can take place.

The location of the land is also an important consideration as Provinces and Local Authorities have their own legislation and bylaws that govern subdivisions and regulate the details of such a transaction. These include the minimum size of a subdivided portion, the number of portions, availability of services, access to roads and property zoning.

The relevant Local Authority should be contacted for confirmation on these, as ascertaining the specific legislation and bylaws that apply in a particular situation is crucial before beginning the process of a property subdivision.

#### **ii. How property subdivision works:**

As well as the legislative considerations, the costs associated with the property subdivision process, particularly relating to the various professionals required in order to complete and register the subdivision, must, be taken into account to make sure the process will provide long-term benefits.

Once an owner has made the decision to proceed with the subdivision of a property, the process will begin with enlisting the services of a land surveyor who will draw up a subdivisional diagram and have this registered with the Office of the Surveyor General.

From there, a town planner will handle the process on behalf of the owner / applicant and will assess all the requirements as set out by the Local Authority.

The town planner will determine and provide recommendations regarding any restrictions or limitations on the subdivision and attend to advertisements and notification of all relevant parties (e.g. affected neighbours) to allow for legitimate objections to be lodged.

Any objections by interested parties, e.g. neighbours, will have to be dealt with in the appropriate tribunals/hearings and this may delay the process and increase costs significantly.

Depending on the complexity of the subdivision, the services of an engineering firm may also be required to perform a full site inspection and provide a services report.

With all legislation and bylaws complied with, a conveyancer will be instructed, who will draft the necessary documentation for registration of the subdivision in the Deeds Office.

While the timeframe for the final registration process remains the same as for all other property transfers, the full subdivision process can be a very lengthy one, and as such should be commenced well ahead of any desired deadline for the final registration and sale of subdivided land portions.

A piece of land is considered as a single property which cannot be sold or have portions thereof transferred to a different owner unless the property is *subdivided*, each subdivision having its own title deed.

An estate agent can, however, negotiate the sale of a portion before an approved subdivision of the property but the offer must then be made subject to a condition that subdivision approval is obtained before or on a certain date together with a sketch of the portion to be subdivided clearly indicating its size.

All applications for subdivisions are dealt with by the local municipality in accordance with the town planning scheme.

One cannot sell a farm or a portion of a farm if there is land that must be subdivided. The subdivision must be approved by the Department of Land Affairs first. No scheme or plan (lease agreements and then option agreements and then sale agreements) will be valid if signed before the subdivision was approved, no matter what anybody tells you. The bottom line is that one cannot sell farmland before a subdivision was approved. (This paragraph of course only refers to cases where a farm owner wishes to subdivide the farm and then sell of a portion – it does not pertain to cases where the whole farm is sold).

#### **h) Rezoning and removal of restrictions**

Often property is purchased on condition that it can be rezoned, i.e. a change is made in respect of one or more of the control measures contained in the town planning scheme.

e.g. to change the use of a house into an office etc.

These offers can be made subject to rezoning or till the consent application is signed off by the Municipality.

Should an offer be made with the condition that a specific restriction to the title be removed, then the offer needs to make this clear. The restriction needs to be applied for in terms of the Removal of Restrictions Act 84 of 1967.

Both of the above are typically dealt with by a conveyancing attorney or a town planner on behalf of the Seller

#### i. **Rezoning**

A straightforward rezoning is possible where there are no restrictive conditions in the title deed of a property. The process is governed by the provisions of the applicable town planning ordinance. The success of a rezoning application depends on

- The relevant town planning scheme
- The relevant structure/development/policy plan
- The opportunities and constraints relating to the specific property
- The need and desirability of the rezoning
- The environmental impact of the rezoning

An application generally takes 6 to 12 months to finalise and typically involves

- Preparation of a motivating statement and other documents and plans
- Advertising of the application in the local press, Provincial Gazette and calling for representations and objections
- Consideration of the application by the official of the local town planning department, with due consideration to objections received and comments of other government departments
- Referral of the application to the relevant council and Minister for consideration

#### ii. **Other**

##### ✓ **Tacit hypothec**

The landlord's tacit hypothec is a form of real security recognised in South African law. The hypothec is "tacit" because it is understood or implied without being stated; in other words, the hypothec comes into effect by operation of law and not by agreement between the Landlord and Tenant.

The hypothec secures the lessee's obligation to pay the rent in terms of the agreement of lease. It does this by allowing the landlord to burden the movables present on the leased land or while in transit to a new destination subsequent to the removal from the land.

What this means is that the Landlord is able to obtain a limited real right in the movable goods present on the property on the date that rent is in arrears. However, this right does not accrue to the Landlord automatically; it first needs to be perfected. In other words the landlord has

to obtain an interdict restraining the removal or sale of the goods on the property pending an action for rent or an order for their attachment by the court.

Importantly, the hypothec does not apply to goods removed from the premises before the hypothec is perfected. In certain instances, the movable goods belonging to third parties can also fall under the hypothec, but only to the extent that the movable goods belonging to the lessee are insufficient to satisfy the arrear rental. For this to happen the Lessor will have to show that the aware and consented to the presence of the goods on the premises, that the landlord was unaware that they belonged to a third party and that the goods were bought onto the premises for permanent use by the lessee.

✓ **Builder's lien**

- In terms of common law a builder has a right of retention over the building or structure (site) or portion thereof that he has constructed, enhanced or repaired to secure payment of the contract price, by means of retaining physical control of the site, until such time as his claim has been satisfied or the contractor has been provided with appropriate alternative security in respect of his claim.
- has been provided with appropriate alternative security in respect of his claim.

## **8. Running home businesses in clusters**

Can you operate a small home business in a cluster home scheme? This question came up for decision in a High Court case and its findings will not only affect cluster owners in future but have also served to some extent to determine the conditions under which they may or may not run home-based businesses in a cluster scheme.

### **a) The Right to Operate a Business in a Residential Area**

All properties within municipal areas are rated and zoned for various uses. Estate agents are very familiar with them – residential 1, agricultural, business, industrial, recreational, ecclesiastical, etc. Getting the zoning changed is quite challenging even when there is every justification for doing so. Most rezoning applications take a few years these days to reach finality.

Many years ago, however, local authorities introduced the concept of consent-use, a simplified process allowing people to run small businesses in residential areas. These days provincial and municipal department strongly support the practice, and you will be familiar with numerous suburbs where both small businesses and normal residences abound. In some streets small businesses seem to have taken over completely.

Getting permission is not hard – an application for consent-use must be submitted. Notices publicising the application must be placed conspicuously in front of the residence giving

neighbours the right to object, adequate parking within the premises must be provided, and the business must be noise-free and of a general trading or administrative nature. The manufacturing of products will not be allowed. Councils have in recent times freely granted consent-use rights once their conditions have been complied with. Objectors have invariably been overruled.

Recently a woman in a cluster home scheme in the Cape Town area opened a small hairdressing business on her property. It was open to the public and was supported by some of the other homeowners in the cluster. The rest of them objected, however, and the scheme's Homeowner's Association took the matter to the High Court.

***b) Homeowners' Associations in the Western Cape***

The woman opposed the application, asserting her rights to use her home for small businesses under a Western Cape provincial law that allows 'home occupations' in residential areas provided the owner complies with its obligations. She claimed she had – she had no advertising boards outside her home, parking was not an issue, and all customers had to make a prior appointment with her. The Court originally found in her favour, but the HOA took the matter on appeal to a full bench of the Court.

The Western Cape law is one of the first in South Africa to pay special attention to HOAs and introduce legislation defining their rights and obligations. In the USA virtually all states have their own laws regulating HOAs in cluster home suburbs. In South Africa the Sectional Title Act governs all sectional schemes and, almost consequent to it, homeowners' associations for cluster schemes have generally been ignored by the lawmakers. Most HOAs are a law to themselves, but municipalities have generally recognised the concept and require an HOA to be established for every cluster scheme, usually as a Section 21 company. The Western Cape Land Use Planning Ordinance of 1985, generally known as LUPO, does not affect other provinces but it does govern HOAs in its own territory.

Section 29 of LUPO provides that an HOA shall be a body corporate like its sectional title equivalent, that it must have its own constitution controlling the management of the scheme, and must be approved by the local authority. The Western Cape High Court had to decide whether owners of the scheme in question could run home businesses in the light of LUPO and the HOA's own constitution which specifically provided that all its properties may be used only for residential purposes unless a special resolution decided otherwise, and that each home had to comply with the zoning regulations affecting it.

***c) The Decision of the High Court and its Implications***

The Court sided with the HOA. It concluded that LUPO granted HOAs wide powers to govern their schemes, in particular to prohibit any activity that might adversely affect the rights of owners to enjoy living peacefully as normal suburban residents. Once the Council (in this case the City of Cape Town) had approved the constitution, its provisions became prescriptive and could be imposed on all owners in the scheme.



The HOA had effectively, in this case, overruled a homeowner's right to obtain a consent-use permit to operate a small home-based business. Every owner was deprived of the rights he might otherwise enjoy under the special provisions applying to areas zoned for residential purposes.

Whether the decision was correct remains to be seen, but it is a common practice in most HOA cluster schemes for residences to be packed tightly together with minimal fencing or walling between units. Parking for customers from outside would obviously become a problem and nuisance if all cluster owners could exercise the right to run small home-based businesses, unlike normal residential suburbs where homes face wide roads and pavements and are usually big enough to allow for parking on the premises.

For the moment the decision only governs cluster homes in the Western Cape, not because High Court decisions there are not binding on other provinces, but because the legislation relied on is exclusive to the province and is purely provincial.

## **9. House plans: a growing problem**

It is becoming an increasingly troublesome issue in the industry: buyers demanding house plans from their sellers whether this obligation has been placed on the seller in the sale agreement or not. Another headache is arising from this new development – many extensions have been added to the sellers' homes without proper plans being approved, often without the sellers even being aware of this omission. All too often previous owners did the extensions without getting plans approved and the seller, buying in a different era when very few buyers bothered about plans, has blissfully lived in the home for years without knowing anything about it.

This is complicated further if the unapproved additions are built over drains, servitudes or building lines.

In other cases, the approved plans for properties have just simply disappeared from the Council's files altogether. This problem is becoming so common that estate agents may well need to address the issue with their sellers before marketing their properties for sale.

### **a) House Plans and Offers to Purchase**

There are no laws obliging home owners to be in possession of their house plans, nor are there any laws obliging sellers to have these available and to hand them over to their buyers once they have signed their sale contracts. There are laws, however, obliging home owners to ensure that all structures on their properties are recorded on their approved Council plans and, legally, no extensions may be constructed until the local Council has officially approved the relevant plans. All too often this is overlooked or deliberately neglected by homeowners and they go ahead regardless with their extensions, never bothering to get properly approved plans first.

No seller or estate agent is obliged to include the furnishing of approved plans to their sellers in a sale contract. If nothing is said about plans by the buyer at the time when he signs an offer to purchase, he cannot oblige the seller afterwards to supply them to him. He will be free, of course, to get his own plans afterwards and may be able to get them prior to transfer, but a problem will arise if the buyer discovers that the plans are defective and do not cover all the structures on the premises. There is an implied term underlying every sale contract and that is that properly approved plans must be in place for all structures on the property. In such cases, however, a buyer may not refuse to take occupation, pay occupational rental, refuse to sign documents or pay deposits, etc, on the grounds that the seller is in breach of contract. Without express provision for the furnishing of plans the seller cannot be in breach of contract and the buyer cannot suspend his obligations under the sale contract. But he will have a right of recourse against the seller for damages after taking transfer of the property and may cancel the sale prior to transfer if the Council refuses to approve the new plans.

If the seller knew about the building plans not being in place, and intentionally kept quiet, the purchaser will be entitled to claim damages from the seller, should he be able to prove that the seller knew about the approved building plans not being in place. In addition, should there be a reason for the building plans not being approved and the seller was aware of this, the seller might be held liable to rebuild the building in a more suitable place or for compensating the purchaser for the loss, should the council require of the purchaser to demolish the building.

***b) When Furnishing Plans is Included in a Sale Contract***

In this case, if the buyer discovers that no plans or defective plans exist, he can place the seller on terms and cancel should the seller not have rectified his breach within the breach period. In this case the seller has consciously misrepresented the buyer, but the latter cannot simply cancel the sale. Due process must be followed. If the defect can be remedied by obtaining proper plans within a reasonable period before transfer of the property and the seller is prepared to pay for them, the parties can enter into an agreement in terms of which registration is delayed pending approval of building plans. If the Council rejects the plans and, more especially, demands that the relevant extensions be demolished, the buyer will almost certainly be entitled to cancel the sale.

Buyers occasionally want copies of their plans for their sectional title units. In this case plans are not only approved by the local Council but also by the Surveyor-General and are filed at the local deeds office when the sectional plan is registered. It can be difficult getting copies of plans in this case as there are no laws allowing sectional title owners the right to apply to their local deeds offices for copies of their sectional plans, and deeds offices regularly decline to supply them as a result. If they cannot be obtained there is a presumption that the structures on the complex duly comply with the registered sectional plans and the obligation is on the buyer to prove otherwise. This can also be difficult, because building plans are never lodged at the deeds office unless the sectional scheme has been registered as a phased development. Enclosed balconies should generally be a red flag and the seller should be asked the question as to whether there are building plans for the alterations.

Should the additions be of a substantial size, the participation quota will be affected and might even result in bond holder's consent having to be obtained in order to update the sectional diagrams.

***c) The Procedure for Obtaining New Plans***

A qualified architect has to draw new plans (if none exist) or extension plans (if no application for approval was ever done). Once these are completed the architect will make an application to the local Council for approval of the plans. Depending on which municipality it is, the procedure will take between six to eight weeks, but it can take a lot longer. Unless there is some reason for refusing to approve the new plans, the Council will generally accept them without further consequences. Councils can penalise home owners for transgressing their laws when failing to get their plans approved before the buildings were constructed, but they generally show considerable leniency in these cases, especially if they can see that the plans would have been approved if they had been lodged for approval at the proper time.

What can prevent the new plans being approved? Usually the issue is purely whether there are any legal restrictions that will affect the extensions. Councils should never refuse to accept plans unless there are specified circumstances in law prohibiting their approval. These are the commonest examples of such restrictive factors:

***d) Sewerage and Other Servitudes***

All such servitudes will readily appear on the owner's title deed to the property. For example, when the township was first laid out, the Council may have placed rainwater pipes or sewerage conducting pipes under the surface of the owner's property. These servitudes will either appear as township conditions on the deed, or as references to notarial deeds imposing the servitudes, or as endorsed conditions of title imposed at a later date. In all cases, if an owner cannot trace any restrictive conditions of title in respect of such pipes (or other similar council services such as electric or telephone cables), he can safely presume there are no servitudes affecting his property. If extensions were unlawfully done without prior approved plans and were placed right over such servitude lines, the Council will demand that the extensions be demolished and there may be other adverse consequences for the offending owner.

***e) Building Restriction Lines***

Title deeds often contain conditions disallowing any buildings within any boundary line or alongside any facility (such as a right of way) for a certain specified distance. Not all properties are affected by these restrictions, but if an owner has unlawfully built structures across these restrictive lines without getting plans approved, he will again almost certainly have to demolish the transgressing structures. If he sells the property and the buyer discovers this before transfer, the buyer will be entitled to cancel the sale.

***f) Municipal Byelaws Prohibiting Certain Structures***

There may also be local municipal laws generally prohibiting certain structures in any of the properties within a suburb, township or residential area. Business premises, public parking facilities, large communal halls, etc, are the sort of structures that would be affected. In these cases, the home owner, on trying to get building plans belatedly approved, may again find that the offending buildings or facilities must be removed, and the buyer will again be free to cancel the sale.

It is becoming increasingly imperative to ensure that property sellers obtain properly approved copies of plans of all structures on their properties before they put their homes on the market. The time has probably come when all estate agents should raise this issue with all their sellers before putting their mandates to sell into effect.

#### ***g) SPLUMA***

Currently the only municipality that requires house plans for the transfer of a property is the Mbomela Council (Nelspruit).

The implementation of the SPLUMA bylaws, which affect the governance of local municipalities, has any impact of the selling of property unless the local municipal authority in which the property is located has implemented this. Currently no other municipalities have implemented this.

Currently municipalities require a SPLUMA Certificate where new properties are created, i.e. Sub-divisions, consolidation, townships, and sectional title developments. It may also include land development applications like rezoning and consent use to make sure all conditions are complied with prior to transfer to the new owner.

Please consult with your local council and find out whether they require a SPLUMA certificate for the sale of normal property transfers.

### **10. When is a tenant an illegal occupant?**

Where the Contract of Lease is breached in any way by the tenant and he after receiving notice thereof has not remedied such a breach within the period agreed upon, then the landlord may cancel the contract. The tenant will be found to be an illegal occupier in this instance.

Where a tenant fails to perform as agreed upon in his Lease agreement, he will be found to be in breach of that agreement. An example of this is a failure to pay rent timeously or at all. The landlord must notify the tenant in writing of his decision to terminate the contract by means of a letter of cancellation, allowing the tenant a reasonable period, or such timeframe as agreed upon in terms of such a lease, to vacate the property.

If the tenant chooses to ignore the notice of cancellation of the lease agreement by remaining on the property and continuing to use and enjoy it, the tenant will be regarded as an illegal occupier of the property. The same applies if the tenant continues to occupy the property

after the expiration of the initial lease period. An illegal occupier may be evicted from the rented property by the landlord or owner. This will be done at a Magistrate's or High Court and for that the services of a lawyer will be required.

There is no longer a Common Law right to evict someone. Instead the owner or landlord must follow the procedures and provisions of the Prevention of Illegal Eviction and Unlawful Occupation of land Act 19 of 1998 (hereinafter referred to as the "PIE Act"). The tenant must be notified of the pending action, by means of a Notice of Intention to Evict and this must be done at least 14 days before the date of the court hearing. This notice must also be sent to the respective Municipality involved.

On the date of the hearing, the court will consider factors such as whether the person is an unlawful occupier, whether the owner has reasonable grounds for eviction and alternative accommodation available to the tenant. It is now considered a criminal offence to evict someone without a court order to that effect. Constructive eviction, for instance, where a landlord cuts the water or electricity supply to the property in order to "drive" the tenants out, is a criminal offence.

The type of action or application that your legal representative will bring will vary depending on the facts and circumstances of the matter. Such actions or applications can be heard in the Magistrate's or High Court, depending on the value of the occupation and not the leased property value. The lease agreement may also have a clause embodied in it where the parties agree to a particular court's jurisdiction, where upon that will be followed. If the court proceedings are successful a Warrant of Ejectment may be issued, whereupon the owner or landlord may proceed with the eviction of the illegal occupier.

Once the owner or the proprietor of the leased property has followed all the prescribed procedures as laid out in the PIE Act and they have established that their tenant is considered an unlawful occupier then they may proceed with the above-mentioned steps in order to evict them from their property.

An unlawful occupier may be removed from the premises upon the instruction of an Eviction Order / Warrant of Eviction with the assistance of the Sheriff of the respective court at a minimal fee. The steps laid out in the PIE Act are simple to understand and follow allowing a transparent and fair chance to both the landlord and the tenant in these difficult situations.

In practice, courts have regard for the following:

- a) the rights of elderly persons;
- b) children;
- c) disabled; and
- d) households headed by a woman.

However, the court has wide discretion to grant an appropriate date on which the unlawful occupant has to vacate the property, and a date when the actual eviction order is to be effected.

## **11. Insolvent Estates**

The sequestration process involves a Court Application. The Applicant in the Application is either yourself for your own sequestration (voluntary surrender) or the Applicant is one of your creditors (either a friendly or aggressive creditor). The applications are similar and although there are some different requirements for each, the result is the same.

### ***a) Voluntary surrender***

Voluntary surrender refers to the process whereby a natural person can make an application to place himself under an order for sequestration.

A person is insolvent if his liabilities exceed his assets. In such a case he can apply for voluntary surrender of HIS estate. Anybody can apply for voluntary surrender at any stage as soon as he is insolvent, even if they have been or are under debt counselling, for example.

The person who wants to sequester him, will depose to an Affidavit which explains why he claims he is insolvent. This will be drafted by the Attorneys who will bring the application on behalf of the Applicant. As soon as the Affidavit is signed, the application will be issued at Court and a Court date is assigned. The Applicant does not have to appear in Court as the Advocate appears on his behalf.

If the Court grants a provisional order on the first Court date, the matter will be postponed for approximately one month. During that month notice will be given to all creditors, and if on the return date no-one has opposed the application, the order will be finalized, and the Applicant's estate will be sequestrated.

### ***b) Compulsory sequestration***

Applications are also made by way of a Court application; however, in this case the Applicant will be a creditor of the debtor. If it is a creditor with whom the debtor does not have a good relationship, we refer to it as an "aggressive" sequestration (for example the bank).

However, the banks seldom bring sequestration applications against the average debtor as it is much cheaper and easier for them to follow the collection procedures: attach property and sell it and/or attach your salary.

If it is a creditor with whom the debtor has a good relationship, we refer to it as a "friendly" sequestration (for example a family member or a friend to whom you owe money).

### ***c) Aggressive ("unfriendly") sequestration***

Where an unfriendly creditor brings a sequestration application against a debtor, we refer to it as an aggressive sequestration. It is also a forced sequestration as opposed to voluntary surrender.

The creditor who brings the application must have established a claim against the debtor; in other words, the debtor must indeed owe the creditor money. A second requirement is that there must also be a benefit to creditors. Thirdly, the debtor must have committed an act of insolvency.

If a creditor brings an aggressive application against a debtor, the debtor can oppose such an application if he is not insolvent or if there is another reason why the order should not be granted.

#### **d) Process for “unfriendly” and “friendly” sequestrations**

The process for both these applications is the same and it is only the Applicant that differs.

As with voluntary surrender, an Affidavit will be given by the creditor to explain why he avows that the debtor owes him money. He will attach proof thereof (contract/statement) and also proof that the debtor has committed an act of insolvency (where the debtor has written a letter to say that he cannot pay the debt). In both instances the Applicant must prove that there will be a benefit to creditors to have the debtor sequestrated.

Once the Affidavit has been signed, the necessary documentation will be drafted, issued at Court and a Court date assigned. As soon as this is done, the documents will be served on the debtor, employees of the debtor, Master of the High Court and the South African Revenue Services by the Sheriff. The provisional order should also be given to all creditors above R5 000.00 by way of registered post. If the application is not opposed, a final order will be made for the sequestration of the debtor/Applicant.

## **12. Interdicts and Shortfalls**

### **a) Interdicts**

- i. The first thing the attorneys do when there is an interdict is to open a file and do a deeds search. From there they determine the following:
  - ✓ Property description
  - ✓ Ownership information
  - ✓ Bonds
  - ✓ Attachments
- ii. What happens if there is an attachment (interdict) over the property?

- ✓ Need to obtain the information pertaining to the interdict – NB!!!!
- ✓ Make contact with the attorneys who attached the property and make them aware of the fact that the property is being sold.
- ✓ Determine what their requirements are.

(In some instances, there will be requirements to merely uplift the interdict, in other cases attorneys are required to also stop a sale in execution/auction)

iii. Requirements include:

- ✓ Offer to purchase
- ✓ Disbursement account (less cancellation costs, rates and taxes, levies if applicable, agents commission, provision for COC if necessary, etc.)
- ✓ Proof of the rates and taxes as well as levies if applicable
- ✓ Guarantee (**BOND GRANT IS NOT SUFFICIENT**)
- ✓ Payment upfront of the costs to uplift the interdict as well as legal fees
- ✓ Only once the above has been received and accepted by the bank, may the interdict be removed. This is done by way of notice of withdrawal which needs to be served on the deeds office by the Sheriff. It is essential that the deeds office stamps the Sheriffs copy as proof of receipt – if they don't we have no proof that same was received. Once the interdict attorneys have received the return of service, **STAMPED BY THE DEEDS OFFICE**, we can send our correspondent to the interdict department to follow up. It usually 3 – 5 working days for the deeds office to update their records – **NO INTERDICT UNDER ENDORSEMENTS**.

***b) Shortfall***

- ✓ A shortfall means that the amount for which the property is being sold is not sufficient to cover the amount outstanding on the bond.
- ✓ In this case, like above, a disbursement account needs to be done – this shows, after all deductions, how much we have left to give the bank towards the bond.
- ✓ The bank will then decide if they are willing to accept this amount and if so, they draw up an Acknowledgement of Debt to be signed by the Seller for the balance.
- ✓ The Bond Cancellation Attorneys **WILL NOT** lodge unless this Acknowledgement of Debt has been signed and received by the bank.

**13. Role of the Body Corporate**



***a) What is the role of the body corporate?***

When it comes to sectional title schemes, there is still widespread misunderstanding of even the basics, starting with the body corporate and how it is established, as well as what its functions and powers are. This misunderstanding often gives rise to many problems and disputes in sectional title schemes which could quite easily have been avoided.

***b) What is a sectional title?***

A Sectional Title Development Scheme, usually referred to as a “scheme”, provides for separate ownership of a property, by individuals. These schemes fall under the control of the Sectional Titles Act, which came into effect on 1 June 1988.

When you buy a property that’s part of a scheme, you own the inside of the property i.e. the space contained by the inner walls, ceilings & floors of the unit. You are entitled to paint or decorate or undertake alterations as desired, providing such alterations do not infringe on municipal by-laws.

***c) What is the body corporate?***

The Body Corporate is the collective name given to all the owners of units in a scheme. Units usually refers to the townhouses or flats in a development. The body corporate comes into existence as soon as the developer of the scheme transfers a unit to a new owner. This means that all registered owners of units in a scheme are members of the Body Corporate.

- ✓ The Body Corporate controls and runs the Scheme.
- ✓ Day-to-day administration of the Scheme is vested in trustees who are appointed by the Body Corporate.
- ✓ Major decisions regarding the Scheme are made by the Body Corporate, usually at the annual general meeting (AGM), or at a special general meeting (SGM). At these meetings, matters, which affect the Scheme, are discussed, budgets are approved, rules can be changed, and trustees are appointed. Each member of a Body Corporate is entitled to vote at these meetings, providing that the member is not in arrears with levy payments or in serious breach of the rules.

The Body Corporate exists to manage and administer the land and buildings in the scheme. This means, that the Body Corporate is required to enforce the legislation and rules in the Sectional Titles Act, the Management Rules and the Conduct Rules of the scheme. Amongst their other duties, the Trustees manage the Body Corporate’s funds, enforce the rules and resolve conflict to the best of their ability.

***14. Water leaks in sectional title unit?***

Maintenance of a sectional title scheme can appear straightforward, but the reality is that disputes arise frequently regarding maintenance issues relating to sectional title units. This is often the result of the complex relationship of close quarter living and the shared form of ownership represented by sectional titles. Making things even more complicated is the silence of the Sectional Titles Act on many of the minor issues encountered daily in sectional title schemes. So how do you approach the maintenance issues in a sectional title scheme?

Dave owns a flat on the second floor of a sectional title scheme. There is a water leak coming from flat A above him, causing damp problems in his flat and the owner of flat A does not repair the leak. This scenario creates a flurry of questions:

- a) Should Dave, the owner of flat A or the body corporate repair the leak?
- b) Can they enter flat A, or should the owner grant them permission first?
- c) If the owner of flat A refuses to do the repairs or to grant access, what are they to do to stop the leak and further damage occurring?
- d) What does the law say regarding the responsibility of parties in this scenario?

Section 44(1)(a) and (c) of the Sectional Titles Act read with management rules 68-70 of the Sectional Titles Act provides that ***an owner must repair and maintain his section in a state of good repair.***

The owner must also allow a person who is authorized in writing by the body corporate to enter his section at a reasonable time and after notice was given (except in case of emergency when no notice is required) to enter the property. This will happen with the purpose to inspect, maintain, repair, or renew the pipes, wires cables, and ducts capable of being used in connection with the enjoyment of any other section or the common property.

Section 37 of the Sectional Titles Act requires the ***body corporate to maintain and repair the common property.*** Therefore, if the leak originates from the shower in flat A above, it will be the responsibility of the owner of flat A to repair the damage.

*Due to the fact that the leak is caused by flat A's shower base, and therefore forms part of his section and not the common property, it is the responsibility of the owner of the section causing the damage and the leak to repair it.*

If such an owner does not repair the leak within a reasonable time as to stop further damage, the owner suffering the damage can ask the Body Corporate to step in and repair the leak using the same procedure as in the instance where the leak is caused by pipes forming part of the common property. The body corporate can then recover the cost of repairs from the defaulting owner.

## **15. Suspensive conditions**

Most people that have bought a property may have noticed a clause dealing with suspensive conditions in the contract of sale. Usually these conditions relate to deposits that need to be paid, financing that has to be procured and/or another property that needs to be sold before the sale can be confirmed. The interpretation appears straightforward enough – meet the requirements, and the contract is valid; fail to meet the requirements and the contract is invalid. But is it really that straightforward? And what are the consequences of non-compliance?

In layman's terms a condition contained in a contract can be described as a provision that defers the obligation(s) of a party in the contract to the occurrence of some future uncertain event. This is usually termed a 'suspensive condition' or a 'condition precedent'.

Legally a suspensive condition can be described as a condition, which suspends the operation or effect of one, or some, or all, of the obligations under a contract until the condition is fulfilled. If the condition is not fulfilled, then no contract comes into existence. Once the condition is fulfilled, the contract and the mutual rights of the parties relate back to, and are deemed to have been in force from, the date of the signature of the agreement and not the date of the fulfilment of the condition.

***The Supreme Court of Appeal recently confirmed that where a suspensive condition is not fulfilled timeously it lapses and the parties are not bound by it, even though one party has performed fully.***

In the matter of *Africast (Pty) Limited v Pangbourne Properties Limited* the parties concluded a contract for the development of commercial property in an area in Gauteng. One of the suspensive conditions in the contract was that Pangbourne's board of directors had to approve the contract and written approval had to be presented to Africast within seven working days from the date of conclusion of the contract. The contract was signed on 11 April 2007 and Pangbourne's board of directors approved the contract on 20 April 2007, however the written approval was only provided on 25 April 2007 to Africast, which was after the required seven-day period. Pangbourne decided after 18 months that since the suspensive condition had not been met within the stipulated period, it was not bound by the contract and refused to deliver the required guarantees. At that stage buildings had already been constructed by Africast in terms of the agreement.

***The Court confirmed Pangbourne's view that since the suspensive condition in the contract had not been fulfilled timeously no contract had come into existence and that the contract had lapsed due to non-fulfilment of the suspensive condition. The Court came to this conclusion notwithstanding the fact that both parties had performed in terms of the agreement for some 18 months.***

The most common appearance of suspensive conditions is in contracts involving the sale of immovable property such as a house, flat, plot, or farm. The conditions that are generally encountered in the contract of sale is that the sale is subject to the purchaser obtaining a

bond from a financial institution and/or that the sale is subject to the purchaser selling his existing property within a certain period.

It is important to bear in mind that suspensive conditions are usually inserted in a contract for the benefit of one of the parties to the contract. In the abovementioned scenario, the suspensive conditions are included for the protection of the purchaser. Should the purchaser fail to obtain a bond and/or sell his existing property within the required period, the contract would not have any force or effect and the purchaser will not be bound to the terms and conditions of the contract. Non-fulfilment of a suspensive condition renders the contract void, and should the parties still wish to continue with the sale, **a new contract of sale** must be concluded.

If a suspensive condition is included for the benefit of a particular party to a contract, such suspensive condition can be waived at any time prior to the lapsing of the time for the fulfilment of the suspensive condition by the party for whose benefit the condition was included. Having regard to the scenarios mentioned above, the purchaser may accordingly at any time **before the lapsing of the period** of the suspensive condition, inform the seller that he waives the suspensive condition and the contract is no longer subject thereto. ***This will then make the contract unconditional and the purchaser and seller will be bound to the terms of the contract.***

It is always prudent to tread carefully when entering into a contract that is subject to a suspensive condition. Be aware of the stipulated periods for compliance, for whose benefit the conditions are inserted and the requirements to prove compliance.

## **16. Terms Deed of Sale (see clause 27)**

They are referred to by various common terms in the real estate industry. The official term is a **deed of sale under the Alienation of Land Act 1981** (because this Act is the fundamental legislation defining terms deeds of sale) but most agents, and the general public, casually call them 'selling on deed of sale'.

This is a bit of a misnomer because all normal cash sales and cash-and-bond sales are also forms of 'selling on deed of sale' (all property sale agreements are deeds of sale), but everybody seems to know what is being referred to. It is a sale agreement by which the seller sells on a long-term basis. He gets a deposit upfront (usually about 10% of the selling price) and then allows the buyer to pay off the balance of the purchase price over a period of time, usually between three and five years.

In tough times this type of deed of sale is often resorted to, especially when the buyer is willing to put down a fairly large deposit. Sellers who are desperately trying to sell their properties will welcome a cash deposit to help them pay off the arrears on their bonds while estate agents are also tempted to take their share of the cake, namely their commission which becomes payable on signature of the agreement. No matter what the short-term advantages may be, all parties need to be warned upfront as to what the backlash may be from such sales.

***Many sellers and buyers have come to deeply regret ever entering into a terms deed of sale.***

***a) The Prescribed Formalities affecting Terms Deeds of Sale***

When the old Sale of Land on Instalments Act was introduced in 1971 its intention was to protect buyers from unscrupulous sellers. Too many cases were known of sellers taking huge deposits from buyers, only to sell to other cash purchasers thereafter without advising either party of the circumstances. Without knowing about the second sale, terms buyers faithfully continued paying off their purchase prices unaware that their sellers had already transferred their properties to other cash purchasers who had paid them in full. The Act was introduced to protect buyers against this type of abuse. Its terms were incorporated into the Alienation of Land Act of 1981 which is the law that covers all terms sales to this day.

Unfortunately, the lawmakers went overboard protecting buyers and the law today favours them considerably at the expense of their sellers who are usually unaware of their obligations under the law.

No one advises them that they have to furnish their buyers with an annual statement disclosing all payments made and any interest accruing on the balance of the purchase price from month to month. (If they don't, they can lose all future interest on the balance owing to them). Often, they are not aware of the buyer's rights under the Act to record their sale against the seller's title deed in the local deeds office under Section 20 of the Act. (Only residential properties, that is, those being used for residential purposes, are affected by this provision).

They are also often not advised that they may not take out further bonds or act in any other way with the result that the amount owing under their bonds may exceed what their buyers still owe them. In getting into this position in any way, such sellers are committing a criminal offence. When their buyers can finally pay their sellers in full, the latter may not be able to clear their bonds and give them transfer of their properties.

Added to this is a severe restraint on all sellers if their buyers fail to pay any instalments on time. They have to give them no less than 30 days written notice to pay the overdue instalment before they can cancel their sales. By this time their buyers will be a further month in arrears.

***b) Watch out for the National Credit Act!***

When such sales are concluded, and an initial deposit is paid, the balance of the purchase price will be invariably more than R500 000. If the agent concluding the sale is not careful, the seller will have to register as a credit provider under the National Credit Act. This also obliges him to provide separate statements of account to his buyer annually and to comply with all sorts of other obligations. Some agencies even advise their sellers that they must go ahead and do the necessary to get properly registered under the NCA. Only sometime thereafter will they find out just how much they have let themselves in for.

Agents must be wide awake here. Any mention of interest payable monthly on the outstanding balance of the purchase price will oblige sellers to become registered credit providers (eina!) under the Act. ***The contract must avoid any mention of interest if the balance owing exceeds R500 000.***

***The proper alternative, and this is perfectly acceptable in terms of our laws, is to supplement accruing interest with occupational rental.***

A fixed monthly rental, relative to what the monthly interest would have been, must be inserted in its place and it *must* be officially described as *occupational rental*. It's perfectly legal – it simply reflects the rental value of the balance of the purchase price still owing to the seller.

***c) When the Time Comes for the Purchaser to Pay***

***One of the worst problems with terms deeds of sale is that, when they expire, the buyer is usually no more capable of paying what is still owing to the seller than he was when he first bought the property.***

Invariably a terms deed of sale was drawn because the buyer *couldn't* get a bond for the balance of the purchase price at the time. The sale was concluded on the assumption that the buyer would be able to get his act together later, even though there was no guarantee of this at the time. The seller now wants his money and to be done with the deal. The buyer has paid plenty to him and is very concerned about the possibility that he may lose everything in his predicament. It happens all too often.

To make matters worse the Act provides that the buyer may take transfer of the property once he has paid off 50% of the purchase price. He may now own the property without being able to pay the balance owing to the seller (who will also, in all probability, not be able to clear his bond and give transfer anyway). The buyer's right to take transfer has to be disclosed in the sale agreement. So many complications can arise with terms deeds of sale and agents must foresee and anticipate them before they conclude such sales.

***d) The Conventional Penalties Act – Another Red Herring***

***There's more to come. A piece of legislation hardly known to estate agents (and many conveyancers!) is the Conventional Penalties Act. This law provides that, when a sale is cancelled, the seller may not summarily expropriate everything that has been paid to him.***

Even if your contract says he can do all this and keep it as *rouwkoop*, the High Court, on application by the defaulting buyer, may assess the real damage suffered by the seller and reduce the actual amount owing by the buyer to a more reasonable amount. This applies to cash sales as well. The problem here is that the buyer is usually obliged, in terms of a deed of sale, to pay all capital repayments directly to the seller as the years go by. If he has paid, say, 40% of the purchase price but cannot raise the balance when his repayment term expires, he will have to apply to the High Court to reduce the amount owing under the Conventional

Penalties Act and then sue the seller for the difference! The amount may be substantial, causing much inconvenience to both parties.

The potential for prejudices, injustices and sheer opportunism with terms deeds of sales are prolific. If the buyer is going to pay substantial amounts reducing the purchase price, these should be kept in trust in the relevant conveyancer's trust account to protect the buyer from exploitation if he cannot meet his obligations when the time comes for him to do so.

***Estate agencies need to be extremely cautious when recommending a terms deed of sale, even if the opportunity to secure early payment of a commission from the sale is extremely tempting.***

## **17. SARS and VAT**

### **Problems with zero-rating**

SARS has reviewed its approach to the payment of transfer duty or VAT on property sales. It has tightened up many of its requirements and it is important for all role-players in the industry to know what these are. All of these new restrictions apply to VAT-related sales, whether they are zero-rated or normal VAT payment transactions. SARS has issued a directive in terms of Section 9(15) of the Transfer Duty Act covering some new obligations, but many of its other requirements are being discovered purely by experience as SARS responds to applications for VAT-exemption certificates.

#### ***a) Zero-Rated Transactions: SARS is now Checking more Carefully***

Until recently SARS seemed to take the attitude that it would rely on the taxpayer to be honest in seeking a zero-rated VAT exemption certificate and would only intervene if evidence to the contrary subsequently surfaced. SARS has probably had a few cases in recent times where it has realised after a transfer has been concluded that the parties did not qualify for zero-rating and, in consequence, it has become more thorough in checking the status of each matter before approving zero-rating.

Zero-rating (avoidance of both the payment of transfer duty and VAT on a property sale) is allowed where both the seller and the buyer are VAT vendors and where the property is being sold as part of an ongoing concern, meaning that the seller has been conducting an income-producing activity from the property and that the buyer will continue to do so after transfer.

***This is now being determined by checking whether the seller has been filing the required bi-monthly VAT returns together with VAT payments each second month and whether the buyer continues to do so after transfer.***

Normal zero-rating seems to be functioning smoothly enough, but serious problems are being experienced with applications for zero-rating when the properties are being leased to third parties. Only when the seller is occupying the property and the buyer intends to do likewise when he takes possession of it will SARS probably be content not to ask further questions.

***b) Property Leases: Ongoing Problems and Delays***

***VAT is never payable on rentals received on leases of residential properties, but it is often payable on business or industrial leases.***

If the landlord's annual business income exceeds the prescribed minimum exemption limit (currently R1 million), the landlord has to register for VAT. Most companies operating businesses fall into this category and pay VAT on the rentals they receive each month. When the landlord decides to sell the property and both the seller and the buyer are VAT vendors, zero-rating can be applied for, but if either party is leasing the business property, SARS intervenes and requires more than just proof of the right to zero-rate the transaction.

When applying for zero-rating and leases are operating, a conveyancer cannot submit supplementary documents. He has to wait for SARS to tell him what it needs. Since SARS became stickier with its requirements, conveyancers have been having nightmares trying to deal with what, at times, have seemed like idiosyncratic requirements. Firstly, SARS has been calling for extra property valuations and other similar documents which, to all intents and purposes, are irrelevant to zero-rated transactions. The result has been to delay the transfer unnecessarily. Then there are repeated requests to 'upload lease agreement' even though this may have been done already. In a recent case, when receiving this request three times, we had to phone SARS call centre to find out exactly what SARS wanted.

***c) SARS wants Existing Lease Agreements Amended***

SARS transfer duty and VAT department (for property sales) has been relocated to Cape Town and is soundproof (you are not allowed to contact anyone there to discuss any problem you may have with them). You have to phone the call centre and be prepared for a lengthy waiting period after a voice-mail welcomes you to the centre and tells you that you are somewhere around number 125 in the queue. The call centre folk do try to be as helpful as they can be but can only call up the matter on their screens. They usually don't know much about zero-rating and will try to explain what's on the screen. Often the answers are baffling and confusing

**Experience has taught us to get the representative to actually read out the requirement on the screen (it rarely coincides with the stock requirement given to you, such as 'upload lease agreement').**

Even then the requirement may still be confusing. SARS seems to think that, for sales of leased properties to qualify for zero-rating, the existing lease must lapse on the actual date of sale and the new lease must start on the same date. It doesn't matter what the actual dates are on the agreements the parties have concluded, SARS will want an agreement varying the termination date of the seller's lease and a revised agreement changing the commencement date of the buyer's lease! One can only hope that this is a temporary idiosyncrasy resulting from staff not being properly informed about the meaning of an 'ongoing concern' and that



it will be ironed out in the near future, but that's what SARS required recently before finally issuing an exemption certificate (both parties had to amend their agreements).

There is no need for the termination and commencement dates of new leases to coincide exactly. As long as the payment of VAT on the monthly rentals continues on a regular bi-monthly basis SARS should have no further queries on the validity of zero-rating for the transaction.

***d) SARS New Requirement for VAT Payments***

The directive SARS recently issued unfortunately did not cover zero-rated matters, but it does give clarity on transfers subject to VAT. In future SARS will issue a VAT certificate to a conveyancer on receipt of the prescribed undertaking by the conveyancer to pay the VAT due to SARS within five days of transfer of the related property. The conveyancer can only withdraw the undertaking if his mandate to finalise the transfer is withdrawn or if a court order (an insolvency or attachment of the proceeds of the sale) overrules SARS.

SARS now checks all the seller's tax obligations and if it finds that the seller is in arrears with its tax payments, SARS can call for a payment of the VAT amount on the sale to be paid as security if the seller cannot clear his tax obligations immediately. The VAT will still have to be paid separately on transfer and an application will have to be made for a refund of the security, alternatively the vendor can apply for the security to be set off against the vendor's current VAT liability for other payments due.

***e) Transfer Duty and VAT Refunds: Beware!***

SARS has a note on its e-filing website saying that, as all transfer duty (and presumably VAT) refunds are now being done electronically, this has simplified and expedited the process which in the past was too tedious. Indeed - what used to take up to ten days in the past now only takes a year to process! In the good old days (that's what they really were), if you needed a transfer duty refund you could go to your local SARS branch and deliver a letter requesting the refund which had to be accompanied by declarations of cancellation of sale by both the seller and the buyer. You could usually pick up a cheque about a week later.

Now you have to file all sorts of documents and apply for a refund through electronic channels. If SARS doesn't come back with more requirements you should receive a note from SARS (usually a very vague one without the transaction being actually identified) confirming that your application has been approved. But you're likely to have to wait three months for the confirmation. After that only a succession of calls to SARS' call centre may assist you to get the refund within less than a year from the date when you applied for it.

SARS has become increasingly officious and remote and taxpayers can expect to endure many problems in the future, especially those who want to be exempted from tax payments on property transactions!

**18. When a house burns down**

Over and above all the emotional and financial tension it causes in the life of a person and his family, there will be several steps that a homeowner will need to take before the problems accompanying such an experience will be resolved.

The homeowner needs to report the matter to the nearest police station. A case number as required by most insurance companies. Thereafter the complaint will be investigated by the police and handed over to the prosecuting authority that will decide if the third party should be prosecuted or not. The matter is then reported to the insurance company together with the abovementioned case number.

Thereafter the insurance company will investigate the claim and decide whether it is going to accept or reject the claim. The insurance policy will determine the ambit of the insurance company's discretion in deciding whether to accept or reject the insured's claim. The insurance policy will determine the rights and obligations between the insurance company and the insured. If the insurance company decides to reject the insured's claim the insured will have two further options at his disposal. The insured will be able to take the matter to the ombudsman for determination, or he may dispute the matter in a civil court based on breach of contract by the insurance company.

The insured will be indemnified if the claim is accepted by the insurance company. The amount that the insurance will pay out to the insured will once again be determined by the terms and conditions of the insurance policy. If the insurance company rejects the insured's claim or if the insured decides not to claim from the insurance company, then the insured will be able to institute action against the third party if he can prove that the house was burned down as a result of the intentional or negligent conduct or omission by the third party or, alternatively, that the house was burned down as a result of a breach of a contractual obligation between the homeowner and the third party, had a contract been in place.

### **19. WhatsApp's and Social Media legal implications**

*"I found a photographer online who could take our wedding photos. We started communicating on WhatsApp and she confirmed she was available and gave me her prices which I confirmed looked reasonable. I never told her that I would use her and eventually found someone else. When I informed her that I would not use her, she just replied that we had an agreement and she would claim her fees from me if I did not honour our agreement. Surely, just talking on WhatsApp can't create a contract?"*

Before the Electronic Communications and Transactions Act 25 of 2002 ("ECTA") came into effect, there was legal uncertainty as to whether a data message sent electronically (such as a WhatsApp message) could be sufficient to enter into a valid contract. One of the main areas of uncertainty was whether electronic communication could, and should, impose legal obligations on people and whether this form of communication was sufficient to communicate an intention to enter into a legally binding agreement.

This uncertainty was resolved by ECTA, which expressly recognises data messages as a viable method to conclude legally binding agreements. This means that data messages are now a recognised method to engage in actions that give rise to legal obligations, which includes the possibility of concluding electronic contracts by way of data messages sent, for example, via WhatsApp.

That said, for an electronic message to impose legal obligations, the normal requirements for a binding contract must still be met. In South Africa, the following must be present for a contract to be binding on parties, even via WhatsApp:

- a) There must be a valid offer and acceptance. An offer is made when a person puts forward a proposal with the intention that upon acceptance of the proposal, a binding contract is created. The intention to make an offer and the acceptance of the offer can either be expressed or implied from the conduct of the parties. However, if the offeror does not intend to be bound by the acceptance of her offer, the necessary intention to create a binding contract may be lacking. The acceptance of the offer in question may be communicated by direct or indirect means but must be capable of being inferred from an unambiguous act which indicates acceptance. For example, a facial expression (such as a smile) will not be sufficient to indicate acceptance but signing an agreement will be a clear indication of acceptance of the terms of the agreement. Furthermore, acceptance of an offer must be in relation to the offer in its entirety, as anything more or less than what was offered (including acceptance together with a reservation) may amount to a counteroffer, which the offeror then has the option to accept or decline.
- b) There must be consensus between the parties in that they intended an agreement to result from their actions. This essentially means that the offer by one party (the offeror) must be clearly accepted by the other party (the offeree) and requires that an offer must contain sufficient information to enable the person to whom it is addressed to form a clear idea of exactly what the offeror has in mind. The proposed offer must also be a firm offer. A tentative statement to possibly contract in the future will not be deemed sufficient to amount to a valid offer, and acceptance thereof will not result in the formation of a valid agreement.
- c) The parties must have the capacity to contract. In South African law, every living person and/or legal entity is presumed to have the capacity to contract unless limited or excluded due to age or other factors. It is important to remember that generally, only persons over the age of 18 have full contractual capacity in terms of South African law. Persons under the age of 18 are referred to as minors and must be assisted or represented by a legal guardian.
- d) The agreement must be legal and lawful in order to be enforceable. If it is against the law, it will not be legally enforceable.

- e) The content of the agreement must be certain, and the agreement must have fixed and definite terms.
- f) The obligations must be capable of performance, or else it will not be legally enforceable.
- g) All necessary formalities must be observed if applicable. Generally, there are no prescribed formalities for the conclusion of a contract, unless a specific law determines otherwise, ***such as for property sales which requires everything to be reduced to writing and signed by both parties.***

If these requirements are met, a valid contract will be created. If we then assess your communications with the photographer, it does appear from what you have said that the necessary intention to conclude a contract was not there, and that you were merely obtaining information. If, however, the photographer continues to insist that a contract was formed, it may be worthwhile to approach your attorney for assistance to help clarify the position with the photographer.

## **20. Mora interest**

Damages that flow from the failure to make payment timeously have recently been the subject of debates in the Supreme Court of Appeal (SCA). As a result, a number of principles emanating from a creditor's right to claim interest have been formulated in a number of reported cases.

Certain of the principles include the following:

- a) If a debtor is late with payment of a money obligation under a contract, the creditor is entitled to claim *mora* interest on the outstanding debt due to the debtor's failure to make payment on the due date.
- b) The creditor is entitled to claim this interest even without a specific contractual provision to pay interest.
- c) If the contract fixes the time for payment, no demand is necessary to place the debtor in default and interest is payable from the date on which payment was due.

In *Land Agricultural Development Bank of South Africa v Ryton Estates (Pty) Ltd and Others* [2013] 4 All SA 385 (SCA), the appellant (the bank) advanced and lent monies to several commercial farmers (the respondents or borrowers). The loans were all secured by mortgage bonds. Each loan agreement provided that interest at a stipulated annual rate would be calculated on the balance of the capital outstanding from time to time.

In terms of each loan agreement, the loan and interest was repayable in equal instalments annually in arrears (at para 4). The date on which each instalment was due and payable was

fixed by agreement. It was common cause that, in many instances, the respondents did not pay their instalments on the due dates.

After all the loans were repaid, the respondents instituted action against the bank on a number of grounds. In this article we will focus only on whether the bank was entitled to levy *mora* interest on unpaid but due and payable interest. The High Court found that 'in the absence of agreement to that effect, the appellant was not entitled to interest on unpaid interest' and gave judgment for the respondent (at para 10).

On appeal, the SCA held that *mora* interest constitutes a form of damages for breach of contract and 'the general principle in the assessment of such damages is that the sufferer by the breach should be placed in the position he would have occupied had the contract been performed' (at para 13).

Due to the fact that interest is the 'life-blood of finance' and that tardy payment of monetary obligations will almost invariably deprive the creditor of the productive use of the money and thereby cause him or her loss (at para 13). Accordingly, it is in the public interest that creditors be compensated when debtors fail to make payment of agreed interest on the due date (at para 19).

Unless specifically excluded in a contract, *mora* interest automatically flows from the breach of contract.

Because *mora* interest represents damages, the rate thereof is not determined nor governed by agreement or in any other manner. *Mora* interest is payable at the prescribed rate, which currently is 15,5%, and is determined by the Minister of Justice, from time to time, in terms of s 1(2) of the Prescribed Rate of Interest Act 55 of 1975, as amended.

The court found in favour of the bank, determining that in the absence of a clear and an unambiguous agreement to the contrary, *mora* interest is payable at the prescribed rate on any unpaid interest that is due and payable.

In an earlier judgment, *Crookes Brothers Limited v Regional Land Claims Commission for the Province of Mpumalanga and Others* [2013] 2 All SA 1 (SCA), the SCA held: 'Even in the absence of a contractual obligation to pay interest, where a debtor is in *mora* in regard to the payment of a monetary obligation under a contract, his creditor is entitled to be compensated by an award of interest for the loss or damage that he has suffered as a result of not having received his money on due date' (at para 14).

A party who has been deprived of the use of capital for a period of time suffers a loss and must be compensated by an award of interest. If the contract fixes the time for payment, no demand is necessary to place the debtor in default and interest is payable from the date on which payment was due. If the contract does not include an express or tacit statement of the date when payment is due, a demand for payment within a reasonable time must be sent before interest starts accumulating.

## Conclusion

*Mora* interest constitutes compensation for loss resulting from a breach of contract and is not governed nor dependant on an agreement. *Mora* interest is a common law right, meaning that it automatically applies to contracts unless it is expressly, plainly and unambiguously excluded by agreement between the parties. If a contract or agreement is silent on the rate of interest, then interest can be claimed at the prescribed rate of 15,5%. *Mora* interest can only be claimed at the prescribed rate. The same principles apply equally to a debtor who is in default in respect of a contractual obligation to pay interest.

### **21. Duets and semi-detached properties**

Typically, landowners create duets on land which cannot be subdivided for various reasons. So instead landowners establish a sectional title register with only two units. These may be two separate dwellings, or they may be semi-detached and are commonly known as duets or semi's.

Often landowners prefer establishing these small sectional title schemes to subdivision due to the cost implications as it might be cheaper and faster to establish a sectional title scheme.

The problem is that many of our clients who live in these duet houses, are under impression that the Sectional Title Act, 95 of 1986 ("STA") and the Sectional Titles Schemes Management Act, 8 of 2010 ("STSMA") are not applicable to them. This however is not the case. Duet Houses, as any other Unit or Section, are strictly administered by the STA and STSMA. Owners often don't realise that all the areas outside the dwelling form part of the common property. The affect thereof is that swimming pools, lapas, driveways, and garages/parking bays/car ports should be registered as Exclusive use areas.

Attorneys often encounter delays in property transfers as a result of owners not being aware of this and the effect it has on their ownership.

#### ✓ **Typical problems that arise are:**

- ✓ The Local Authority was never notified of the existence of the scheme or the Local Authority is only charging one owner of the rates and taxes.
- ✓ The rates and taxes payable in response of the scheme are in arrears which will affect both owners,
- ✓ Extension of building or exclusive use areas without plans,

- ✓ Rules affecting the owners,
- ✓ Signing of the 15B(3) Certificate by the conveyancer.

In terms of the STSMA:

- ✓ A Body Corporate is deemed to be established on the date of transfer of the first Unit into the name of the Purchaser thereof (Section 2(?) STSMA).
- ✓ The Developer must convey the first meeting within 60 days from the date of first transfer. (Section 2(8) of the STSMA).
- ✓ The homeowner who established the Sectional Title Scheme will be regarded the Developer of the Scheme and a fine and/or imprisonment may be imposed if the so-called Developer fails to convene the first meeting.
- ✓ By operation of law, both owners will be part of the Body Corporate and in terms of the STSMA both owners will be the trustees.
- ✓ **Local Authority Bills**
  - ✓ Bills issued in only one owner's name when instead of the Body Corporate should be charged for the common property.
  - ✓ Two rates accounts plus Body Corporate account but nobody received and paid the body corporate account – causing arrears in rates and taxes and consumption. Effectively it comes down to levies.
  - ✓ Pre-paid water and electricity meters.
- ✓ **Extension buildings or exclusive use areas**
  - ✓ Owners are mostly unaware that extension of buildings or exclusive use areas need to adhere strictly to the STA and will require the consent of their neighbour due to the fact that both owners are the members of the B/C.
  - ✓ If any extension occurs on the common property, for example a swimming pool, lapa, or extra garage, all bondholders' consents will be required – in other words the mortgagee of the neighbour will also have to consent.
  - ✓ Should the section be extended, and the extension will affect the Participation Quota with more than 10%, the bondholders' consent of the neighbour will also be required for the said extension.
  - ✓ Amended building plans will have to be lodged with the L/A – to be drawn by an architect.

- ✓ An amending Sectional Title Plan will have to be drawn by a surveyor and approved by the Surveyor General.
- ✓ The owner will then have to bring a formal application for extension of the building or the Body Corporate for registration of an exclusive use area which application will be lodged, which is not ideal.
- ✓ **Rules**
  - ✓ The rules governing all the Body Corporate's form part of Annexures 1 & 2 of the STSMA.
  - ✓ If the standard rules are not custom fit for the specific scheme, the standard rules will apply, which is not ideal.
  - ✓ All amended rules need to be filed and registered with the Ombud.
  - ✓ Any amendments after registration of the scheme need to be approved by both owners where after the rules can only be filed and registered with the Ombud and will only be effective on issuing of a Certificate of Compliance from Ombud.
  - ✓ The rules for these types of schemes need to be more specific for example:
    - Maintenance of gardens, swimming pools, etc. – each party to pay its own costs?
    - Walls, electric fences, driveway common to both properties, maintenance, etc.?
    - Visitors
    - Noise levels
    - Use of buildings
    - Pets

✓ **Levy**

Both owners need to sign a Certificate in their capacity as members of the Body Corporate to certify that no moneys are outstanding and/or payable to the Body Corporate prior to the Conveyancer being able to sign the 15B(3) Certificate.

✓ **STSMA read with CSOS Act**

The scheme needs to comply with the both Acts, for example,

- Maintenance plan



- Insurance
- Reverse fund
- Financials.

### **In conclusion:**

Estate Agents need to familiarize themselves with the rules, levies, plans, comprehensive rates accounts, etc. when listing duets.

Banks are calling for approved plans, financials etc. more regularly now and this can present a huge delay when the plans and/or rules are not up to date.

## **22. Purchasers manipulating deals**

### **a) Lapsing or Manipulating Bond Grants**

When buyers want to get out of deals, they sometimes go to their banks to encourage them to withdraw their loans. This happens mainly when their transfers are being delayed for any reason. Usually they are aware that they are committing a serious breach of contract if they deliberately do this, so they use more clandestine ways of hiding their intentions. They subtly indicate to their banks that they no longer qualify for their bonds due to changes in circumstances, motivating the banks to immediately review their loan grants. Invariably they have caused these changes, such as resigning their employments and creating their own new businesses.

There's no easy solution to the first example (lapsing a bond) as the seller will have to prove that his buyer colluded with his lender in bringing about the desired result which is very hard to prove.

Other buyers refuse to accept loan grants because they feel the interest rate offered to them is too high. If it is over the standard variable rate, they may be justified in their rejection of a quotation, but all too often they complain that the discounted rate offered is insufficient.

It is important for estate agencies to ensure that *their bond clauses oblige their buyers to accept any rate equal to or lower than the current standard rate* (which is the so-called "prime rate", fixed at 3.5% above the repo rate.).

***The Golden Homes standard contract states that, "The Purchaser hereby appoints GOLDEN HOMES to make application for a MORTGAGE BOND, to be registered over the property on their behalf and subject to the conditions currently being imposed by the Financial Institution."***

This covers the agency in the event that the interest rate offered is higher than the current prime rate.

### **b) Getting their own Electricians to issue Quotes**

It's becoming increasingly common for buyers, both before and after getting electrical compliance certificates, to engage electricians of their own choice to do an inspection.

These electricians, sniffing a profitable opportunity, often issue exaggerated quotes which the buyers then angrily force on their sellers.

Legally only qualified inspectors from the respective province's Electrical Inspector's Authority can condemn faulty ECCs (electrical certificate of compliance) and oblige the original electrician to remedy the situation.

The simplest solution here is to ***ensure that the buyer only takes occupation on transfer.***

### **c) Quotes for Defect Repairs**

Purchasers constantly complain about undisclosed latent defects. A common practice here is for the Purchaser to go out and get quotes for electrical and other repairs without reference to the Seller. ***The Seller is under no obligation to accept these and can get his own quotes.***

When a Purchaser raises the issue of defects and the Seller is willing to accommodate him, ***it is essential for the Seller to stipulate that he will get quotes for the repairs.*** When buyers are encouraged to get them, repair companies often hype up the costs of the repairs or add every item they can think of to get a profitable reward out of their work.

Ensure that you (the agent) never encourage Purchasers to get their own quotes. Contact the Seller right away and encourage him to get his own quotes as quickly as possible. Watch out for the repair sharks who see opportunities to make a few bucks out of property repairs.

**Also, NEVER, NEVER, NEVER, offer to get the quotes on any party's behalf and DO NOT refer them to a prospective contractor. Should you do so, and an issue arise with the repairs, the party to whom you referred the contact can take you to court and claim the damages from you!**

**This will become especially important once the new Property Practitioners Amendment Bill comes into law. If your Seller does not have someone that can do the required inspection, offer them three or more contacts and leave the choice up to them. DO NOT get caught in any kickback schemes.**

## **23. The Constitution**

Our present constitution came into effect in 1996 and is the Supreme Law of South Africa. It is stated in Chapter 1 that any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. No matter what act is brought into effect by Government or what decision is made by a court it is important to note that they can always be appealed at the Constitutional Court as the Constitution is the highest law of our country.

Chapter 2 of the Constitution sets out our country's Bill of Rights and forms the cornerstone of our democracy. The Bill of Rights sets out the basic human rights that ALL South Africans are entitled to. The rights of others therefore place a duty on you essentially to consider and uphold those rights.

The rights that you are faced to maintain on a daily basis in your profession are rights such as:

The right to equality – one cannot be unfairly discriminated against, be it directly or indirectly, on one or more grounds including race, gender, sex, pregnancy, marital status, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

- ✓ The right to human dignity – everyone has the right to dignity and to have that dignity respected and protected.
- ✓ The right to privacy – the POPI act just strengthens this and places an even larger duty on agents to make sure that all the correct procedures are followed to ensure the safe keeping of FICA and clients information.
- ✓ The right to freedom of religion, belief and opinion – everyone is entitled their religion and may not be discriminated against because of it.
- ✓ The right to freedom of expression – freedom to impart information or ideas.
- ✓ The right to freedom of association.
- ✓ The right to freedom of trade, occupation and profession.
- ✓ The right to property – this can only be limited through expropriation provided that the application is general. Another limitation would be conditions in the title deed.
- ✓ The right to housing – everyone has the right to adequate housing and no person may be evicted without a valid court order.
- ✓ The right to access to information – all people have the right of access to information held by the state or information held by another person which is required for the protection of any right – the deeds office documents are public documents and your clients have the right to request information held by the deeds office e.g. A copy of the deed.

It's important to note that although we all have these rights and that there is an obligation on all of us to uphold the rights for others and ourselves, that there is a limitation placed on these rights in terms of Section 36 of the Bill of Rights. Rights can be limited provided that the limitation is:

“Reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- ✓ the nature of the right;
- ✓ the importance of the purpose of the limitation;
- ✓ the nature and extent of the limitation;
- ✓ the relation between the limitation and its purpose; and
- ✓ less restrictive means to achieve the purpose.”

An example of a limitation would be BEE – one cannot be discriminated against based on race, but BEE provides for the preference of previously disadvantaged racial groups.

## **24. Trusts: advantages and disadvantages**

Trusts have various advantages, but unfortunately there are also disadvantages. Although this is not a complete synopsis of all the pros and cons, our experience may assist you in making decisions about Trusts.

### **Advantages:**

- ✓ Growth taking place in the Trust assets settles in the Trust and not in your personal estate.
- ✓ By selling the assets to the Trust, the amount owed to you by the Trust will remain outstanding on the loan account and shall be regarded as an asset to your estate. This amount may be decreased for Estate duty purposes by utilizing the annual Donations Tax exemption of R100 000.
- ✓ A Trust offers protection against problems should you become mentally incompetent. This may also make the appointment of a curator to handle your financial affairs unnecessary.
- ✓ A Trust remains confidential as opposed to documents like wills and records of deceased estates which are public documents and therefore open for inspection.
- ✓ A Trust can offer financial protection to disabled dependents, extravagant children or beneficiaries with special needs.
- ✓ A Trust can evade the administrative costs of consecutive estates by making provision for consecutive beneficiaries.
- ✓ A Trust can lighten the emotional stress on your family when you die because the Trust will continue without any of the formalities that are required from a deceased estate.
- ✓ By choosing your Trustees well you can ensure professional asset and investment management.

- ✓ The Trust will enable you to have a degree of control over the assets in the Trust after your death, via the Trustees.
- ✓ After your death and before the estate has been settled the Trust can provide a source of income for your dependent(s).
- ✓ You will prevent your minor child's inheritance from being transferred to the Guardian's Fund.
- ✓ You will avoid the problem of trying to distribute assets equally among the heirs.
- ✓ Trust income can be divided among the beneficiaries with lower tax categories after the death of the initiator when individual exemptions may be utilised, but all taxable income kept in the Trust will be taxed at 40% without exemption benefits.
- ✓ Levels of income may be varied according to the changing needs of the beneficiaries at the discretion of the Trustees.
- ✓ Due to the assets remaining the property of the Trust and not the beneficiaries it need not be included in people's estates as part of their assets when they die, which effects a saving in Estate duty.
- ✓ The Trust assets will be protected from creditors for the same reason.

#### **Disadvantages:**

- ☒ You don't have full control of your assets, as the other Trustees also have a say in the matter.
- ☒ A Trust is registered, and the authorities can gain access to it.
- ☒ You could possibly choose the wrong Trustees. You could expect problems if the Trustees are vying heirs. This shows how important it is to have at least one independent Trustee.

## **25. Wills**

### **a) Personal Wills**

A will, also called a last will and testament, is a legal document in which a person sets out what happens to their estate (the things that belong to them) when they die. The person can also nominate who they would like to appoint as the executor of their will that will administer their estate when they die. They can nominate more than one person to be their executors.

A person's estate consists of all their assets and their liabilities which they had at the time of their death.

To administer an estate means to collect and take control of all the assets of the person that died, to pay all the debts to people they owe money to and then to distribute the balance to the heirs as per the deceased persons will. If the person died without a will then the court will decide how the balance of the money will be distributed to the heirs.

➤ **Why should a person have a will?**

A will allows a person to decide who should be the beneficiaries of their estate once they die. It also determines who your executor will be. When a person dies without a will the Master of the Supreme Court will appoint an executor. This takes control away from the family and places it in someone else's hand, which can become costly to the heirs as these appointed persons must be paid to execute the will.

➤ **Who is competent to make a will?**

A person who draws up a will is known as the testator (male) or testatrix (female).

All persons 16 years and older can draw up a will in order to determine how their estate should be handled when they die, unless they were mentally unable of understanding what they were doing at the time of making the will.

Who can act as a witness to a will?

Any person 14 years and older can act as a witness to a will, provided that when they witnessed the will, they understood what they were doing and could testify in a court of law.

A beneficiary to a will should not sign as a witness to a will because they will then be disqualified from receiving any benefit from that will. There are some exceptions to this rule and a beneficiary should seek legal advice as to these rules before becoming the executor.

When drafting a will take note of the following:

- ✓ All persons (16 years and older) are competent to make a will
- ✓ A will must be in writing. It can be written by hand, typed or printed. (*note that a person who wrote the will in his/her own handwriting (and his/her spouse) may not be one of your heirs or the executor in the will*)
- ✓ The signature of the testator/testatrix must appear on every page of the will as well as at the end of the will (*This signature must be made in the presence of two or more competent witnesses*)
- ✓ Any person of 14 years and above is competent to act as a witness (*note that a witness and his/her spouse may not be one of your heirs or the executor in the will*)
- ✓ A witness must attest the last page of the will in the presence of the testator/testatrix and of each other

- ✓ You must include all details of the assets you want to bequeath as well as the names and details of your heirs
- ✓ Decide who should be your executor, and indicate this in your will (*note that your nominated executor (and his/her spouse) may not be one of the witnesses to the will*)
- ✓ Decide and indicate what should happen to the inheritance of a minor beneficiary (*e.g. Must it be paid into a trust, the Guardian's Fund etc?*)
- ✓ If you are the sole guardian of your minor child, indicate who should be appointed as the guardian of your child after your death.
- ✓ Ensure that your original signed will is kept safe by a trustworthy person or institution, as a copy of a will is not deemed a valid will.

➤ **Where to keep a will?**

The original signed will should be kept safe by a trustworthy person or institution, as a copy of a will is not deemed a valid will. More than one signed copy of the original will can be kept by different trustworthy persons too.

Family and heirs should be told where/who is keeping a copy (or copies) of your will, so that they do not struggle to obtain it after the person's death.

➤ **Why and how to appoint an Executor:**

By nominating their own executor, a person can ensure that someone they trust will take care of their estate and the interest of the heirs' after death.

Because the administration process of a deceased estate is a complex process with many legal requirements, a person should ensure that they nominate someone who will be able to do what is required.

**PLEASE NOTE:**

A person does not have to appoint the institution/person drafting their will, as their executor. They can appoint more than one person to simultaneously act as executors. The person can nominate more than one person, in case their nominated executor is not able or willing to take up the appointment. They should also indicate whether they would need their executor to provide security to the Master for the performing of his/her duties. (*if not exempted, the Master will request that security is provided to the full value of the estate – this is not something that a lay person will normally/easily be able to provide*).

A normal prescribed executor's fee is 3,5% of the value of the assets, however, a person is entitled to indicate a different fee in their will, but need to ensure that their nominated executor is in agreement with this, if the fee is lower than the prescribed fee.

➤ **What are the requirements for a valid will?**

Since 1 January 1954 all wills must be in writing. They can be written by hand, typed, or printed. The signature of the testator/testatrix must appear at the end of the will. This signature must be made in the presence of two or more competent witnesses.

The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other. If the will consists of more than one page, each page other than the page on which it ends must be signed anywhere on the page by the testator/testatrix. Although the testator/testatrix must sign all the pages of the will, only the last page of the will needs to be signed by the witnesses.

➤ **What are the requirements for a valid will, if someone cannot sign his/her name?**

If a person cannot sign their name, they may ask someone to sign the will on their behalf or they can sign the will by making a mark (a thumbprint or a cross). When the will is signed by someone on behalf of the person making the will a Commissioner of Oaths must certify that they have satisfied themselves as to the identity of the testator/testatrix and that the will so signed is the will of the testator/testatrix.

The Commissioner of Oaths must sign their certificate and they must also sign every other page of the will, anywhere on the page. The Commissioner of Oaths must also be present when the will is signed and must append

their certificate as soon as possible after the will is signed even if the testator/testatrix dies soon after signing the will.

➤ **What is a codicil?**

A codicil is a schedule or annexure to an existing will, which is made to supplement or amend an existing will. A codicil must comply with the same requirements for a valid will. A codicil need not be signed by the same witnesses who signed the original will.

➤ **What if I want to amend my will?**

Amendments to a will can only be made while executing a will or after the date of execution of the will. Amendments to a will must comply with the same requirements for a valid will and, if a testator/testatrix cannot sign it, with the same requirements that apply for persons who cannot sign a will. When amending a will, the same witnesses who signed the original will need not sign it again.

➤ **Must I amend my will after divorce?**

A bequest to a divorced spouse in a will, which was made prior to a divorce, will not necessarily fall away after divorce. The Wills Act stipulates that, except where a person expressly provides otherwise, a bequest to a divorced spouse will be deemed revoked if they die within three



months of the divorce. This provision allows a divorced person a period of three months to amend their will, after the trauma of a divorce.

Should they, however, fail to amend their will within three months after their divorce, the deemed revocation rule will fall away, and their divorced spouse will benefit as indicated in the will.

➤ **Who is disqualified from inheriting under a will?**

The following people are disqualified from inheriting under a will: a person or his/her spouse who writes a will or any part thereof on behalf of the testator; and a person or his/her spouse who signs the will on instruction of the testator or as a witness. Consult a legal representative for more information in this regard.

➤ **What will happen if I do not leave a will?**

If you die without leaving a will or a valid will, your estate will devolve according to the Intestate Succession Act, 1987 (Act 81 of 1987).

**b) The living will**

Most people are familiar with a will or testament and understand the importance of having this legal declaration drafted, by which the [testator](#) nominates an executor to manage his or her [estate](#) and provide for the distribution of his or her property to beneficiaries when he or she dies.

But how many people have considered drafting a living will?

A living will does not deal with assets, heirs and beneficiaries, but with the philosophy of death and dying, and should be considered carefully and drafted by a professional.

A living will is a legal document expressing a person's wishes regarding life-prolonging medical treatment when that person can no longer voice his or her wishes. It is also referred to as an advance medical directive.

A typical clause in a living will would read as follows:

*If the time comes when I can no longer take part in decisions for my own future, let this declaration stand as my directive.*

*If I suffer from physical illness or impairment expected to cause me severe distress, rendering me incapable of rational existence, from which there is no reasonable prospect of recovery, I withhold my consent to be kept alive by artificial means and do not give my consent to any form of tube-feeding when I am dying; and I request that I receive whatever quantity of drugs and intravenous fluids as may be required to keep me comfortable and free from pain even if the moment of death is hastened. I withhold my consent to any attempt at resuscitation, should my heart and breathing stop and my prognosis is hopeless.*

The living will tells the doctor and family that the patient does not consent to being kept alive artificially. It speaks for the patient at a time when the patient may be unable to communicate.

South African law and most religions accept the validity of the living will, but none of the main religions accept euthanasia.

Euthanasia is against the law. Sean Davison, the respected UWC professor who helped his 85-year-old terminally ill mother, Patricia Ferguson, die in New Zealand by preparing a lethal dose of morphine, was arrested in New Zealand in September 2010 on an attempted murder charge.

It is important to have a properly drafted, legal living will to avoid far reaching and traumatic consequences for the loved ones that stay behind.

Many lawyers who practice in the area of estate planning include a living will and a health care power of attorney in their package of estate planning documents.

**a) The advantages of a living will**

- ✓ The directives respect the patient's human rights, and in particular his or her right to reject medical treatment.
- ✓ It encourages full discussion about end-of-life decisions.
- ✓ It also means that the medical staff and caregivers are aware of the patient's wishes and knowing what the patient wants means that doctors are more likely to give appropriate treatment.
- ✓ It will avoid the situation where the patient's family and friends have to take the difficult decisions.

**b) Disadvantages of a living will**

- ☒ Drafting this document can be very depressing.
- ☒ The person may still be healthy and not in a position to actually imagine that he or she could ever be in the position where they would voluntarily give up living.
- ☒ When the time comes to act on the living will, the patient might have changed his or her mind and it is then often difficult to amend the document.

**Important points to consider**

The living will should not be incorporated or attached to the last will and testament, which is only acted upon after death.

A living will does not become effective unless the patient becomes incapacitated; until then the patient will be able to choose appropriate treatment.

A certificate by the patient's doctor and another independent doctor certifying that the patient is either suffering from a terminal illness or permanently unconscious, is required before the living will becomes effective. In the case of a heart attack, the living will does not take effect. A living will is only executed when ultimate recovery is hopeless.

You have to notify your doctor and family of your living will and preferably have copies of the document available for the doctor, hospital and family.

## **26. What is covered in an electrical certificate**

What is covered in an electrical certificate of compliance and what is not?

<b>YES</b>	<b>NO</b>
All Distribution Boards	All Fixed appliances E.g. Stoves, extractor fans, geysers,
All circuit breakers and protective devices	Cylinders, under floor heating mats
All wiring and cables from Main Board to point of consumption (including solar panels and geysers)	Secondary wiring to under floor heating mats, solar geyser and solar panels
Wiring of fixed appliances	All Motors (Including garage doors and gate motors)
Earthing	Ceiling fans
Bonding (similar to Earthing) of all extraneous metallic parts  E.g. Hot water cylinders, metallic pipes, satellite dishes, aerials, downpipes, gutters, steel roofs, carports.	Light fixtures, Heater towel rails
Light switches	Changing of globes, light fittings
Plug points	Anything fed from a plug top

Isolators for fixed appliances E.g. Stoves, extractor fans, motors	Garage and gate motors
Cable that runs from isolator to a fixed appliance E.g. From the isolator to stove unit	Extension leads, energy dispensers
Swimming pool distribution boards	Bore hole pumps
Cable that runs from board to pool light	Speed heat
Pool light transformer	Pool globes
Timers	Maintenance irregularities
Photo cells	Wiring past the council mains (All wiring from the supplier to municipal meter and municipal switch)
Transformers E.g. For down lights transformers	Inaccessible areas – which are noted in bold on report and certificate
Positioning and application of light fittings, appliances, switch gear and protective devices.	Sprinkler system
Earthing and wiring of lights	All disconnected circuits or lights.
Disconnecting devices to be installed within 1.5m from appliance	Flexible cords longer than 3m are not recommended
All cable joints in roof to be done correctly Cable type, size and application	

## **27. The instalment sale solution (see clause 16)**

### **a) Embrace Change?**

The property market has changed and will continue to do so for some time to come. Our capacity to adapt to these changes, will determine the measure of our successes going forward.

***b) Elements that contribute to this market shift:***

- ✓ Slowdown in property sales, due to market pressures.
- ✓ Purchasers find it difficult to access adequate funding, due to strict NCA loan criteria.
- ✓ Purchasers, more often than not, cannot raise the deposit required by the financial institutions.
- ✓ Purchasers, after having been able to raise a deposit, cannot afford paying further transfer fees, bond registration fees and costs.
- ✓ “Troubled sellers” cannot get their properties sold at market related prices and are left with no option but to face foreclosure.
- ✓ Purchasers with adverse credit records cannot access the market and are forced to consider the rental option, this amid the fact that these purchasers may have the financial means.

Alienation of Land Act, Act 68 of 1961 / An Effective Property Sales Solution

***c) How does purchasing fixed property via Instalment Sale Agreement (ALA Act 68/81) work?***

Seller, prospective purchaser and agent meet with an attorney to attempt to reach an agreement on the following terms:

- ✓ Purchase price (the seller usually wishes to accelerate the process of determining the purchase price, as registration will only take place at a later date.
- ✓ Initial deposit (if any).
- ✓ Instalment sale agreement term (any period between 12 and 60 months).
- ✓ Agent’s commission and how it is to be paid.
- ✓ Occupational rental payable.
- ✓ Date of occupation.
- ✓ Who will be liable for rates and taxes and on which date will risk relating to the property pass to the purchaser.

- ✓ Capital instalments over term (attempt to get to a 20% deposit over term).

Once the parties have reached an agreement on these terms, the attorney drafts an agreement that meets the criteria, as set by the Alienation of Land Act 68/81 (please take note that the attorney will ensure that the specific transaction does, in fact, fall within the ambit of the ALA Act).

Once the ALA agreement has been signed, the attorney will, amongst other duties as laid down by the Act, inform the existing bond holder of the conclusion of the ALA Agreement and request that the bondholder issue a certificate in terms of the ALA Act within 21 days of the request. The certificate indicates and confirms the amount that the bondholder requires to be paid for the discharge of the bond, as well as the rate of interest which the bank shall levy from time to time on the property.

If the amount owing to the existing bondholder, under said certificate, exceeds the purchase price payable under the ALA Agreement, the ALA Agreement shall lapse and will be of no further force and/or effect.

Once the attorney has received the title deeds from the existing bondholder, he/she will proceed with the endorsement of the title deed, in terms of Section 20 of the ALA Act. The endorsement must be registered before the seller receives any capital from the purchaser.

***d) Practical Implications?***

- ✓ The seller remains the owner of the property.
- ✓ The bondholder has no right to refuse the conclusion of the agreement, save for as stipulated above.
- ✓ The purchaser takes occupation on the agreed date and pays the seller occupational rental.
- ✓ The purchaser is usually liable to pay rates and taxes from the date of occupation, unless otherwise stipulated.
- ✓ The seller receives the deposit together with all capital instalments, on the due dates, on condition that Section 20 endorsement is registered against the title deed of the property, thus creating cash flow.
- ✓ The purchaser takes transfer at the end of the agreement term, but may elect to take transfer sooner, on condition that the full purchase price is secured to the seller.
- ✓ The purchaser may sell the property at any time during the period of the ALA agreement, on condition that the seller's purchase price is secured and paid on the transfer date.

- ✓ The agreement has no suspensive conditions relating to the purchaser having to have completed approval of a bond by a certain time.
- ✓ The ALA agreement does not fall within the ambit of the NCA legislation and the purchaser therefore does not have to adhere to strict lending criteria to be able to conclude the agreement. In practice though, we do execute a vetting process to ensure that the purchaser can afford to purchase the property.
- ✓ The purchaser usually accumulates a 20% deposit over the term, making it easier to get bond approval at the end of the term of the ALA agreement.
- ✓ A purchaser with an adverse credit record can utilise the term of agreement to rectify their credit status, if they wish to apply for a bond to be able to take the transfer.

***e) Benefit to Seller?***

- ✓ The seller now increases his/her chances of actually getting the property sold.
- ✓ The seller generates “cash flow” by receiving both rent and capital over the term of the ALA agreement.
- ✓ The purchaser usually pays the rates and taxes, if so agreed by the parties.
- ✓ The purchaser, who has taken occupation of the property, is an even better tenant as he/she is committed to the transaction by payment of capital to the seller before registration of transfer and tends to take good care of the property as the purchaser has a vested interest.
- ✓ The agreement, once concluded, is not subject to suspensive conditions, so the purchaser is committed to take the transfer.
- ✓ “Troubled sellers” now have the option to utilise the ALA to manage their existing debt with the bondholder and by doing so, prevent foreclosure.

***f) Benefit for the Purchaser?***

- ✓ All purchasers can now acquire property.
- ✓ No deposit required, unless parties agree that a deposit needs to be paid.
- ✓ The purchaser can utilise the term of instalment agreement to rectify any adverse credit record issues and to accumulate his/her deposit.
- ✓ The purchaser can sell the property at any time during the course of the ALA agreement.

- ✓ The purchaser can attempt to purchase property by ALA at the current value and if he/she succeeds, it would make for an even better proposition at the end of the term.
- ✓ The purchaser need not apply for a bond on conclusion of the ALA agreement.

***g) Benefit of the Agent?***

- ✓ Generate sales.
- ✓ Earns commission, which is paid in instalments over the term of agreement, if so agreed.

***h) Benefit to Banks?***

- ✓ “Troubled sellers” can now, by utilising the ALA agreement, be empowered to manage their obligations to their bank, without having to foreclose.
- ✓ As the seller is selling their property at market related value, the bank no longer faces the prospect of having to sell the property at a loss.
- ✓ The bank now has a mechanism whereby it can assist its clients in managing their obligations to the bank, and in doing so, create good publicity for the bank.
- ✓ All ALA purchasers collectively form a data base that the bank can manage and empower to qualify for a bond at the end of the term of the agreement, when the purchaser has paid his/her deposit and cleared all adverse credit record issues.

***i) Risk to the Seller***

Should the purchaser default the seller will need to give notice as per the ALA.

The contract cannot be cancelled like a lease agreement, unless the same notice of demand be done 3 times within one year.

Should the seller manage to get the contract cancelled he will then have to approach the court for an eviction order should the purchaser not vacate.

It would be advisable for the seller to have some form of insurance to mitigate any potential loss.

In closing, I wish to recommend that you do not implement the ALA agreement without the assistance of your attorney.

## **28. Authenticating Documents signed outside South Africa**

A number of complications arise when sellers and buyers are not in the country, such as jurisdictional issues for example. Generally, a document can be signed outside of South Africa



and still be valid, however, if the agreement or document is to be relied upon for court proceedings or for use in other areas like the Deed's Office, a specific process needs to be followed when signing (executing) such a document in order for it to be accepted.

***a) Authentication***

in terms of High Court Rule 63, any documents executed in any place outside of South Africa shall be deemed to sufficiently authenticated for the purpose of use in South Africa if duly authenticated at such foreign place by the signature and seal of office of:

- ✓ The head of the South African diplomatic/consular mission, or;
- ✓ A person in the administrative or professional division of the public service serving as a South African diplomatic consular abroad; or
- ✓ Any government authority of such foreign country charged with the authentication of documents;
- ✓ The consul-general, consul, vice-consul or consular agent of the United Kingdom in that foreign country; or
- ✓ A notary public in the United Kingdom of Great Britain and Northern Ireland, or in Zimbabwe, Lesotho, Botswana or Swaziland.

***b) Authentication: Apostille***

An apostille is simply the name for a specialised certificate issued by the Secretary of State. The Apostille is attached to the original document to verify that it is legitimate and authentic so that it will be accepted in one of the other countries who are members of the Hague Apostille Convention.

If the convention applies between two countries, such an apostille is sufficient to certify a documents validity, and removes the need for double-certification by the original country and then by the receiving country.

***c) Authentication: Commissioner of Oaths***

In terms of the Justice of the Peace and Commissioner of Oaths Act 116 of 1963, a Commissioner of Oaths that has been designated by the High Court may administer oaths or affirmations in the ordinary course outside South Africa and shall be required to place his seal, stamp or certification thereon. Such authenticated affidavit, affirmation or solemn or attested declaration will be of the same force and effect as if made in front of a Commissioner of Oaths in South Africa. Such as attorneys that are overseas which are on the South African role would be able to assist in this regard.

***d) Manner of Execution***

The colour of ink to be used varies from country to country, for example in New Zealand blue ink is commonly used in legal documents. If a document is intended for use in South Africa black ink should be used, especially if the documents are intended for use in the deed's office. Each page should be initialled in the bottom right hand corner except for the signature page, which need not be initialled as the full signature would appear on such a page.

***e) Before travelling or emigrating – sign a power of attorney***

If you have a client that is emigrating or will be overseas when the transfer documents, or any other documents or agreements need to be signed, have then consider signing a power of attorney before leaving South Africa authorising someone to sign the transfer documents on their behalf in order to prevent delays.

Please note that a power of attorney needs to be signed by two witnesses or by a Commissioner of Oaths. However, if the parties granting a power of attorney are married to each other in community of property then the power of attorney must be witnessed by two witnesses and not a Commissioner of Oaths.

**29. National Heritage Properties**

Buyers who are interested in buying in a proclaimed heritage suburb need to know what they may or may not alter or renovate. They should also know what is expected of them as set out by the National Resources Heritage Act (Act 25 of 1999).



***a) How old does an area or suburb need to be before it receives national heritage status?***

The conditions and criteria regarding when a Heritage Impact Assessment needs to be done are set out in the Act and have nothing to do with the age of the site or the heritage status of

the site. The Act states that if the development will alter the character of the site a heritage impact assessment is compulsory – without exceptions or exemption.

According to the Act the word “place” is used when referring to a feature of heritage significance. The concept “cultural significance” or “heritage significance” is used when referring to the status of a feature. There are several criteria used to determine cultural significance of place. These criteria are also supported by several values that are set out in the Act. Age is one of the criteria used to determine the significance of a place, but it is not the single and most significant aspect to determine significance.

According to section 34 of the Act all man-made structures older than 60 years are protected by the Act.

If a site is older than 100 years, it is classified as a site of archaeological significance and also needs to be assessed by an archaeologist during a Heritage Impact Assessment.

Another category refers to sites and features older than 75 years. This age threshold refers only to sites and features that have a military association.

These age criteria refer to all man-made features and would mainly imply to anything non-natural, meaning farmsteads, urban areas of any type, size and function, etc. The only tricky features are vegetation as they can also have “cultural significance” irrespective of whether they were planted or not.

**b) Do all properties that fall within the proposed development area receive the same status, even those that may have already been refurbished or modernised?**

The Act is clear that when a Heritage Impact Assessment is done, such an assessment must include all heritage features irrespective of the 60 years age threshold. The heritage consultants must be able to determine the cultural significance of every feature in the area proposed for development (type of development is defined in Section 38 (3) of the Act).

No two sites or two features have the same cultural significance and this level of significance needs to be identified and assessed individually and collectively to determine the heritage status of such a feature and a special context where they occur.

Few man-made features in the world exist in their original form. Buildings and structures must be assessed according to their current condition including later extensions and alterations. The heritage consultant just has the ability to determine what the cultural significance of each feature is according to its current condition and character. Later extensions and alterations do not disqualify a building or structure of its cultural significance.



**c) What are the fundamental requirements when buying a house that has heritage status? How much of the inside and outside may be changed and what do you do when upgrading damaged or worn materials such as roofs. Nails and doors?**

If a "place" has been proclaimed officially as a site of Provincial or National Heritage status, this will be indicated on the title deed of the property- also indicating the extent of the proclaimed area. Such proclamation is done via publication in the Government Gazette and reference to this publication and date will also appear in the title deed documents. Any work (demolitions, alterations and new work) on such a property must be submitted to the **South African Heritage Resources Agency (SAHRA)** in Cape Town for approval.

If a building or structure is older than 60 years, and it is not recorded in anyway in any of the legal documents of the property it will only be able to determine the age when investigating the architectural drawings or if these do not exist the relative dating will be done by an architectural historian. Such an assessment needs to be executed by using the criteria for such an assessment set out in the act (the same as for a Heritage Impact Assessment).

When acquiring a building or structure older than 60 years the act defines what is meant by "alter" and "alterations". If the property and buildings are older than 60 years a so-called Section 34 investigation is required prior to applying for a permit to demolish or "alter" the buildings or structures. The criteria for such an assessment are exactly the same as for Heritage Impact Assessment.

This implies that the appointed architectural expert has the right to make recommendations regarding demolitions and any alterations to the building- interior and exterior. Such a person also has the right to criticise proposed designs and design proposals. All proposed alterations must be indicated as a colour overlay on top of the original and "as-built" floor plans and elevations of such a structure as part of the submission to the Provincial Heritage Resources Agency (PHRA).

The scale and degree of renovations and modernisation are determined by the unique qualities of each building and site. The act does not provide guidelines or hard regulations regarding this aspect of "protection and reuse". A strong set of ethics guide heritage architects and conservationists in this decision and they rely on the guidelines and principles of the /COMOS Burro Charter to do so. SAHRA is signatory to the Burro Charter and also uses this charter in its decision making and assessments.

**d) Does each municipality different rules with regards to heritage status as well as what can and cannot be done without approval?**

A By-law each municipality must comply with the acts of the country and the National Heritage Resources Act applies everywhere in the country, even at National Key Point sites. No municipality can override the obligations of the National Heritage Resources Act, except for the Cape Town Municipality. It has the capacity and competence to do as it pleases, as its municipal by-laws regarding heritage management are tighter and more refined than the specifications of the National Heritage Resources Act.

The effectiveness of the application and interpretation of the obligations in the act depend on the officials at each municipality - with the resultant loss and damage of many heritage sites, buildings and structures since 2000.

To backtrack slightly, the meaning and definition of "place" needs to be checked against the definition in the act. In practical terms immovable heritage include the following (not set out like this in the act):

- Buildings – all man-made structures with a roof
- Structures – all an-made construction works other than buildings
- Infra structural elements – roads, water furrows, canals, railway lines, pipelines, telephone lines, electricity lines and fences.
- Activity areas – all open areas considered to be of cultural significance to a group of people (excluding battlefields and cemeteries).
- Vegetation – all planted natural or vegetation that are considered of cultural significance to a group of people.

***e) What are the consequences of not adhering to the requirements of a heritage property?***

It is not the requirements of a heritage property but the requirements of the National Heritage Resources Act that comes into play. Even a site younger than 60 years may have "cultural significance." It is for this reason why a heritage specialist must be appointed to assess the property or properties prior to planning and designing on the site.

Non-compliance with the requirements of the act involves a legal process, usually starting by stopping the development and removal of the contractors from the site until the full Heritage Impact Assessment process is completed, the proposed development is approved and the necessary permits have been issued. The extent of the impact assessment process is defined and set out in Section 38(3) of the act and includes a public participation process.

If a building of cultural significance is demolished without any HIA process, the principal agent (usually the architect, engineer or any other professional person by agreement) is the responsible person for such actions. A fine or jail sentence is usually applicable.

A significant aspect to remember is "deliberate decay", or "deliberate neglect" when a developer or landowner allows a site and buildings to be vandalised and demolished in order to degrade the property to such a degree that nothing is left or becomes so structurally unsound that buildings need to be demolished for health and safety reasons.



## Property Finance

### 1. Costs involved in a transfer

#### a) Deposit

The deposit is an upfront payment, usually between 10% and 20% of the purchase price but varies from purchaser to purchaser. The transferring attorney is obliged to open up a separate trust account for each transaction at the highest possible interest rate.

#### b) Transfer Fees – payable by the Purchaser

Is a general term that is made up of the transferring **attorney costs** and **transfer duty (tax)**.

#### c) Transfer Duty

Transfer duty is the tax that the buyer is obliged to pay the Receiver of Revenue in order to have the property registered into his name. The buyer will pay the transfer duty to the transferring attorney, who will in turn, pay it to the Receiver of Revenue. The amount of the transfer duty is calculated on the purchase price at the rate as set by SARS. Conveyancing costs are for services rendered by the transferring attorney.

Transfer duty is currently calculated as follows:

Value of the property (R)	Rate
0 – 900 000	0%
900 001 – 1 250 000	3% of the value above R900 000
1 250 001 – 1 750 000	R10 500 + 6% of the value above R 1 250 000
1 750 001 – 2 250 000	R40 500 + 8% of the value above R 1 750 000
2 250 001 – 10 000 000	R80 500 +11% of the value above R2 250 000
10 000 001 and above	R933 000 + 13% of the value exceeding R10 000 000

**No transfer duty is payable if the transaction is subject to VAT- its either duty or VAT, never both.**

#### d) Bond Registration Fees – Payable by the Purchaser

Bond registration fees are payable to the attorneys who have been appointed by the bank to do the registration of the bond. These costs include attorney's fees, various petties, deeds office fees and VAT. The fee amount is calculated on the BOND amount as per the recommendation laid out by the Legal Board. Therefore, bond costs are only payable if there is a bond.

#### e) Bond cancellation fees – Payable by the Seller

Bond cancellation costs are charged by the attorney appointed to cancel the existing bond over the property. The cancellation of an existing bond is done simultaneously with the registration of a new bond. Only if there is a bond over the property will this be applicable, and the standard rates is approximately R3000/bond registered. This does vary though depending on the outstanding amount.

***f) Bond Cancellation Penalties – Payable by the Seller***

This is the fee that the bank charges the bond holder to cancel the bond prior to the end of the loan term. These penalties are calculated on the monthly interest payable but are subject to various conditions e.g.

- If the bond is less than 3-5 years then the bank will charge up to 3 months interest penalties
- Most banks will refund this penalty payment if the bond holder takes out another bond with the same bank within a certain period (typically a year)
- Penalties will be calculated pro-rata PROVIDED that the seller has notified the bank of his intent to cancel his bond early. This again is dependent on the bank and varies between 90 – 180 days.

*Note: it is imperative to find out from the Seller if he has notified his bank of his intention as soon as the property goes on the market and if the property has not sold within the 90 days to inform the bank again*

***g) Bank Valuation Fees – Payable by the Purchaser***

*Initiation fee:* This is a once off fee paid to the bank for opening and processing a home loan account. This amount is a standard R5700 and includes admin fee, property valuation, FICA, various petties and VAT. This cost is not included in the loan amount unless the purchaser so requests

*See the National Credit act for further notes on this*

***h) Occupational Rent – Payable by either the Seller or Purchaser***

This refers to the monthly rent as determined in the OTP but either party either prior to registration or in the case of a Seller if he remains in occupation

***i) Homeowner's comprehensive insurance – Payable by the Purchaser***

This is a compulsory cover and provides for loss or damage to the structure, fittings and permanent fixtures to your house (it excludes household contents) in the event of fire, lightning, storm, floods and earthquakes. The premium is usually debited to the home loan account on a monthly basis and is included as part of the home loan monthly instalment. No



bond will be granted unless this insurance is in place. The Purchaser may however change policies once the property has registered in his name

***j) Life assurance premium – Payable by the Purchaser***

The banks will require this to cover the outstanding balance on the home loan account in the event of death. Retrenchment and disability options can also be added to the cover. This monthly premium can be included in the home loan monthly instalments or can be debited to another account of choice.

***k) Rates – Payable by the Purchaser and Seller***

The local Municipality will charge monthly rates & taxes. This amount is calculated on the Municipal value of the improvements. Note therefore – you may have a property on the market being charged R500/month rates based on a value of the property of R1m. If the property sells at R2m the Municipality will automatically adjust rates for the new owner on registration.

In order for the transferring attorney to register a property they would need to obtain a rates clearance certificate. Before this can be issued the Municipality will require

- Settlement of all existing rates & utilities accounts PLUS three months in advance. This is in case the Seller stops paying his account prior to registration. Any refund owing to the Seller will be refunded to him within 3 months of registration
- 3 months average rates payable in advance by the Purchaser. This is to cover any costs during the transfer of accounts from one owner to the next. This amount usually gets 'lost' in the system and the onus is on the Purchaser to ensure that this amount is credited to his account

***l) Deposit for lights, water – Payable by the Purchaser***

The Municipality will require not only a deposit on rates (paid via the attorney) but also a deposit for electricity and water. If the property has a pre-paid meter, then this deposit is not applicable. This deposit varies between R3000 – R5000 depending on the average consumption of the previous owner. Again, this deposit often gets 'lost' in the system and the onus is on the Purchaser to ensure that this amount is reflected on his account. This amount cannot be used to pay a monthly bill but can be used to settle final rates clearance if and when the property gets sold

***m) Monthly levies – payable by the Seller and Purchaser***

Levies are payable on all sectional title units. This levy amount is calculated based on the sqm of the unit i.e. a 60sqm unit will pay less levy than an 80sqm unit (within the same complex – levies vary from complex to complex).

Levies typically will include water, refuse removal, homeowners' insurance, garden service, security, management fee and other services. In some cases, electricity for common areas can be included but this usage is usually split between all owners on a monthly basis.

As with rates clearance, prior to registration, the attorney will require a rates clearance certificate. In order to obtain one, the seller will need to settle all outstanding levies and also 3 months in advance. The Purchaser will also be required to pay levies for 3 months in advance which is credited to his account.

## **2. Bond Originators South Africa**

It is no secret that a professional **bond originator** can get you a better deal, than dealing directly with lenders.

Bond Originators or Mortgage Brokers act as an intermediary who sources mortgage bonds on behalf of individuals or businesses.

***These services are absolutely free to clients.***

Traditionally, banks and other lending institutions have distributed their own products. However, as the markets for mortgages has become more competitive, the role of the bond originators has become more popular.

In competitive mortgage bond markets many lenders use an array of rate offers and other incentives to attract customers. To many consumers, due to their infrequent purchases of home loan products, the mortgage market may appear confusing and somewhat daunting.

Bond originators can guide clients through the process of selecting a suitable home loan and offer mortgage and property related financial advice.

For borrowers with poor credit records, or other unusual circumstances, finding a lender may be difficult.

Bond originators, having specialised knowledge and multiple lending sources, become a valuable resource in obtaining financing. Bond originators receive a fee from the banks and not their clients. The sheer volume of business provided by bond originators to the banks, gives the originator negotiating power to muscle low home loan rates for their clients.

Usually the bond loan process is much quicker when using bond originators.

***You should be weary if a bond originator asks you for fees or charges to your clients for services.***

### ***a) Common Duties: Bond Originators***

- ✓ To assess the market and offer the [mortgage bond](#) product that fits the client needs at the lowest possible interest rate.

- ✓ To obtain a pre-approval by applying for a lender's agreement in principle!
- ✓ To gather all needed documents (payslips, bank statements, etc.).
- ✓ To assist the client in completing the lender application form.
- ✓ To explain any legal implications to the client.
- ✓ To submitting all material to the multiple lenders.

### **3. Property Taxes**

#### **a) Transfer Duty**

Transfer Duty will be the most common tax payable on property transactions. It is payable on the purchase price of the property and must be paid within 6 months after the date of sale of the property. Failure to pay the Transfer Duty within the 6 months period leads to penalties being levied on Transfer Duty

#### **b) Value Added Tax (VAT)**

In the case of a sale of Fixed Property, VAT is payable by the seller of the property only if the seller is a VAT vendor and the property is sold in the course of furtherance of the seller's enterprise. This is irrespective of whether the property forms part of the seller's trading stock or is a Capital Asset. If both the seller and purchaser are VAT vendors and the property is sold as a going concern, i.e. a Commercial Property with tenants, then the transaction will be considered zero-rated (note: contract must specify inclusion of VAT)

#### **c) Capital Gains Tax (CGT)**

All immovable Property is subject to capital gains tax unless the property is a Primary Residence.

In order to be considered as a primary residence, the following is applicable:

- i. It must be owned by an individual (i.e. Trust, Companies, and Close Corporations are excluded)
- ii. The owner of the residence must live in the property and any part of the home used for business purposes does not form part of the Primary Residence and will be included for purposes of Capital Gains Tax

A Primary Residence is subject to Capital Gains Tax in the following circumstances:

- i. If on the sale of the Primary Residence, the Nett Gain is more than R1,5m then that portion that is over R1,5m will be subject to Capital Gains Tax

- ii. In the event of any property being larger than 2 hectares, then the area over and above 2 hectares is subject to Capital Gains Tax

Individuals pay Capital Gains Tax at a rate of 25% and Companies, Close Corporations and Trusts at a rate of 50%.

**Estimated Capital Gains / Profit and Loss**

Selling Price	1 100 000
<b>Less:</b>	
Original Purchase Price	500 000
Bond Costs	25 000
Transfer costs	30 000
Agent's commission	50 000
Sales Price Shortfall	100 000
Repairs	45 000
Bond Cancellation	320 000
Net profit/loss	30 000
Profit x 50%	15 000

The R15 000 profit will be added to the total income of the individual/legal entity at the end of that financial year and the taxes are then worked out accordingly.

#### **4. Foreign Buyers**

Favourable exchange rates make buying property in South Africa very appealing for foreigners, also referred to as non-residents, so it's important to know what is possible within the legal framework of the country.

Foreigners (whether they be natural persons or legal entities normally domiciled or registered outside South Africa) **can invest in property** in this country, within limits. Non-residents' investments are not subject to South African tax. If foreigners investing in property in South Africa later sell that property and wish to transfer funds out of the country, the local tax laws of that country will apply.

#### **Frequently asked questions:**

***a) What impact does exchange control play when purchasing a property in your own name in South Africa?***

The money you paid to buy the property and any profit made if you sell it can be repatriated. Capital Gains Tax will be deducted from that profit though. Make sure that your title deed is endorsed 'non-resident'.

***b) Should I opt for a fixed interest rate or variable interest rate on my home loan/mortgage?***

The first thing you have to decide is whether you want a fixed rate or a variable rate product. Fixed rate mortgages will guarantee that the same interest rate will be applied for the duration of the agreement. This is usually in the region of about five years.

Variable rate mortgages are more common than fixed rate products in South Africa. Unlike a fixed rate product, these can cost more or less depending on how the interest rates change.

***c) If the house I purchase stands empty for six months of the year – how do I protect it and what insurances are required?***

Household insurance is a must, but because of the length of time the property is unoccupied, your premiums may be higher to cover the associated risks. Cover against loss or damage will also be affected. It's important to check the terms and conditions of your policy and ensure that all the specified security requirements are met. These will no doubt include a radio-linked alarm system with armed response, burglar guards on opening windows and security gates on external doors.

***d) This is my first time I am buying a property in South Africa – I hear about all the political turmoil and land expropriation without compensation – how do I make sure my property rights are safe?***

It is best to check the state of play with your estate agent as regards land expropriation at the time of purchase.

***e) If I take a mortgage for the property – what can I apply for and what are the terms I am likely to get?***

Major banks will offer mortgages to foreign buyers under certain conditions. Non-residents may arrange finance for up to 50% of the purchase value, with the balance coming from foreign funds transferred to South Africa. Bank loans to foreigners are subject to the approval of the South African Reserve Bank.

***f) Should I get a mortgage in the UK for a property in South Africa or is it best to get one in that country?***

It is not currently possible to mortgage a South African property in the UK.

***g) They want me to pay a deposit – how do I know that money is safe?***

Your deposit should be safely held in an interest-bearing trust account where it will earn interest until the transfer of ownership goes through. While the conveyancing attorney or estate agent will charge an administration fee, this will usually be deducted from the interest earned and not the capital investment.

**5. Unsecured lending**

August 2008 will stick in the memories of many people for a long time. Lehman Brothers, one of America's major banks, crashed and triggered an international financial recession of proportions not seen since the Great Depression of 1929. Its effects remain with us five years later and there are still no real signs of recovery in sight. Locally business confidence, quarterly growth and other economic indicators remain as low as they have been at any time since 2008.

The major cause of the recession and its staying power was the reckless extension of credit during the boom years of 2004-2007, resulting in mortgages throughout the world being bloated to unmanageable levels. Rapidly rising house prices, triggered by the free-spirited subprime lending that brought new buyers into the markets, creating excessive demand for homes, added to the ballooning of traditionally sound first-world economies.

Did the lenders learn much from their indulgences or have they since aggravated the situation by new forms of over-lending? A new lending monster has arisen which is beginning to show signs of cracking, leading potentially to new levels of unmanageable indebtedness – unsecured lending.

In the past five years commercial banks have shifted their lending targets from mortgages to personal loans, overdrafts and other forms of unsecured lending. More than 20 million South Africans are now indebted to banks and other credit providers. The statistics for adverse credit records have increased radically over the same period. In 2008 no less than 6 million South African consumers were blacklisted – that figure has since increased to more than 9 million. Household indebtedness has increased to its worst levels ever.

The National Credit Act, introduced in 2007 to control reckless lending, seems only to have directed lenders away from mortgages to high-interest unsecured loans. No wonder there is no light at the end of the economic tunnels.

Unsecured loans have increased while mortgage lending has dropped dramatically. Unsecured lending by its own definition means only one thing if debtors should begin to default on their monthly repayments. The lenders (mostly commercial banks) will have no assets they can attach to secure their loans.

In 2001 Saambou Bank collapsed because of massive defaults on its micro-loans. The bank, with only R16 billion in assets and very little of that liquid, lost nearly R1 billion in a matter of months as investors added to its woes by doing a run on the bank, withdrawing investments

as quickly as they could. Less than a year earlier Saambou had produced a glowing annual report, disclosing that its micro-lending (the unsecured lending medium of its time) had increased from 13% to 24% of its total lending in just twelve months. Macro-collapse soon followed, and the bank simply imploded and disappeared.

In an article in the Business Times (Sunday Times 9<sup>th</sup> June 2013) Riaan Stassen, CEO of one of the country's major unsecured lenders Capitec Bank, stated that one of the reasons that this market has grown so much in recent years is the major changes in South African society that were not being addressed by the mortgage and secured lending markets.

He added a few other causes. Credit cards and overdrafts had previously only been available to consumers in higher-income sectors. Unsecured lenders were restricted to loans of no more than R10 000 over 36 months or less. All the reasons advanced by role-players in the credit market follow this pattern – economic factors have simply shifted the emphasis from secured lending to high-income earners to unsecured lending to a more broadly-based market. But the real reasons are not being disclosed. The fundamental motivation has been a grim determination by mortgage lenders to offset their overblown home-loan books by targeting a market that attracts interest rates around 17% to 24% irrespective of the obvious risks involved.

In the boom years, spurred by fierce competitiveness, banks put their ever-circling money supply into the only market that could sustain the circulation – mortgages. Despite the relatively low borrowing-to-lending ratio (only a 3.5% margin) lenders freely offered discounted rates around 2% off-prime to an ever-burgeoning market.

Since 2008 mortgage defaults, protracted foreclosures and increased inhouse recovery expenses have made heavy inroads into the minimal 1.5% profit margin remaining. The last thing banks want right now is to inflate their mortgage books further. Hence the shift to unsecured lending. Banks are aiming at balancing their losses by reaping the fruits of maximum interest rates. The cliff-face, however, is drawing ever closer and some lenders are on a knife-edge. Massive defaults, very likely if inflation and interest rates should suddenly start rising, could dump a few more "Saambous" onto the ash-heap of reckless lending.

The whole purpose of the National Credit Act was to curb reckless lending. Instead statistics may soon show that it has merely been aggravated during the years of its operation. The National Credit Regulator is well aware of the growing economic albatross and is taking steps to curb reckless lending. Right now, the Regulator's office is drawing a thin line between reckless and unsecured lending, increasingly regarding the latter as essentially reckless in itself.

The Department of Trade and Industry recently gazetted its National Credit Amendment Bill which is intended to curb the growing debt crisis. Extended punitive powers will be given directly to the Regulator and reckless credit agreements will be referred directly to the National Consumer Tribunal for redress in future. Presently these may only be condemned by the courts. Other measures, such as obliging lenders to approve or reject applications within

7 days (to curb access to other forms of credit extension in the meantime) will be introduced. But will this result in effective changes?

The problem with the NCA, something of a paper tiger since its introduction, is that it only serves to punish reckless lenders after the deed is done and only those cases that are reported to the NCR. The legislation needs to be amended to *prevent* over-lending, not to cure it. No one wants regulation in any industry that restricts free market initiatives, but if banks cannot be trusted to manage their own affairs sensibly something has to be done to contain their lending powers upfront.

Local banks have shown scant respect for the lessons they should have learned from the excessive mortgage lending that triggered the 2008 recession. Instead they have simply burgeoned national indebtedness further and have done this with very little hope of recovering their unsecured loans if their borrowers should default on a grand scale (a very possible outcome if interest rates should rise substantially before the national economy begins to recover).

The NCR's draft affordability guidelines incorporated in the new Amendment Bill may have to be replaced with legislative restrictions that can be enforced against lenders who continue to disrespect the growing economic stagnation caused by consumers continuing to lose their disposable incomes to high-interest rate indebtedness.

#### **6. See LTV table**

The loan to value table sets out what percentage loan each bank is willing to offer a client based on their income qualification and the value of the property. The attached table is an example, please get an updated copy from your bond originator.

### **Annexure 60 – LTV table**

#### **7. Bond repayment table**

The bond repayment table assists you in calculating what the bond repayment will be based upon the loan amount and the current bank interest rate factor.

### **Annexure 61 – Bond Repayment Table**

#### **8. Affordability table**

The bond repayment table assists you in calculating what loan amount the purchaser qualifies for based on their salary and the current bank interest rate factor.

### **Annexure 62 - Affordability Table**

#### **9. Bond reduction calculator**



The following table assists you in calculating how much interest a purchaser would save, and how many years they would pay the bond off in, if they paid an additional amount off on their bond which is over and above their monthly instalment due.

**Annexure 63 – Bond reduction table**

# Registration Process

## 1. The Transfer Process

In general, a transfer takes approximately 7 – 8 weeks to transfer and this is conditional to all the suspensive conditions being fulfilled. For example, if the purchaser is still in the process of obtaining a bond then the transfer the time it took to get the bond granted will be added to this time frame.

On some occasions it could take less time, however, this is the exception and not the rule. Do not let any attorney try and convince you otherwise.

The transfer process is a very specific one and no short cuts can be taken. It is paramount that in order for attorneys to attend to the registration of a transaction within this time frame, or any other agreed time frame, that the buyer and seller co-operate with the attorneys diligently.

### *a) Step by step summary of the process:*

- ✓ Open a file and send all parties a letter acknowledging receipt and asking for certain information including FICA; calling for the deposit (if payable) and calling for payment of costs (including transfer duty); await confirmation of bond approval (if applicable) sale of other property or completion of any other suspensive conditions.
- ✓ Obtain a copy of the title deed from the deeds office and conduct deeds office search to check on marital status; determine whether any interdicts (attachments / any other types of restraints) exist over the property which may delay or obstruct registration.
- ✓ Send pro forma statement of costs to the buyer.
- ✓ Liaise with seller's existing bond holder (if property is bonded) to obtain bond cancellation figures and to obtain original title deed. / If the property is not bonded then we call on the seller to provide us with the original title deed. (It REALLY helps us if the OTP has the seller's existing bond account number.
- ✓ If original title deed is lost a separate application must be brought to obtain a certified copy from the Deeds Office at additional cost to the SELLER. The sooner we determine this the better as this can be done whilst we do everything else that needs to be done otherwise it may delay the process by about two to three weeks.
- ✓ If the buyer has applied for a loan, we liaise with the bond registration attorneys and request guarantees to pay the purchase price (less deposit if a deposit was payable) on registration of transfer. (Kindly note that the bond is

registered with the transfer of the property on the same day. A fee is also payable to the bond registration attorney, separate from the transfer fee.)

- ✓ Prepare documentation necessary to give effect to the transfer. (Power of Attorney to give transfer; FICA Affidavits; Transfer Duty Declarations etc)
- ✓ Meet with buyer and seller to sign transfer documents.
  - Write to the managing agent (if the property is a sectional title) or Home Owner's Association (if the property forms part of an HOA) to ask for levy figures and / or a letter of consent to the transfer. (If a property is a sectional title then we must determine what levies will be payable on transfer (if anything) and ensure that we will have sufficient funds. If it falls in an HOA it is always a title deed condition that a written consent to transfer be obtained from the HOA. We are finding more and more properties which have an HOA title deed condition, only to discover that the HOA was never formed, or has lapsed. Such transfers can be delayed by weeks and months because then we have to scramble, to re-establish the HOA and ensure that someone is appointed and authorised to sign the Consent form.
  - Apply for and obtain rates clearance figures from the local authority, and upon receipt, convey this to the seller and call for payment. Upon receipt of payment, we pay this to the council and obtain a rates clearance certificate which is required by law.
  - Assuming the buyer is financially prepared, we receive our costs and pay transfer duty to SARS. Obtain a transfer duty receipt. Here is where we hope that the seller or estate agency does not have any issues with SARS!
  - Call for compliance certificates (without which we may NOT register the transfer).
  - 1Prepare deeds for lodgement by checking draft title deed against existing one.
  - Liaise with bond registration attorneys / bond cancellation attorneys (if property being sold is also bonded); linked transfers, to agree on lodgement date.
  - Lodge deeds at deeds office.
  - Anything from 7 or so working days to around 10 working days after lodgement the deeds will "come up on prep". They may have "notes" raised by the examiners which may take a day or two to attend to. If

this is the case, and once we have attended to address. We have 5 working days (including the day the deeds come up on prep) to "hand in", and then we register on the following day. Currently in the CT deeds office we are receiving the original title deeds returned to us within 3-4 working days after transfer to be delivered for onward transmission to the new owner (if it was a cash deal) or the bank (if the property was bonded). This turnaround time varies month to month.

***b) Things that commonly delay transfers***

- ✓ If either party is not available to sign the transfer documents; sale agreements containing errors which require surgery by us!
- ✓ If the managing agent of a sectional title / HOA delays in providing the required consent / City Council delays in providing rates clearance figures, or if the seller disputes any arrears that council is claiming; HOA's that have lapsed
- ✓ If either party delays payment of (for example):
- ✓ Advance rates collection required (payable by the seller) to obtain a rates clearance certificate which is compulsory.
- ✓ Transfer duty by the buyer (a transfer cannot be lodged without a transfer duty receipt being issued by SARS).
- ✓ Delays in presenting guarantees where it is a cash buy.
- ✓ Attending to repair work to the property that may have been made a condition of sale, prior to transfer.
- ✓ If the seller is in arrears with his / her bond and the selling price will not leave sufficient net residue (after paying agent's commission) to settle the bond, this will always delay matters significantly because the bank must first decide whether it will write off the loss or whether it will insist on the seller signing an Acknowledgment of Debt.
- ✓ Failure by the seller to arrange for compliance certificates.
- ✓ Lost original title deeds.
- ✓ Change in marital status or death. So, keep your buyers and sellers alive for heaven's sake! 😎

**2. Bond Registration Process**

Who is involved in the bond registration process?

- ✓ the seller
- ✓ an estate agent
- ✓ the buyer
- ✓ a transferring attorney (appointed by the seller to transfer the property to the buyer's name)
- ✓ a bond attorney (appointed by the bank receiving the bond)
- ✓ a cancellation attorney (appointed by the bank cancelling the seller's bond)

*Note: The same attorney could deal with more than one or all of the above transactions.*

**a) Steps to registering a bond:**

➤ ***Buy a property***

The buyer and the seller sign an offer to purchase.

The buyer applies for a home loan through their bank or bond originator.

➤ ***Bond approval***

Approve the home loan and request the bond attorney to register a continuing covering mortgage bond.

➤ ***Property transfer***

The seller advises the transferring attorney to transfer the property.

The title deed and cancellation figures are requested from the bank which holds a bond over the property.

A statement of rates and taxes is requested from the local authority.

➤ ***Bond attorney contacts transferring attorney***

The bond attorney advises the transferring attorney of the amount available for guarantees and requests the draft deed of transfer and the guarantee requirements.

➤ ***Cancellation attorney***

The cancellation attorney is requested to cancel the seller's bond on receipt of a guarantee for the amount owing.

➤ ***Transferring attorney***

The transferring attorney receives the title deed and cancellation figures and sends a copy of the deed of transfer and the guarantee requirements to the bond attorney.

The transferring attorney asks the buyer and seller to sign the transfer documents.

The buyer pays the transfer costs and the transferring attorney then pays the rates and taxes and transfer duty.

➤ ***Bond attorney***

The bond attorney prepares the bond documentation together with the buyer.

The buyer signs the documents and pays the costs.

The bond attorney prepares and issues the necessary guarantees, forwards them to the transferring attorney, and prepares the bond documents for lodging at the Deeds Office.

➤ ***Transferring attorney***

Once the transferring attorney has received the guarantees, they are forwarded to the cancellation attorney.

➤ ***Cancellation attorney***

The cancellation attorney obtains a consent for cancellation from the bank that holds the seller's bond.

➤ ***Documents prepared for the Deeds Office***

After all the documents have been signed and the costs paid, the transfer, new bond and cancellation bond documents are prepared by the respective attorneys for lodging with the Deeds Office.

➤ ***Deeds Office***

All the documents are lodged simultaneously at the Deeds Office by arrangement with all the attorneys concerned.

The Deeds Office takes about two to three weeks to check the documents before they are ready for registration by all the attorneys on the same day.

➤ ***Bank pays loan***

On the day of registration, the bank pays out in accordance with the guarantees issued.

The transferring attorneys pay out the respective parties.

*Allow at least three months for the registration and transfer of the bond.*

**b) Things that delay bond registrations**

Delays could be caused by:

- ✓ failure by the seller and/or buyer to provide personal information.
- ✓ failure by the seller to provide details of the bank holding the existing bond.
- ✓ the existing bondholder not providing cancellation figures and title deeds to the transferring attorney.
- ✓ receiving rates figures from the local authority and/or clearance certificates.
- ✓ failure by the buyer to pay a deposit (if required).
- ✓ delay in the provision of guarantees.
- ✓ failure by the buyer to pay transfer and/or bond costs on time.
- ✓ the seller delays the signing of transfer documents.
- ✓ the buyer delays obtaining government capital subsidy approval or employee income subsidy documents for new bondholders, and a failure to comply with other bank requirements.
- ✓ the buyer delays signing the transfer and/or bond documents.
- ✓ Other unforeseen circumstances.

**3. Bond Cancellation Process**

Once a property has been sold and the seller still has an outstanding bond over his property the bank will need to be informed of the seller's intention to cancel his bond.

If the seller did not notify the bank before selling the property, the conveyancing attorney will do so on behalf of the seller. The banks require a 90 day early settlement notice.

The bank instructs the cancellation attorney to attend to the cancellation, giving the attorney the exact cancellation figure, which includes:

- ✓ The month-end balance prior to cancellation figures being issued.
- ✓ 90 Days interest (if applicable).

- ✓ The homeowner's insurance premiums that would have been debited to the bond account in the next 6 months. (This is done to ensure that the property is insured until transfer takes place.)
- ✓ The credit life assurance premiums that would have been debited to the bond account in the next 6 months. (this is done to ensure your life remains assured until transfer takes place.)
- ✓ All the legal costs, interest and/or early settlement charges.

The seller's conveyancer will issue the bond cancellation attorney with a guarantee confirming that the outstanding bond and cancellation penalties will be paid to the respective bank, via their attorney, upon registration in the deeds office.

If the bank receives more than the amount needed to repay the seller's home loan, it will refund him a few days after registration.

Upon registration the title deeds will be held by the purchaser's bank until the purchaser chooses to settle his bond with them.

If a homeowner wishes to cancel his bond without selling his property, he is free to do so. The same cancellation process will be followed as above except that the title deed will be handed to the homeowner once the bond has been lifted from the title deed in the deed's registry.

#### **4. Deeds Office Procedure**

##### **DAY 1: Lodgment counter**

Documents lodged by all Attorneys. Documents (individually) captured on system.

##### **DAY 2-3: Data and Sorters**

Documents are linked and then batches are captured on system.

Printouts of both property and persons involved are made available for examiners.

##### **DAY 4: Examiners (Deed Controllers)**

Deeds are examined by First Examiner (Junior). Deeds are endorsed and remarks are stated.

No Rejections.

##### **DAY 5: Sorters**

Documents are received back from First Examiner (Junior) and re-issued to Second Examiner (Senior).

##### **DAY 6: Examiners (Deed Controllers)**



Deeds are examined by Second Examiner (Senior). Deeds are either passed or rejected.

#### **DAY 7: Sorters**

Documents are received back from Second Examiner (Senior) and re-issued to Assistant Registrar (Monitor Phase).

#### **DAY 8: Examiners (Deed Controllers)**

If Monitor finds any matter (issue) passed by Second Examiner (Senior), which should have been rejected, then Assistant Registrar (Monitor Phase) may also reject the deeds.

#### **DAY 9: Preparation Phase**

Deeds received back from Assistant Registrar (Monitor Phase) are split and issued to each Attorney to remove Notes from Examination. Once Notes are removed deeds are issued to registration.

#### **DAY 10 – 14: Registration Phase**

Deeds ready for registration are received in this Phase where it may stand over for 4 days. If not registered by the 4th day the deeds are automatically rejected.

### **REGISTRATION**

- ✓ Transfer, new bond and bond cancellation registered simultaneously.
- ✓ Financial institution pays out guarantees the day after registration.
- ✓ Sale proceeds distributed.

#### **5. Rates Clearance**

A rates clearance certificate is a certificate which is issued by the relevant local municipality on application by a conveyancer for the transfer of a property.

The purpose of this document is to prove that all the outstanding debt on the property has been paid by the seller.

It is the duty of the transferring attorney to apply to the local authority or council for a rates clearance certificate.

In order for the council to issue this certificate, they will require all rates and taxes on the property to be paid up to date. Additionally, they will require at least 4 to 5 months of rates and taxes to be paid in advance. Only once these payments have been made, will the council issue the conveyancing attorney with the rates clearance certificate.

The Registrar of Deeds will reject the transfer of the property without a valid rates clearance certificate which will prolong the change of ownership process. Once the registration has been finalized, the seller is then entitled to a refund of the amount paid in advance.

Although the conveyancing attorney will notify the council of the registration, it's not the attorney's responsibility to obtain the refund. It's the responsibility of the seller. This refund may take several months to obtain.

## **6. Transfer Duty Receipts**

*When documents for the transfer of property are lodged in the Deeds Office, it is a requirement that a Transfer Duty Receipt or Transfer Duty Exemption Certificate be lodged. The Deeds Office will not register the transfer unless this document is lodged.*

SARS has indicated the following information must appear in a Transfer Duty Receipt:

The full name and identity number / registration number of the parties.

The full date of transaction.

Purchase price, if property was sold (not required in words and figures).

Property description (property in a sectional title scheme must be described by referring to the number of the section, name of the scheme, and the sectional plan number. No reference need be made to the undivided share in the common property. The exclusive use area must be described by referring to the exclusive use area, for instance G 10, name of the scheme, and the sectional plan number).

## **7. Rectifying errors on a title deed**

Title deeds contain a number of important facts and information relating to the property, including the legal description, the size / extent of the property, conditions that the property is subject to, the last recorded purchase price and details of both the seller and purchaser.

One of the most pivotal stages in the transfer process is where the Deeds Registry endorses the new title deed and rights are transferred to the new owner.

While all information submitted undergoes a stringent process of checks and balances to ensure that what is submitted is the true and accurate position, errors do sometimes occur.

### **a) How do you change a title deed?**

Should a title deed be drafted and registered with incorrect information, an application can be brought to the Deeds Registry to correct this. The requirements and process for this application are set out in Section 4(1)(b) of the Deeds Registries Act.

In accordance with this Act, all Deeds Office documents need to show the correct position. For example, if a title deed is registered and the purchaser is described incorrectly or the [owner's name has changed](#), this will need to be corrected before any subsequent transaction can take place regarding the property. This is to ensure that the same mistake is not carried forward on any other Deeds Office documents.

The application also needs to state and confirm that no other documents need to be corrected. If the error affects any other document, these documents must also be corrected.

***b) How long does it take to correct a title deed?***

If an application for a correction is brought without any transfer or subsequent transaction taking place, it can be attended to within three weeks from the time a conveyancer is approached and the relevant details for the correction are supplied.

Should the error be identified during the process of a property transfer, to avoid any significant delays, it is possible for the conveyancer managing the transfer to attend to the correction simultaneously.

It is important to note that such an application can only be used to ensure that minor errors are corrected and cannot be used to transfer any rights. If amendments to ownership are to be effected, a conveyancing attorney should be approached to ascertain the details of the position and what route needs to be taken to implement such a change.

## Acts Relating to Property

The right to own property in South Africa is enshrined in Section 25 of the Constitution. The registration of rights to and over immovable property is regulated by the Deeds Registry Act, 1937, which sets out the registration requirements and processes necessary for the transfer of ownership or creation of real rights in respect of land, including the process whereby security is registered in favour of lenders (i.e. Banks).

### 1. Estate Agency Affairs Act

#### a) There are four main provisions that the Estate Agency Affairs Act covers:

- ✓ To establish the Estate Agency Affairs Board
- ✓ To establish and monitor the Estate Agents Fidelity Fund
- ✓ To control certain activities carried out by estate agents
- ✓ To deal with any incidental or disciplinary matters.

#### b) The Property Practitioners Regulatory Authority

The PPRA protects the interests of the public and ensures that estate agents are compliant with the Act.

#### c) Trust Accounts

Every estate agency must have a correctly balanced trust account. Service charges cannot be debited from this trust account and is to be borne as a normal business expense. The correct registered name of the estate agency with the PPRA must appear on all bank statements.

Trust accounts must be audited annually by an auditor registered with the Independent Regulatory Board (IRBA) and all reports are to be submitted by the auditor via the auditor's portal on the PPRA website.

#### d) Compliance

An estate agency must be compliant in the following:

- i. Submission of audit reports.

Failure to submit an audit report will result in the PPRA not issuing a new FFC (Fidelity Fund Certificate) to the principal nor his agents even if their fees have been paid. This means the agency and its agents may not trade as estate agents and the seller is not obligated to pay commission until the agency is compliant.

- ii. Not completing the required educational requirements within the stipulated time.

Should an agent not complete the prescribed industry qualifications within the prescribed time, the agent will not be issued a new FFC. The estate agent will also not be able to claim commission on any sale made by the agent.

## **2. The Property Practitioners Bill**

The long-debated Property Practitioners Bill has been signed into law and will be replacing and repealing the 43-year-old Estate Agency Affairs Act.

Whereas the old act regulated the conduct and dealings of only estate agents, the bill has extended the parameters to include all “property practitioners” such as estate agents, commercial property brokers, bridging finance companies, property managers, home inspectors and bond originators.

The Property Practitioners Regulatory Authority will replace the Estate Agency Affairs Board as the regulatory body for the industry and the Estate Agents Fidelity Fund will now operate as the Property Practitioners Fidelity Fund.

A property practitioner will have to, every three years, apply for a fidelity fund certificate and pay to the authority any prescribed fees and any applicable penalties. No one is permitted to act as a property practitioner if they are not in possession of a valid fidelity fund certificate. The bill specifically sets out that commission or remuneration may not be paid by the conveyancer to a property practitioner who is not in possession of a valid fidelity fund certificate.

A defects disclosure form will now also become compulsory and will need to form part of a sale or rental agreement. *Should the form not be included, the agreement will be interpreted as if no defects were disclosed.* In addition, purchasers and tenants will be able to request that the sale or rental agreement be done in any of South Africa’s eleven official languages. The regulatory board is to provide sample contracts in all languages accessible on their website.

**Although the bill has been signed off by the president, the new law will only *come into operation on proclamation in the Government Gazette*, a date which has not yet been set.**

## **3. The Rental Housing Act, 50 of 1999**

### **a) Aim of the Act**

To define the responsibility of Government in respect of rental housing property; to create mechanisms to promote the provision of rental housing property; to promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market; to make provision for the establishment of Rental Housing Tribunals; to define the functions, powers and duties of such Tribunals; to lay down general principles governing conflict resolution in the rental housing sector; to provide for the facilitation of

sound relations between tenants and landlords and for this purpose to lay down general requirement ~ relating to leases; to repeal the Rent Control Act, 1976; and to provide for matters connected therewith.

***b) The purpose of the act is to:***

- Regulate the relationships between landlords and tenants;
- Provide alternative dispute resolution methods in the form of Rental Housing Tribunals; and
- Set out the rights and duties of both the landlord and the tenant.

***c) The rights of the tenant***

Section 4(3) of the act sets out the following rights of the tenant:

The tenant has the right to not have:

- ✓ his or her person or home searched;
- ✓ his or her property searched;
- ✓ his or her possessions seized, except in terms of law of general application and having first obtained an order of court: or
- ✓ the privacy of his or her communications infringed.

***d) Rights of the landlord***

Section 4(5) of the act sets out the following rights of the landlord:

The landlord's rights against the tenant include his or her right to:

- ✓ prompt and regular payment of a rental or any charges that may be payable in terms of a lease;
- ✓ recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the Tribunal or an order of a court of law;
- ✓ terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;
- ✓ on termination of a lease to—
  - ❖ receive the rental housing property in a good state of repair, save for fair wear and tear: and
  - ❖ repossess rental housing property having first obtained an order of court: and

✓ claim compensation for damage to the rental housing property or any other improvements on the land on which the dwelling is situated, if any caused by the tenant a member of the tenant's household or a visitor of the tenant.

It is important to note that a lease between a tenant and landlord does not need to be in writing, however, should a tenant require a written lease agreement, the landlord must oblige and reduce the lease agreement to writing.

***e) The standard provisions of a written lease agreement***

Section 5(3) of the Act sets out the provisions to be included in a written lease agreement. These include things such as:

- ✓ The requirement that the landlord must furnish the tenant with a written receipt for all payments which have been received.
- ✓ The receipt furnished to the tenant must be dated and clearly indicate set out the address of the property for which payment has been made as well as the reason for payment e.g. in respect of rent, arrears or a deposit etc.;
- ✓ the landlord may require a deposit and the deposit may not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed on between the parties.
- ✓ The deposit must be invested by the landlord in an interest-bearing account which interest will be payable to the tenant and may not be less than the rate applicable to a savings account with the financial institution which the money is invested.
- ✓ Both parties must inspect the dwelling to ascertain the existence or not of any defects or damage therein prior to occupation and with the aim of determining the landlord's responsibility for rectifying or noting any defects or damage.
- ✓ A joint inspection of the dwelling must be arranged at the expiration of the lease agreement with a view to determine if there was any damage caused during the tenant's occupation.

These are only a few however the same are set out in Section 5(3) of the Act.

***f) Information which must be included in a written lease agreement***

- ✓ The names of the parties and their domicillium addresses in South Africa for any formal communication.
- ✓ the description of the property which is to be leased.
- ✓ the rental amount and reasonable increases, if any, to be paid in terms of the lease.
- ✓ set out the frequency of rental payments.

- ✓ the amount of the deposit, if any.
- ✓ the lease period and should there be no lease period set out, the notice period required for the termination of the lease.
- ✓ obligations of both the tenant and the landlord.
- ✓ The amount payable in respect of rental and any other charges which may be payable in addition to the rental amount in respect of the property being leased.

***g) The rental housing tribunal***

Any tenant or landlord or interested group may in the proposed manner lodge a complaint, concerning any unfair practices in respect of rentals, with this Tribunal.

The Tribunal must first try to resolve the dispute through mediation, and should mediation fail, the Tribunal must conduct a hearing and make a ruling which it considers just and fair under the circumstances.

**4. Sectional Title Act**

What are the purposes of these Acts? It's the conferring and registration of rights in, and the disposal of, common property, the establishment of Bodies Corporate to control common property and for that purpose to apply rules.

- ✓ The Purpose for this Act is for the:
- ✓ to provide for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property;
- ✓ the control of certain incidents attaching to separate ownership in sections and joint ownership in common property;
- ✓ the transfer of ownership of sections and the registration of sectional mortgage bonds over, and real rights in, sections;
- ✓ the conferring and registration of rights in, and the disposal of, common property;
- ✓ the establishment of bodies corporate to control common property and for that purpose to apply rules; and
- ✓ the establishment of a sectional title's regulation board; and
- ✓ to provide for incidental matters.

**5. The Sectional Title Schemes Management Act**

The Purpose for this Act is for the:



- ✓ Establishment of bodies corporate and to manage and regulate sections and common property in sectional title schemes
- ✓ To apply rules applicable to such schemes
- ✓ To establish a sectional titles scheme management advisory council
- ✓ To provide for incidental matter.

This Act is always used in conjunction with the Sectional Titles Act.

### ***Overview of these 2 Acts***

Every sectional title scheme comprises of three elements, **owners' sections**, **exclusive use areas** and **common property**. It is important for an owner to understand the differences, so that he knows what is his to use and what is not, and what use/entitlements he is paying levies toward.

#### ***a) Owners' sections***

These are the houses within a scheme that are individually owned and are registered in the name of the owner. These areas can sometimes include gardens, storerooms or garages. The extent of your section is determined from the sectional plans filed in the Deeds Office. The client should always check precisely what he is buying, before he buys it. It often happens that estate agents and even sellers are unaware of what they own and that unsuspecting owners are 'given' less than they bargained for when transfer takes place.

A unit is comprised of a section in a scheme, together with an undivided share of the common property in the scheme, calculated in accordance with the owner of the unit's participation quota in the scheme. When a purchaser buys into a scheme he doesn't only buy his section, he also buys a bit of a common property and he owns a bit of the common property along with every other owner, but in undivided shares ( it can't physically be divided up and allocated to each of the co-owners individually).

#### ***b) Exclusive use areas***

These are portions of the common property in respect of which an owner will pay a levy for the exclusive right of use of the said area and which can then be used exclusively by the owner, to the exclusion of all other owners in the body corporate.

Common types of exclusive use areas include parking bays, gardens, storerooms, and balconies. However, as above, you need to check the sectional plans (and sometimes the body corporate rules) to determine whether a particular piece of ground is an exclusive use area, part of a section or part of the common property.

There are two types of exclusive use right – those shown on the sectional plan and those recorded in the scheme's rules. Exclusive use areas are transferred or allocated to an owner in a scheme in a different way to which a unit is transferred to an owner, so a purchaser needs to check that any parking bay, storeroom, garden, etc., that he is buying, is being ceded or otherwise allocated to him at the same time as transfer passes to him of his unit.

***c) Common property***

This is the remainder of all of the land that comprises the scheme (including exclusive use areas but excluding owners' sections). All common property is owned by all of the owners in the scheme in undivided shares based on the owner's participation quota and is for the use and benefit of all members of a scheme. An example would include a pool area or a communal garden or the driveway. The rights of use of common property areas can, however, be limited in terms of the rules of the scheme. It is essential for a purchaser to check the rules thoroughly to ensure that he is happy with them, before he signs a sale agreement purchasing a unit in the scheme.

**6. Community Schemes Ombud Service Act**

The Community Schemes Ombud Service Act 9 of 2011 aims:

- ✓ to provide for the establishment of the Community Schemes Ombud Service;
- ✓ to provide for its mandate and functions; and
- ✓ to provide for a dispute resolution mechanism in community schemes; and
- ✓ to provide for matters connected therewith.

One of the purposes of the Act is to provide for a dispute resolution mechanism in the context of community schemes that is cost effective and efficient, and which does not require consumers to engage legal representation, or draw on scarce judicial resources.

In short, it provides for the establishment of a body to be known as the "Community Schemes Ombud Service". The Ombud is responsible for receiving and processing "applications" by members of community schemes seeking relief pertaining to their particular scheme. Importantly, the Ombud is empowered to grant relief in relation to occupiers in a scheme, not just owners, and will therefore also be of benefit to both tenants and landlords.

The types of relief that may be applied for are divided into seven categories, namely:

- ✓ Financial issues
- ✓ Behavioural issues
- ✓ Scheme governance issues
- ✓ Meetings
- ✓ Management services
- ✓ Works pertaining to private areas and common areas
- ✓ General and other issues

**7. Housing Development Schemes for Retired Persons Act, 65 Of 1988**

***a) The Aim of The Act:***

*“To regulate the alienation of certain interests in housing development schemes for retired persons.”*

**Formalities in respect of contracts:**

- All provisions relating to the alienation of a housing interest to a retired person must be contained in a contract and such contract must be signed by the parties or their agents so authorized in writing.
- The provisions above relating to signature by an agent acting on written authority may not detract from any other law relating to the conclusion of a contract in writing by a person professing to act as an agent or a trustee for a company not yet formed.

**b) Language:**

The purchaser is entitled to elect which official language the contract should be drawn up in.

**c) Contents of the contract:**

Section 4 of the act provides for the provisions of a contract where the seller is a developer. Same is attached hereto.

**d) Right of occupation:**

The rights conferred on the holder of a right of occupation are very much the same as those conferred on a lessee in a long-term lease and which lease is registered against the deed. This registered lease ranks as number 1 against any other right.

**e) Alienation of land subject to the right of occupation:**

The land may not be alienated without the right of occupation attached thereto unless 75% of the holders of rights consent thereto. Should they consent, the right holders have preferent claims in respect of the proceeds and such claim shall:

- ✓ Rank in priority over the claim of any mortgagee;
- ✓ May be equal to the amount paid in terms of the definition of right of occupation

—

***'Right of occupation' means the right of a purchaser of a housing interest-***

- ***which is subject to the payment of a fixed or determinable sum of money by way of a loan or otherwise, payable in one amount or in instalments, in addition to or in lieu of a levy, and whether or not such a sum of money is in whole or in part refundable to the purchaser or any other person or to the estate of the purchaser or of such other person; and***

- *which confers the power to occupy a portion in a housing development scheme for the duration of the lifetime of the purchaser or, subject to section 7, any other person mentioned in the contract in terms of which the housing interest is acquired, but without conferring the power to claim transfer of the ownership of the portion to which the housing interest relates;*

#### TO NOTE:

- A right of occupation is registered against the title deed in the deed's office by way of an endorsement.
- It is essentially a life right in which the purchaser is entitled to occupy the property for as long as he lives.
- The resale of the property after death is usually regulated in the agreement of sale. What people often find appealing about these schemes are the extra facilities such as frail care, nursing, restaurants and the security available.
- They most likely restrict occupants and allow only, for example, people over 50 and their spouses.
- The right to occupy the property should be for the retired person and their spouse, no one else!
- A financial institution will not finance a life right.

### **8. The Prevention of Organised Crime Act, 121 Of 1998**

#### **a) Purpose of the Act**

To introduce measures to combat organised crime, money laundering and criminal gang activities; to prohibit certain activities relating to racketeering activities; to provide for the prohibition of money laundering and for an obligation to report certain information; to criminalise certain activities associated with gangs; to provide for the recovery of the proceeds of unlawful activity; for the civil forfeiture of criminal property that has been used to commit an offence, property that is the proceeds of unlawful activity or property that is owned or controlled by, or on behalf of, an entity involved in terrorist and related activities; to provide for the establishment of a Criminal Assets Recovery Account; to amend the Drugs and Drug Trafficking Act, 1992; to amend the International Co—operation in Criminal Matters Act, 1996; to repeal the Proceeds of Crime Act, 1996; to incorporate the provisions contained in the Proceeds of Crime Act, 1996; and to provide for matters connected therewith.

The constitution enshrines the rights of all people. The right to safety and security are some of the most fundamental human rights encompassed in our country's constitution, however, at the time that this act was brought into effect there was no law in place to effectively deal with organised crime. It was because of this and the government's aim to combat organised crime that the The Prevention of Organised Crime Act was enacted.

***b) The act deals with the following crimes:***

i. Offences relating to racketeering activities

Racketeering refers to a person being in possession of property which they know is linked to unlawful business activity. A person convicted of such a crime can be fined up to R1 000 million or be imprisoned for life.

ii. Offences relating to proceeds of unlawful activities

These activities include [Money Laundering](#), [Assisting Another to Benefit from Proceeds of Unlawful Activities](#) and [Acquisition, Possession or Use of Proceeds of Unlawful Activities](#). A person convicted A person convicted can be liable to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30 years.

iii. Offences relating to criminal gang activities

A person convicted can also be liable to a fine or imprisonment for a time determined by the offence.

**9. Protection of Personal Information Act (POPI)**

POPI refers to South Africa's **Protection of Personal Information Act** which seeks to regulate the Processing of Personal Information.

**Personal Information** broadly means any information relating to an identifiable, living natural person or juristic person (companies, CC's etc.) and includes, but is not limited to:

- ✓ **contact details:** email, telephone, address etc.
- ✓ **demographic information:** age, sex, race, birth date, ethnicity etc.
- ✓ **history:** employment, financial, educational, criminal, medical history
- ✓ **biometric information:** blood type etc.
- ✓ **opinions** of and about the person
- ✓ private **correspondence** etc.

**Processing** means broadly anything done with the Personal Information, including collection, usage, storage, dissemination, modification or destruction (whether such processing is automated or not).

Some of the **obligations** under POPI are to:

- ✓ only collect information that you need for a specific purpose
- ✓ apply reasonable security measures to protect it
- ✓ ensure it is relevant and up to date
- ✓ only hold as much as you need, and only for as long as you need it
- ✓ allow the subject of the information to see it upon request

The Act was signed into law in November 2013. We are now awaiting a commencement date for the act. After the commencement date, a compliance grace period of 1 year will exist, which may be extended to a maximum 3 years.

Accountability for compliance rests with a **Responsible Party**, meaning a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information. Generally, the Responsible party must be resident in South Africa, or the processing should occur within South Africa (subject to certain exclusions).

## **10. Financial Advisory and Intermediary Services Act (FAIS)**

The Financial Advisory and Intermediary Services Act, or the FAIS Act for short, exists to protect you, the consumer, from getting dodgy financial advice.

The FAIS Act says that anyone who provides financial advice should be registered with the Financial Sector Conduct Authority (FSCA). That means only registered financial advisors can give you advice about what insurance products (or any product that takes your money and does something with it, like an investment product) are right for your specific situation.

### **a) Purpose of the Act**

“To regulate the rendering of certain financial advisory and intermediary services to clients; to repeal or amend certain laws; and to provide for matters incidental thereto.”

FAIS, is legislation that impacts on the financial services industry and aims to regulate the giving of advice and rendering of intermediary services to clients, as well as certain other issues. FAIS impacts on most financial institutions, financial service providers their representatives (such as advisers, direct sellers) and other staff.

- ✓ Protect the clients who use financial services and products
- ✓ Protect the financial services industry
- ✓ Protect intermediaries
- ✓ Determine the financial needs of the clients
- ✓ Provide appropriate advice to clients after having established the relevant facts
- ✓ Assist clients to make informed decisions
- ✓ Establish an effective complaints resolution procedure
- ✓ Ensure that intermediaries are competent
- ✓ Ensure that product providers and financial planners act with due care and diligence, and in the interests of the client.
- ✓ Provides clients with trusted and appropriate advice and solutions
- ✓ Act with integrity, transparency and a culture of discipline when dealing with clients

- ✓ Receiving protection by means of appropriate and trusted advice, integrity and transparency
- ✓ Maintenance of high standards by product providers
- ✓ An effective complaints resolution mechanism
- ✓ Protection through the continued existence of the FSP
- ✓ Proper monitoring of advisers' and consultants' actions
- ✓ Record keeping of advice and communication
- ✓ Ensuring that advisers are competent

***b) Who must register with FAIS?***

FAIS became effective from 30 September 2004. It is important to note that this date is the same for all financial institutions impacted by FAIS and that, from this date onwards, no FSP may operate without an FSP licence.

**11. The Financial Intelligence Centre Act, 38 of 2001**

***a) Purpose of the Act***

To establish a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.

The above is achieved by creating a legal framework for the identification and verification of clients; keeping records; complying with various procedures with regards to reporting; implementing staff training; setting out and enforcing compliance requisites and the institution of the Financial Intelligence Centre and Counter-Money Laundering Advisory Council.

In essence the obligations outlined by FICA impose the following duties:

- ✓ Establishing and verifying the identity of clients;
- ✓ Keeping records of business relations and transactions;
- ✓ Reporting receipts of cash above a specified amount to the Financial Intelligence Centre;
- ✓ Reporting any suspicious transactions to the Financial Intelligence Centre;
- ✓ Implementing internal rules coherent with the obligations set out by the FIC Act;
- ✓ Offering essential and obligatory FICA training; and
- ✓ The appointment of a compliance officer

The Financial Intelligence Centre Act (FICA) 38 passed into law in 2011, in an attempt to join the major countries world-wide in combating money laundering and to join the major countries world-wide in combating money laundering.

Money laundering is the biggest single industry in the world, where “dirty money” obtained from drug sales, prostitution, human trafficking, illegal gambling and a host of other criminal activities, is “laundered” through legitimate businesses and professions so as to appear to have been legally earned.

This was the main objective of FICA, soon to be followed by a second objective to combat terrorism. These objectives are supported by the FICA liaising with various law enforcement and intelligence agencies both at home and overseas and exchanging information which is to the benefit of all concerned.

***b) How does FICA impact real estate agents?***

Government looked at the most likely ways criminals could launder their illegal earnings and identified a number of possibilities, including the buying and selling of immovable property.

They made the real estate governing body, the Estate Agency Affairs Board, a supervisory body as defined in the Act and made it responsible for ensuring that estate agencies, defined as accountable institutions in the Act, were fully aware of their responsibilities to report illegal or suspicious transactions with regard to buying, selling and leasing of immovable property. Very simply put, the Act requires that [estate agents](#) must identify their clients and place of residence before entering into either a single transaction or a business relationship.

These records along with copies of sales agreements, leases, and mandates must be kept in a secure environment for a period of five years from the date when the single transaction or business relationship terminates.

***c) Problems estate agents encounter***

***i. Identifying who the client is.***

The Estate agency Affairs Act 112 of 1976 defines the client as being the person who gives a mandate that an agent accepts, meaning that the seller of immovable property will be the client as he instructs the agent to find a suitable purchaser for the property.

Likewise, a landlord instructing an estate agent to find a tenant for his property would also fall into the category of being the client.

The question must be asked as to which of the parties is most likely trying to launder the ill-gotten gains and the answer is glaringly obvious - it will be the purchaser or the tenant.

The FICA recognises this and accordingly recognises the purchaser or the tenant as being the client.



The Act requires that estate agents must identify their clients and place of residence before entering into either a single transaction or a business relationship.

**ii. When does a client become a client?**

Strictly speaking, at the time a prospective purchaser or tenant walks into a real estate office looking to buy or rent a property is the time that they should be FICA'ed. This would be before an agent could even start talking to him about his requirements.

Similarly, if a potential seller or landlord wishes to sell or lease his property, they would have to be FICA'ed before an agent could start talking business.

Compound the problem by assuming the purchaser/tenant, seller/landlord are using the services of a number of estate agents, that's a lot of photocopying of IDs and utility bills to prove residence.

In practice most estate agents will only fully FICA a client, should a successful transaction take place. The FIC is fully aware of the situation but no changes have yet been made to amend the Act.

Getting FICA information for a single client should be relatively simple and more often than not it is. But, where the property is sold or purchased with multiple sellers or buyers, for example companies, cc's or trusts, it becomes more difficult and requests for FICA information often fall on deaf ears.

**d) Refusing to produce FICA documents**

According to the FIC, refusal to give the required information is to be treated as a suspicious transaction and reported to FICA, as well as any cash deposit of R25 000 or more.

The FIC is serious about their role and penalties for failure to comply range from R1 000 000 to R10 000 000 fine and up to 10 years in jail.

**12. National Credit Act**

The National Credit Act (NCA) was signed into law on 15 March 2005, and governs the assessment, application and maintenance of credit granted by a credit provider to a consumer within the Republic of South Africa.

The NCA must be read in conjunction with the Regulations passed in terms of the Act.

The NCA has updated areas of the law that were contained in the Credit Agreements Act, the Usury Act and other legislation that were cumbersome, ineffective, and subject to abuse or obsolete.

It replaced three pieces of legislation:

- i. the Usury Act, 1968
- ii. the Integration of Usury Laws Act, 1996 (i.e. the Exemption Notice to the Usury Act exempts microloans (loans of less than R10,000) from the Usury Act and allows microloans to operate outside of certain requirements of the Usury Act)

- iii. the Credit Agreements Act 1980.

The Usury Act governed leasing, credit, and money lending transactions.

The NCA also makes amendments to other legislation.

***a) Purpose of the Act?***

Some of the main purposes of this Act are to:

- ✓ Promote and advance the social and economic welfare of South Africans,
- ✓ Promote a fair, non-discriminatory, controlled, competent, sustainable, responsible, efficient and accessible credit marketplace,
- ✓ Simplify and standardise the manner in which information is disclosed in credit agreements,
- ✓ To regulate credit bureaux and the information they keep on record about consumers,
- ✓ To ensure that all credit products are handled in the same way by different credit providers,
- ✓ To assist over-indebted consumers to restrict their debt,
- ✓ To have a regulator to regulate the entire credit market, being the National Credit Regulator,
- ✓ To establish the National Consumer Tribunal to adjudicate matters relating to the Act.

***b) Who within the scope of the NCA?***

- ✓ Credit providers offering credit in excess of a prescribed threshold / volume,
- ✓ Consumers – all individuals, trust, juristic persons [e.g. companies, close corporations, partnerships, and an association of persons, however not all sections apply to juristic persons.

***c) Credit providers include:***

- ✓ Banks
- ✓ Micro lenders
- ✓ Retailers such as furniture and clothing stores
- ✓ All businesses, companies, close corporations, partnerships and individuals who do business on credit, provide loans or charge interest on overdue accounts, and
- ✓ Who offer credit within the prescribed threshold values in terms of the Act.

***d) Consumers include:***

- ✓ Natural person (individuals)
- ✓ Certain juristic persons [e.g. companies, close corporations, trusts (with more than three individual trustees), partnerships and an association of persons] whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold as determined by the Minister in terms of section 7(1) of the Act, which threshold value is currently R1 million.
- ✓ Debt Counsellors
- ✓ Credit Bureaux.

***e) What were the drivers behind the NCA?***

The NCA was introduced to:

- ✓ Promote and advance the economic and social welfare of all South Africans,
- ✓ Promote a fair and transparent credit market,
- ✓ Promote consumers and their rights in the credit market,
- ✓ Regulate all credit providers, debt counsellors and credit bureau,
- ✓ Limit the cost of credit,
- ✓ Create a standard in the way in which credit is granted by credit providers in order for consumers to compare what is being offered.

***f) What is reckless credit?***

Reckless credit means credit granted to a consumer under a credit agreement where the credit provider:

- ✓ Failed to carry out a proper credit risk assessment to ensure that the consumer can afford the loan,
- ✓ Proceeds to grant a loan to the consumer despite the consumer not being able to afford the loan based on the assessment conducted; and
- ✓ The consumer does not understand his/her rights and obligations in a credit agreement as well as the costs involved in taking the loan.

Only a court can declare an agreement reckless on the request of either the debt counsellor or the consumer. The Court can suspend the credit agreement that has been declared reckless or change the terms and conditions of the agreement.

If a credit agreement is found to be reckless, the credit provider cannot enforce the agreement and the obligations of the consumer are set aside.

The reckless credit provisions in the NCA are dealt with in [Chapter 3](#) – Part D and are only applicable to consumers who are not juristic persons.

***g) What is over-indebtedness?***

A consumer is over-indebted when he/she does not have the means to meet all his/her debt repayments and his/her expenditure exceeds his/her income.

Consumer education to make informed choices and be able to manage their debt will assist consumers to avoid over-indebtedness.

***h) What are the most common causes of over-indebtedness?***

There are various reasons for over-indebtedness, including the following:

- ✓ Over-committing oneself financially,
- ✓ Poor monthly budgeting,
- ✓ Purchasing on impulse when he/she has already incurred other debt,
- ✓ Change in personal circumstances or life stages such as having a child or going through a divorce,
- ✓ Purchasing essentials such as food on one's credit card,
- ✓ Conversion of short-term debt (e.g. credit card debt) to long-term debt (e.g. home loan) to increase your monthly cash flow, but increases your interest debt in the long term,
- ✓ Making application for credit in your name on behalf of a third party,
- ✓ Standing surety for a third party who may default on his/her repayments resulting in you being responsible for the third party's debt.

If you need to apply for credit, ensure you approach a registered and reputable credit provider.

***i) What is a credit agreement?***

A credit agreement is an agreement entered into between a credit provider and a consumer in which the credit provider supplies goods or services or lends money to the consumers.

The NCA requires that, before a credit agreement is entered into, the bank must provide the consumer with a pre-agreement statement and quotation.

A pre-agreement statement is a document that details the terms and conditions of the credit agreement that the credit provider intends entering into with the consumer.

A quotation is a document which discloses the principal debt, the interest rate, the total amount payable under the agreement, the instalments and all fees, charges and interest i.e. the costs of credit.

***j) Which products fall under the NCA?***

- ✓ Personal loans

- ✓ Home loans
- ✓ Business loans depending on threshold values applicable to the consumer, i.e. juristic persons
- ✓ Overdrafts
- ✓ Credit cards
- ✓ Asset-based finance:
- ✓ Instalment sale agreements (terms deed of sale)
- ✓ Lease agreements

***k) Does the NCA, in any way, have an impact on commercial property lending and the insurance on these properties being done by banks?***

The NCA does not apply to a large agreement entered into between the bank and a consumer that is a juristic person whose asset value or annual turnover at the time of the agreement equals or exceeds a threshold value of R1m.

For the purposes of this question, a credit agreement is a large agreement if it is a mortgage agreement.

Therefore, the NCA will not apply to commercial property lending, unless the consumer is a natural person.

If the lending is not subject to the NCA, the credit insurance on the property will also not be subject to the NCA.

***l) What is an affordability assessment and how will a credit provider determine affordability for credit?***

An affordability assessment is an evaluation process conducted by a credit provider on a consumer to determine whether or not credit will be granted to the consumer. The affordability assessment will determine whether or not the consumer will be able to afford his/her obligations under a credit agreement.

The consumer must answer any requests for information made by the credit provider as part of the credit assessment fully and truthfully.

If the consumer is married in community of property, the affordability assessment will be conducted on both the consumer and his/her spouse.

The affordability assessment includes an assessment of the consumer's income, expenses, debt repayments, history of debt repayment and credit information via access to the credit bureau record of the consumer.

Credit information retained by the Credit Bureau in terms of the Act includes the following:

- ✓ Credit history of the consumer, including details of:

- ✓ Credit agreements signed,
- ✓ Repayment history; and
- ✓ If the consumer is/was under debt review
- ✓ A consumer's financial history
- ✓ Past and current income
- ✓ Assets and liabilities
- ✓ Payment information regarding continuous services
- ✓ Any information that is needed to identify credit fraud
- ✓ Information on payments made by a consumer whether the debt was ceded
- ✓ Any other information provided the consumer has given his permission for this information to be sent to the credit bureau and provided the credit provider has informed the consumer what
- ✓ the information will be used for.

***m) What additional information must a client provide on his or her credit application form?***

It is important that the client provides complete and accurate information regarding his/her income and expenditure when completing his/her application form.

***n) The following information must be provided:***

- ✓ Monthly income with proof thereof
- ✓ Monthly expenses (such as groceries, rent, travel costs and school fees)
- ✓ Monthly financial responsibilities (home loan payments, study loans, vehicle finance, etc)

***o) The following additional information must be provided:***

- ✓ Age of applicant
- ✓ Solvency status
- ✓ Whether applicant is under, or has applied for, debt review, judicial management, curatorship
- ✓ Whether applicant is party to any other credit agreements
- ✓ Whether applicant has a commercial purpose for applying for the loan
- ✓ Whether applicant requests an annual limit increase (where applicable)

***p) Marketing options:***

- ✓ Completion of specific declarations regarding the information supplied (e.g. client warrants that all questions are answered truthfully and honestly), and consent to the provider to access the consumer's credit bureau records for purposes where such consent is required in terms of the Act.

***q) How will existing credit limits be affected?***

Existing clients, who entered into credit agreements prior to the enactment of the NCA will be impacted by the NCA by a change in service fees. Certain fees that were standard practice (such as early-settlement or administration fees) cannot be charged within the ambit of the NCA. Where an existing client amends a contract or requests further credit, he/she will be subject to the NCA and an affordability assessment will be conducted in respect of the further credit application.

***r) Can a client still request a temporary limit increase?***

Yes, subject to the requirements as contained in section 119(2) the NCA.

***s) What is debt counselling and how can I apply for it?***

Debt counselling is a process intended those who are over-indebted find a solution.

If you think you are financially overcommitted, please contact your credit provider and request an informal debt review.

Clients who are unable to meet their financial commitments may apply to a registered debt counsellor for a proposed resolution. A debt counsellor must be registered with the National Credit Regulator.

The [debt counsellor](#) will assist in the client to re-arrange/restructure his debt obligations in negotiation with his/her credit providers, based on how much the consumer can afford to pay towards his/her debt each month.

If the debt counselling process is unsuccessful, the credit provider will have no alternative but to institute debt enforcement proceedings in terms of the NCA.

If a debt counsellor finds that a client is indeed over-indebted, a proposal can be recommended to the client and his or her credit providers for repayment of the debt. If there is any disagreement with the proposal, the matter will be heard by the magistrate's court, which in turn may restructure the client's debt by:

- ✓ extending the term of any agreement,
- ✓ postponing payments,
- ✓ extending the period of the agreement and postpone during a specific period the dates on which payments are due under the agreement,
- ✓ recalculating the consumer's obligations as a result of unlawful provisions in the credit agreements or unlawful fees and charges debited to the consumer's account.

### **13. Consumer Protection Act**

In the past, people have not always been protected against the suppliers of goods or services. Suppliers misled consumers about the quality of their goods or services, or offered goods or services on unreasonable terms and conditions, leaving the consumer with no remedy in the event of a problem occurring with these goods or services.

From 1 April 2011, the Consumer Protection Act ("CPA") supplies protection to these consumers against such suppliers.

The CPA applies to an agreement concluded between a consumer and supplier in the **ordinary course of business**. A consumer buys or uses goods or receives services from a supplier. The supplier sells goods, gives services, and/or advertises his goods or services to the consumer.

Goods are anything that can be consumed or in writing, for example, food, electricity, toiletries, information and so on. Services are any work or undertaking to work by one person for the benefit of another, for example, supplying holiday accommodation, education, fixing things and so on.

These goods or services are exchanged for anything of value, for example, money, property, rights, credit and so on.

For example, John owns a Spar and Kathy visits John's Spar to buy groceries. John is the supplier of groceries and Kathy the consumer. An agreement was entered into between John and Kathy in the ordinary course of John's business, selling groceries. Kathy gave John money for these groceries. As a result, the CPA applies to their agreement.

#### **a) Does the Consumer Protection Act apply to all agreements?**

The CPA does not apply to an agreement concluded between a supplier and a consumer if it is:

- ✓ the State,
- ✓ a business, with an annual turnover of more than R2 million, or owning property worth more than R2 million, at time of concluding the agreement,
- ✓ relating to labour, for example, an employment contract or collective agreement,
- ✓ relating to a loan
- ✓ outside of South Africa,
- ✓ that is not in the ordinary course of the supplier's business; or
- ✓ if it is exempted by the CPA.

#### **b) What type of protection does a consumer get from the Consumer Protection Act?**

The CPA provides a consumer with rights and the supplier with obligations, such as:



- ✓ A supplier may not discriminate against a consumer based on his/her race, gender and so on.
- ✓ A consumer may examine anything before s/he pays for it.
- ✓ A supplier must show the price, label and/or trade description of the goods on his/her packaging. The content may not be misleading.
- ✓ A consumer must receive a quote or breakdown of his/her financial obligations before entering into an agreement with a supplier, for example, before a supplier starts repairing his/her motor vehicle or before a supplier installs replacement parts. Do not sign a blank agreement consenting to any unknown repairs or replacements.
- ✓ The terms of an agreement to supply goods or services may not be unfair, unreasonable and unjust, for example, the terms may not only favour the supplier. Such a term or agreement will be void.
- ✓ A supplier may not use force or manipulate a consumer to enter into an agreement, or to pay for goods or services. A consumer has the right to a receipt after paying the supplier for goods or services.
- ✓ An agreement between a consumer and a supplier must be in plain language that is easy to understand. A consumer is entitled to a copy of the agreement.
- ✓ A supplier must inform a consumer of, or draw his/her attention to, any assumptions of risks, acknowledgement of facts or indemnities contained in an agreement. Always read an agreement before signing.
- ✓ An agreement between a consumer and supplier may not be longer than 24 months, unless the consumer agrees to a longer period and the agreement benefits him/her financially. A consumer must be notified in advance of the agreement reaching its termination date.
- ✓ A consumer may cancel an agreement with his/her supplier on 20 business days' notice.
- ✓ Advance bookings or reservations may be cancelled by a consumer. However, the supplier may require such a consumer to pay a reasonable cancellation fee.
- ✓ A supplier may not accept money from a consumer, if s/he is not able to supply goods or services as a result of insufficient stock or incapacity to render a service. A consumer must be refunded any amount paid plus interest, and compensate the consumer for all costs incurred as a result of the supplier's overselling or overbooking.
- ✓ When a consumer buys goods or receives services from a supplier that approached him/her by mail, in person, e-mail or SMS, s/he has the right to a cooling-off period. This means that the consumer can return the goods bought or cancel his/her order within 5 days after the date s/he received it or ordered it,

without penalty or reason. The supplier must inform the consumer of his/her right to a cooling-off period.

- ✓ A consumer may choose whether or not s/he wants to receive marketing material from a supplier, for example, a consumer may opt-out from receiving marketing SMSes or telephone calls; or put a notice in his/her post box to avoid pamphlets.
- ✓ A consumer may not be contacted by a supplier to market his/her goods or services during the week, before 08:00 in the morning and after 20:00 in the evening; or during the weekend, before 09:00 in the morning or after 13:00 in the afternoon.
- ✓ The representation or marketing of goods or services may not be misleading or false, for example, a supplier may not sell a Honda, 1996 model, as a 1999 model.
- ✓ If the goods bought from a supplier are defective (not suitable for its usual purpose or for the purpose it was bought, of poor quality and bad working order, or not useable or durable), a consumer has 6 months from the date of delivery to return the goods to the supplier, at the supplier's risk and expense. At the consumer's choice, the supplier must fix, replace or refund the goods bought by the consumer. The voetstoets clause no longer applies; this means that a supplier may no longer sell goods "as they are", unless the consumer has been informed of the defects and accepts them.
- ✓ If the services rendered by the supplier are of poor quality or not completed in time, the consumer may request that the supplier correct his/her mistakes or request a refund. A refund will depend on the extent of the supplier's mistake.

**c) What can a consumer do if a supplier fails to comply with the Consumer Protection Act?**

- ✓ A consumer must lodge a complaint with the supplier, preferably in writing. If the complaint is lodged by telephone, ask for an e-mail address in order to confirm the conversation about the complaint in writing. Normally, a big business has a department that specifically deals with complaints, it is best to follow the procedure prescribed by that department.
- ✓ Before complaining to the supplier, the consumer must know how s/he wants the complaint to be resolved, for example, repairing or exchanging the item bought, by refund or being paid damages. Make copies of all the documents in support of the complaint, for example, a tax invoice, quotes, e-mails and so on.
- ✓ Keep records of the date of the complaint, name of the consultant complained to, the reference number of the complaint, and any other relevant details.
- ✓ Follow up on the complaint.

- ✓ If the complaint is not resolved by the supplier within a reasonable time period, the consumer may lodge a complaint, with the relevant Ombud, industry Ombud, Consumer Goods and Service Ombud, National Consumer Commission, National Consumer Tribunal, an alternative dispute resolution agent, consumer court or civil court; depending on the type of complaint.
- ✓ A complaint must be lodged within 3 years of it occurring. Only a civil court can make an award for damages.

# RENTALS

## 1. Rental Agent Legal Obligations

### ✓ The role of the rental agent

Rental Property Law places the agent in a dynamic position.

An agent is an *extension of its principal*

An agent can *never represent both landlord and tenant* in this transaction. As such, your duty lies with your landlord, so place a qualified tenant!

The relationship between landlord and agent is governed by:

- Case law
- Legislation
- And contract

#### i. Case law

NB – only cases decided by the SCA and Con Court create law in South Africa.

Cases in the High Court of various provinces creates law in those provinces and, at best, have persuasive influence in other provinces.

General themes through case law is:

- ✓ An agent is a fiduciary position with his/her principal (Landlord)
- ✓ The agent must act solely for the benefit of his/her principal and must disclose any conflict of interest (Mallinson v Tanner 1947)
- ✓ The agent cannot make a secret profit out of the mandate (Jones v East Rand Gold Mining Co)

#### ii. Legislation

### **The estate agents affairs act (code of conduct)**

Section 2 of the CODE OF CONDUCT

**An agent must:**

- ✓ Not do or omit to do any act which is or may be contrary to the integrity of estate agents
- ✓ Protect the interest of the client (the Landlord) at all times to the best of his ability, with due regard to the interest of all other parties concerned
- ✓ Not wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent

- ✓ Convey to a prospective tenant all facts concerning the property as are, or should reasonable in the circumstances be, within his personal knowledge and which are, or could be, material to the prospective tenant
- ✓ Avoid conflicts of interest and disclose any potential conflict of interest to the tenant

#### Section 5 of the CODE OF CONDUCT

##### **An agent must not:**

- ☒ Claim to be an expert or to have specialised knowledge in respect of any estate agency service if, in fact, he/she is not such an expert or does not have such special knowledge
- ☒ Wilfully or negligently make false statements as to any fact or make any harmful or misleading statements or use such marketing techniques
- ✓ **The Consumer Protection Act**

#### Section 40 of the CPA (AGENT TO TENANT)

An agent (on behalf of his landlord) must not:

- ☒ Use physical force against a tenant, coercion, undue influence, pressure, duress or harassment, unfair tactics or any other similar conduct, in connection with:
- ☒ Demand for, or collection of, rental payment; or the repossession of the property from the tenant
- ☒ Directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a tenant.
- ☒ Use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception; or
- ☒ Fail to correct an apparent misapprehension on the part of the tenant, amounting to a false, misleading or deceptive representation.
- ✓ **Examples include falsely stating (advertising) the property:**
  - Has characteristics, accessories, uses, benefits, or qualities or is of a particular standard or quality.
  - Has or is proximate to any facilities, amenities or natural features that are not available or proximate.

#### Section 54 of the CPA (AGENT TO LANDLORD)

54(1) When a supplier (rental agent) undertakes to perform any services for or on behalf of a consumer (Landlord), the consumer has a right to:

- ✓ The timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services,
- ✓ The performance of the service in a manner and quality that persons are generally entitled to expect,
- ✓ The use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and
- ✓ The return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services (NOTE: *this could also include restoring after an outgoing inspection!*)
- ✓ If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either:
  - Remedy any defects in the quality of the services performed or good supplied; or
  - Refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

## **2. Rental Contracts**

### **What is the rental mandate?**

Is the formal agreement between the principal and the rental agent.

A management mandate can only be a sole mandate so must be in writing.

- i. Section 3.3 of the Code of Conduct
- ii. Section 22 CPT – Plain language

It provides that the agent must fulfil the terms of the mandate, after which the agent is entitled to his/her commission.

### **Terms of the mandate**

Agents offer a range of services

Landlords to decide which services he wants to retain, delegate to his agent or have shared between his agent and tenant

The mandate must be drafted according to the Landlord's requirement

- ✓ i.e. collection of rentals, dealing with arrears etc – by agent

- ✓ pool maintenance or gardening – by tenant

Trying to fit the property into the mandate is when issues arise!

### **Procurement / finders / marketing mandate**

The agent is only responsible for finding a tenant, nothing further. Duties to the landlord end here

Mandate complete upon proper procurement (i.e. when complete due diligence in placing tenant is done)

Problems occur when the agent either retains the tenant deposit in trust or does ad hoc work for the landlord – Tacit contract

### **Management of the mandate**

The agent will take care of virtually everything (apart from what the landlord excludes)

Remuneration is usually higher

Mandate ends when:

- ✓ lease ends by termination (legally or illegally)
- ✓ end of a fixed period of the lease
- ✓ end of a 24-month period
- ✓ if the agent's mandate is terminated; or
- ✓ the agent terminates his mandate

### **Section 14 CPA – the ramifications for the rental agent**

- i. Concern 1 Section 14 (2) (d) – CPA IMPLICATIONS FOR MANDATE MANAGEMENT

Section 14 (2)(d)

Applies to the automatic renewal of fixed term agreements and applies equally to management mandates concluded between landlords and agents for a fixed term

The automatic renewal of a mandate, for a further fixed term is NO LONGER POSSIBLE under the CPA

In short, the consumer (Landlord) must expressly agree to a renewal of the agent's mandate agreement for a further fixed period.

Therefore, a clause in a mandate, which states that the agreement will automatically renew for a further fixed term unless the consumer notifies the agent otherwise, is impermissible, despite the fact that express provision may be contained in the mandate agreement itself

Section 51(1), particularly Section 51(1)(1)(i) provides that any agreement may not be subject to any term, if its effect is to defeat the purposes and policies of the CPA. One cannot contract out of the CPA

So if an agreement is nearing the expiry of the fixed term, the supplier (i.e. the rental agent) should notify the consumer (Landlord) within not less than 40 and not more than 80 business days before the expiry date, and inform the consumer (landlord) that he/she could elect to renew or terminate the agreement, as well as any material changes that may apply in the event of a renewal.

If a consumer (Landlord) does not act upon such notification and makes no election, the agreement will automatically renew on a month to month basis (but not for a further fixed term), and continue to renew until the consumer (landlord) exercise an election to cancel i.e. you continue to manage the landlords property on month to month basis, until such time as you receive express notice of his/her intention to cancel.

ii. Concern 2 – Section 14(3) and Regulation 5(2) of CPA – Termination of mandates and entitlement to impose a reasonable cancellation penalty

A mandate to manage a property of a natural person constitutes a fixed term consumer agreement falling within the purview of Section 14 of the CPA.

Thus, the landlord, as a consumer of your services, is entitled to terminate your mandate to manage his/her property at any time prior to its expiry. The entitlement to cancel your mandate is conditional provided that he/she has given you 20 business day's notice of his/her intention to do so (see section 14(2)(b)(ii).

As a result of section 14 of the CPA finding application, the landlord's election to cancel your mandate, will be subject to your right to impose a reasonable cancellation penalty (see: section 14(3) of the CPA)

In calculating the reasonable cancellation penalty to be imposed, the factors provide for in the regulations to the CPA (see: regulation 5(2)) must be considered, particularly:

- ✓ the value of the transaction up to the date of cancellation (see: regulation 5(2)(b)). This includes the value that can be ascribed to the performance of the services and compensation that you would have received in terms of the mandate (had it run its course)
- ✓ the prospects of mitigating your losses;
- ✓ the nature of the services that were performed (see: regulation 5(2)(g)) and;
- ✓ the general practice in the industry (see: regulation 5(2)(j))

Practically, the cancellation penalty may not have the effect of negating the landlord's decision to cancel your mandate (see: regulation 5(3)).

**Inspections**



Doing an inspection for a rental property is crucial. It is important to not only do a detailed written inspection but to do detailed photographs as well. Note all defects, fixtures and fittings, condition of the garden and outbuildings, etc. the more detailed your inspection the less frustration you have should disputes arise, and they always do.

Remember, your job is to look after your landlord and to ensure that you protect him by having a detailed inspection sheet which both the landlord and tenant have signed. Make sure both parties get a copy of the inspection sheet and that you have explained the terms of maintenance in the lease agreement to both parties.

### **Landlord and tenant statements**

Landlord statements are usually sent out between the 7<sup>th</sup> and the 15<sup>th</sup> of the month to account for rental income received and expenses paid.

Tenant statements are sent between the 20<sup>th</sup> to the 25<sup>th</sup> of the month to give the tenant ample time to prepare his rental payment on time.

### **Tenant deposit**

The tenants deposit is usually held in on behalf of the landlord in the estate agents trust account or an interest-bearing account, depending on the terms of the lease agreement. This interest is either refundable to the tenant upon vacating the premises, provided that there are no outstanding costs payable to the landlord or the agent.

Should the interest not accrue to the tenant then the full interest earned is payable by the agency to the PPRA. Bank charges are not allowed to be deducted from the interest as an expense.

On occasion the deposits are held by the landlord and it could be agreed that the interest will accrue to the landlord. However, this is not recommended as there is no protection towards the tenant should he vacate the premises and the landlord is not able to refund him his deposit.

### **Notices and Letters of demand**

Notices need to be sent out no later than the 1<sup>st</sup> of the month to provide for a full calendar months' notice. If the 1<sup>st</sup> should fall on a weekend or public holiday, then notice should be given the last working day of the previous month to avoid any problems.

Notices must be sent in accordance with the terms and conditions of the lease agreement to the addresses stipulated.

It is especially important to make sure that any letter of demand for non-payment of rent is not sent out later than the 1<sup>st</sup> of the month or the 1<sup>st</sup> working day of the month. Any leniency given sets a precedent in favour of the tenant and the court will hold in favour of the tenant and not the landlord should a matter go to court.

### **Insurance**

It is advisable that the landlord speak to his insurance broker and to negotiate insurance cover in the event of a loss of rent due to damage or non-payment of rent. He should make sure he has homeowner's insurance and cover for any moveable items he may have left as part of the lease agreement for the tenants use.

There is an insurance product, called Landlord Legal, which offers the landlord protection against the cost of having to evict his tenant. Evictions are expensive. Should the landlord not want this cover then he needs to sign an indemnity confirming to the agent that he is not interested in taking out this sort of cover. This policy is only available through real estate agents.

The tenant is responsible to have insurance cover for his household contents as the landlord is not responsible should the tenant suffer loss through theft or damage.

### **Compliance certificates**

A landlord is required by law to have the following certificates on file. These certificates will cover him and protect him from any damage, loss, harm or death caused to anyone utilising his property.

- ✓ Electrical certificate of compliance.

This certificate does not need to be renewed provide that the landlord does not make any changes to the electrical installation after the issue of the certificate.

- ✓ Gas certificate – if applicable
- ✓ Electric fence certificate – if applicable
- ✓ Plumbing certificate – City of Cape Town only

### **Tenant Application**

The tenant application form should be comprehensively completed and the consent form for a credit check must be signed. No credit checks may be done against anyone's name without written consent.

FICA documents should be in place before completing any lease agreement. This applies to both the landlord and the tenant.

### **Qualifying a tenant**

Before proceeding with any lease agreement, it is important that you qualify the tenant financially first. Tenants are qualified the same as buyers in that you do not want the rental to be more than 25/30% of the tenant's net income and then also taking into account other expenses he may have that may become burdensome and cause him to default on his rental payments.

A credit check through TPN (Tenant Profile Network) will give a clear indication as to whether the tenant qualifies or not.

Do not put unqualified tenants into a property without the landlord's consent. Advise the landlord of ALL risks involved and get written acknowledgment from him should he decide to accept the tenant.

***NEVER PLACE A TENANT BECAUSE YOU FEEL SORRY FOR THEM!!!!***

**Documents that will be required**

**Landlord**

- ✓ Mandate to let (either management or procurement)
- ✓ FICA documents – ID and proof of residence
- ✓ Levy statements
- ✓ Full contact details

**Tenant**

- ✓ FICA documents – ID and proof of residence
- ✓ Application form and cost breakdown
- ✓ Bank statements and payslips
- ✓ Authorisation to do a credit check
- ✓ Full contact details

**Rental Management Summary**

**Landlord**

- ✓ Inspection and rental valuation
- ✓ Tenant interview and pre-qualification (affordability, credit worthiness, assessment of previous rental history\_
- ✓ Preparation of all legal documents (lease agreement)
- ✓ Collection of deposit, key deposit, electricity deposit
- ✓ Transfer of deposit into trust account
- ✓ Perform ingoing and outgoing inspections as well as regular inspections during the rental period
- ✓ Collection of rental monies
- ✓ Provide monthly statements showing income and expenditure
- ✓ Maintenance reports / quotes etc
- ✓ Annual reviews in accordance with market conditions

- ✓ Assistance with any legal aspects that may arise through non-payment of rentals

#### **Tenant**

- ✓ Monthly invoicing
- ✓ Ensure rental is paid on time
- ✓ Address maintenance issues
- ✓ Negotiation lease extensions and rental increases

### **3. Agent Administrative Tasks**

Agents are to keep in mind that the following administrative tasks required when dealing with a Landlord.

#### **a) Record the following**

- ✓ Legal ownership
- ✓ FICA details
- ✓ Type of management contract
- ✓ Property inspection report
- ✓ Banking details / account payment details

#### **b) Record maintenance of:**

- ✓ Market trends
- ✓ Regular feedback sessions with landlord
- ✓ Body corporate / council payments & liaison
- ✓ Monthly statement of monies received vs monies paid out
- ✓ Regular property maintenance and inspections

#### **c) Management functions**

- ✓ Number of rentals turned to mandates
- ✓ Rental property stock growth: number of new rentals vs existing, losses etc

- ✓ Property market value and property capital gains vs rental returns
- ✓ Additional properties purchased for buy-to-let

Agents are to keep in mind that the following administrative tasks required when dealing with a Tenant.

**a) Record the following**

- ✓ All relevant contact details: names, telephone numbers, email addresses etc.
- ✓ Current employment history + past references
- ✓ Property inspection report
- ✓ Signed application – specifically permission to obtain credit checks
- ✓ Means of payment i.e. debit order, EFT, etc.
- ✓ Receipt of deposit paid and proof of us holding the money in trust

**b) Record maintenance of:**

- ✓ Monitor activities as per the terms of lease agreement i.e. lease renewal
- ✓ Payment profile and tenant detail updating on TPN
- ✓ Monthly invoicing & statements and collection of rental payments timeously
- ✓ Maintaining of all communication via letter or email
- ✓ Address property maintenance and recorded faults

**c) Management functions**

- ✓ Number of tenants converted to buyers
- ✓ Track number of on time payments vs late or defaulted payments
- ✓ Track average lease periods and rental increases
- ✓ Number of to let properties vs tenants placed monthly
- ✓ Percentage of existing tenant base defaulting or in legal eviction process

**4. Options and Rights of First Refusal**

When letting properties to tenants' agents are often asked to include a clause giving the tenant the right to purchase the property at a later date, but usually during the period of the tenancy. Many letting agents are unaware that there are two very different ways of doing this and they accordingly misinterpret the steps that have to be taken for the tenant to exercise his rights. The two alternatives are to give the tenant either a right of first refusal or an option to purchase.

Agents often presume that these are just two different ways of saying the same thing with the result that the right may not be properly exercised, leading to major problems later.

***a) The Difference between an Option and a Right of Refusal***

An option to purchase is a right given to a tenant which he is able to exercise during the time period allowed to him in his lease. Usually, if a proper clause is inserted in the contract, it will give him the right to purchase the property at any time during the lease provided he gives written notice of his intention to purchase not less than thirty days before the expiry of the lease. The value of an option is that the landlord is obliged to sell the property to the tenant once he chooses to purchase it and complies with his obligations.

A right of first refusal does not allow a tenant to choose to purchase the property at his sole discretion. It may only be exercised if the landlord elects to sell the property during the term of the lease (or any other period of time specifically stipulated in the lease). In this case the landlord must first allow the tenant an opportunity to purchase the property before concluding a sale with another purchaser. The landlord must notify the tenant of his intention to sell and the tenant, once again, must comply with his obligations if he wants to buy the property. In this case the landlord can still decide not to sell to any party including the tenant and advise the tenant accordingly. He is not bound to the obligations applying to options to purchase.

***b) Fixing the Purchase Price of the Property***

It is obvious that the two rights are very different in terms of their obligations and agents must exercise care in allowing either of them to a tenant. In the case of an option, if the parties do not agree on the purchase price beforehand and fail to state it when recording the option, the right is useless and cannot be enforced. This is one of the drawbacks of granting an option to purchase – the landlord must fix the purchase price upfront and may not change it later even if market conditions have substantially increased the property's value.

With a right of first refusal, the situation is very different and somewhat ambiguous. The law states that, if the purchase price has not been fixed as a condition of the right, the landlord must offer the property to the tenant at a price which a third party is prepared to offer for it. The landlord cannot rely on the property's municipal value or an agent's valuation of its current market value.

It appears that the only way to comply with the law here is for the owner to first get a genuine offer to purchase at arms-length from a third party and to then give the tenant the

right to match that offer. Only if the tenant fails to do so may the landlord conclude the sale with the third party.

This appears to be highly irregular in that the landlord is being compromised in terms of his alternative purchaser. He must obviously inform the third party of the tenant's pre-emptive right, knowing that this may discourage the former from putting in an offer at all. However, irregular this may be, it seems to be the way our courts have generally interpreted the law here.

***c) How to Properly Handle these Rights***

What must rental agents do to prevent trouble afterwards if either right is ignored or not properly exercised? With an option the ideal answer is to draw the eventual deed of sale upfront inclusive of all its ancillary conditions (such as the date of occupation, whether the landlord will provide an electrical certificate, how the purchase price will be paid, etc). This makes the final contract certain.

It is not signed at the time the lease is concluded (it *must* not be signed upfront!) but is attached to the lease agreement as an annexure and is only initialled by each party. The value of this is that all the terms of the sale have already been concluded before the lease is even signed. Otherwise, as often happens, when the tenant decides to exercise his option, he may find that the landlord will disagree with him on the finer details of the contract and its ancillary conditions.

The lease simply needs to say that if the tenant does want to exercise his option, the draft agreement attached to the lease contract will become the actual sale agreement between the parties.

With a right of first refusal agents need to exercise considerable care. Here the law, as has already been seen, is somewhat inconsistent and is not what common sense might suggest it should be. Invariably sellers and agents think they must first go to the tenant, fix an asking price (if one hasn't been determined in the lease agreement), and then oblige the tenant to sign a sale agreement within a chosen period of time (once again, if one hasn't been fixed in the lease agreement).

In a recent case the tenant was unable to meet the landlord's asking price (which was genuinely market-related) and the landlord duly sold the property to a third party. After this the tenant came back, objecting that the correct procedure had not been followed, and that she now wanted to exercise her right. The matter became complicated when her alternative offer did not match the first one completely (though it did comply with its fundamental terms) and the matter ended up in the courts, putting both parties to considerable expenses and costs with the seller having to pay damages to the third party to get his sale to her subsequently cancelled.

***d) Avoid giving Rights of First Refusal***

In the latter case the lease agreement simply stated that a right of first refusal was given to the tenant without saying anything further. No time period was stipulated for the exercise

of the right and no provision was made for determining the purchase price. Numerous complications duly arose afterwards. The same would apply to any mention of an option to purchase if nothing more was stated. It is best to avoid giving rights of first refusal in view of the ambiguities in the law.

Always give the tenant an option to purchase as this is a certain right he can exercise, and make sure the purchase price is stated and a time period fixed for the exercise of the option. Preferably, as already suggested, draw the final sale agreement and attach it as an annexure to the lease contract which the parties must only initial to confirm that it contains all the terms and conditions agreed to between them.

If the landlord insists he is only willing to give a right of first refusal and the tenant accepts this, make sure the determination of the purchase price (or its pre-agreed amount) and the manner in which the right must be exercised are clearly stated in the lease agreement. Otherwise the common law principles will apply and, as has been seen, this can create difficulties and problems for the parties and, possibly, the agent as well.



# INTRODUCTION TO REAL ESTATE

## 1. The Estate Agent

### a) Definition of an estate agent

An estate agent is defined as someone (a person or a firm) who:

- ✓ Buys or sells, lets or hires, or publicly exhibits
  - i. immovable property or
  - ii. a business undertaking (commercial or industrial)
- ✓ Negotiates or facilitates any of the above
- ✓ Canvasses or offers to canvass a seller or purchaser or a landlord or tenant
- ✓ Collects monies
  - i. payable on account of a lease (e.g. rental)
  - ii. payable as commission from buyers, sellers, landlords or tenants

### b) Categories of estate agents

- ✓ There are 3 categories of estate agents.
  - i. Principal Estate Agents, who are the heads of estate agency firms
  - ii. Non-Principal Estate Agents, who work in a principal's firm and is deemed as qualified.
  - iii. Intern Agents, who also work in a principal's firm and still have to qualify.

### c) Registrations

By law (the Estate Agency Affairs Act 1976, every estate agent (including an intern), must be registered with the Estate Agency Affairs Board, and take out an annual Fidelity Fund Certificate, which is a licence to practise. If you perform any service as an estate agent without a current FFC, you are breaking the law, and you are not entitled to receive any commission or other payment for that service.

### d) The Estate Agency Affairs Board

The Estate Agents Boards primary role is to ensure industry standards

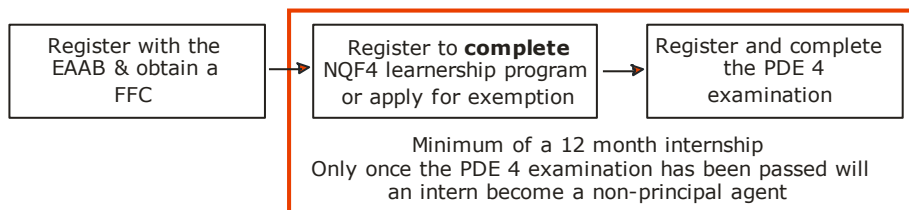
Task: Visit the PPRA web site at [www.eaab.gov.za](http://www.eaab.gov.za) and familiarise yourself with who they are and what they are. Make a couple of notes and add to your portfolio. At the same time, register yourself on "myEaab"

### e) Education Requirements

In brief

An intern agent is required by to serve as an intern agent, acting under the supervision of a principal estate agent, for a continuous period of 12 months up to 24 months. During this time, they are required to obtain their NQF4 Real Estate qualification and write the PDE 4 (Professional Designation Examination). Should an intern be exempt from obtaining a NQF4, due to having prior qualifications, they are still obligated to serve a minimum internship of 12 months. Only once the PDE exam has been written and passed, will an intern agent become a non-principal agent.

Any non-principal agent wishing to become a principal agent and run their own estate agency, must first obtain their NQF 5 Real Estate certificate and complete the PDE 5 exam, before a principal's fidelity fund certificate can be issued.



#### ***f) The PPRA Code of Conduct***

See blog on PPRA Code of Conduct Explained or reference it further in this manual.

#### ***g) The Institute of Estate Agents of South Africa (IEASA)***

The IEASA is an industry organisation whose purpose it is to 'maintain, protect, promote and co-ordinate the interests of estate agents and, in particular, of its members.

Task: visit the Institutes web site at [www.ieasa.co.za](http://www.ieasa.co.za) and familiarise yourself with what they do. Register as a member - cost is ....

#### ***h) Agent responsibilities***

In brief, your responsibility as a Real Estate Agent with Golden Homes will encompass the following

- ✓ Get mandates / listings (stock)
  - Through: canvassing, networking, valuations, building a referral network etc
  - This is the mainstay of your business!!
- ✓ Conclude the sale
  - Taking of offers, presenting offers, negotiating terms etc.
- ✓ Sales service
  - Bond applications, fulfilment of contractual obligations (deposits, occupation, electrical compliance certificates etc.), monitoring of the transfer journey etc.
- ✓ The property markets

The property markets include:

- residential sales - i.e. houses, flats, sectional title, clusters, vacant land etc.
- commercial sales - i.e. shops, businesses etc.
- industrial sales - i.e. factories, warehouses
- rental / letting of any of the above
- Developments

For all intents and purposes, as an agent for Golden Homes, your focus will be on residential sales or residential letting.

***i) Top 10 money producing tasks in real estate***

The following tasks are critical in order to achieve success in real estate. Ensure that they are planned into your weekly schedule as priority tasks and track that they have been achieved.

- ✓ Negotiate offers / sales follow ups

This is money earned – protect it by ensuring nothing hinders registration.

- ✓ Mandates

Keep on top of your mandates – frequent feedback to your seller, price counselling, face to face appointments etc.

- ✓ Valuation appointments

Make sure you do asap, have your facts on hand – CMA's, area statistics, copies of mandates, boards etc.

- ✓ Canvassing

This is the primary source of your business.

- ✓ Lead / client follow up

Never delay calling your buyers and sellers or delay on chasing up on leads.

- ✓ Advertising

Web site listings, property week ads etc. Without ads or web listings you will not generate any enquiries. Ensure you spend enough time writing GOOD ads that will attract buyers otherwise they are pointless.

- ✓ Appointments & show houses

Do all appointments timeously

- ✓ Attend open hours
- ✓ Referral database

Make contact – send email newsletters,

- ✓ Training and coaching sessions

General training, monitoring work performance etc.

Secondary tasks that should not be neglected (allocate time monthly) include, but are not limited to:

- ❖ Personal branding ideas

(flyers, letters, email newsletters, social networking etc)

- ❖ Strategic planning
- ❖ Watch Real Estate training videos
- ❖ Read property related articles and keep current with economic housing trends
- ❖ Obtain CPD points
- ❖ Check boards in the market place – replace where necessary
- ❖ Check that you have the tools needed to do your job

(File with copies of offers & mandates, pre-appointment checklists boards, poles, cable ties, hammer, flyers, area maps,)

#### ***j) Commission***

**Do you deserve your fee?**

**YES! You do!**

Cutting your commission is one of the fastest ways to decrease your earning in real estate.

Reasons we cut commission are varied but typically happen because:

- ✓ The 'veiled' threat from your sellers that the sale will not happen unless the RValue charged is lessened – At this point, you must be armed with self-confidence that you can prove your RValue.
- ✓ Competition 'forces' you to reduce your fee – again be ready to justify your commission by pointing out the extent of your service
- ✓ Financial desperation – you would rather take a 'little' bit of something than a 'lot' of nothing

Desperation makes you take overpriced listings and cut commission – be selective. You want 5-star sellers and 5-star purchasers. Some listings are just not worth the trouble!

**Remember: the only professional method of achieving your commission is to add perceived value to the transaction.**

***VALUE = SERVICE – where are the BENEFITS to the Seller***

Value deserves reward – so be good at what you do, then your commission will not be questioned or challenged

***k) Human resources***

As an agent with Golden Homes you will be required to:

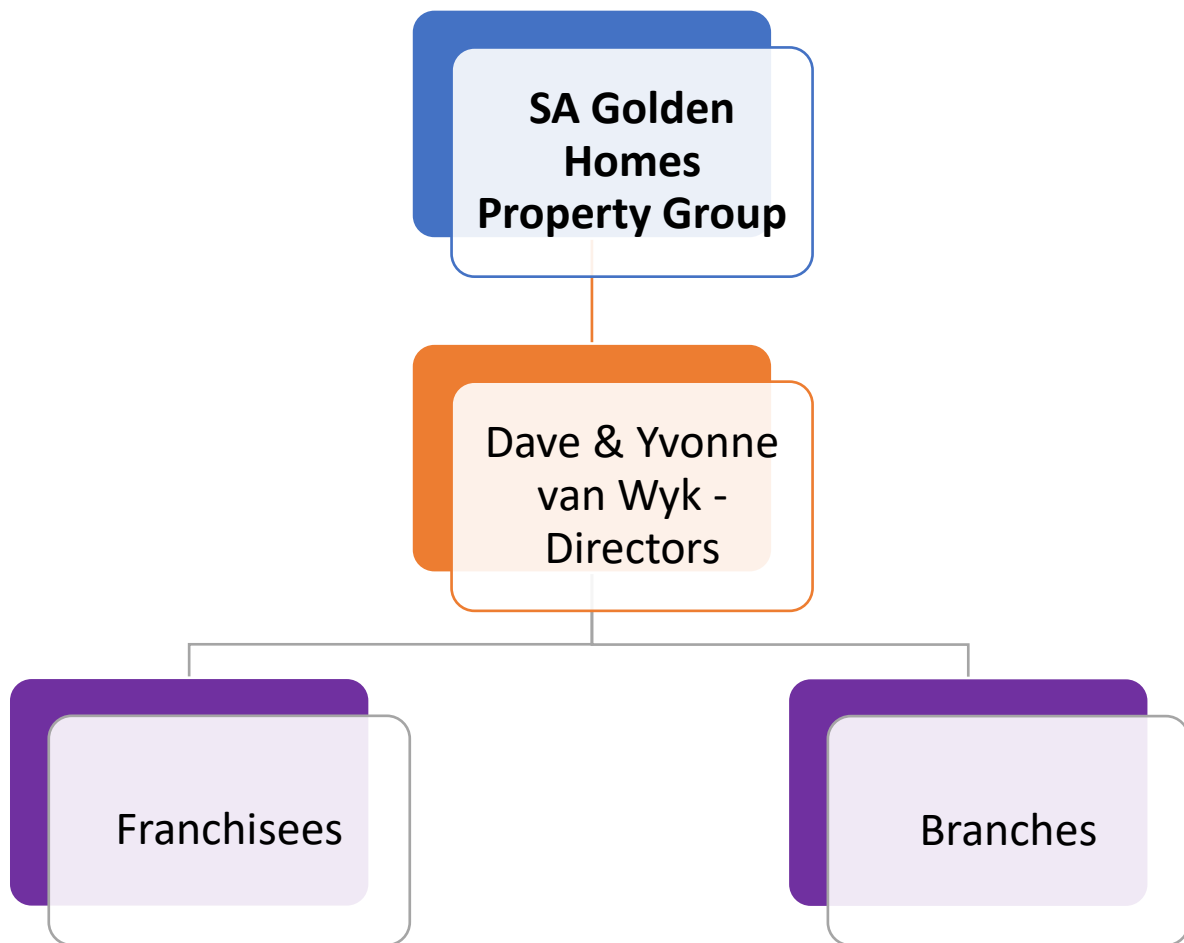
- ✓ Sign an employment contract and adhere to the conditions therein
- ✓ Sign acceptance of the commission policy
- ✓ Register with SARS, obtain a tax directive and submit your returns yearly.
- ✓ Sign a copy of our internal code of ethics
- ✓ Sign a copy of our disciplinary policy
- ✓ Attend external listing systems induction courses and sign any agreement with regard to their code of conduct and rules
- ✓ Sign a copy of your job description
- ✓ Provide the company with the following documents: Contact details, copy of ID, copy of latest tax clearance certificate, original FFC certificate, etc.
- ✓ Sign a copy of the SAGH code of conduct

***l) Confidentiality***

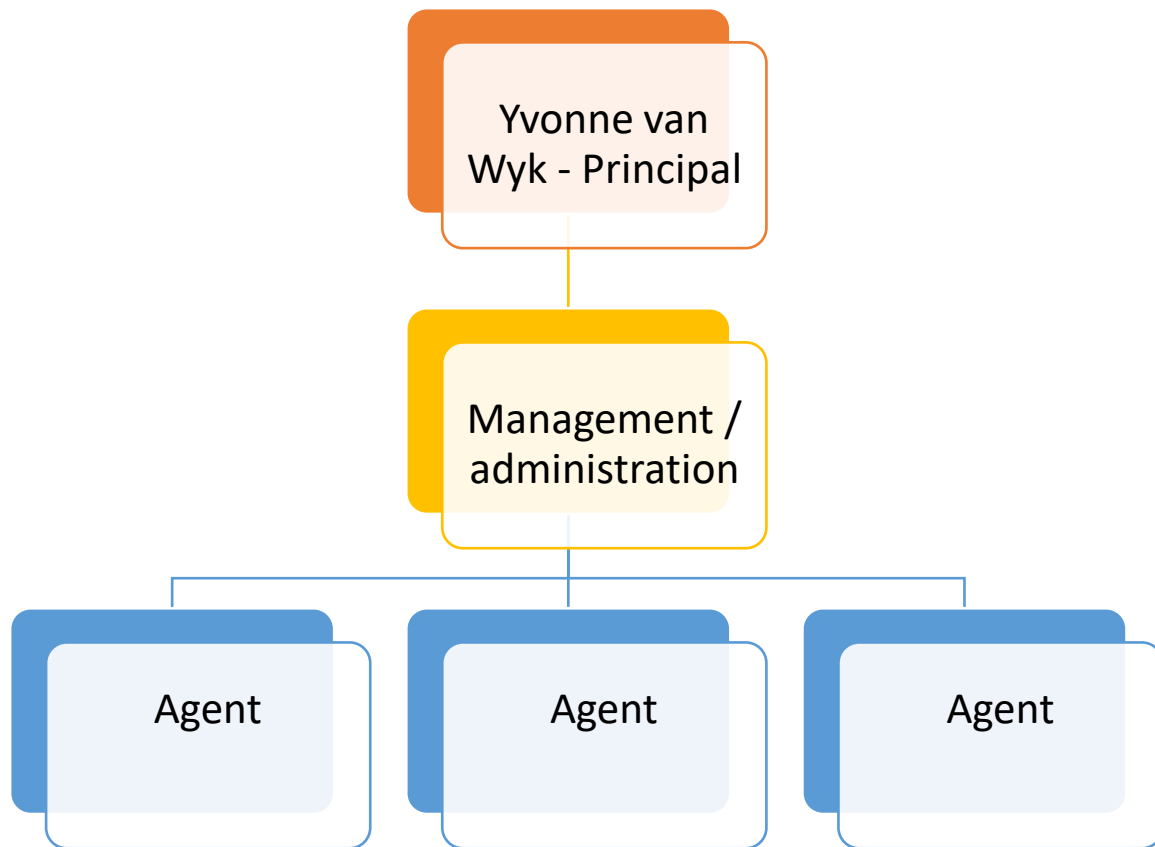
During your time at Golden Homes, you will be given full access to all company information, training material, work ethic etc.

Should you wish to terminate your services with Golden Homes, all information must be returned to the company. No commissions due will be paid out till such time that the company is satisfied that all relevant information has been returned to it.

SA Golden Homes Organogram



Golden Homes Branch Organogram



## 2. Agent Administrative Tasks

### Sellers

From an administrative perspective you need to keep in mind that the following administrative tasks are required when dealing with a Seller.

#### a) Record the following

- ✓ Source of the lead, where did they learn about us
- ✓ Reason for their selling
- ✓ All contact details to ensure validity of contract – full names, erf, physical address, price, start date, end dates, commission etc.
- ✓ Agreed marketing plan during mandate period
- ✓ Any contract changes – in writing and signed

#### b) Record maintenance of:

- ✓ Regular seller communication: buyer feedback, price counselling show days etc.
- ✓ Relevant market information: other sold properties, new comparable properties on the market

- ✓ Time frames – to ensure meetings or service obligations
- ✓ Updating of seller activity reports
- ✓ Regular management / company meetings to maintain market interest in the property

**c) Management functions**

- ✓ Market share – ours vs competition
- ✓ Figures: number of buyer view to offer, number of days on the market, listed price vs selling price etc.
- ✓ Personal figures: number of hours worked on the property, R earnings vs end selling price etc.
- ✓ Management: number of listing appointments vs mandates
- ✓ Management: source of leads to maintain marketing focus

**Buyers**

From an administrative perspective you need to keep in mind that the following administrative tasks are required when dealing with a Purchaser.

**a) Record the following**

- ✓ Source of the lead, where did they learn about us
- ✓ Reason for their selling
- ✓ All relevant contact details: names, telephone number, email addresses etc.
- ✓ Their pre-qualified affordability price range
- ✓ Detailed property needs i.e. location, price range, type, accommodation needs etc.
- ✓ When they need to have bought by to determine their urgency
- ✓ Who will make the ultimate purchase decision?

**b) Record maintenance of:**

- ✓ Continuously re-assess needs to ensure that the client is matched to the right property
- ✓ Feedback sessions and actions taken based on feedback information
- ✓ Call lists / schedules to ensure buyers don't fall by the wayside
- ✓ Update control document by removing any buyers who have moved on or don't respond to our attempts to contact them
- ✓ Schedule of appointments done



### c) **Management functions**

- ✓ Growth of our future client referral base = future earnings potential
- ✓ Review figures quarterly and manage 'numbers' i.e. no of buyer appointments vs offers taken
- ✓ Analysis of weak areas and plans to address these weaknesses
- ✓ Analysis of our source of leads in order to keep our marketing and advertising focus
- ✓ Review agent performance figures: i.e. number of appointments made, number of show houses done, number of hours worked vs earnings, number of homes shown per sale etc.

### **Agent**

On any given day, some of an agent's activities will be income-producing while others will be strictly administrative. Administrative duties include tasks such as:

- ✓ Completing, submitting and filing real estate documents, agreements and lease records
- ✓ Coordinating appointments, showings, open hours, show houses and meetings
- ✓ Loading properties and the various property websites
- ✓ Creating and distributing flyers, newsletters and other promotional materials
- ✓ Creating and implementing paper and electronic filing systems for records, correspondence and other material
- ✓ Data entry
- ✓ Developing marketing plans for listings
- ✓ Maintaining and managing client databases
- ✓ Researching active, pending and sold listings to develop comparative market analysis (CMA) reports
- ✓ Responding to emails and phone calls
- ✓ Updating websites and social media profiles

### a) **Lead Generation**

A popular way to build contacts and generate leads is through a real estate sphere of influence through the people the agent already knows, such as family, friends, neighbours, business associates and social contacts.

Because most people will **sell, buy or rent property** at some point in their lives, every person that an agent meets is a potential client. That means that a real estate agent's day often

includes meeting and speaking with lots of people, giving out business cards, and keeping track of contact information for a growing sphere of influence. Meeting people and handing out business cards is only one step in cultivating new leads, however. After the first contact is made, it is important to follow up with periodic phone calls, emails, snail mail or text messaging to keep the agent's name fresh in the minds of all potential clients.

#### ***b) Marketing***

An agent also assumes responsibilities for marketing the home in the local community. This includes taking pictures and putting them on her website and in local newspapers. Show houses, open hours are periodically held to invite other agents and people from the community into the home. As part of the marketing and selling process, the agent also takes calls from prospective buyers and other agents to schedule showings of the property to home shoppers.

#### ***c) Viewings***

Agent's works with potential home buyers to identify properties in their price range and schedule viewings. Agent's calls sellers to make arrangements for a home viewing. He / she pulls pictures and listing details from the multiple listing systems and shares them with the buyer during the home visit. As he shows the home, he shares information, points out features of the property and answers any questions.

#### ***d) Working with Clients***

Whether working on behalf of buyers or sellers, real estate agents typically spend time each day working directly with clients. Agent, for example, may spend time preparing a listing presentation, taking digital photographs of the property and staging the home so it shows well. On the other hand, may spend time combing through the MLS to find appropriate listings, printing or emailing the listings to the potential buyers and showing the property to interested buyers. Real estate agents also accompany clients to inspections, key hand over and other activities where their presence is either required or requested.

A real estate agent plays an active role in the completion of a purchase transaction. The agent submits an offer to purchase with an offer price when they find a property of interest. During this process, some agents actively consult on writing an offer while others prefer to let clients make decisions alone. Once an offer is received by the agent, he / she presents the offer to the homeowners. They can accept or reject the offer or make a counteroffer. This process goes on until both parties agree to price and other terms.

#### ***e) Meetings***

Real estate agents work for and under the umbrella of [a](#) principal, and as such, typically work in an office with other real estate agents. Regular office meetings allow agents to share their new listings, update other agents on price reductions and discuss buyers' needs, and can help agents line up buyers and sellers

### **3. Seller and Agent Relationship**

Meeting a seller for the first time to do a mandate presentation can be daunting. However, if you have prepared yourself, understand your value and the value of Golden Homes, you should be able to present yourself confidently and ensue a high success rate in closing your seller and walking out with your mandate.

Before you ever go to see a seller, whether you are doing a mandate or an offer, mentally rehearse your personal and company values to yourself, fix the purpose for your visit firmly in your mind, lift your head you high, put a smile on your face, and get going. Your seller will often have his own needs as his priority, and you will need to be firm in what and what you are there.

You should be able to confidently answer the following question:

***What are my values and what sets me apart from some other agent?***

***a) Explain the value of Golden Homes***

During every listing presentation, you want to **sell your company** strong and **highlight** the things your company is able to do that others cannot. This is a vital because your seller will feel more comfortable if they know that your company is behind them and can help them **achieve their goals**.

***Every single company has a distinctive value proposition.***

Some things to consider that may set your company apart could include:

- ✓ What is your company's marketing plan?
- ✓ What does your company do to make sure that the buyers are qualified? Not just financially, but also that you're not bringing questionable people into the home.
- ✓ What is your company's ability to take control of the overall process?
- ✓ What is your company's internet and social media program, and how do they work for sellers?
  
- ✓ What is your company's local marketing strategy?

Analyse everything your company does and determine which elements set it apart from the competition.

***b) Communicate your personal value***

Just as you differentiate Golden Homes from the others in your marketplace, you also need to differentiate **yourself** from the other agents, including the agents at your current company.

When you're at a listing appointment, it's all about **aligning your specific skills and areas of expertise** to the needs and desires of your prospective seller. If you can prove upfront that you are **more valuable** than someone else, no one will ever question you or your commission again. Some things to consider that may set you apart could include:

- ✓ Do you have any qualifications and skills?
- ✓ Do you speak any other languages?
- ✓ Do you specialize in a particular type of listing, such as the luxury market, condos, or beachfront properties?
- ✓ Have you taken any specialized classes, such as negotiation?
- ✓ What is your personal internet and social media strategy?
- ✓ What is your service policy?
- ✓ What is your local marketing strategy?
- ✓ How often do you communicate with your sellers?
- ✓ What do you do to know what's taking place in the market?
- ✓ What websites do you subscribe to?
- ✓ What news sources do you read/watch/listen to?

No matter who you are or how long you've been in real estate, there are things you do that enable you to stand out from other agents. Pinpoint the uniqueness of what you offer and highlight it prominently.

***Commission is never based on price. It's based on the unique value propositions of your company and yourself.***

The more you differentiate Golden Homes and yourself from the competition, the more value you'll be able to offer your seller. With your value clearly defined and communicated, you'll never hear the commission objection again.

***c) Show gratitude.***

Always thank your seller for considering your services. They are obviously interested in hiring you, and you appreciate their time in meeting with you. For example,

*"Thank you for asking about my commission Mr. Seller. I'm so glad that you value my services and you invited me to list your house for sale. It's a big task and I am honoured to assist you with it."*

***d) Compliment them.***

Instead of being upset they are asking for a commission discount, point out how their skill is a commonality. For example,

*"I can see you are also a great negotiator, that's what I like about you. We are going to enjoy working together, aren't we?"*

At this point, if they don't respond, you can simply drop the topic and move along with your presentation. "Sign right here so you can begin experiencing our excellent service." But if they persist, keep going on to step 3.

***e) Ask for more information to find out what the specific commission objection is.***

Find out what they want, and most importantly, why. Guide the conversation gently to get to the bottom of their concerns. For example, "When you say, 'lower commission', what type of reduction are you asking for?"

***f) Address their reasoning.***

If their request is because they think you make money hand-over-fist, be prepared to educate them how you pay the other brokerage, your broker split, tax, your marketing expenses, office overhead (including MLS), and you get to keep the small slice of pie that's left to feed your family. Some people simply are not familiar with how self-employment works, so you can educate them tactfully. If their commission objection is because they are comparing your service to bargain discount partial-service companies, you'll have to point out how your services are superior. Review your marketing plan of the many things you will do for them that other brokerages may not do. Then you can compare your services to an affluent, upscale luxury car that they can relate to. For example, "When you drive a \_\_\_\_\_, you can relax because everything is done for you, and first class too, right? They can't offer all of those wonderful luxurious services for \_\_\_\_\_ prices." That will infuse a bit of humour too.

If they are asking to pay a lower commission because they have very little equity to spare, or are on the verge of a short sale, that may require some creative solutions. Address their concerns with authentic, sincere resolutions.

Then again, next time they ask that dreaded commission objection, there's always the simple style approach revered by seasoned agents: "No. Any other questions?"

**4. Listing Presentation**

The Golden Homes Listing Presentation is a powerful tool when doing a mandate presentation. It gives the agent a step by step presentation to do with his seller, educating and helping the seller come to a realistic price and the marketing process of his property by the agent.

Go through the attached presentation and become familiar with it and you will see the power that is in your hands. It is, however, important that you, the agent, know the presentation well and that you yourself are convinced with regard to the information within.

Practice it with family and colleagues till it flows from within you. When you are confident you will convey that confidence to your seller and will convince him that he is dealing with a professional.

## **Annexure 64 – Listing Presentation**

### **1. Mandate Management**

The following table will assist you in planning a successful management system and follow-up sessions with your seller.

As an agent you are responsible to update the HUB with all your interaction and management with your listings.

<b>9 Week Marketing Procedure</b>				
<b>Agent</b>		<b>Property</b>		
<b>Week</b>	<b>Day</b>	<b>By Whom</b>	<b>Action</b>	<b>CHECK</b>
Week 0 and 1		Agent	Co Write copy. Client input. Amenities, Schools, features and more	
		Agent	Email seller's copy to sign off	
		Agent	Arrange/take photos and video (optional)	
		Agent	Load onto website	
		Agent	Send thank you note to seller	
		Agent	Post to Facebook Photo Carousel with Copy	
		Agent/Manager	Boost on Facebook	
		Agent	On market drops x 10 - 15	
		Agent	Board on Property	
		Agent	Upload Mandate and FICA docs to Hub	
		Agent	Upload listing sheet to Hub	
		Agent	Email listing to seller	
		Agent	Open WhatsApp Group with seller	
Week 2	Monday	Agent/Admin	If mandate is open email agents	
	Tuesday	Agent	Arrange Show House	
		Agent	Place on Show on GH website	
		Agent	Instagram Post GH website link	
	Wednesday	Agent	Email possible buyers	
		Agent	Show house Drops x 10-15	
	Thursday	Agent	Update Seller – give feedback	
		Agent/Admin	Open hour for GH agents	
	Friday	Agent	Review photos and advert	
		Agent	Seller feedback	
		Agent	Update notes on HUB	
		Agent	On Show Event on Facebook with photos	
		Agent/Manager	Boost On Show event with Manager	
	Saturday	Agent	Boards On Show 12h00	

	Sunday	Agent	On Show. On show register. SMS to buyers after	
Week 3	Monday	Agent	Follow up Show House buyers email more info	
		Agent	Update Seller	
		Agent	Show house clients captured on Hub	
		Agent	Show House success report to seller	
	Tuesday	Agent	Check agent zone stats if on P24	
		Agent	Facebook stats check	
		Agent/Manager	Motivate featured listing	
	Wednesday	Agent	Get comments from agents and inform Seller	
		Agent	Agents feedback captured on HUB	
	Thursday	Agent	Share GH website link on Facebook	
		Agent	Share on Community Facebook Pages	
		Agent	Update follow up note on HUB	
	Friday and Weekend	Agent	Viewings	
Week 4	Monday	Agent	Check Agent Zone Stats	
		Agent	Check Facebook Stats	
		Agent	Email stats to seller	
	Tuesday	Agent		
		Agent/Manager		
	Wednesday	Agent	List to Facebook Marketplace	
	Thursday	Agent	Seller Feedback and price counsel	
		Agent/Manager		
		Agent	Update follow up note on HUB	
	Friday	Agent	Viewings etc	
Week 5	Monday - Friday	Agent	Reduce Price with seller input	
		Agent	Reload on HUB	
		Agent	Review all stats	
		Agent	Remove off Facebook	
		Agent	New Facebook Slideshow	
		Agent/Manager		
Week 6 and 7	Monday - Friday	Agent	Arrange new show house	
		Agent	Show House drop	
		Agent	Change photos all websites order	
		Agent	Do new Facebook post	
		Agent	Show House Event on Facebook	
		Agent	Normal Show House procedure as Week 2	
		Agent/Manager	Boost On Show event with Manager	
		Agent	Update follow up note on HUB	
		Agent	Review all stats	
		Agent	Redo action of week 2 and Week 3	

Week 8	Monday - Friday	Agent/Admin	Request featured listing	
		Agent/Team	Remind team of the listing	
		Agent	Prepare for new mandate	
		Agent	Take new photos	
		Agent	Update follow up note on HUB	

## 5. Buyer and Agent Relationship

All Agents are obliged to comply with the Code of Conduct for Estate Agents issued by the PPRA.

Typically, an Agent will act on behalf of the ***Seller*** interests, however it is important to always keep in mind the buyers interests as well.

### a) A buyer can only expect you to:

- ✓ Advise the buyer of the market value of the property and to be able to point out all factors to justify the purchase price
- ✓ Present a *written* offer to the Seller and only on condition that the proposed purchase price is reasonable.
- ✓ Disclose to the buyer any adverse factors that may affect the sale i.e. servitudes, defects, no plans etc. (however an agent can only disclose this if it has been disclosed to us by the seller)

### b) An agent's expectations from the buyer are

- ✓ That an offer is made in good faith
- ✓ That they are financially able to i.e. no judgements or adverse credit ratings and that he qualifies for the required loan
- ✓ That they do not withhold any information i.e. documents

### c) Things a buyer would need to do in order to purchase a property:

- ✓ Start saving for a deposit as well as for registration and transfer costs
- ✓ Sell their current property if necessary
- ✓ Compile a comprehensive budget to ensure that they can afford the purchase
- ✓ Obtain a copy of their credit record to ensure they have no adverse credit issues – if they do, then they should sort them out before purchasing
- ✓ Make sure all their tax
- ✓ Get pre-qualified (either by the agent or bank or bond originator)
- ✓ Assess what the home needs to offer (security, accommodation etc)



- ✓ Read up on things to consider when buying a home
- ✓ Get documents in order

**d) Showing property**

As an agent, your obligation to each buyer is to:

➤ **Know what he is looking for**

Accommodation requirements, price range, location, type of property etc

➤ **Plan the appointment**

Note: select 3-4 at a time that will suit his basic requirements.

- ✓ Show the worst option first and the target property last.
- ✓ Plan the route.
- ✓ Make the appointment with the seller and confirm that the property is still on the market at the advertised price (also if he has signed any offers).
- **Be prepared**
  - ✓ Have offers, cost sheets, calculators, listing sheets etc.
  - ✓ Have a selection of other alternative properties if none you are showing are suitable.
- **Meet the purchaser**
  - ✓ Confirm the appointment at least 2 hours prior.
  - ✓ Give him a general idea of where the property is to ascertain if he has already seen the property.
  - ✓ Meet at the office or a central point – whichever is easier (avoid a 'two car' situation but only if they agree to leave their car at the office behind a locked gate / or if not too late).
- **During the appointment**
  - ✓ Try find out what they have already seen and with whom and if they have seen anything they like (good way to pick up stock!).
  - ✓ If you get to a property that he has already seen, advise the seller immediately and cancel.
  - ✓ Avoid pointing out features – rather ask questions - Point out only the **benefits** of the property.

**Feature**

**Advantage**

**Benefit**

North facing

Warm &amp; sunny in winter

Saves Electricity to heat

➤ **Don'ts during an appointment**

- ✓ Be enthusiastic, but remain on the same emotional level as the purchaser
- ✓ Don't talk too much
- ✓ Don't crowd them – they need time to identify with the property – it will be their home

➤ **After the appointment**

- ✓ Have your diary available to schedule next appointment
- ✓ Get feedback from the buyers on the property
- ✓ Give this feedback to the seller immediately after the appointment

➤ **Taking an offer**

- ✓ Preferably take them to the office or other central point
- ✓ Avoid giving them too much time to 'think about it'
- ✓ Diary – to schedule next appointment

**e) Pre-qualifying a buyer**

Questions you need to ask to pre-qualify a buyer. This stage should be done early on in your dealings before wasting your time effort and money

Why you as an agent should pre-qualify your buyers:

- ❖ Saves time and money
- ❖ Builds the client's trust in you
- ❖ Answers objections in advance
- ❖ Gives you the tools to close

**WHY?**

Why is the buyer looking for a home?

*(Currently renting, upgrading, downgrading etc, i.e. their motivation which is going to drive this process)*

**WHEN?**

By when would they like to have purchased? And why?

*i.e. their house is sold, transfer etc. ideally you want to establish if they found a house they like, can they purchase it TODAY?*

**WHERE?**

Where is the buyer intending to move to?

*Location/area – can depend on a number of factors like prestige area, proximity to schools, what the neighbourhood provides etc.*

**WHAT?**

What is their dream home?

*What are the critical/minimum features are you looking for in a home?  
I.e. must have's*

What is their price range?

*Have they been pre-qualified to purchase in this price range? Do they have bank approval etc.*

**WHO?**

Who is it that really wants to move or purchase?

*Uncover, as quickly as possible, the person who has the final say.*

**Additional questions**

How long have they been looking for?

*i.e. have they seen what is on the market, if so what, did they like what they saw, if not what did they not like about it*

Once the above has been established, it is important to assess their *REAL* intent to purchase

**HOW**

How long have you been looking for?

**WHAT**

What homes have you already seen?

*What did they or did they not like about these homes?*

*Note: a buyer will make a decision based on elimination by comparing homes in a price range.*

**WHICH**

Which other agents are they working with?

*If just started looking, get commitment from them to allow you to take them to all properties you have on your books before they phone other agents i.e. explain the multi listing system.*

**6. Planning to achieve success in real estate**

**a) Realise who you are**

How do I see myself? How do others see me?

*Note: this step is so important because if you cannot see yourself as a successful, unique person, you will always live a mediocre life.*

**b) Define your purpose in life**

- What are your gifts / talents?
- Have I aligned these with my purpose?

**c) Write down your dreams/vision**

Critical success factors

- ✓ Never give up on your dreams – but adjust the plan.
- ✓ Dream areas include (but are not limited to) Health, home, knowledge, family/social, financial independence etc.

The 'higher' you fly, the more powerful each of your daily decisions will become.

**d) Identify All Areas Hindering You from Achieving Your Dreams**

- ✓ Identify any fears, weaknesses etc.
- ✓ Action plan to overcome these fears.

**e) Build your lifetime referral system**

***"Small actions performed with CONSISTENCY over time will have a DRAMATIC result!"***

➤ **Critical success factors**

- ✓ This MUST be a very strategic process.
- ✓ All referrals must be acknowledged by a gift and a handwritten note within 24 hours – if the referral turns into a sale, raise the value of the thank you.
- ✓ Continuously purge your database to eliminate non-supporters.
- ✓ Set goals and measure your performance against those goals.
- ✓ Send a minimum of 5 'thank you' notes per day.
- ✓ Send a minimum of 5 'touch points' per day.

➤ **Create your referral 'team'**

- ✓ Create a list as large as possible – everyone you know by first name (do not initially eliminate anyone).
- ✓ Get permission to communicate with them.
- ✓ Ensure you get all their information as per your spreadsheet.
- ✓ NB! Take into consideration the new POPI act that became law in 2014.
- ✓ Regularly delete those contacts that will not refer you, or that you don't want business from.

➤ **Attract referrals for life**

Giving starts the receiving process so look at means to give .

Examples...

- ✓ Make a yearly contribution to charity.
- ✓ Get involved in a community project (like a feeding scheme).
- ✓ ***Implement a post-sale service system***
- ✓ 1 day, 1 week, 1 month.
- ✓ Send customer satisfaction survey.
- ✓ Send gift to their office – branded i.e. yellow jellybeans in a jar.
- ✓ Supply lunch on the day of their move.
- ✓ Give moving boxes.

➤ ***Create a list of strategic alliances***

This list in anyone you do business with together with a strategy to build this relationship.

Examples:

- ✓ Electrician, plumber, handyman
- ✓ Home inspectors, valuers.
- ✓ Attorneys, rental agencies.
- ✓ Doctors, hairdressers, dentists.
- ✓ Church, gym, kids' sports, school teachers etc.

➤ ***Some interesting statistics:***

80% of buyers or sellers prefer to work with someone they know.

Out of every 100 people on your list, you could generate 15 sales.

Income is a byproduct of service.

➤ ***Touch Point Ideas***

- ✓ Personalised notes in their post boxes (i.e. noticed you are painting – looks great!)
- ✓ Telephone call (any call will make any mailing 7 times more effective. Personal calls are the jet fuel that makes this system work).
- ✓ Offer a free valuation on their property (even if they are not selling).
- ✓ Send special gifts/messages on special days like birthday, anniversary of move etc.
- ✓ Invite them for coffee / host morning coffee & cake at the office.
- ✓ Send thank you notes for anything! Always be on the lookout on how you can say thank you.

### ***f) Personal Development***

***“The biggest room in the world is the room for personal development.”***

#### ***➤ Critical success factors***

- ✓ Educate yourself – seek good advice but make your own decisions.
- ✓ Be independent – the more you depend on someone else to help you the less likely you are to succeed.
- ✓ Become a leader... leadership starts with SELF – you are either talking yourself into action or you are talking yourself out of action.
- ✓ Study success – success is internal.

#### ***➤ Identify all areas that you need to educate yourself in***

Examples:

- ❖ NQF 4 or 5
- ❖ PPRA logbook
- ❖ RNS induction
- ❖ General product knowledge.
- ✓ Have ‘lateral thinking’ days.
- ✓ Keep track of new trends around the world – they eventually get here.
- ✓ As soon as you start making changes, you are already becoming successful.

### ***g) Generate Leads***

#### ***➤ Critical success factors***

- ✓ do not waste time on overpriced listings or sellers ‘not sure’ about selling – QUALIFY.
- ✓ all areas of lead generation to be covered in your weekly schedule.
- ✓ have a written strategy to tackle all areas of lead generation.

#### ***➤ Where do leads come from?***

- ✓ Past client referrals
- ✓ Database referrals
- ✓ Business partner referrals
- ✓ Show houses
- ✓ Personal branding campaigns

- ✓ Boards in the marketplace
- ✓ Direct mail (drops)
- ✓ Door to door canvassing/cold calling
- ✓ Web site
- ✓ Print advertising
- ✓ Private sellers
- ✓ Expired listings
- ✓ Canvassing over boards
- ✓ Subtle canvassing of RNS sellers
- ✓ Community involvement
- ✓ Social networking
- ✓ Event sponsorship
- ✓ Bank re-possession (MyRoof)

There is an abundance of everything out there in the world – enough listings, enough buyers etc. so share, give and have lots of fun!

### **Points to Ponder**

(Highlight those that make the most impact on you)

It is easy to figure out how to make a living, but what's really exciting is learning how to make a fortune. How do you make a fortune? Deserve a fortune! How do you deserve a fortune? Render services worth a fortune.

If we go out every day and figure out how to give more than we get, the day will come when we get more than we give.

When you change the way you look at things, the things you look at change.

***The dream of HAVING and doing leads to success, the dream of BEING leads to significance!***

### **7. Presenting the offer and closing the seller**

#### **a) Prepare for the presentation of your offer**

Make appointment a.s.a.p. – Time is the death of a sale

- ✓ be in the right frame of mind
- ✓ list 10 reasons why the seller should accept the offer
- ✓ List any potential objections and how you will address them (SWOT)

- ✓ List your MIL's & any other negotiating points i.e. RNS average etc.
- ✓ Avoid discussing the offer telephonically as you cannot see reactions
- ✓ Confirm with the Seller that he has sufficient time to discuss & accept the offer

NB! Ensure all sellers are present – if not, make appointment for some other time

***b) The appointment***

- ✓ Do not place yourself between 2 sellers – you need to see the both of them at all times
- ✓ Watch for body language – if the sellers are 'closed' talk about other issues before you get into the nitty gritty of the offer
- ✓ Keep control of the appointment at all times
  - Begin with the Minor closes: get him to fill out his details, discuss fixtures etc (i.e. a mini close)
  - Deal then with SUSPENSIVE conditions – if offer is uncomplicated, acceptance of price becomes a lot easier
  - If he shows shock at the price, ask him if he has any other written offers – the absence of offers is an indication that the asking price cannot be justified
  - If you get into a 'counteroffer' situation, warn the seller that he may lose the buyer
- ✓ Once the seller has accepted ensure you explain each clause to him
- ✓ If all else fails, find another buyer!

***c) Points to remember***

- ✓ You are only facilitating the deal, so do not get emotionally involved.
- ✓ Do not negotiate on your commission (unless a reasonable amount) learn to walk away from a deal – often a seller will accept if he thinks he may lose the deal.
- ✓ A note of caution: never let the seller know that the buyer is 'desperate' for the house as he will be less likely to negotiate the selling price.
- ✓ The longer you allow the seller to "think" about the offer, the more issues will arise – so avoid this wherever possible
- ✓ The seller pays the commission, so make sure he knows you are on his side

See clause 5, 6 & 7 of the code of conduct

***d) The Counter Offer***

Avoid having the seller reject the offer out of hand – if you do so, you have lost a sale. Rather get him to propose HIS terms. This then still gives you the opportunity to go back to



the seller and start the negotiating process. However, do not give the seller time to think about it as if he takes too long the offer can expire!

Recognise that some people need “to haggle” – so be prepared and enjoy “the game”!!

*In order for a counteroffer to be valid it needs to be:*

- Accepted by the purchaser (do not present telephonically – it’s too easy for a purchaser to then decline!)
- Within a specified time period
- Within reason
- Reduce the difference to a monthly amount payable on their bond... i.e. additional R10 000 = +- R150/m – however keep in mind what the purchaser qualifies for
- Appeal to the purchaser’s “fear of loss”

***e) Seller influencing factors***

- ✓ If he has a lot of interest in his property, chances are he will be reluctant to accept a lower offer
- ✓ The longer the property is on the market, the more the seller is open to negotiation
- ✓ Too many suspensive conditions can be off-putting as this may draw out the process and still result in a no sale. Therefore, make sure your suspensive clauses have a time frame or escape option

**Note:** do not accept a counteroffer if you have advised the purchaser that the offer, he has made is fair and market related. It would be very difficult to then justify the higher counteroffer. Therefore, best always to say nothing!!

Try not split the disputed amount exactly in half – remember you are working for the seller, so he needs to feel he is getting more. It is also better to draft the counteroffer on a separate document & get seller to sign. That way the original stays valid till expiry date

**ONLY AS A LAST RESORT – negotiate your fee but NEVER USE YOUR FEES TO BARGAIN WITH!!!!**

**8. Successful Canvassing**

In order to reap the rewards of the industry you need to continuously market yourself in your area of choice which will result in listings.

Two thirds of your time should be spent working for listings

***a) What is canvassing?***

The purpose of canvassing is simply to make contact with prospective sellers of a property with the prime purpose of listing their property to sell. They will want to ...

- ✓ Know about you
- ✓ Know your ethics and values
- ✓ Know you are a professional and that you work for a professional Agency
- ✓ Know that you are successful / or that you have the potential to be successful

***If you achieve the above, you will undoubtedly be their first choice!***

Note of interest: Nationally, homeowners buy and sell property every SEVEN years. Therefore, depending on the area, an average of 20% of all properties will be sold in a year.

Therefore, if you work an area of 1000 homes, taking this into account, potentially 200 properties will sell in the year.

However, having said that, the magnitude of the task of farming an area can leave an Agent feeling despondent. This despondency can lead to a fall in motivation, which in turn results in failure.

Solution? Start with a small area, farm it consistently till you see results, then consider enlarging your area.

### ***A "farming area"***

"Farming" is an active method of concentrating your efforts to obtain listings from a group of homes or geographical area. The basic steps for setting up and working a successful listing farm are listed below.

Select the area you wish to farm & look for the following:

- a group of 300 – 500 homes
- similar properties
- a high turnover rate
- an area within your home
- an area you enjoy working

Listing farms don't have to be restricted to geographical area. Other ways to organise your farm might include:

- your 52 favourite homes
- owners in the social clubs or professional groups you belong to
- simples, duplexes, flats

- townhouses
- lifestyles

Frequent contact with everyone in your listing farm is the main stimulus to increased listings. To ensure your time invested and to develop a steady stream of new listings, make steady and repeated personal contact and the more you can personalise your act, the more effective it will be.

Listing is basically a “contact sport” so get out and talk to people, develop an interest in them and their area, and they’ll reward you with listing on a regular basis

#### ***b) How to analyse your area***

It is important to be knowledgeable about your area. To achieve this, start off as follows:

- ✓ obtain a detailed map showing all erf/plots in the area (obtainable from the deeds office or local municipality)
- ✓ mark each erf with as much sales history as possible i.e.
  - ❖ date of last sale
  - ❖ purchase price
  - ❖ owner details
  - ❖ home details (beds, bath etc)

Ideally you would like to make contact with each homeowner 24 times per year. Seem impossible? Remember if you break this down it won’t seem so daunting. Much of this information can be obtained from the deeds office, statistics from your local network system, property24, SAPTG, Lightstone, etc.

From here, you are able to get a really good picture of the activity in the area.

To find information about homes and areas that you are going to farm, use sources such as friends, walking the area, etc. Normally you will only be able to obtain this information from repeated contacts.

#### ***c) Sources of Business***

##### **✓ Expire Listings**

If only 60% of homes in average markets sell during the listing period, 40% expire unsold. This concept opens an unbelievable window of opportunity to go out to talk to and assist many sellers who are likely to feel let down or dissatisfied by the process.

##### **✓ Private Sellers**

The most misunderstood category of homeowners are those attempting to sell their homes privately. The main reason they choose to do so is to save agents fees. Most are uneducated about our services and the difficulties that exist in selling privately. Some have had a

previous bad experience with estate agents, and some are just hostile towards agents. The process of working with private sellers is extensive and ongoing.

#### ✓ **Going over Boards**

Many homes may be on the open market. If not it is an ideal opportunity to find out when the mandate expires. This then allows you to keep in contact with the seller during this time so that when the mandate expires, you already have your 'foot in the door!' It is always best to approach the seller direct and confirm that the property is still on the market and offer to assist in marketing it.

#### ✓ **Door to Door**

This means what it says: visiting each property in your area and establishing a contact.

#### ✓ **Show Days**

Plan them well! Ideally you want to always prioritise show houses in an area where you will gain the most exposure. Avoid showing overpriced properties too frequently.

#### ✓ **Show House Invites**

Before every show house you should distribute show house invitation cards to the neighbouring residents – even if they don't take up the invitation, you will at least have made indirect contact with them.

#### ✓ **For Sale boards**

Constantly drive through your area checking for sale boards of competing agencies. Personally, visit homes which have been advertised, with the intention of meeting the owners. ***Do not just drop a card and disappear!***

#### ✓ **Sphere of Influence**

Anyone you personally know that can potentially give you business or refer you to someone who might give you business falls into the category of 'sphere of influence.' Friends, relatives, social contacts, sport associates etc. Begin with your personal telephone directory – people whom you know well, and who know you, are always an excellent source of referral business.

Top salespeople rely heavily on their spheres of influence to produce a steady stream of listings and sales. They do it with hard work, discipline, and regular routing of contact, and MORE contact. You can share in that success and you can use the same techniques that are used by top producers.

#### ✓ **Social Media**

Social media has become the most successful canvassing tools available to you as an agent. Learning how to navigate social media to canvass and market your properties effectively will give you a great advantage over your competitors.

It takes focus and consistency to build up a social media following but if you are diligent it will bring you the rewards you are looking for.

✓ **The 7x7x12**

This is one of the most powerful canvassing strategies you can do as an agent. It is simply dropping a just listed, just sold, free valuation card etc., into the mailbox of the 7 homes on either side of the house and 12 directly opposite from the house.

The reason it is so powerful is that when a home is listed or sold in a neighbourhood and the word is out on the streets, very often a neighbouring property is also placed on the market within a few days. This is due to the fact that often then second homeowners are amazed at the price listed or sold and are keen to sell their home for a similar or market related price.

To really reinforce this concept a three-card system over an 8-10-day period is very effective. i.e. Day 1 – just listed/sold, Day 4/5 – area specialist card, Day 8/10 – thinking of selling card or free market analysis.

***If you regularly do this in your area of specialisation, every time you list or sell a home the message of your dominance becomes very apparent and the calls soon start to flow in.***

✓ **Welcoming Visits**

Use your knowledge of your area: look out for a new arrival and welcome the new property owners to your community.

✓ **Flyers**

Although this is the least successful method, do not ignore it. It does produce results (although not as many as you would like), and if you receive 1 response for every 10 000 flyers distributed, you can consider the effort worthwhile.

(A flyer means an easily recognisable leaflet with a consistent layout, colour, logo, catch phrase and message by which the recipient will remember you and your name. This is all you are aiming to achieve, even if it's just for the time it takes for him to remove it from his post-box and place it in the bin! After the third flyer your name will be synonymous with real estate.

✓ **Thank you, letters,**

Use every opportunity you have to send people thank you letters. Make sure that they are in your own handwriting and on Golden Homes Stationery.

✓ **Passive Canvassing**

This refers to always looking out for opportunities – i.e. wear your name tag everywhere, place car magnets on your car, owners 'upgrading' may be an indication of 'about to sell', overgrown garden indicates neglect and possible potential home for sale etc.

***Never be 'off' duty – always be alive to opportunity!!***

***d) Putting the above into action:***

✓ **Establish a record system for each contact/potential seller in your area**

The best way to keep track of your contact list is to use a computer system with the following information for each person.

Name, address, phone number, occupation, source of contact, personal data i.e. family names, ages, birthdays, hobbies, pets etc + methods of contact, referrals given and results.

There are many ways to make this information work for you. Basically, you should establish a system to ensure repeated, consistent contact with everyone.

To be completely effective, your system should also remind you when it is time to make another contact.

When selecting sources to develop, be realistic, make a commitment that you know you can keep, and select as many sources as you will and can work.

✓ **Rate your Contacts**

When you start your contact list, and as it grows, you will need some system for identifying sources that have a high potential for giving or sending you business. You might label high potential sources as “A” contacts and those with lesser potential as “B” contacts. You should contact the A list persons twice per month, the “B” list at least six times per year.

✓ **Make Contact every day**

To make your contacts produce listings, remind people that you are in the real estate business and that you want their help through business referrals.

**Ask for them and you will get them.**

Set up a system of daily contact and set aside a specific time each day, say one-half to one hour, to make contact in some way with people in your personal sphere of influence. Do it every day. Just 5 contacts a day will add up to 100 per month, 1200 per year.

That kind of systematic routing will pay off handsomely. Keep your contact file handy at all times so that you can use it whenever you have a few spare moments

Contacts include drops, birthday greetings, WhatsApp's, SMS's, Facebook post, your business card, etc.

✓ **Make initial contact with each owner using the following sequence**

Out of sight, out of mind: it's the frequency of contact that will pay off with people in your sphere of influence.

Write a letter of introduction - short and to the point, state you are specializing in the area. Offer them a market analysis of their home.

Visit each owner (introduce yourself and your company).

Send a thank you note after each visit.

### ✓ **Take Action**

- i. Follow up on leads immediately.
- ii. Send a thank you note to your source.
- iii. Let your source know how things turn out.
- iv. Send another thank you note upon closing, or whatever the outcome of the lead.
- v. Ask for more referrals.
- vi. Rate your Success.
- vii. If your list is not providing as many listings as you would like, ask yourself these questions.
  - ✓ Am I making contact often enough?
  - ✓ Am I working with too many people?
  - ✓ Is my contact list up to date?
  - ✓ Am I asking for leads?
  - ✓ Am I only asking for listings?
  - ✓ Am I following through on leads?
  - ✓ Have I thanked those who have provided leads?
  - ✓ Am I negative about myself or the real estate business?

### **e) Summary**

As you work your farm, refer to these guidelines

- ✓ be consistent, repeated contact is the key to success
- ✓ eliminate negative contacts from your farm
- ✓ follow up all visits or referrals with a thank you note
- ✓ attend area functions and get involved in the community
- ✓ make personal contact with everyone at least four to six times a year

### **f) Commitment**

To succeed in finding new sources of marketable listings, you need three basic ingredients:

- goals for making contact and getting new listings
- the appropriate materials and tools for developing an ongoing system of contact with several sources
- a commitment to take action and follow through

- i. Set some goals for making regular contact with potential sources

\_\_\_\_\_ per day

\_\_\_\_\_ per week

\_\_\_\_\_ per month

Follow through. Set time aside every day and develop a contact routine that becomes a regular part of your schedule

- ii. Set some goals for obtaining listing appointments (current & future)

\_\_\_\_\_ per day

\_\_\_\_\_ per week

\_\_\_\_\_ per month

- iii. Set monthly goals for the following:

\_\_\_\_\_ R-value income

\_\_\_\_\_ Mandates

\_\_\_\_\_ Showhouses

\_\_\_\_\_ Other

- iv. Determine the tools and resources that you'll need to keep succeeding.

(boards, stationery, colleagues, etc.)

- v. Continuously remind yourself of the things you need to do that will help you succeed.

- vi. Write down your affirmations and say them daily.

(i.e. I am a successful Estate Agent and I sell houses, lots of them. Sellers LIKE doing

business with me. I will always remain ethical in this industry and I will walk away from anything that will jeopardise my future. I will earn \_\_\_\_\_ this month etc.)

**g) Important Listing Notes:**

- ✓ People rarely call in or drop in to say they'd like to list their home. Successful salespeople land most of their new listings by initiating and repeating contact with various sources of listings.
- ✓ Obtaining listings involves a good deal of preparation, repeated contact, record keeping and persistence. This work usually pays long-term dividends in increased listings and more stable income.



- ✓ People like to recommend good things to others. If you're a capable salesperson, you'll obtain most of your new listings by reminding people you know through repeated personal contact that you are in the real estate business.
- ✓ If you want their referrals or business, people have to be reminded more often than twice per year. Those with high potential for giving you business should be contacted once a month and others at least 4 x a year.
- ✓ Don't assume that people will send you their business or referrals just because they know you're in the real estate business. If you want leads for listings, ask for them. Then always be sure to follow up and thank people for the lead if you want to cultivate that source for future listing leads.
- ✓ A For Sale by Owner is often a strong-willed person who believes he can sell himself. He often does not believe agents can help him and wants to save commission.
- ✓ Although some approaches are more successful than others, you will need to pay several visits to the For Sale by Owner before he has confidence in you and you are able to gain a listing appointment. Persistence however usually pays off with private sales.
- ✓ Don't sell your services on the phone or at the door when working the private sales. He does not like sales pitches and has probably already heard several before your call. Your first goal with private sale is simply to introduce yourself, begin to develop positive relationship and offer your assistance. Depending on the circumstances you may also attempt to see the home or get a later appointment.
- ✓ The expired listing seller is probably more frustrated, anxious and looking for a place to vent his emotions. If you demonstrate an understanding of his problem and a willingness to listen, you'll more easily establish a receptive frame of mind when you talk about how you can help.
- ✓ Although the percentages vary across the country, the average home is sold about every 7 years. That is a substantial turnover every year and presents a tremendous opportunity for new listings.
- ✓ It usually takes 6-12 months for the listing farm to pay regular dividends in the form of listings. However, if worked persistently the farm territory will provide one of the most steady, dependable sources of listings in the long run.
- ✓ An overpriced home will stay on the market much longer than if the price was set at fair market value. However, the owner usually feels his home didn't sell because of an inept agent or the agency.
- ✓ When you have a buyer with specific interests, you can often find a listing by locating the homes that fit your buyer's needs, contacting the owners and asking

them if they might be interested in selling or if they know of someone who would be interested in selling.

- ✓ Almost anyone can be a listing prospect, so it is imperative to maintain a regular system of contacting people in different sources and keeping your name before many people at all times. This will increase the odds that you will be called when someone does need the help of an agent.
- ✓ The five most important sources of listings are: referrals, canvassing over boards, expired listings, targeted canvassing, farming, private/open property.
- ✓ After failing to sell his home during the listing term, the owner is usually quite embarrassed and frustrated. Because he may be in danger of double mortgage payments or delays in moving, he is quite worried and anxious to sell.
- ✓ When selecting an area of homes too become a real estate specialist in, 100-300 properties will provide enough potential for a regular stream of listings, which will translate into a regular stream of income.

## 9. Writing Winning Ads

Real estate listings usually include a lot of pictures because pictures really are worth a thousand words. But homebuyers routinely tour houses and attend open houses based on the strength of classified ads, too - just some lines of text with no images involved.

The writers of those classified ads chose the right words. Knowing the right words to use can help you compose an effective advertisement that will set your listing apart and get your listing sold.

### a) Brainstorm Words to Describe the Home You are Listing

Start by listing all the adjectives and nouns that come to your mind when you think about your house. Let the words and your imagination flow. Don't worry about the order or spelling at this point. Just write them down as they pop into your mind.

### ***Avoid Negative Words***

Now review your list and cross off any words that might potentially sound negative or misleading. You might have said:

**Small or tiny:** Your home or condo might be cosy, but it is *not* small. Don't ever use this word unless you're selling a true "tiny home," designed and built and intended to be that way.

**Cramped:** Cross "cramped" off your list as well. A house might be comfortable, but it's *never* cramped. Cramped usually can't be fixed, at least not without boatloads of money poured into renovations and additions.

**Outdated:** Outdated implies that a lot of work will be necessary to make the place liveable. "Original vintage" is much better. Vintage homes in pristine condition are sought after.

**Oversized:** This might sound like a good word, but you'll want to stay away from it, too, unless your home is the largest one in the neighbourhood. If so, it's a white elephant and it should be priced accordingly.

**Upside potential:** Use this phrase only if you're clearly selling a [fixer-upper](#). Buyers can't normally envision potential, and they'll want to pay less for it, not more.

**Basement:** "Basement" condos and co-ops are hard to sell. If you were given a choice between looking at a basement or a penthouse, which would you choose? A better word choice is "lower level."

**Ugly but cute:** You might think "ugly but cute" is clever, but odds are that buyers won't get past the "ugly" part. Just do it if you need to replace the carpeting. There's no need to alert buyers to the fact that they'll have to take care of it themselves. Forget that old school of thought that says a buyer wants to pick out his own carpeting. He doesn't.

**Fresh paint:** Paint it if the place needs a paint job, but don't advertise the property as having "fresh paint." Buyers tend to be suspicious and wonder why you had to recently paint the home. What are you covering up?

**Leaking roof:** As for that "leaking roof," nobody sets out to buy a house with the potential for water splattering on their living room furniture. Most buyers are afraid of roofs that need repair and rightly so. Replace the roof, if possible, and offer a [roof certification](#).

**Near train or bus line:** Public transportation might be important to urban buyers, but some homebuyers imagine endless noise and fumes when they see the words "on bus line" or "near train." In fact, properties located by light rail or the train sell for a lot less than homes just a few blocks away, and they take longer to sell. A better word choice is "public transportation available."

**Motivated seller:** Stay away from "motivated seller," too. A [motivated seller](#) is a desperate seller, and desperate sellers accept much less than market value. Don't wave that flag and label yourself. Use "all offers considered" instead.

***Some of these might look like no-brainers, but you would be surprised as to how often they find their way into property descriptions ads.***

#### **b) Real Estate Advertising Words That Work**

Now replace all those words you crossed out with something more affirmative. Accentuate the positive.

Think back to when you bought your home. What made you want it? What single feature made you write an offer? Play up those factors. They might include:

**Beautiful:** Every home buyer wants a beautiful home. The word "beautiful" is powerful regardless of where or how it's used.

**Turnkey:** Let readers know about it if your property is ready to move into tomorrow. Some agents use the phrase "all the work has been done for you," and this is good, too. Either way, it presents a clear picture of a home ready for occupancy with minimal or no fuss.

**Lovingly maintained:** One of the greatest fears of homebuyers is having to pour money into a house after closing. Homes that are well maintained require less initial upkeep, so you might want to mention that yours has been "lovingly maintained."

**Spacious:** Buyers envision buying a home that's large enough for their needs. You might use other words that describe a big space as well, such as huge or enormous, but *don't* say it if it isn't true.

**Backyard paradise:** These two words speak volumes. A big and welcoming backyard can be the main selling feature for some buyers, especially those with children, pets, or who are buying in warmer climates.

**Open floor plan:** A great floor plan can overcome many other objections, including the overall size of the house. Good flow can maximize space. Most homebuyers want an open floor plan.

**Redeemed to perfection:** Let buyers know if you've made updates that enhance the home, but don't say it was "completely remodelled" unless the home was literally torn down to the studs. This could get you sued. Say "remodelled to perfection" instead.

**Suite:** The term "suite" lets buyers know the master bedroom has its own bath, and this is a desirable feature. It's always good to mention a "huge master suite" or "retreat." Picture the mom and dad who just put their kids to bed. Do they want to retreat somewhere private and comfortable? Count on it.

*"Sell the sizzle and not the steak" is an old adage that is particularly true when it comes to writing property descriptions.*

### **c) Choose Short Descriptive Headlines**

Decide which of your revised word list speaks volumes and choose one to describe your house. If it's location, style, size, or updates, use these features to write an attention-grabbing headline.

Read other ads to see how those agents describe homes in or near your neighbourhood. Go ahead and steal the best modifiers, like these:

- ✓ Stunning Classic
- ✓ Magnificent Mediterranean
- ✓ Prestigious Location
- ✓ Finest Street In (name of the neighbourhood)
- ✓ Entertainer's Delight
- ✓ Charming Cottage

- ✓ Sparkling Pool and Private Spa
- ✓ Beautiful Bungalow
- ✓ Fabulous Water Views
- ✓ Skyline View
- ✓ Secret Gardens
- ✓ Upscale Urban

Bear in mind that these are the first words a buyer will see when reading your ad. Tell them what is important – in the best possible terms.

**d) Your Closing Statement**

Tell readers how they can learn more now that you've sparked their interest. Your call-to-action in a closing statement is just as important, if not more important, than any other part of your classified ad. Let potential buyers know what's in this for them.

Here's where you'll mention that you'll consider all offers. Yes, you're probably inviting a low-ball offer or two or more, but so what? You can always come down on price if you absolutely have to. Include clear contact information for you, your agent, or both.

**e) And then there is the Law**

***All media ads, including digital and social, must not contain deceptive, false or misleading content. Messaging should be responsible and authentic.***

## **10. Photo Tips and Tricks**

# REAL ESTATE PHOTOGRAPHY TIPS & TRICKS



## FIRST THINGS FIRST

### Choose a Full-Frame Camera or Buy Wide-Angle Camera or Lenses

\*Choosing the best camera for real estate photography is key to your success. I advise you to pay attention to the full frame cameras. They are perfect for this type of shooting.

\*The fact is that a cropped sensor camera can't get a lot of light and full-frame cameras cope with this task perfectly.

\*However, if you do not have the opportunity to buy such a device, choose any camera with interchangeable lenses. This way you can make any, even the simplest camera body, more professional.



#### Buy Wide-Angle Lenses

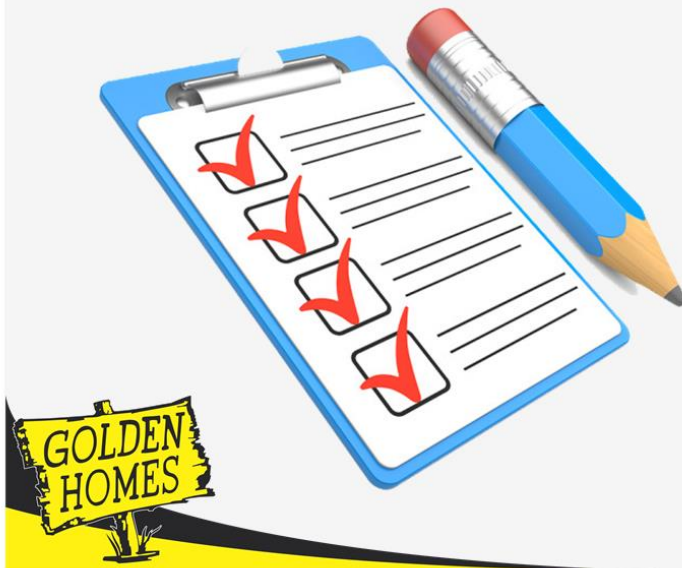
To take pro-level real estate photos, you must use good lenses that aren't fixed. Very often, they play an even bigger role than a camera itself.

The main task of a photographer is to move around the object quickly and cover the maximum space. Choose wide-angle lenses. They will help you visually enlarge the room and create a more comfortable and inviting look.



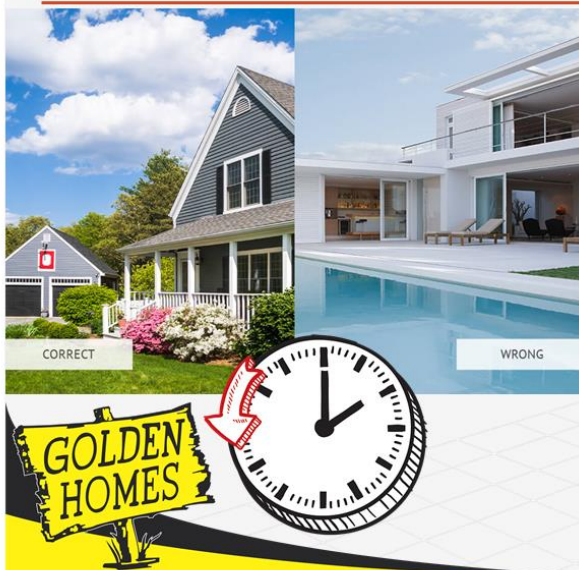


## Preparation.....



**Charge your batteries  
a day before  
the photo shoot  
and pack all Your  
accessories**

## Choose Right Time



Choosing the right time is very important for real estate photographers. If you have the opportunity, schedule a photo shoot at the daytime. This way, you will get a lot of natural light and bright, saturated colors in your pictures.

If the weather is cloudy, you should choose another time for shooting. Some people like to photograph real estate during the sunset. Undoubtedly, you can get very beautiful shots in this period of the day.

However, you should consider one very important aspect. The sun should be behind the house. Thus, you will get really good lighting in this position.

## Examine the Property Beforehand

- 1** Do not rush. First, you have to learn every room of the house. Remember that they may be very different, so you must pay attention to every detail. Before the photo session, walk around the house and yard, and make a few shots.  
Take 2-3 pictures of each room. Do not forget to take 1-3 photos of the backyard and 1-2 photos of the front of the house.
- 2** Then you should examine these shots very attentively to identify features that should be considered when taking professional photos. This approach helps photographers see those details that seem unnoticeable at first glance but have great importance.  
In addition, this way, you will be able to ensure that the house is ready for shooting. Probably, you may need some time to correct some imperfections. Ask the owner to tidy the rooms and remove clutter on all counter tops and living spaces.



DO NOT FORGET TO PUT  
DOWN THE TOILET SEAT  
COVER





## Open Blinds/Windows & Turn On All the Lights

- 1 Figuring out how to shoot real estate photography correctly, you must remember that natural light is the best option. No artificial light sources can replace the sun. This way only you can get very beautiful, saturated shadows.

Besides, natural light will make your photos as realistic as possible, and the clients will see how the house actually looks.

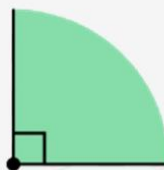


- 2 This is one of the basic but at the same time very useful tip for real estate photography. Turning the lights on and off, you can achieve different effects. It all depends on your goals. For example, the additional light will give some warmth and coziness to your pictures. Nevertheless, you should remember that such photos require light temperature correction during further photo editing. Working with the lights off will bring you a balanced temperature, but such pictures will look quite cold and will have to be edited further.

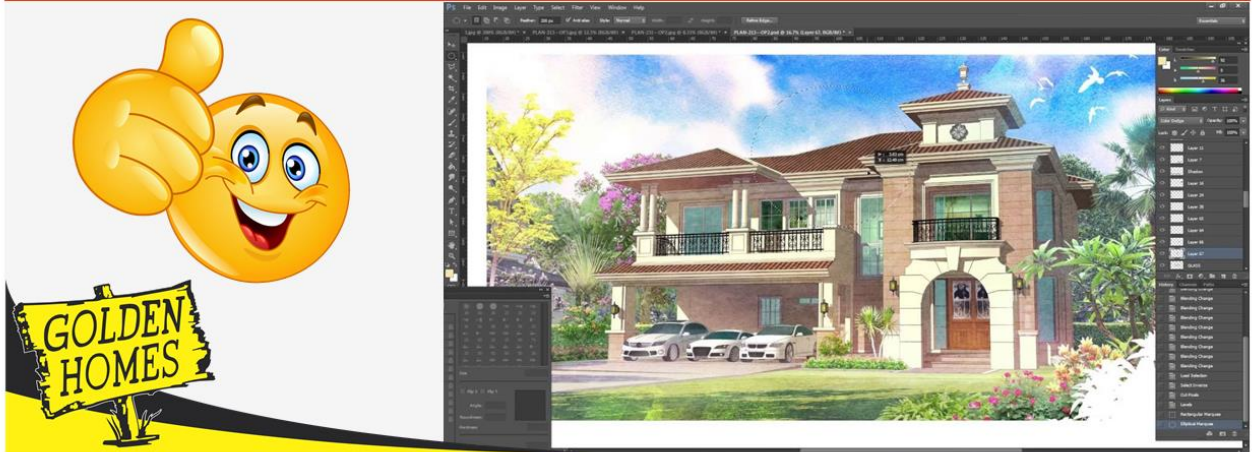


## Find Creative Angles of Shooting

- 1 While it is important to take a photograph of the room from a corner, try to find more interesting, unusual angles. This is a very important thing in real estate photography business. For example, you can shoot a room from a doorway. Thus, you may capture the maximum amount of space and show the whole room. Also, do not forget to pay attention to details. If you notice any distracting elements, such as a picture or some pieces of furniture, remove them from the frame to create a laconic and clear image.



ALWAYS EDIT YOUR PHOTOS AFTER EVERY PHOTO SHOOT



## 11. Social Media

### a) Introduction:

There has been a shift from traditional advertising that has occurred with the increased use of the Internet over time. Now, people consume more advertising online than in print media, radio, or television.

We currently live in a world in which traditional advertising strategies are not enough. Social media not only allows for tremendous outreach and networking, but also allows for interactivity that can be very beneficial to businesses for a variety of reasons.

“Social media” is a name given to web-based and mobile technologies used to turn communication into an interactive dialogue. **This interactive dialogue can occur between organizations, communities, and individuals.** The Internet allows millions of people to connect with each other, and you to promote your businesses to people all over the world by using web-based media applications.

Sites such as Facebook, [Twitter](#), and [YouTube](#) allow you to share ideas on not just news, but also on products and services. Products and Services that people had never heard about before social media, are now readily available and accessible.

Social media has forever changed the way our society works, whether it is the sharing of an idea, the communication of news, or the availability of a product or service. Society today is on the verge of a new way of existing that it has never experienced before.

One of the most important things social media can do for a business is to give business owners a way to engage customers in a whole new way. Social media allows you to get personal with your clients and to form a bond of trust with them. By replying to the

concerns of your clients and asking for their opinions, you can enhance customer satisfaction while getting more traffic for your site, which further promotes your business.

You can share photos and videos via social media, keeping clients and potential clients updated as to your business's current events and latest properties for sale. This helps in creating a strong bond with your clients, and in making them feel a connection with you and your business.

A good, strong social media strategy often requires an investment, but as with any advertising campaign, the ROI (return on investment) must be considered. A good social media strategy will have a positive effect on your sales as it increases the overall exposure of your business, gets people talking about your business or service, and exposes your products and/or services to a far wider audience. In the end, of course, the goal is to convert the user into a client and then a sale. When you interact with your clients and you form a bond of trust with them, it will illustrate an interest in your client and their experience, which often translates to sales.

You may already be familiar with the benefits of banner advertising (getting people to click on your ad) and its enhancement of brand awareness. The same is true with social media sites.

Every social media site allows you to add an avatar, which is technically your brand mascot, logo, or anything which describes your company. When people constantly see updates on their timeline in Facebook or on Twitter, etc., about your business and your products and services, you are enhancing the brand awareness for your company.

You can consider lowering your advertising budget when you concentrate on social media marketing plans. Moreover, traditional ads are a one-time investment for a one-time gain, but with a social media presence, your clients and followers will give you long-term benefits.

Selecting the right social media platform for your growth is an especially important part of the strategic plan of any business today. For example, Facebook fan pages are highly effective for the creation of an engaging community

Businesses large and small are turning to social media as an outreach to potential customers worldwide, to advertise their products and services, and to engage with customers.

***Paid social media marketing is an immensely powerful tool in digitally marketing your properties. This is because more and more of the country's consumers are joining social networks, allowing your marketing message the potential to reach millions of people.***

Social media advertising options you can use to promote yourself and your properties. There are three primary networks that we focus on, however, you are free to expand to any social networks you would like to promote your business on.

A picture speaks a thousand words, and this is true in your Social Media Marketing and engagement. Your profile picture (called an avatar) should be unique and same on all your sites. Choose your mascot, or your logo and take care of the colour combination for better

exposure. Make sure to keep a note of the maximum allowed size for the image, which will help you to make the most out of it.

### ***b) Facebook adverts***

Facebook adverts show up in a person's News Feed, and the adverts can feature photos or videos. You can also display your content in the format of a carousel, slideshow, or canvas.

- The **carousel** format lets you display up to 10 images or videos in one advert, which someone can swipe or click through.
- The **slideshow** format looks like a video but displays a series of still images to make the advert load faster.
- **Canvas** combines videos and images that people can swipe through and even zoom in on.

Facebook offers [Adverts Manager](#), [Power Editor](#) and the [Ads Create Tool](#). Before you start, read the platform's advertising policies. With these advertising tools, you will set the goal of your campaign, your target audience, budget and schedule. After that, you can create or upload your content.

### ***c) YouTube adverts***

On YouTube, South African advertisers can choose between the platform's 'TrueView' in-stream advertising and video discovery advertising, which was previously known as in-display advertising.

- **In-stream adverts** run before YouTube videos and can be skipped by the user after five seconds.
- **Video discovery adverts** display as a thumbnail and text in YouTube's search results or in various spots on a page that display a video. At times, these adverts can also appear on the YouTube homepage.
- YouTube is the world's most popular free video hosting site. Videos are the best way to brand yourself, and with YouTube videos, you can quickly find yourself on Google. One of the best thing about YouTube is, you can [use your Gmail login to access YouTube](#).

### ***d) Twitter adverts***

Twitter's advertising options include 'Promoted Tweets,' 'Promoted Accounts,' 'Promoted Trends' and 'First View'.

Promoted Tweets and Accounts function in a similar way to organic tweets. The difference is that people searching for content relevant to your advert will see your tweet or account at the top of the search results they receive. They can show up in a person's timelines and relevant user profiles. Promoted Accounts can also display in the 'Who to Follow' section.

You can see Promoted Trends at the top of the 'Trending Topics' list. They can also show in a person's timeline. First View places your advert in the top advert slot of the timeline people see when they first visit the Twitter App or Log in to the website.

With 140 characters, you can reach out to a large audience. Getting on Twitter is easy and within minutes, you can create a profile and create your *Social media presence* on this site. There are few things which you can do to better engage with your followers on Twitter:

- ✓ Get a custom Twitter Cover image to match your site design or profile
- ✓ Use Hashtag when writing Tweets
- ✓ Acknowledge all tweets coming your way **@reply**

With [Twitter Ads](#), you'll select your campaign type and define your audience. After that, you set a budget and either select existing tweets to promote or create new ones. You can view activity and insights on Twitter's Ad analytics dashboard.

#### ***e) LinkedIn***

LinkedIn is one of those social networks confined to a small number of users compared to others, but they have a quality audience. LinkedIn is not only for businesses as it is one of the best places to find a job or freelancing work.

#### ***f) Pinterest***

Pinterest may not be for everyone, but they are one of the most popular social networking sites globally. You can use [Pinterest for marketing](#) or for your brand promotion.

**Pinterest** is another social networking site but created with a vastly different approach. The Pinterest basic model is based on Images and it might not be wrong calling Pinterest as an Image-based *social networking site*.

#### ***g) How does the pricing of social media advertising work?***

Social media is very inexpensive when compared to other advertising and marketing tools available to individuals and businesses. The [social media tools](#) are free for everyone to use. By simply spending some time working on your social media presence for a few minutes a day, you can see great benefits of increased exposure and sales and it helps you to develop good relationships with your clients.

Traditional advertising and business promotion tools usually require the help of professionals. Using social media tools, on the other hand, is quite easy and inexpensive.

There are two things to understand when it comes to social media advert costs:

What the advertiser (you) is charged for

How social media networks decide on the price.

#### ***h) What advertisers (you) are charged for:***

Most of the time, you only pay for the views, clicks or other actions that people complete when they see an advert.

Social media networks allow you to create advertising campaigns on their platforms. When you set up your campaigns you must choose what you want people to do when they see your advert. You may want people to click on the advert, or to watch a video. You are only charged for each of the actions a person performs.

Some platforms, however, charge you for simply running the advert, regardless of how many 'likes' or 'clicks' the advert gets. You will have to do your research on each platform's advertising policy to uncover the finer details.

Social networks rely on ad auctions to figure out what an advertiser (you) will pay for a click, 'view' or other action. The cost of this action is influenced by other advertisers in the auction.

These auctions happen before a person sees an advert on a social media platform. In each of these auctions, the social network's auction system weighs up a number of adverts from various advertisers before one is chosen and displayed to the user.

You can choose to bid automatically or manually. With manual bidding, which is also called maximum bidding, you select how much you are willing to pay for each person's action.

When you win in the auction, you don't always have to pay the amount they set manually. Instead, you only pay slightly more than the bid that came second in the auction, which, in Twitter's case, is one penny above the second-place advertiser's bid. This is called a 'second-price auction.' Twitter sells adverts in second-price auctions, with YouTube also providing this option.

On Facebook, adverts win auctions based on their highest total value. This is a combination of the advertiser's bid, the quality and relevance of adverts as well as the estimated action rate of the audience.

#### ***i) Maintaining and Monitoring your Social Media***

A single negative comment can cause harmful than anything else. It is said, "for every dissatisfied vocal customer, you lose ten customers or potential customers." For this reason, any serious business with an online presence needs to manage and monitor social media activity. This helps you to track the level of satisfaction noted by your clients via their comments, and also helps in solving user issues, thus enhancing the overall client experience.

Maintaining the image of your business is particularly important. Negative comments and rumours of poor business practices can easily destroy the image of any business. By keeping up with a strong and consistent social media presence, you can help to keep the good reputation and strong image of your business. Through social media, you can easily reply to potentially destructive comments instantaneously, and help keep the image of excellent client service that you want your business to have.



Social media is all about getting targeted people to join and interact with your business page or profile. It is important to follow common social media practices such as continuous sharing, breaking news, questions, humour, etc., to bring consistent conversation to your page.

#### **Additional Resources:**

<https://www.shoutmeloud.com/how-to-create-a-facebook-fan-page-for-your-blog.html>

<https://www.shoutmeloud.com/how-to-create-a-twitter-account-for-dummies.html>

<https://www.linkedin.com/>

<https://www.shoutmeloud.com/loginlink-your-youtube-account-with-gmail-account.html>

<https://www.shoutmeloud.com/pinterest-marketing-tips-for-bloggers.html>

## **12. Body Language**

Body language speaks louder than any words you can ever utter. Whether you're telling people that you love them, you're angry with them, or don't care less about them, your body movements reveal your thoughts, moods, and attitudes. Both consciously and sub-consciously your body tells observers what's really going on with you.

### ***a) What Is Body Language?***

Put simply, body language is the unspoken element of communication that we use to reveal our true feelings and emotions. Our gestures, facial expressions and posture, for instance. When we are able to "read" these signs, we can use it to our advantage. For example, it can help us to understand the complete message of what someone is trying to say to us, and to enhance our awareness of people's reactions to what we say and do. We can also use it to adjust our own body language so that we appear more positive, engaging and approachable.

### ***b) How to Read Negative Body Language***

Being aware of negative body language in others can allow you to pick up on unspoken issues or bad feelings.

**Lack of eye contact:** Evidence from psychology shows that moderate eye contact communicates confidence, interest, and puts people at ease.

**Staring at your phone:** If you are dealing with clients, put the phone away. While phone addiction is ubiquitous now, it is still rude. Strive to engage with others at the gathering and refrain from ever overtly checking your phone. N

**Talking too fast:** Talking too fast or blinking rapidly is a sign of nervousness and distrust. Practice pausing between sentences, let people finish their sentences and look people in the eye when talking to them. If you can't look them in the eye, try looking at them in the forehead. It looks like eye contact but it's not

**Lack of response:** When you're talking with someone, make sure they know that you're listening. This requires a certain amount of eye contact, nodding, or smiling. Even if you don't agree with someone, it's important to give cues that let them know you hear them. This is a basic sign of respect and not doing this leaves a poor impression.

**Closed-off body language:** Being unapproachable is extremely harmful for business relationships. It will prevent you from moving forward if you're responding to people in a negative way, if you're not engaging with others in conversations, or if your body language is standoffish or closed off to other people.

**Folding your arms:** Folding your arms as you speak portrays a rather defensive stance and you don't come off as being amenable. The best way to avoid it is to train yourself to hold your hands behind your back instead.

**Not smiling enough:** Did you know that smiling has been proven to make us feel happier? People tend to believe the opposite. Therefore, if you maintain that beautiful smile of yours, you'll feel more confident and will undoubtedly be more pleasant to work with. So, whenever you catch yourself making a face, turn it into a smile.

### ***c) Making a Confident First Impression***

These tips can help you to adjust your body language so that you make a great [\*first impression\*](#) :

**Have an open posture.** Be relaxed, but don't slouch! Sit or stand upright and place your hands by your sides. Avoid standing with your hands on your hips, as this will make you appear larger, which can communicate aggression or a desire to dominate.

**Use a firm handshake.** But don't get carried away! You don't want it to become awkward or, worse, painful for the other person. If it does, you'll likely come across as rude or aggressive.

**Maintain good eye contact.** Try to hold the other person's gaze for a few seconds at a time. This will show her that you're sincere and engaged. But, avoid turning it into a staring match!

**Avoid touching your face.** There's a common perception that people who touch their faces while answering questions are being [\*dishonest\*](#) . While this isn't always true, it's best to avoid fiddling with your hair or touching your mouth or nose, particularly if your aim is to come across as trustworthy.

Facilitate discussion on how body language can reinforce verbal communication, however it can also be stronger than verbal communication – it is important that we are aware of our body language in order to ensure we are projecting the right message.

When you know how to interpret body language, you can discover what people are really thinking.

### ***d) When a listing appointment fails!***



We have all been there – went on a listing appointment and walked away empty handed. Then we suffer through a few hours of personal pain trying to figure out what went wrong.

**Point 1: Where 95% of the failure occurs**

In 95% of the time, the reasons for your failure are two reasons!

***You simply did not establish trust and rapport required to cause the seller to list with you!***

**i. Trust solution**

You must use a testimony presentation. What is this? It is a presentation you use before you begin your listing presentation. It consists of testimonies from clients who have had a successful experience with you as their realtor. Go through the testimonies with the seller before you begin your listing presentation and you will notice a remarkable improvement in your success rates when on listing appointment.

***Trust may be the single most important foundational element in a business relationship.***

And with so many business relationships starting online, *knowing [how to build trust with customers and prospects](#)* is essential for success.

Not only do you need to communicate how your service will help them sell their property. It is important to [establish trust with them](#).

**Here are four strategies you should use:**

- **Address objections:** You probably know the objections prospects sellers have. Address those head-on in your marketing presentation.
  - The more honest and forthright you can be when you take on possible objections, the more your prospects seller will notice and appreciate it.
- **Never misrepresent the features,** advantages and benefits of a product or service.
  - Customers don't want a product or solution that only comes close to meeting their needs, or that usually functions properly. Give them the whole, unvarnished truth, and let them decide if the proposed solution will work for them.
- **Don't promise anything you can't deliver:** Some sales professionals find it very difficult to say no to the customer about anything.
- **And finally: make promises and keep them**

**ii. Rapport solution**

Rapport is a little harder to share within this type of lesson format.

Success with people is dependent upon you getting yourself out of the way.

❖ **What do I mean by that?**

Well - buckle your seat belt for a minute. Got it fastened tight? Guess what? People are not really interested in you. Well, not just you actually. They really are not too interested in anybody else but themselves.

❖ **Are you rubbing people the wrong way?**

How does one find himself in that terrible state? By talking to people about YOURSELF and YOUR interests. They are not interested in either. Rather you need to talk about THEM and what is of INTEREST to them - and in most cases what interest them the most is them - their lives - their opinions - their hobbies.

❖ **Eliminate These Words from Your Vocabulary**

- I
- Me
- My
- Myself
- Mine

That's what you must do to improve your rapport when on a listing appointment.

❖ **Add These Words Instead**

- You
- Your
- Their name

In other words, get talking about them. Say the words you and your as many times as you can - and add in their name as a mix and the result will be increased success rates when on listing appointments.

**Body language and your need to understand how to read it when you are on listing appointments.**

***e) Develop Sensitivity Awareness:***

By understanding the role of body language in the decision-making process will increase your success rates. You must become effective in the following areas.

- Listening
- Voice tone
- Voice inflection
- Facial expression
- Repetitive movements

- Muscle tension
- Eye communication
- Hand movement suggestions

There are many books you can buy dealing with this critical success issue. Please make it a point to develop your skills in this area.

***f) Be in harmony:***

You must 'match and mirror' your prospect's body language. In other words, do and act as they do within body language. If they like to touch, you touch too. If they like to relax, you relax too. Get the point?!

But be careful not to be too obvious. The most effective matching is the head. Whenever your prospect nods, you must agree with a nod yourself.

Studies prove that when people disagree, they subconsciously mismatch their body language gestures. So, pay attention to this so that when you see their mismatches you can quickly adjust and get yourself back on the same page.

***g) Eye contact:***

If the prospect feels you are not listening to them by observing that you are not looking at them, you will suffer loss on listing appointments. Effective eye contact proves to your prospect that you are listening.

***h) Double up on listening with your tongue:***

Not only will you increase your success rates through the effective use of your eyes, you can further increase your success through your tongue.

You must occasionally repeat verbatim what your prospect says - especially their key words or phrases.

Restating in your own words serves to clarify communication, but you deepen rapport when you use their words.

***i) Dress Yourself to Success:***

It is true - people do judge a book by its cover. Some studies suggest that up to 95% of the decision to do business is made within the first 5 minutes of meeting us.

***Now That's Scary!***

This is why you must pay attention to how you look, how you dress and how you carry yourself.

***j) Be Professional:***

This means you must not act in a way that causes people to think poorly of you.

Never curse

Never be negative

Never criticise your prospect

No childish behaviour

***k) Remember the basics:***

- ✓ Good communication
- ✓ Be culturally appropriate
- ✓ Smile
- ✓ Relax
- ✓ Remember people's names
- ✓ Hold your head up and maintain a good posture
- ✓ Listen carefully and attentively

**13. Phone and Email Etiquette**

**1. Email**

It is amazing to find that in this day and age some real estate companies have still not realized how important their email communications are. Many agents send email replies late or not at all or send replies that do not actually answer the questions you asked. If your company is able to deal professionally with email, this will provide your company with that all-important competitive edge. We are going to discuss the main etiquette rules and provide advice on how principals can ensure that they are implemented.

***a) Why do you need email etiquette?***

A company needs to implement etiquette rules for the following three reasons:

- ✓ ***Professionalism:*** by using proper email language you will convey a professional image.
- ✓ ***Efficiency:*** emails that get to the point are much more effective than poorly worded emails.
- ✓ ***Protection from liability:*** agents' awareness of email risks will be protected from costly law suits.

***b) Most important email etiquette tips:***

- ✓ ***Be concise and to the point.***

Do not make an e-mail longer than it needs to be. Remember that reading an e-mail is harder than reading printed communications and a long e-mail can be very discouraging to read.

✓ ***Answer all questions and pre-empt further questions.***

An email reply must answer all questions, and pre-empt further questions – If you do not answer all the questions in the original email, you will receive further e-mails regarding the unanswered questions, which will not only waste your time and the client's time but also cause considerable frustration. Moreover, if you are able to pre-empt relevant questions, your client will be grateful and impressed with your efficient and thoughtful customer service.

✓ ***Use proper spelling, grammar & punctuation.***

This is not only important because improper spelling, grammar and punctuation give a bad impression of your agency, it is also important for conveying the message properly. E-mails with no full stops or commas are difficult to read and can sometimes even change the meaning of the text. And, if your program has a spell-checking option, why not use it?

✓ ***Make it personal.***

Not only should the e-mail be personally addressed, it should also include personal i.e. client content. For this reason, auto replies are usually not very effective. However, templates can be used effectively in this way.

✓ ***Use templates for frequently used responses.***

Some questions / emails you get over and over again, such as standard email instruction, copy of offer to purchase to buyers and sellers and the transfer process. Save these texts as response templates and paste these into your message when you need them. You can save your templates in a Word document or use pre-formatted emails. Even better is a tool such as [ReplyMate for Outlook](#) (allows you to use 10 templates for free).

✓ ***Answer swiftly.***

Clients send a request via e-mail because they wish to have more information on a property. Therefore, each e-mail should be replied to within at least 24 hours, and preferably within the same working day. If the email is complicated, just send an email back saying that you have received it and that you will get back to them. This will put the customer's mind at rest and usually customers will then be very patient!

✓ ***Do not attach unnecessary files.***

By sending large attachments you can annoy clients and even bring down their e-mail system. Wherever possible try to compress attachments and only send attachments when they are productive. Moreover, you need to have a good virus scanner in place since your clients will not be very happy if you send them documents full of viruses!

✓ ***Use proper structure & layout.***

Since reading from a screen is more difficult than reading from paper, the structure and layout is very important for e-mail messages. Use short paragraphs and blank lines between each paragraph. When making points, number them or mark each point as separate to keep the overview.

✓ **Do not overuse the high priority option.**

We all know the story of the boy who cried wolf. If you overuse the high priority option, it will lose its function when you really need it. Moreover, even if a mail has high priority, your message will come across as slightly aggressive if you flag it as 'high priority'.

✓ **Do not write in CAPITALS.**

IF YOU WRITE IN CAPITALS IT SEEMS AS IF YOU ARE SHOUTING. This can be highly annoying and might trigger an unwanted response in the form of a flame mail. Therefore, try not to send any email text in capitals.

✓ **Don't leave out the message thread.**

When you reply to an email, you must include the original mail in your reply, in other words click 'Reply', instead of 'New Mail'. Some people say that you must remove the earlier message since this has already been sent and is therefore unnecessary. If you receive many emails you obviously cannot remember each individual email. This means that a 'thread less email' will not provide enough information and you will have to spend a frustratingly long time to find out the context of the email in order to deal with it. Leaving the thread might take a fraction longer in download time, but it will save the recipient much more time and frustration in looking for the related emails in their inbox!

✓ **Add disclaimers to your emails.**

It is important to add disclaimers to your internal and external mails since this can help protect your agency from liability. Consider the following scenario: an agent accidentally forwards a virus to a customer by email. The customer decides to sue the agency for damages. If you add a disclaimer at the bottom of every external mail, saying that the recipient must check each email for viruses and that it cannot be held liable for any transmitted viruses, this will surely be of help to you in court.

✓ **Read the email before you send it.**

A lot of people don't bother to read an email before they send it out, as can be seen from the many spelling and grammar mistakes contained in emails. Apart from this, reading your email through the eyes of the recipient will help you send a more effective message and avoid misunderstandings and inappropriate comments.

✓ **Do not overuse Reply to All.**

Only use Reply to All if you really need your message to be seen by each person who received the original message.

✓ **Mailings > use the Bcc: field or do a mail merge.**

When sending an email mailing, some people place all the email addresses in the To: field. There are two drawbacks to this practice: (1) the recipient knows that you have sent the same message to a large number of recipients, and (2) you are publicizing someone else's email address without their permission. One way to get round this is to place all addresses in the Bcc: field. However, the recipient will only see the address from the To: field in their email, so if this was empty, the To: field will be blank and this might look like spamming. You could include the mailing list email address in the To: field, or even better, if you have Microsoft Outlook and Word you can do a mail merge and create one message for each recipient. A mail merge also allows you to use fields in the message so that you can for instance address each recipient personally. For more information on how to do a Word mail merge, consult the Help in Word.

✓ **Take care with abbreviations and emoticons.**

In business emails, try not to use abbreviations such as BTW (by the way) and LOL (laugh out loud). The recipient might not be aware of the meanings of the abbreviations and in business emails these are generally not appropriate. The same goes for emoticons, such as the smiley :-). If you are not sure whether your recipient knows what it means, it is better not to use it.

✓ **Don't use e-mail as an excuse to avoid personal contact.**

Don't forget the value of face-to-face or even voice-to-voice communication. E-mail communication isn't appropriate when sending confusing or emotional messages. Think of the times you've heard someone in the office indignantly say, "Well, I *sent* you e-mail." If you have a problem with someone, speak with that person directly. Don't use e-mail to avoid an uncomfortable situation or to cover up a mistake.

✓ **Use the subject field to indicate content and purpose.**

Don't just say, "Hi!" or "From Laura." Agree on acronyms to use that quickly identify actions. For example, your team could use <AR> to mean "Action Required" or <MSR> for the Monthly Status Report. It's also a good practice to include the word "Long" in the subject field, if necessary, so that the recipient knows that the message will take time to read.

✓ **Use a signature that includes contact information.**

To ensure that people know who you are, include a signature that has your contact information, including your mailing address, Web site, and phone numbers.

✓ **Summarize long discussions.**

Scrolling through pages of replies to understand a discussion is annoying. Instead of continuing to forward a message string, take a minute to summarize it for your reader. You could even highlight or quote the relevant passage, then include your response. Some words of caution:

## **2. Phone**

### **a) Phone Etiquette: Vocal Skills**

Voice reflects attitude. Even if the words are correct and intended to be polite, tone could imply the opposite. Voice is made up of five distinct elements: tone, inflection, pitch, rate and volume. Your voice contains specific percentages of each element that makes it uniquely yours. However, there is a best practice range within which your voice sounds confident and most importantly professional.

- ✓ **Tone** is the most important vocal skill in great telephone etiquette. Tone expresses your overall attitude and lets the person you are communicating with know how you feel about them.
- ✓ **Inflection** refers to the way you highlight certain words and phrases. When used well, a representative can use inflection to stress the importance of certain words and keep the caller engaged and on track.
- ✓ **Pitch** refers to how high or low your voice sounds. Generally higher pitched voices sound abrasive, while low deeper voices tend to be more soothing.
- ✓ **Rate** refers to the speed and cadence of your voice. Remember to speak slowly and clearly, and/or adjust your rate to match the customers.
- ✓ **Volume** refers to how soft or loud you speak. Volume is the easiest element to control. However, many people are unaware that they speak too softly or too loudly and will need to be coached to use an appropriate level when taking a call.

#### **b) Telephone Etiquette Guidelines**

Telephone etiquette can easily be addressed. Use the tips below to remind agents on how to provide good phone etiquette:

- ✓ **Use formal greetings.** When answering the call use a formal greeting and clearly state your name. It is considered best practice to use sir or ma'am to address customer's if names are unknown.
- ✓ **Speak clearly.** Taking the time to speak clearly and in a positive, professional tone will put the caller at ease.
- ✓ **Hear & understand.** Agents must listen carefully to customers and let them finish their thoughts without interrupting. Ask questions that clarify information and confirm that everyone is on the same page before moving forward.
- ✓ **No food or beverages.** This may seem like common sense, –but refrain from consuming food or beverages while taking a call. The last thing your customers want to hear is slurping and crunching.
- ✓ **Poor language.** Do not use slang words or Poor Language. Respond clearly with “yes” or “no” when speaking. Never use swear words.



- ✓ **Addressing a client.** Address the Client Properly by his or her title. (i.e. Good morning Mr. Brown, Good afternoon Ms. Sanders). Never address an unfamiliar caller by his or her first name.

**c) Good Phone Etiquette Increases Customer Satisfaction**

Telephone etiquette is one of the key components to customer satisfaction. Customer service representatives need to be well versed in product or service knowledge and possess the skills to positively share that information with customers. Representatives who do not have good phone etiquette are a liability and will negatively impact sales and customer retention. However, representatives who have good phone etiquette will decrease escalations, increase sales and improve customer satisfaction.

**d) Making a call**

Always identify yourself properly. When calling a client, whether in person or when leaving a message, always identify yourself properly by providing your name, company name and contact telephone number. For example, "Good afternoon Mr. Brown, this is Ms. Brown from Officeskills.org. My telephone number is 408-555-1212."

Avoid leaving long winded messages. Remember, someone has to listen to your message, write it down and then act upon it. Your message may be just one of many messages that need to be handled. It is often a good habit to write down or type out your message in advance. Keep it brief and to the point.

**14. Safety Alerts for Estate Agents**

**1. What to look out for:**

- ✓ Be careful of clients calling you and asking to call back because they have no airtime.
- ✓ Be cautious when potential purchasers viewing property change the location of a meeting at the last minute for no reason.
- ✓ Don't be influenced into helping someone who appears vulnerable.
- ✓ Be cautious of people who want to see properties at odd hours.
- ✓ Be cautious of people who want a lift or want to drive with you.
- ✓ Take note of what questions potential purchasers ask.

**2. What you can do:**

- ✓ If you are showing a property later than usual – try and take someone with you.
- ✓ Let the client walk in before you and direct them from a position slightly behind them – "the bathroom is to your right."

- ✓ Always try and know two potential exits in the property that you are showing and if possible, leave the doors unlocked or open so that you can get out if you need to;
- ✓ Try and have a safe word or phrase that you can easily convey to the office or a contact person in an emergency situation.
- ✓ Have someone on speed dial.
- ✓ Have the office keep records of the agent's car – make, model, year, colour and registration number.
- ✓ Try and always drive yourself to appointments and have clients do the same.
- ✓ Don't get parked in – try and park behind the other cars or in front of the property rather than in the driveway.
- ✓ Know where you are going and try have an alternative way of driving home should the appointment make you feel uncomfortable.
- ✓ When you arrive, take two seconds to just observe your surroundings and make sure that there isn't any suspicious acting or potential obstacles.
- ✓ Try and park in a well-lit spot.
- ✓ Try not go to appointments with expensive jewelry or watches etc.
- ✓ Carry less – if you can, lock your handbag and valuables in the boot and carry only the necessities.
- ✓ If you can, verify the identity of the person you are going with (credit checks through TPN);
- ✓ Get a safety app:
  - ❖ **Cell 411:** allows users to quickly contact groups of friends and family members. It provides GPS co-ordinates to your group to the current location, directions to the location and live streams video.
  - ❖ **Watch Over Me:** you can alert the app when you are in a vulnerable position so it can watch over you and track your location. If you don't tap 'I'm Safe' before the time runs out, your loved ones get an alert and your exact location.
  - ❖ **Find Me:** allows you to send friends your GPS or network location and provides directions to you. It has an aerial or street view mode to help friends find you and shares your speed, altitude, longitude, and latitude.
  - ❖ **Be Safe:** lets multiple family members and friends see where you are at a time of your choice and send alerts to them when you arrive at your destination. It will also notify your loved ones if you are running behind schedule.

# PPRA Code of Conduct Explained

## Definitions

In this code of conduct, unless the context otherwise indicates –

- a) **"board"** means the Estate Affairs Board.
- b) **"candidate estate agents"** means a person referred to in paragraph c (ii) of the definition of "estate agents" in section 1 of the Act who has subject to the provisions of Government Notice R 1469 of 29 June 1990 been exempted from the standard of training prescribed by Government Notice R 1409 of 1 July 1983;
- c) **"client"** means a person who has given an estate agent a mandate, provided that should an estate agent have conflicting mandates in respect of a particular immovable property, the person whose mandate has first been accepted by the estate agent, is regarded as the client;
- d) **"estate agency service"** means any service referred to in subparagraphs (i) - (v) of paragraph (a) of the definition of "estate agent" in section 1 of the Act:
- e) **"estate agent"** means a person defined in section 1 of the Act, including a candidate estate agent.
- f) **"franchise"** means an agreement, arrangement or understanding between a franchiser and a franchisee estate agent in terms of which the latter is entitled or required to operate under a trade name which is owned by, or which is associated with the business of, the franchiser or any other person;
- g) **"immovable property"** means immovable property as defined in section 1 of the Act.
- h) **"mandate"** means an instruction, or an authority given to and accepted by. estate agent to render an estate agency service.
- i) **"sole mandate"** means a mandate incorporating an undertaking on the part of the person giving the mandate, not to confer a similar mandate on another estate agent before the expiry of a determined or determinable period.
- j) **"the Act"** means the Estate Agents Act, 1976 (Act No.112 of 1976)

## Discussion:

### a) "Client"

In practice estate agents obtain mandates not only from sellers of immovable property, but also from prospective purchasers. In certain instances, this may cause an estate agent to hold conflicting mandates in respect of a particular property, and problems may then arise as to who the estate agent's client is. Consider the following example:

An estate agent is given a mandate by Seller A to sell a five-bedroomed home in Sandton for R250,000.00 negotiable. Two days later he is given a mandate by Purchaser B to find him a five-bedroomed home in the Sandton area for an amount of up to R240 000.00

**Who is the estate agent's client if he introduces B to A's property?**

Knowing who the estate agent's client is in this situation is important because the Code provides specifically that an estate agent must at all times protect the interests of his client to the best of his ability (clauses 2.2). In the example given above, it will be impossible for the estate agent to equally protect the interests of both the seller and the purchaser since their interests clearly conflict - the purchaser wants to pay R240 000.00 while the seller's asking price is R250000.00 negotiable.

This definition solves the problem by providing that the person whose mandate has first been accepted by the estate agent, is regarded as the estate agent's client. (A in the example given above). The definition must be read together with clause 4.1.4 of the Code which provides that an estate agent may not perform or attempt to perform any mandate in respect of a property if a prior current mandate, which conflicts with the aforesaid mandate, has already been accepted by him, unless he has disclosed that prior mandate to the person who has given the later mandate, and the fact that he will not be the estate agent's client in respect of the property.

In the example given above, this means that the agent must, before he introduces B to A's property, disclose to B that he has been given a mandate by A to sell the property and that B will not be his client in respect thereof. The effect is the following:

- The estate agent must protect the interests of A to the best of his ability) with due regard to the interests of B (clause 2.2 of the code).
- If the estate agent has fulfilled A's mandate, he will have a common law claim for payment of commission against A (not B).

In practice, however, purchasers of immovable properties seldom give estate agents mandates to buy properties. A buyer usually enquires from an estate agent about properties which he has for sale and making such an enquiry is not tantamount to giving the estate agent a mandate to buy or find a property.

#### ***b) "Mandate"***

It is important for an estate agent to understand what a mandate is, since he may not perform any work in respect of a property for a buyer or a seller unless he has been given a mandate to do so - clauses 3.1 and 3.2. A mandate is defined either as an instruction to render an estate agency service, or an authority (power of attorney) to both render and perform the service. An instruction to market a property can be given in a number of ways such as, for example, by way of a request, an order, the granting of permission to market the property etc. The following are common examples:

- "Will you please sell my house for me?"
- "Find a buyer for my house please."
- "I would like your firm to sell my property for me."

An estate agent who simply asks a seller whether or not his property is for sale should never assume that he has a mandate in respect of the property, if the seller answers in the affirmative without giving any further indication that the estate agent may market the property. The estate agent will have obtained a mandate only if it is clear that the seller has in fact instructed him to sell the property.

As an instruction to an estate agent only becomes a mandate once the instruction has been accepted by the agent, and standard mandate forms should specifically make provision for acceptance.

A prospective purchaser who merely asks an estate agent whether or not property is for sale, does not in so doing grant a mandate to the estate agent to canvass the owner or the property. Similarly, a person who asks an estate agent to show him certain properties which the agent has for sale does not thereby confer on the estate agent a mandate in respect of those properties.

An open mandate need not be in writing unless it also confers on the estate agent a power of attorney to buy or sell immovable property, in which event the mandate must be in writing to be valid. It is nevertheless sound business practice to record all open mandates in writing, or at least acknowledge them in writing.

A sole mandate must be in writing, even if it does not confer a power of attorney – see the discussion on clause 3.3.1 below. A sole mandate conferring power of attorney must furthermore comply with clause 3.5.

### ***c) "Sole mandate"***

It is important for an estate agent to know what a sole mandate is, because specific requirements are prescribed in respect of sole mandate: See clause 3.3

A sole mandate can be worded in a variety of ways, but the essential feature thereof is that the person conferring the mandate must undertake (expressly or implied) not to appoint another estate agent, before the expiry of a determined or determinable period, to render the same estate agency service as that expected of the sole agent. The undertaking can be expressed in many ways, such as:

- "I (seller) hereby confer on you (estate agent) the sole right to sell my property until (date)"
- "I (seller) hereby confer on you (estate agent) a mandate to sell my property. I shall not before (date) appoint another estate agent to market the property."
- "I (seller) instruct you (estate agent) to find a buyer for my property. I agree to pay commission to you should I personally or through another estate agent on or before (date)"

A mandate which leaves a seller free to appoint other estate agents to market his property does not constitute a sole mandate.

## **2. General duty to protect the public's interest**

In terms of estate agents' general duty to members of the public and other persons or bodies, an estate agent –

### **Code:**

**2.1 shall not or pursuant to the conduct of his business do or omit to do any act which is or may be contrary to the integrity of estate agents in general;**

### **Discussion:**

This clause lays down the general standard of conduct expected of an estate agent where such conduct is not specifically regulated elsewhere in the Code. The clause is restricted to actions or omissions on the part of an estate agent in the conduct of his business. An estate agent can therefore never be found guilty of improper conduct by reason of his conduct in his private life or in a business other than his estate agency business.

Dishonest or corrupt conduct, reckless in business affairs and indifference to duty constitute some of the contraventions contemplated by this clause.

**Code:**

**2.2 shall protect the interests of his client at all times to the best of his ability, with due regard to the interests of all other parties concerned;**

**Discussion:**

This clause imposes a general duty on an estate agent to protect his client's interest to the best of his ability, with due regard to the interest of all other parties concerned.

Examples of the general duty under this clause are the following:

- An estate agent given a mandate to sell or let a property must use his best endeavours to perform the mandate. Unless specifically arranged with his client, he cannot simply sit back and make no attempt to market the property. What is expected of him will depend on the circumstances of each case. Every estate agent must decide for himself on the most effective way to market a client's property, taking into account special circumstances, such as marketing costs and location of the property.
- An estate agent given a mandate to sell a property, is obliged to try and find a buyer for the property on the best possible terms and the best price for the seller.
- When holding a show-house-day or introducing prospective purchasers to a property, an estate agent should take all reasonable precautionary measures to ensure that viewers do not damage the property or remove items there from. The nature of these measures will depend on the circumstances of each case. An estate agent should therefore make a risk assessment and finalize security arrangements with the seller of the property, prior to holding a show-house day.

An estate agent is naturally not obliged to protect a client's interests at all cost. For example, an estate agent cannot be expected to lie, cheat, steal or participate in fraudulent schemes in order to perform his client's mandate.

Clause 2.2 places no obligation on an estate agent to protect the interest of the non-client although he must still have due regard to such person's interest.

**Code:**

**2.3 shall not in his capacity as an estate agent willfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent;**

**Discussion:**

2.3 An estate agent must maintain high standards of professional conduct at all times and although not a registered valuer or a lawyer, must apply his mind when he expresses an opinion on a property's value or complete standard contract documents (such as an Offer to Purchase). An estate agent may well be found guilty of improper conduct if a contract document completed by him is

later found to be null and void because it had been incorrectly completed. Other possible contraventions of this clause are:

- An estate agent completes a pre-printed sale agreement form but fails to incorporate a clause in the contract which was in the circumstances clearly necessary to protect the interests of the seller and/or the purchaser, such as, for instance, a suspensive condition that the sale is subject to the purchaser obtaining loan finance.
- A sale agreement is subject to the condition that the purchaser obtains a loan from a financial institution on or before a certain date. The estate agent completes the loan application form, but because this is done incorrectly the application is refused. The time limit for fulfilment of the suspensive condition expires and the sale falls through. Had the estate agent completed the application correctly, the loan would have been granted and the sale finalized.

**Code:**

**2.3 shall comply with both the Act and the regulations promulgated thereunder:**

**Discussion:**

2.4 Non-compliance with Estate Agent Act 112 of 1976 and the regulations framed there under not only constitutes a criminal offense but now also constitutes improper conduct. If, for example, a complaint is lodged against a candidate estate agent and it appears that he failed to comply with the regulations governing candidate estate agents (for example he did not act under the supervision and control of his principle) disciplinary steps may be taken against him by the board.

**Code:**

**2.5 shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party as front of nominee do anything which would not be permissible for him to do if he were operating as an estate agent"**

**Discussion:**

2.5 The purpose of the clause is to prohibit an estate agent from using companies or close corporations (or other nominees) as fronts to achieve objectives which would have improper conduct had he acted in his own name.

**Code:**

**2.6 shall not deny equal services to any person for reasons of race, sex, or country of national origin:**

**Discussion:**

This clause prohibits an estate agent from discrimination against any seller or prospective purchaser of a property on the grounds of such person's race, creed (if religious beliefs or political opinions or principles), sex, or country of national origin. This means that an estate agent may not, of his accord, deny his services to any person of a lower standard than he normally gives. Practical examples would be:

- An estate agent is instructed by a seller to market his property. The estate agent may not refuse the mandate by reason of such person's race, creed, sex, or country of nation origin. He may, however, refuse the mandate on the grounds such as for example because the seller's asking price is too high or marketing expenses would be excessive in relation to the estate agent's remuneration.
- A prospective purchaser contacts an estate agent and asks to view properties which the estate agent has for sale. The estate agent may not refuse his services to such person by reason of his race, creed, etc. Any refusal to undertake services which would put the agent in a position of supporting discrimination will constitute a breach of this clause.
- A seller informs the appointed estate agent that he will not sell the property to a persons belonging to a certain race or religious/political groups. The estate agent may accept the mandate on the stipulated condition. In other words, an estate agent may refuse to introduce a prospective purchaser to a seller's property, if the seller has prohibited from doing so. Clearly the estate agent is not, of his own accord, denying equal services to the purchaser – he is simply carrying out the seller's instructions.

(This example is subject to the likely introduction of a Bill of Rights in South Africa. Which might well outlaw the conduct of this nature on the part of a seller and which in effect place an obligation on the estate agent to refuse a mandate in such circumstances).

**Code:**

**2.7 shall not discriminate against a prospective purchaser of immovable property on the grounds that such purchaser will not, or is unlikely to, make use of financial assistance made available by any specific person or financial institution and which the estate agent offers to arrange on his behalf.**

**Discussion:**

The philosophy underlying this clause is that every debtor is entitled to choose his creditor. Take the following examples:

- An estate agent has a sole mandate on a property. A prospective purchaser approaches him to view the property but the estate agent informs him that unless he is willing to take up a loan with a specific financial institution, he (the estate agent) will refuse to introduce him to the property.
- An estate agent prepares an Offer to Purchase for a prospective purchaser. The document used contains a standard clause stating that the offer is subject to the suspensive condition that the purchaser obtains a loan from a specific financial institution on or before a certain specified date.

The purchaser requests the estate agent to change the name of the financial institution since he would rather take up a loan with another institution. The offer provides that commission is payable by the seller, but the estate agent has an arrangement with the financial institution named in the document that commission will be paid by the institution as an advance to the estate agent on conclusion of the agreement of sale.



The estate agent now informs the purchaser that should the name of the institution be changed, he (the purchaser) will have to pay commission on conclusion of the contract. This action on the part of the estate amounts to a punitive measure against an innocent purchaser, who merely wishes to obtain loan finance from the financial institution of his choice.

On the above specific facts, the estate agent will be guilty of contravention of clause 2.7

### **3. Mandates**

No estate agent shall –

#### **Code:**

**3.1 offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee therefore, unless he has been given a mandate to do so by the seller or lessor of the property, or his duly authorized agent:**

**3.2 on behalf of as prospective purchaser of lessee, offer, purport or attempt to offer to purchase or lease any immovable property or negotiate in connection therewith or canvass, or undertake or offer to canvass a seller or lessor therefore, unless he has been given a mandate to do so by such prospective purchaser or lessee as the case may be or his duly authorized agent;**

#### **Discussion:**

The purpose of these two clauses is to protect a seller's right to privacy of his home and property and also to avoid misinterpretation to a purchaser by an estate agent.

No estate agent shall –

#### **Code:**

**3.3 accept a sole mandate, or the extension of the period of an existing sole mandate, unless –**

**3.3.1 all the terms of such mandate (or extension, as the case may be) are in writing and signed by the client;**

**3.3.2 the expiry date of the mandate (or extension, as the case may be), which shall be expressed as a calendar date, is specifically recorded in the written sole mandate (or extension, as the case may be);**

#### **Discussion:**

The purpose of this clause is to avoid disputes and uncertainty about the content and duration of sole mandates. The following points should be noted:

- The Code does not prescribe a time limit in respect of sole mandates. It must be remembered, however, that a sole mandate in effect confers on the sole agent an exclusive right coupled with a moral obligation to market the seller's property. When negotiating the period of the sole mandate a reasonable time should be allowed within which to implement an appropriate marketing effort. An unduly lengthy period will obviously not be in the interest of the seller (the estate agent's client) and when fixing the period of the sole mandate an estate agent must therefore be careful not to contravene clause 2.2 of the code (see the discussion above). What constitutes a reasonable period will depend on the circumstance of each case.

- All the terms and conditions of the mandate must be in writing and signed by the client. Although it is not expressly required by the code, it is recommended that the estate agent also sign the mandate document.
- The expiry date of the mandate, expressed as a calendar date, must be stated, for example 30 July 1992. It is not permissible to state that the mandate will terminate/expire after a certain period from the date of signature thereof. A sole mandate on a property expressed to continue “until sold” is clearly not allowed.

**Code:**

**3.4 accept a sole mandate which contains a provision conferring upon him –**

**3.4.1 an option to extend the sole mandate for a certain period after expiry of the sole mandate; or**

**3.4.2 a mandate to continue to render the same estate agency service referred to in the sole mandate, after the expiry of the sole mandate,**

**Unless –**

**(aa) the client has prior to his signature of the sole mandate expressly consented in a written document executed independently of the said sole mandate, to the inclusion of such provision or provisions (as the case may be); and**

**(bb) such document contains an explanation of the reasons for and implications of the inclusion of such provision; and**

**(cc) such document is signed by both the client and the estate agent in question:**

**Discussion:**

The purpose of this clause is to avoid double commission disputes. Unless the written consent of the client has been obtained, an estate agent is prohibited from including in a sole mandate document provisions which confer upon him –

- an option to extend the sole mandate for a certain period after expiry of the sole mandate; or
- an open mandate to render the same estate agency service referred to in the sole mandated after expiry thereof.

The client’s consent may not be contained in the sole mandate document but must be set out in a separate document, which must explain the reasons for, and implications of, the estate agent. The obvious reason for the automatic extension of a sole mandate or the continuation of an open mandate on the expiry of a sole mandate is to enable the agent to continue his marketing effort.

Note that an estate agent is not prohibited, after expiry of a sole mandate, from negotiating afresh a further mandate (open or sole) in respect of the property in question. If an open mandate is conferred, it can be accepted verbally.

***a) Extension of a sole mandate***

In terms of clause 3.4.2 (bb) the implications of a sole mandate containing a clause conferring on an estate agent an option to extend the sole mandate after its expiry must be explained to the client.

The implications of conferring such an option on an estate agent are of a legal nature and are as follows:

- The estate agent may in his sole discretion extend the sole mandate period, in which event the seller will not be able to revoke the mandate unilaterally, nor will he be able to appoint other agents to market his property until the expiry of the extended sole mandate period, unless he is prepared to face a double commission dispute
- If the seller appoints other agents on expiry of the initial sole mandate period to market his property without first ascertaining from the sole agent whether or not the option to extend the sole mandate period has been exercised, he may expose himself to a double commission dispute.

***b) Continuing open mandate on expiry of sole mandate***

In terms of clause 3.4.2 (bb) the implications of a sole mandate containing a clause conferring on the sole agent an open mandate after expiry of the sole mandate must be explained to the client. The implications of continuing an open mandate on the expiry of the sole mandate are also of a legal nature and are as follows:

- The sole agent may continue to market the property until his new open mandate is revoked. On termination of the initial sole mandate he need not specifically approach the seller for the grant of an open mandate.
- On termination of the sole mandate the seller should not confer a sole mandate on another estate agent before revoking the new open mandate. Should he fail to do so he may be in breach of his obligations towards the new sole agent since the first agent now having an open mandate will then be marketing the property in competition with the sole agent.

**Code:**

**3.5 accept a sole mandate which also confers upon him a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate:**

**Discussion:**

An estate agent's mandate does not usually confer a power of attorney on the estate agent. For example, an estate agent having a mandate to sell a property, is usually not empowered or authorized to enter into a contract of sale on behalf of the seller. There may be situations where it is appropriate to confer an authority of this nature on the estate agent, but this happens only in exceptional circumstances.

The clause does not prohibit an estate agent from including a power of attorney in a sole mandate document, but imposes a duty on the estate agent in such a case to explain the intention and effect of the power of attorney in the sole mandate document. In other words, it must be made clear to the seller that he is not simply conferring a usual or ordinary mandate on the sole agent but is in fact giving him the right to conduct an agreement on the seller's behalf without the latter's knowledge or further consent.

Sole mandate documents used by estate agents headed "Sole Authority to Sell" usually stipulate that the seller authorizes the estate agent to sell the property on the terms and conditions set out in the mandate. In such case the estate agent is clearly given a power of attorney to conclude the contract

on the seller's behalf and sole mandate documents of this nature must always comply with the requirements of clause 3.5

**Code:**

**3.6 include, or a clause to be included, or accept the benefit of, any clause in contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract:**

**Discussion:**

This clause prohibits an estate agent from including a clause in an agreement of sale or lease whereby a sole mandate is conferred upon him authorizing him to sell or let the property at any time after the conclusion of such agreement of sale or lease. The reason for this is that a purchaser when entering into an agreement of sale does not normally consider the immediate resale or letting of the property and hence does not apply his mind to the question of whether or not he would wish to confer a sole agency should he ever want to sell or let the property in the future, or even which estate agent he would choose to appoint in such event.

A purchaser should at all times be free to select the estate agent of his choice should he wish to resell or let the property he has bought and should not be deprived of his right of free choice by being bound to an obligation imposed by a reprinted clause in the sale/lease agreement which he had signed. Such freedom of choice promotes free and fair competition amongst estate agents.

The same consideration applies to lease agreements. A lessor who has let his property through a particular estate agent, should be free, if he wishes to re-let or sell the property in the future, to decide at that stage whether or not to appoint a sole agent to do so.

Is it permitted to include a clause in a lease agreement which entitles the letting agent to a sales commission should the lessee purchase the property during the currency of the lease or within a certain period thereafter? The answer is yes, provided it is clear that the letting agent initially had a mandate to sell and the lease was entered into merely as a bridging or interim arrangement pending the conclusion of the intended sale.

Clause 3.6 does not prohibit the inclusion of clauses in sale of lease agreements conferring open mandates (i.e. not sole mandates) to sell or let.

**Code:**

**3.7 accept any mandate for instructions of work in respect of immovable property if his interest therein would compete with his obligations towards an existing client in respect of the same immovable property without first disclosing such interest in writing to such client;**

**Discussion:**

An estate agent is expected to use his best endeavours in the performance of his mandate. A prospective purchaser, for instance, is entitled to be informed if the estate agent wishes to accept a competing mandate from someone else.

**Code:**

**3.8 knowingly or negligently make material misrepresentation concerning the likely market value or rental income of immovable property to a seller or lessor thereof, in order to obtain a mandate in respect of such property:**

**Discussion:**

It is clearly not in a seller's interest to be induced to confer a mandate (particularly a sole mandate) on an estate agent as a result of misrepresentation concerning the market value of his property. Such dishonest practice on the part of an estate agent not only prejudices the seller but also restricts free and fair competition amongst estate agents.

The following points are relevant –

- The clause prohibits an estate agent from misrepresenting the likely market value (i.e. selling price) or rental income of a property. Regard should be had to the clear distinction between a seller's asking price and the likely market value of his property. The clause does not prohibit an estate agent from advising a seller on setting a particular asking price for his property (which may or may not correspond with the likely market value) to test the market. The estate agent must take care not to bring the seller under the impression that the asking price is necessarily also the likely market value.
- An estate agent will contravene clause 3.8 only if he has made a material representation concerning the likely market value of the property, as done so knowingly or negligently. Since an estate agent is not required or expected to be a registered valuer his is not expected to give an absolute or definitive assessment of the property's market value. The general tenor of clause 3.8 is that an estate agent must not merely concoct a figure when advising a seller on the market value of this property. His opinion must be based on facts. An estate agent who applies his mind to the matter and bases his opinion on proper and adequate research undertaken by him, can never be found guilty of contravening this clause, even should it transpire that his opinion differs markedly from what later proves to be the true market value of the property. Proper research in this context would include a comparative market analysis or the use of some other recognized valuation method.
- An estate agent who has not researched the value of a property and who does not know what its likely market value is, should not venture an opinion even if the seller should ask him what the likely value is.

**Code:**

**3.9 accept a mandate in respect of any immovable property if the performance of the mandate requires specialized skill or knowledge outside of his field of competence, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client;**

**Discussion:**

The purpose of this clause is to avoid a situation where members of the public suffer loss through incompetence on the part of estate agents. It will depend on the facts of each individual case whether the performance of a mandate "requires specialized skill or knowledge" and whether such performance falls outside an estate agent's field of competence.

A practical example would be where an estate agent experienced in the sale of residential properties is approached by the seller of a business to sell that business. If the estate agent has never handled

such a transaction before, it is obvious that he cannot have the required practical experience in this field. The estate agent may nevertheless accept the mandate provided that he will in the performance of the mandate be assisted by a person possessing the necessary skill or knowledge required to handle such a transaction and the fact that such assistance is disclosed to the seller.

The person assisting the estate agent could be an attorney, an auditor or any other knowledgeable or experienced person (for example, another estate agent). The manner in which such person must assist the estate agent is not prescribed but generally it will be expected of such person to advise the estate agent of the pitfalls in the sale of a business and how the transaction should ideally be structured. It is advisable that such person also scrutinize the contract of sale prior to its signature by the purchaser or seller.

There may be instances where the performance of a mandate does not require specialized skill or knowledge on the part of an estate agent, even though the mandate concerns a transaction of a technical nature and the estate agent has never before undertaken a mandate of that nature.

#### **Code:**

**3.10 accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client –**

**3.10.1 the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, through the intervention of another estate agent; and**

**3.10.2 what specific obligations in respect of the marketing of the property will be assumed by the estate agent in his endeavour to perform the mandate:**

**Provided at such explanations, if contained in a standard pre-printed or typed sole mandate document, shall be in lettering not smaller than that generally used in the remainder of the document.**

#### **Discussion:**

Consumers who confer sole mandate are often not aware of the commission implications arising out of sole mandates and what specific marketing effort can reasonably be expected of the estate agent during the sole mandate period. The purpose of this clause is to specify and clarify all commission implications between and estate agent and the client as well as the responsibilities to be undertaken by the agent in the performance of the mandate. The following aspects are important:

- In the terms of clause 3.10.1 an estate agent must explain to the client the commission implications should the client sell or let the property himself (or through the intervention of another estate agent) during the currency of the sole mandate, and if he sells it after the termination of a sole mandate to a person introduced to the property by the sole agent during the currency of the sole agency. The nature of the implications will, in the first place, depend on the express terms of the sole mandate. Some sole mandates prohibit a seller from marketing the property himself during the same mandate period while other contain no such restriction. Furthermore, sole mandate provide that should the seller sell his property after the expiry of the sole mandate, he (the seller) remains liable for payment of the commission whether or not the estate agent is the effective cause of such a sale.

Clauses of this nature are often rather technically worded, making it very difficult for the layman to grasp the significance. Clause 3.10 therefore requires that an estate agent give a clear and easily

understandable written explanation of the commission implications of the sole mandate. The explanation can be contained in a letter, fax, telegram, the sole mandate document itself, or any other document. The following is suggested as being a suitable explanation:

**c) Explanation of mandate:**

- ✓ During the currency of this sole mandate you (the seller) may not sell the property yourself or through the intervention of any other estate agent. Should you do so you will be liable to pay the full commission to me (the estate agent named in this mandate) in addition to any other commission payable to any other agent.
- ✓ You (the seller) may not appoint any other estate agent during the currency of the sole mandate to market the property. Should you do so, I (the estate agent) may cancel my sole mandate and claim damages from you in an amount equal to the commission stipulated in the mandate.
- ✓ For a period of ... weeks after the expiry of this mandate you may not sell your property (either by yourself or through the intervention of another estate agent) to any purchaser introduced by me (the estate agent) or any other estate agent during the currency of the sole mandate. Should you do so you will be liable to pay me (the estate agent) the full commission stipulated in the sole mandate, in addition to whatever obligations you may have in respect to any other estate agent.

In terms of clause 3.10.2 an estate agent must specify the obligations he will assume in the performance of the mandate. The clause does not prescribe any specific obligations but leaves this matter to be negotiated with the seller. As stated earlier, a sole mandate to sell a property confers on an estate agent the exclusive right to market the property and it is reasonable in these circumstances to expect that the estate agent should assume marketing obligations commensurate with the discharge of the mandate. Accordingly, for the purpose of compliance with this clause an estate agent must record at least some specific obligations that will be assumed by him pursuant to the sole mandate. Examples of some of these obligations are:

- i. The holding of a show-house-day on specified dates:
- ii. The placing of advertisements in specified newspapers on a minimum number of occasions:
- iii. The maintenance of on-going contact with the seller during the mandate period and reporting back to him on progress made in the marketing of his property on a regular basis.

The obligations undertaken by the estate agent must be recorded in writing, either in the sole mandate itself or in a separate document.

**4. Duty disclose**

**Code:**

**4.1 An estate agent shall –**

**4.1.1 convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property, in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should be reasonably in the circumstances be, within his**

personal knowledge and which are or could be material to a prospecting purchaser or lessee thereof;

**4.1.2** if he conducts his business in terms of a franchise, disclose clearly and unambiguously in all his correspondence, circulars, advertisements, and other written documentation that he operates in terms of a franchise and state thereon his name and the name of the franchiser;

**4.1.3** if he conducts his business under a trade name or style other than his name, clearly disclose his full name in all correspondence, circulars, and other written documentation.

**4.1.4** not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate, which conflicts with the aforesaid mandate, has been accepted by him, unless he has disclosed to the person who has given the later mandate the existence of such prior mandate, and the fact that he will not be the estate agent's client in the respect of that property.

**4.2** No estate agent shall purchase directly or indirectly for himself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of, or interest in, such immovable property.

#### **Discussion:**

##### **4.1.1**

A prospective purchaser or lessee introduced to the property by an estate agent expects that, that agent will convey to him all material facts concerning the property. Of particular importance would be defects on the property such as leaking roofs, dampness, beetle infestation, etc. and other factors which may influence the value of the property or its use to the purchaser, including developments planned on adjacent properties, the proclamation of main roads in the vicinity, etc. Clause 4.1.1 obliges the estate agent to disclose all material facts (i) of which he is personally aware (such facts disclosed to him by the seller personally) or (ii) of which he should reasonably in the circumstances have been aware.

When it can be said that an estate agent should "reasonably in the circumstances" have been aware of certain facts? No hard and fast rules can be laid down in this regard. Each individual case will depend on the circumstances surrounding the particular property and the transaction in question. Important considerations are the following:

An estate agent cannot be expected to know everything about a property. He is not expected to be a construction expert or to be acquainted with all the technicalities relating to property development and township establishment. The crucial question is – what knowledge can be reasonably be expected of an estate agent in the particular circumstances?

Regulations framed under the Estate Agents Act draw a clear distinction between full status and candidate estate agents while a candidate estate agent must act under the active supervision and control of a principle a full status estate agent need not do so. In order to establish whether an estate agent has breached this clause the objective test applied will not necessarily be whether a purchaser dealt with a full status estate agent (whether a principle or an employee), and a candidate estate agent acting under the active supervision and control of a principle estate agent, are regarded,



in respect of their levels of experience, as possessing equal knowledge and skills. If, however, a prospective purchaser is aware that a candidate estate agent is acting independent of his principle's supervision he cannot be heard to complain if he chooses to accept the representation or advises of such candidate estate agent. Members of the public, therefore, need to be aware of this situation and the Board will accordingly highlight it in publications

Clause 4.1.1 does not require an estate agent to actively uncover latent defects. For example, an estate agent is not obliged to climb into the roof of a house, to dig up foundations or to have walls examined for dampness for no apparent reason. On the other hand, it is reasonable to expect an estate agent to undertake a visual inspection of a property and to be put on guard by a defect which is reasonably apparent. An estate agent cannot therefore ignore reasonably obvious defect.

The clause does not specifically place an obligation on the estate agent to inspect the building plans or title deeds before marketing a property. It is clearly reasonable for an estate agent to assume that buildings on a property have been erected in accordance with approved building plans. However, if upon inspection of a property it is reasonably apparent that certain additions are structurally so unsound or badly constructed that they could not have been approved by a local authority, then the estate agent should be on guard and either make full enquiries or disclose his concern to the prospective purchaser.

The ease and degree of difficulty that the estate agent will encounter in obtaining information about a property must be considered. If, for example, certain facts can only be obtained after making of expensive and complicated enquiries, it cannot reasonably be expected of the estate agent to obtain or possess such information. The lack of enquiry should nevertheless still be disclosed.

An estate agent may generally rely on representations and statement made to him by the seller of the property, but this does not necessarily absolve him from making further enquiries.

For example, if an estate agent is told by a seller of a house that the roof does not leak he may accept this to be true unless there are clear indications to the contrary. This means that the estate agent must still undertake a visual inspection of the property. If a leak problem is not apparent (for example the ceiling is not stained) he need not make further inquiries. He can then convey to a prospective purchaser that the seller has told him the roof is leak free and that he has no reason to believe otherwise.

#### 4.1.2 – 4.1.3

The purpose of these clauses is to ensure that members of the public doing business with an estate agent know precisely with whom they are dealing.

#### 4.1.4

See the explanation under the definition of "client" above.

### **Code:**

**4.2 No estate agent shall purchase directly or indirectly for himself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of, or interest in, such immovable property.**

**Discussion:**

This clause embodies the common law principle that an estate agent should at all times guard against a conflict of interest. Obviously if an estate agent wishes to buy a property in respect of which he has a mandate to sell, there will be a conflict of interest between him and his client. The estate agent would want to buy the property at the *lowest* price possible while in acting for the seller, he must try to obtain the *highest* price.

The same considerations apply to where the estate agent sells his own property to a purchaser who has given him a mandate to find a property. Clause 4.2 does not prohibit the conclusion of such transactions, but requires an estate agent to prohibit the conclusion of such transactions, but requires the estate agent to disclose his interest in the property to the seller or purchaser (as the case may be).

**5. Duty not to make misrepresentations or false statements or to use harmful marketing techniques**

No agent shall –

**Code:**

**5.1 in his capacity as an estate agent publish or cause to be published any advertisement which could create the impressions that it was published by the owner, seller, or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;**

**Discussion:**

The purpose of this clause is to avoid misinterpretation. A prospective purchaser who reacts to an advertisement concerning a property, must know with whom he is dealing, i.e. whether the owner himself or an estate agent.

**Code:**

**5.2 wilfully or negligently, in relation to his activities an estate agent, prepare, make or assist any other person to prepare or make any false statement, whether orally or in writing or sign any false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of account or other records;**

**Discussion:**

This clause prohibits an estate from making false statements in relation to his activities as an estate agent from assisting another person in making such statement. The clause also prohibits an estate agent from preparing or maintaining false books of accounts and other records. Consider the following cases which clearly constitute contraventions of clause 5.2.

- An estate agent has a mandate to sell a house for R100,000.00. A purchaser buys the property for that price but does not have sufficient funds for a deposit and does not qualify for a 100% loan. To assist the purchaser in obtaining a 100% loan from a financial institution, the estate agent draws up an agreement of sale reflecting the purchase price as 125,00.00

and providing that on registration of transfer the seller will pay 25,000.00 for the purpose of having certain repairs effected to the property.

- Nor repairs will in fact be carried out and the agreement is so worded solely to mislead the financial institution. This would constitute contravention of clause and may well constitute as fraud. The same considerations would apply to schemes where the purchase price is loaded in order to deceive the financial institution as to the real value of the property, and to schemes where the purchase price is falsely reduced in order to lower transfer duty.
- An estate agent who wilfully maintains false records in respect of his trust account in order to deceive his auditor.

**Code:**

**5.3 claim to be an expert or to have specialized knowledge in respect of any estate agency service is, in fact, he is not such an expert or does not have such special knowledge;**

**Discussion:**

The purpose of this clause is to avoid misrepresentation by estate agents concerning the level of expertise which they possess in respect of estate agency services. For example, an estate agent may not advertise that he is an expert in the field of commercial property transactions if in fact he has very little experience in that regard.

**Code:**

**5.4 advertise or otherwise market immovable property in respect of which he has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;**

**Discussion:**

The purpose of this clause is to prohibit the placing of confusing advertisements concerning the purchase price of a property. Say a seller's asking price for his property is R100,00.00. An estate agent with a mandate to market the property must offer the property for sale at that price, unless the seller has consented to the estate agent using a marketing technique where the real asking price is not specifically indicated. This means that unless the seller has given his consent (verbally or in writing) the estate agent may not advertise the property on the basis that "Offers upwards of 90,000.00 will be submitted". Nor may he say that the asking price is "R100,000.00 negotiable".

**Code:**

**5.5 without derogating from the generality of the foregoing -**

**5.5.1 wilfully or negligently mislead or misrepresent in regard to any matter pertaining to the immovable property in respect of which he has a mandate;**

**5.5.2 use any harmful or misleading marketing technique or method to influence any person to confer upon him a mandate to render any estate agency service or to sell, purchase, let, or hire immovable property, having regard to the general experience which such person has concerning property transactions and the circumstances surrounding the transaction or proposed transaction;**

**Discussion:**

**5.5.1**

An estate agent given a mandate to market a property must never make any misrepresentations to any person concerning that property. For example, he should not in any advertisement describe the property in excessively glowing terms (for example, where an ordinary house is described as “a palace for king”) if in fact the statements are untrue or unjustified. Further examples include:

- A prospective purchaser introduced to a property by an estate agent wishes to buy the property but is concerned about the lack of a school in the area. The estate agent may not convey to the purchaser that the building of a school is being planned, unless the estate agent knows for a fact that this is statement true.
- A prospective purchaser introduced to a house by an estate agent asks the estate agent whether or not the roof leaks. The estate agent, eager to close the deal, states categorically that there are no leaks. The estate agent has, however, never made enquiries in this regard and does not know whether his statement is true. It later turns out that the roof does leak. The estate agent will clearly be guilty of improper conduct since he should have indicated at the time he did not know whether or not the roof leaked and that enquiries would have to be made.

### 5.5.2

An estate agent should not use harmful or misleading marketing techniques when marketing a client’s property. Harmful or misleading marketing techniques are not defined in the Code and it will depend on the facts of each specific case as to whether a particular marketing technique can be described as harmful or misleading. For example, to submit an offer to purchase to a few minutes before midnight (the expiry date of the offer) under the pretence that is the purchaser’ final offer, is a harmful marketing technique if this is a scheme engineered solely to bring pressure to bear on the seller to accept the offer.

A specific consideration is whether or not the person to whom the marketing technique is directed has any experience of property transactions. It may be assumed that a person with a legal background and years of experience in property transactions will not easily be persuaded by an estate agent’s marketing techniques to buy a particular property. On the other hand, someone who has never bought a property before and who has very little commercial experience can succumb more easily to certain types of marketing techniques. Experience constitutes an important factor in contravention of this clause.

The code does not replace an absolute bar on the use of incentives by estate agents. In principle, therefore, an estate agent may offer incentives (such as gifts or cash) to prospective purchasers as part of marketing.

However, in certain cases the use of incentives may constitute a harmful marketing technique, in particular where the incentive offered is never awarded even though a person has qualified to receive it. An estate agent will have to exercise his discretion carefully when deciding to make use of incentives in any marketing campaign. Should an incentive be offered, it must be made clear who is making the offer (i.e. whether it is the owner/seller of the property or the estate agent) and the circumstances under which a person will be entitled to receive the incentive in question.

### **Code:**

**5.6 Use any firm or trading name in respect of his business is such name may give rise to confusion on the part of the public in respect of the nature of the business carried on by him;**

**Discussion:**

The purpose of this clause is to prevent members of the public from being misled by the business name of an estate agent. In the case, for example, where an estate agent's trading name is "For Sale by Owner" or "Private Seller", members of the public such estate agent's press advertisements or For Sale boards will be entitled to presume that they are dealing directly with the owner of the property and through an estate agent. This deception is clearly not in the public's best interest.

**Code:**

**5.7 inform the seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from the purchaser or the seller (as the case may be), unless such offer**

**5.7.1 is in writing; and**

**5.7.2 has been signed by the offeror; and**

**5.7.3 is to the knowledge of the estate agent concerned, a *bona fide* offer:**

**Discussion:**

Take the case where the seller of a property has conferred an open mandate on two estate agents (agent A and agent B) to market his property. Agent A finds a prospective purchaser who submits an offer on the property. Agent B, sensing that he may lose a potential transaction, contacts the seller and advises him not to accept the offer before considering another offer which he (Agent B) has obtained in respect of the property. In fact, no such other offer exists and it is simply a ploy used by Agent B to delay the acceptance of Agent A's offer. Such conduct is clearly not in the interests of either the seller or Agent A.

Clause 5.7 does not prohibit an estate agent from verbally informing a seller (or purchaser) that he has obtained an offer in respect of a property provided that the offer is:

- i. In writing
- ii. Signed by the offeror; and
- iii. To the knowledge of the estate agent a *bona fide* offer.

**Code:**

**5.8 affix any board on or notice to immovable property indicating that such property is for sale or hire or has been sold or let, unless**

**5.8.1 the seller or lessor (as the case may be) has given written consent to do so; and**

**5.8.2 the estate agent concerned in the fact has a mandate to sell or let the property, or in fact has sold or let the property as the case may be.**

**Discussion:**

"For Sale" and "Sold" boards are commonly used by estate agents. Unfortunately, some estate agents, in order to promote their business and maximize exposure, affix "For Sale" and "Sold"

boards to properties which they either do not have for sale or which they did sell. The messages which are thereby transmitted as to the effectiveness of the estate agents are false and not in the public interest.

The purpose of clause 5.8 is therefor to regulate the proper use of such boards. The seller's or lessor's written consent to display boards may be contained in the mandate given to the estate agent, in the agreement of sale/lease or in any other document. For example, it is permissible for a clause to be included in a sole mandate document in terms of which that seller consents to the estate agent affixing a "Sold" board to the property once it has been sold.

An agreement of sale concluded subject to a suspensive condition, for example, that a purchaser obtains a financial loan from a financial institution or that he sells his property on or before a certain date, is not enforceable as a sale until the suspensive condition has been fulfilled. Accordingly, an estate agent may only display a "Sold" board on a property if:

- i. He has negotiated the transaction in question; and
- ii. All suspensive conditions have been fulfilled.

## **6. Duties in respect of offers and contracts**

### **Code:**

#### **6.1 No estate agent –**

**6.1.1 who has a mandate to sell or purchase immovable property shall wilfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;**

**6.1.2 who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to make the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller;**

**6.1.3 shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.**

### **Discussion:**

#### **6.1.1**

An estate agent with a mandate to sell or buy a property cannot selectively withhold offers and must present all offers received by him to his client, until the property has been sold. A seller when conferring a mandate may, however, specifically instruct the estate agent not to submit certain offers (for example, offers below a certain price) and in such case the estate agent would be under no ethical obligation to submit such an unacceptable offer.

And offer can be presented to a seller either personally or through his nominated representative. It is preferable to present an offer personally, but if this is not possible the offer can be presented through the post, be faxed, etc. An estate agent may telephone a seller to inform him that he has a written signed offer in respect of the property (see clause 5.7 discussed above), but then must convey all the material terms of the offer to the seller.

### 6.1.2

An estate agent holding a mandate to *sell* a property must at all times be mindful of the fact that in such case the *seller* is his client. In practice it often happens that an estate agent spends much more time with the prospective purchasers than with the seller and as a result becomes emotionally involved in a particular purchaser's quest to find a home, losing sight of the fact that the seller is his client. An estate agent may not, however, allow personal considerations to cloud his judgement. Take the case where an intending purchaser has made an offer on a property.

One week later, before the expiry of the first offer, a second intending purchaser also makes an offer on the property through the same estate agent. The estate agent favours the first buyer because he knows how desperately the purchaser wishes to buy the property. The estate agent may not, however, when submitting the second offer, make favourable comments on that offer which are not true, simply to induce the seller to accept the first offer. The estate agent must remain objective at all times and give the seller unbiased advice.

#### Code:

### 6.2 An estate agent shall –

**6.2.1 explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meanings and consequences of the material provisions of such offer or contract, or, if he is unable to do so refer such party to a person who can do so;**

**6.2.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted by the expiry date thereof, forthwith notify the seller or of such fact;**

**6.2.3 without undue delay furnish every contracting party with a copy of an agreement of sale, lease, option or mandate with which he is concerned as an estate agent, provided that the foregoing shall also apply in respect of an offer to purchase or lease if the offer or specifically requests as copy thereof.**

#### Discussion:

In practice most estate agents use standard pre-printed contract documents for mandates, offer to purchase, sale agreements, etc. Sellers and buyers negotiating through estate agents rarely consult their attorneys before signing such documents. Documents are also sometimes signed without being read or their terms understood. This is largely due to the fact that buyers and sellers blindly place their trust in estate agents and do not expect them to use documents which do not adequately safeguard the interests of the parties.

To prevent disputes and misunderstanding concerning the terms of an offer, estate agents are required by clause 6.2.1 to explain to every prospective party to a written offer or contract negotiated by the estate agent, the meaning and consequences of the material provisions of such offer or agreement. The explanation must be furnished prior to signature of the offer document or agreement by the party concerned. If the estate agent is unable to give the necessary explanation, he must refer the party to a person who is able to do so. Such person need not necessarily be an attorney and may even be another estate agent.

The following points should be noted:

- In certain instances, an estate agent's explanation of the offer or contract document can be brief, while in other cases it may have to be given more fully. For example, if a contracting party has a legal background or has wide experience in property transactions, a brief explanation of the terms of the agreement will suffice. If on the other hand, the contracting party is totally inexperienced, the explanation will necessarily be more detailed. If a party to a contract is not interested in an explanation an estate agent can clearly not oblige him to listen to one.
- Only the *material provisions* of an offer or contract must be explained. For the purposes of clause 6.2.1 of the Code the following are regarded as material terms:

SALE	LEASE
Description of property and movables included in sale	Description of premises and furniture / household goods included in lease
Purchase price and method of payment thereof	Rental and deposit and method of payment thereof
Specific contractual obligations of the buyer / seller	Specific contractual obligations of the lessor / lessee
Suspensive / resolute conditions	Suspensive / resolute conditions
Amount of commission and when payable	Additional payment by lessee (Levies/Electricity/Telephone etc.)
Situation regarding defects to the property ("Voetstoots clause")	Lessor's obligations to pay commission
When risk of accidental damage to or destruction of property passes to purchaser	Responsibilities concerning defects and maintenance
"Special conditions" specifically added to the agreement	"Special conditions" specifically added to the agreement

Documents to be explained are offers to purchase / sell / let / hire: agreements of sale and lease; written mandates and written options / rights of first refusal. Loan application forms are excluded.

### 6.2.2

A person who has submitted an offer on a property through an estate agent is entitled to know whether or not the offer has been accepted. If the estate agent is aware of the fate of the offer, he must forthwith notify the purchaser thereof which can be done verbally or in writing.



### 6.2.3

A party to an agreement is entitled to a copy thereof. This clause obliges an estate agent to furnish a copy of a written mandate to his client and to give a copy of an agreement of sale, lease or option which he has negotiated, to each contracting party. Such copies must be given without undue delay, or in other words, as soon as possible.

An estate agent need not give a copy of an offer to purchase or lease to the offeror unless the latter specifically requests that he be given such a copy. However, if the offer is accepted a binding agreement of sale or lease is thereby concluded and a copy must then be given to all contracting parties.

The provisions of the Stamp Duties Act must be observed in so far as they apply to agreements. No stamp duty is payable on mandates or agreements of sale of immovable property (or copies of such agreements) but all written lease agreements must be stamped.

A copy of a written mandate and an agreement of sale or lease must be given to every contracting party, whether or not such contracting party specifically requests a copy.

## 7. Prohibition against undue influence

**No estate agent shall without good and sufficient cause, directly or indirectly, in any manner whatsoever, solicit, encourage, persuade or influence any party or potential party to a pending or completed transaction to utilize or refrain from utilizing –**

### Code:

#### **7.1 the services of any particular attorney, conveyancer or firm of attorneys;**

### Discussion:

The only person who is legally obliged and competent to pass transfer, is the seller of immovable property. Agreements of sale of immovable property for this reason invariably provide that transfer will be effected by conveyancer appointed by the seller. An estate agent may not, therefore, pressurize a seller into selecting a particular attorney, conveyancer or firm of attorneys, merely because the estate agent has a good relationship with them. Estate agents are sometimes of the view that certain conveyancers are able to expedite transfers more than others. This personal view does not justify a seller being influenced to utilize or refrain from utilizing the services of any particular attorney or conveyancer.

It may happen that a seller does not have or know a conveyancer. If asked for a recommendation the estate agent may in such case suggest a particular conveyancer. The selection of a conveyancer by an estate agent acting on specific instruction of a seller does not contravene this prohibition, provided that the seller understood that he had the right to make the selection himself.

### Code:

**7.2 the services of financial assistance offered by any financial institution to members of the public in general; or**

**Discussion:**

The purpose of this clause is to avoid a situation where an estate agent promotes a particular financial institution with a view to furthering his own personal interests. Competition between financial institutions to grant home loans is fierce and an estate agent cannot for personal reasons favour one institution over another.

However, nothing prevents an estate agent from furnishing a purchaser with details of the loan packages offered by various financial institutions. For example, it is permissible for an estate agent to advise a purchaser that his estate agency firm acts as an agent for a specific financial institution, and to explain to such purchaser the institution's loan policy. In so doing the estate agent must, however, be careful not to convey to the purchaser that such institution's services are better or more professional than those of other similar institutions or that the lending policy of institutions is suspect. The test is simply whether the estate agent is trying to force the purchaser into a certain direction or is providing genuine information to assist him in deciding which institution to approach for a loan.

**Code:**

**7.3 the financial assistance offered to such party by any person.**

**Discussion:**

What has been said in respect of clause 7.2 is also applicable to clause 7.3

**8. Remuneration**

**No estate agent shall –**

**Code:**

**8.1 stipulate for, demand, or receive directly or indirectly any remuneration, commission, benefit or gain arising from or connected with any completed, pending or proposed contract of sale or lease which is subject to –**

**8.1.1 a Suspensive condition, until such time as that condition has been fulfilled; or**

**8.1.2 a resolute condition, during the time that the transaction may fall away as a result of the operation of the said resolute condition:**

**Provided that the foregoing shall not apply if**

**(aa) good cause exists; and**

**(bb) the party liable for the payment of remuneration, commission, benefit or gain has expressly consented in a written document executed independently of the contract in question, to such payment at any time, notwithstanding the fact that the said contract is subject to a Suspensive or resolute condition, as the case may be; and**

**(cc) such document contains an explanation of the implications and financial risks for such party of such payment; and**

**(dd) such document is signed by such party and the estate agent in question.**

**Discussion:**

At common law an estate agent is entitled to payment of commission on a transaction only once a binding agreement has been concluded. In this context an agreement is binding only if all suspensive conditions have been fulfilled. It is clearly not in the interests of the seller to be placed in a position where he is liable to pay commission whether or not suspensive conditions have been fulfilled since that would mean that he is liable to pay commission whether or not a sale actually materializes.

Examples of suspensive conditions normally found in agreement of sale, are that the purchaser is to obtain a loan to cover the balance of the purchase price from a financial institution, or that he is to sell his own house, before or on a certain date.

If a contract of sale is subject to a *resolutive condition* the contract is binding on signature thereof by both parties but terminates upon fulfillment of the resolutive condition. A typical example of a resolutive condition would be a stipulation in an agreement of sale of a proposed sectional title unit that the sale will terminate should the sectional title register not be opened before or on a certain date. In such case it would obviously not be in the interests of the seller to bind himself to pay commission on signature of the agreement as that sale may eventually fall through.

Clause 8.1 prohibits the inclusion of clauses in sale or lease agreements stipulating that commission is payable on signature of the agreement whether or not a particular suspensive or resolutive condition in the contract has been fulfilled. There may, however, be instances where payment of commission in such circumstance can be justified, for example when there is an extraordinarily long period between the date of signature of the agreement and the date specified for fulfillment of Suspensive condition.

If the party responsible for payment of commission agrees to pay commission prior to fulfillment of Suspensive conditions, a written document separate from the agreement of sale or lease must be drawn up. Such document must set out the implications and financial risks, for the party concerned of such payment. The document must then be signed by such party and the estate agent in question.

**Code:**

**8.2 convey to his client or any other party to a completed proposed transaction in which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the board or any institute or association of estate agents or any other body;**

**Discussion:**

The purpose of this clause is to avoid misrepresentation on the part of an estate agent regarding the amount of commission that he may charge.

There is no prescribed commission tariff for estate agents although the Institute of Estate Agents of South Africa has a *recommended tariff* for its members.

The Code does not prohibit an estate agent from advertising his commission rate. It is not; however, permissible to advertise that the estate agent guarantees to undercut any other estate agent's rate or that his tariff is lower than that of his competitor's. To do so would be misleading since an estate agent's commission is usually linked to the services offered by him.

**Code:**

**8.3 introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that such person has already been introduced to such property or the seller or lessor thereof by another estate agent and that there is a likelihood that his client may have to pay commission to such other, or to more than one, estate agent should the sale or lease be concluded through his intervention: Provided that the foregoing shall not apply if the estate agent has informed his client of such likelihood and obtained written consent to introduce such party to the property or the seller or lessor thereof;**

**Discussion:**

The purpose of this clause is to avoid double commission disputes.

**Code:**

**8.4 include, or cause to be included, or accept the benefit of, any clause in a mandate or in a contract of sale or lease of immovable property, providing for payment to him by the seller or lessor of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of the fact whether the purchaser or lessee is financially able to fulfil his obligations in terms of the said contract: Provided that the foregoing shall not apply if**

**(aa) good cause exists; and**

**(bb) the seller or lessor has, prior to his signature of the contract or mandate (as the case may be) consented in writing in a document executed independently of the said mandate and contract, to such payment; and**

**(cc) such document contains an explanation of the implications and financial risks for the seller or lessor of such payment; and**

**(dd) such document is signed by both the estate agent and the seller or lessor.**

**Discussion:**

A common law requirement for the earning of commission on a sale is that an estate agent must introduce a purchaser who is legally and financially able to implement the transaction.

A commission clause in a sale agreement proving that the seller is to pay commission whether or not the purchaser is financially able to implement the sale is obviously not in the seller's interest and the inclusion of such a clause is prohibited by clause 8.4 of the code of conduct.

In the unlikely event that a seller is willing to pay the commission whether or not the purchaser is financially able to fulfil his contractual obligations a separate document must be prepared. This document must contain an explanation of the implications and financial risks for the seller arising from such payment and must be signed by both the estate agent and the seller.

Agreements of sale concluded subject to the condition that the purchaser is to obtain a loan on or before a certain date, often proved that should the purchaser fail to apply for the loan and provide false information in his application solely to avoid fulfilment of the suspensive condition, he (the purchaser) will become liable for payment of commission. The inclusion of such clause is not prohibited by clause 8.4

#### **Code:**

**8.5 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, entitling him to deduct from any money entrusted to him in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract: Provided that the foregoing shall not be so construed so as to prohibit an estate agent from making such deduction when such money is actually paid over by him to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain.**

#### **Discussion:**

This clause prohibits an estate agent from including provisions in agreements which entitle him to deduct his commission from deposits held by him in trust. Such a deduction can only be made when the deposit is actually paid over by the estate agent to the party entitled hereto and provided that such party is in terms of the relevant agreement responsible for the payment of commission. For example, in the case of a sale where the seller is liable to pay commission the estate agent may not deduct his commission from the purchaser's deposit held by the estate agent in trust.

The commission may, however, be deducted when the deposit is paid over to the seller of his representative. (If the agreement of sale authorizes the conveyancer appointed by the seller to receive the purchase price on behalf of the seller, the conveyancer acts as the seller's representative: accordingly the estate agent will be entitled to deduct commission when handing over the deposit to the conveyancer.)

Clause 8.5 must be read in conjunction with clause 9.4 of the code which is dealt with below. The latter clause regulates the inclusion of a clause in a sale providing for the payment of a deposit to the seller prior to registration of transfer of the property in the purchaser's name. Clause 8.5 and 9.4 read together mean that, as a general rule, an estate

agent may only pay out a deposit to a seller (or his representative) on the registration of transfer of the property sold and only then may the estate agent deduct his commission from the deposit.

Clause 9.4 does, however, provide that if good cause exists the purchaser can consent to payment of the deposit to the seller prior to registration of the transfer, in which event such consent must be embodied in a separate document containing an explanation of the implications and financial risks of such payment for the purchaser. The seller, the purchaser and the estate agent in question must sign the relevant document.

Once the document has been signed, the estate agent is entitled to pay the deposit to the seller prior to registration of transfer and may then deduct his commission from such payment.

The Code does not prohibit an estate agent who has performed his mandate from demanding immediate payment of commission from the party responsible for such payment. This can be done at any stage after fulfilment of the mandate, even before registration of transfer. Moreover, although commission is usually payable by a seller the Code does not prohibit the inclusion of a clause in an agreement of sale providing that commission is payable by the purchaser. It does however prohibit an estate agent from deducting his commission from the purchaser's deposit held in trust by him.

Is this provision of the Code contravened where an agreement of sale provides:

- that the agent must pay the stipulated deposit over to an attorney;
- the attorney is in turn instructed by the parties to deduct the estate agent's commission from the deposit and to pay such commission to the estate agent after fulfilment of all suspensive conditions (i.e. prior to registration of transfer)?

While the inclusion of such a clause is not specifically prohibited by the Code an estate agent must remember that he is obliged in terms of clause 6.2.1 of the Code to explain to the purchaser, prior to him signing the agreement, the meaning and the consequences of the clause. If the estate agent is unable to explain the clause, he must refer the purchaser to a person who can do so.

The purchaser's attention must be specifically drawn to the implications of the relevant instruction contained in the agreement of sale. It must be explained to the purchaser that if he cancels the agreement of sale as a result of non-performance by the seller of his obligations, the purchaser will not be entitled to a full refund of the deposit entrusted to the attorney but only to a refund after the deduction of the agent's commission.

## **9. Trust money and interest**

**An estate agent –**

### **Code:**

**9.1 shall not solicit or influence any person entitled to trust funds in the agent's possession or under his control to make over or pay to the estate agent directly or**

**indirectly any interest on moneys deposited or invested in terms of section 32(1) or 32(2)(a) of the Act;**

**9.2 shall, before he receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that unless they agree in writing to whom interest earned on such money must be paid, the interest shall, in terms of section 32(2)(c) of the Act, accrue to the Estate Agents Fidelity Fund;**

**9.3 shall if any money is invested by him pursuant to section 32(2)(a) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the estate agent –**

**9.3.1 invest such money at the best interest rate available in the circumstances at the bank or building society where he normally keeps his trust account or accounts, and**

**9.3.2 pay the full amount of the interest which accrued on the investment to the party entitled to such interest, or the board, as the case may be, subject to any written agreement in this regard between him and such party;**

#### **Discussion:**

#### **9.1 – 9.3**

These clauses deal with interest earned on moneys held by an estate agent in trust. The Estate Agents Act provides that all interest earned on monies held by an estate agent in trust are to be paid to the Estate Agents Board for the benefit of the Estate Agents Fidelity Fund, unless the parties to an agreement of sale or lease have agreed otherwise in writing. The Code requires that an estate agent must disclose the position to the parties concerned, *before* he receives moneys in trust.

Standard agreement of sale or lease documents used by some estate agents specifically provides for payment of the interest to one of the parties to the agreement. This constitutes sufficient compliance with the provisions of clause 9.2 of the Code. An estate agent using standard documentation which is silent on this point, must specifically explain to the parties the position concerning interest earned on trust moneys (on the assumption that the moneys will be entrusted to the estate agent pursuant to the agreement in question)

In terms of clause 9.3.2 an estate agent must pay all the interest earned on trust moneys invested by him, to the party entitled to such interest in terms of the sale or lease agreement. In the absence of a provision in such sale or lease agreement regulating the payment of such interest, the full amount of interest earned must be paid to the Estate Agents Board for the benefit of the Fidelity Fund. The following application of this clause can be illustrated by the following example:

*A lease agreement negotiated by an estate agent provides that the lessee is to pay a “key breakages” deposit to the estate agent to be held in trust, interest thereon to accrue to the lessee. The lessee and the estate agent have agreed in writing that the estate agent will charge a holding fee in respect of the deposit and that this fee may be deducted from the interest to be paid to him by the estate agent.*

In the above example the estate agent would not contravene the Code by deducting his holding fee from the interest earned on the deposit, as he is acting in terms of a prior written agreement.

What is the position where the rate of interest or basis of investment is spelt out in the agreement of sale or lease, but where the estate agent, through investment of bulk funds held in trust account, is able to secure better rates? Can the estate agent in such event deduct or charge a fee for administering the bulk fund? In terms of clause 9.3.2 of the code an estate agent must pay the full amount of the interest which was earned on the investment to the party entitled to the interest, or the Estate Agents Board for the benefit of the Fidelity Fund, as the case may be, in the absence of a contrary written agreement in this regard between them.

Such party would be entitled in such case to the full interest earned on his pro rata share of the bulk investment. The estate agent may charge a fee for administering the trust account, provided this is done in terms of a written agreement concluded between him and the party entitled to the interest.

**Code:**

**9.4 shall not include, or cause to be included or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser: provided that the foregoing shall not apply if**

**(aa) good cause exists; and**

**(bb) the purchaser has prior to his signature of the contract in question, consented in writing in a document executed independently of the said contract, to such payment; and**

**(cc) such document contains an explanation of the implications and financial risks of such payment for the purchaser; and**

**(dd) such document is signed by both the seller and the purchaser and the estate agent in question.**

**Discussion:**

The application of this clause has been explained above: see the discussion on clause 8.5

**10. Confidentiality**

**Code:**

**10. No estate agent shall, without just cause, divulge to any third party any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he acted as an estate agent.**

**Discussion:**



This clause is self-explanatory. It is of minor consequence to an estate agent involved mainly in the sale of residential properties.

### **11. Vicarious responsibility**

#### **Code:**

**11. Every estate agent who is the sole proprietor of an estate agency business or a partner in a partnership or a director of a company or a member of a close corporation contemplated in paragraph (b) of the definition of “estate agent” in section 1 of the Act carrying on the business of an estate agent, shall be held responsible for any contravention of or failure to comply with this code of conduct by any other partner, director, or member or by any estate agent in the service of such sole proprietorship, partnership, company or close corporation, unless he has prior to such contravention or**

**Failure to comply taken all reasonable steps to prevent the same and could not in circumstance have prevented such contravention or failure to comply.**

#### **Discussion:**

In terms of this clause the principals of an estate agency business assume responsibility for any contravention of or a failure to comply with the code of conduct by their fellow principals and employee estate agents and imposes an obligation upon such principles to take all reasonable steps to ensure compliance with the Code by such persons.

The effect of this provision is that principals are compelled to play an active role in ensuring such compliance.

**GOVERNMENT NOTICES R 1799 OF 29 AUGUST 1986 AND R 2106 OF 3 OCTOBER 1986 ARE HEREBY REPEALED.**

**THIS NOTICE WILL COME INTO OPERATION ON 1 APRIL 1993.**

#### **Commercial Property**

Commercial and Industrial is a separate division within the SA Golden Homes organisation with different rules, regulations, and commission percentage. Your principal would either have a separate franchise agreement for commercial and industrial sales and rentals or would have special permission to do so on an ad hoc basis.

Retail and industrial properties are both considered to be commercial real estate, as opposed to ‘residential real estate. Commercial real estate refers to buildings or land that is intended to generate profit. Industrial and retail are simply sub-categories of commercial real estate.

An industrial property is defined as a property used for the actual manufacturing of something and can be considered either a factory or plant. It is usually zoned for light, medium, or heavy industry. This includes things such as warehouses, garages, distribution centres, etc.

Retail property is a commercially zoned property used solely for business purposes, the actual selling of the product, rather than its manufacture. Retail property includes retail stores, malls, shopping centres and shops all huddling nicely under the retail umbrella.

## **Annexure 66 – Commercial Property Broker**

### **PRODUCT TRAINING EXERCISES**

#### **1. OTP – Offer to Purchase**

**Use the information below and complete the relevant OTP's and present the offer in a role play activity to fellow estate agent / principal estate agent**

- a) Mr John Michael Lewis and Tracy Lewis are looking to buy a duplex townhouse in Bartlette / Bardene area in Boksburg. They viewed the ideal property with you and want to put in an offer on the property. They are first time buyers and need to get a 100% bond. The offer is for R630 000 and the commission is 7% inclusive of VAT. Occupation of the property will be on registration.

#### **The address of the property they wish to purchase:**

93 Protea Gardens

60 Julius Knight street

Bartlette

Erf 192

Section 93

#### **The seller's details:**

Wilmarie van Zyl

I.D. no.: 7110090081084

Cell no.: 083 6011 862

Email: [wilmarie.vanzyl@gmail.com](mailto:wilmarie.vanzyl@gmail.com)

Marital status: single

Income tax number: 24682469

Rates: R191.00

Levies: R930.00

#### **Bond details:**

Bond holder: SA Homeloans

Account number: 13763 987 254

Outstanding bond: R220 000

**The purchaser's details:**

John Michael Lewis

I.D. no.: 69080476890

Cell no.: 083 281 3069

Email: jmlewis@absamail.com

Marital status: COP

Date of marriage: 2002-11-07

Income tax number: 123456789

Physical address: 12 2<sup>nd</sup> Avenue, Boksburg

Postal address: PO Box 2, Boksburg, 1459

Company name: Build it

Company address: 17 Jet Road, Jet Park

Occupation: Draftsman

Period of employment: 10 years

Tracey Lewis

I.D. no.: 700112658907

Cell no.: 082 840 6574

Email: tracey@hib.co.za

Income tax number: 3693579188

Company name: Diva Fashions

Company address: Shop 10, Eastrand mall

Occupation: Store manager

Period of employment: 5 years

**Transferring Attorney**

Wilma Ewest Attorneys

011 842 7680

- b) John Dorey and Zelda Cooper are putting an offer in on a 3-bedroom house for R1 200 000. They have a R50 000 deposit emanating from the sale of their property (Erf 23, 45 Heather Court, Hughes Street, Everleigh).

**The address of the property they wish to purchase:**

28 Brink Avenue

Parkrand

Erf 170

**The seller's details:**

Pieter Johannes & Magda Gouws

I.D. no.: 501009876523

Cell no.: 071 231 0945

Office number: 011 678 5643

Email: [jpimg@mymtntnmail.com](mailto:jpimg@mymtntnmail.com)

Marital status: Married ANC

Date of marriage: 1980-12-12

**Bond details:**

Bond holder: Nedbank

Account number: 657 232 009

Outstanding bond: R190 000

**The purchaser's details:**

John Dorey

I.D. no.: 7505051287465

Cell no.: 083 234 8799

Income tax number: 556787

Office number: 011 452 3456

Email: [jd5@gmail.com](mailto:jd5@gmail.com)

Company name: Babcock

Occupation: Project supervisor

Period of employment: 5 years

Marital status: single

Zelda Cooper

I.D. no.: 7212036578765

Cell no.: 079 879 5421

Income tax number: 567498

Office number: 011 828 1242

Email: n/a

Occupation: Teacher

Period of employment: 7 years

Marital status: single

**Transferring Attorney**

Tuckers Incorporated

011 842 1214

**2. Addendum – Bond grant date**

- a) Use the information below and complete the relevant addendums and present the addendum in a role play activity to fellow estate agent / principal estate agent**

Mr John Michael Lewis and Tracy Lewis applied for a bond to purchase 30 Protea Gardens, 60 Julius Knight Street, ERF 192. There was a delay and they could not secure a bond in the 30 days. The bond originator should have an answer within the next two weeks. The owner Wilmarie van Zyl agreed to extend the bond grant date by two weeks. The bond should be granted before 30 May 2014.

**b) Addendum – Bond amount**

**Use the information below and complete the relevant addendums and present the addendum in a role play activity to fellow estate agent / principal estate agent**

John Dorey and Zelda Cooper submitted an offer on 28 Brink Avenue, Parkrand, Erf 170 for R1 250 000. The seller Pieter Johannes Gouws accepted the offer. However, they could not qualify for a 100% bond, they only qualified for R1 100 000.00. John & Zelda will pay the difference in cash. Complete the addendum to ensure that their offer is legal and binding. They agreed that their money will be paid before or on 25 April 2014.

The deposit must be paid into the transferring attorneys account:

Account Name: Tuckers Incorporated

Bank: Nedbank

Account number: 3456 9873

Branch: Durban

Branch Code: 56982

### 1. Calculations of client's net surplus income and qualify bond amount.

The following is a high-level bond qualification estimation summary. The banks / financial institutions will determine the value according to their own assessments.				
Gross Earnings:	R 44 000,00	x 30%	R	
Bond Amount Applying for :	R 750 000,00	Maximum Qualification:	R	
Interest Factor:	9%	Client Qualifies:	YES	NO
Years	20			
The following is a high level bond qualification estimation summary. The banks / financial institutions will determine the value according to their own assessments.				
Gross Earnings:	R 25 000,00	x 30%	R	
Bond Amount Applying for :	R 980 000,00	Maximum Qualification:	R	
Interest Factor:	10.5%	Client Qualifies:	YES	NO
Years	25			

The following is a high level bond qualification estimation summary. The banks / financial institutions will determine the value according to their own assessments.				
Gross Earnings:	R 60 000,00	x 30%	R	
Bond Amount Applying for :	R 1 250 000,00	Maximum Qualification:	R	
Interest Factor:	11%	Client Qualifies:	YES	NO
Years	30			

### 2. Calculate the estimated cost a purchaser will pay when purchasing a property

PRUCHASER COST ESTIMATION	
The following is an estimation of costs involved in the transfer of a property	
Purchase Price	1 580 000,00
Transfer duty	
Conveyancing fees (incl vat, deeds office, petties, Fica)	
Rates & Taxes / Levies - 6 months (R350 p.m)	
Bond registration costs, Bond Attorney Fee (incl VAT, deeds, Petties, Fica)	
Valuation / inspection fee	

<b>TOTAL TRANSFER COSTS</b>	
Plus: Electricity & water deposit	
<b>Total Costs</b>	
<b>PRUCHASER COST ESTIMATION</b> <b>The following is an estimation of costs involved in the transfer of a property</b>	
<b>Purchase Price</b>	<b>830 000,00</b>
Transfer duty	
Conveyancing fees (incl vat, deeds office, petties, Fica)	
Rates & Taxes / Levies - 6 months (R842 p.m)	
Bond registration costs, Bond Attorney Fee (incl VAT, deeds, Petties, Fica)	
Valuation / inspection fee	
<b>TOTAL TRANSFER COSTS</b>	
Plus: Electricity & water deposit	
<b>Total Costs</b>	

### 3. Calculate the estimated cost a seller will pay when selling a property

<b>SELLER COST ESTIMATION</b> <b>The following is an estimation of costs involved in the transfer of a property</b>	
<b>Selling Price</b>	<b>1 580 000,00</b>
Agents commission (7.5%)	
Outstanding Bond (R900 000)	
Bond Attorney Cancellation fees	
Bond Cancellation (10.5%)	
Electrical Clearance Certificate	
FICA	
Pro-rata Rates and Taxes / levies (R1200 p.m)	
<b>Nett selling price</b>	
<b>SELLER COST ESTIMATION</b> <b>The following is an estimation of costs involved in the transfer of a property</b>	
<b>Selling Price</b>	<b>830 000,00</b>
Agents commission (7.5%)	
Outstanding Bond (R350 000)	
Bond Attorney Cancellation fees	
Bond Cancellation (10.5%)	
Electrical Clearance Certificate	

FICA	
Pro-rata Rates and Taxes / levies (R550 p.m)	
<b>Nett selling price</b>	

**4. Calculate the loan repayment for at least 3 clients at different sales values:**

**CLIENT 1**

<b>PURCHASE PRICE</b>	<b>R 850 000</b>
<b>Interest rates</b>	<b>9%</b>
<b>Years</b>	<b>20</b>
<b>Deposit</b>	<b>R</b>
<b>Monthly repayments</b>	<b>R</b>
Total payments	R
Interest payments	R

**CLIENT 2**

<b>PURCHASE PRICE</b>	<b>R 500 000</b>
<b>Interest rates</b>	<b>11.5%</b>
<b>Years</b>	<b>20</b>
<b>Deposit</b>	<b>R</b>
<b>Monthly repayments</b>	<b>R</b>
Total payments	R
Interest payments	R

**CLIENT 3**

<b>PURCHASE PRICE</b>	<b>R 1 200 000</b>
<b>Interest rates</b>	<b>10.5%</b>
<b>Years</b>	<b>20</b>
<b>Deposit</b>	<b>R</b>
<b>Monthly repayments</b>	<b>R</b>
Total payments	R
Interest payments	R

**Additional OTP exercises**

**Scenario 1**

Lynette Roets and Markus Lizemore are making an offer on Erf 333 Homestead from Karen Webber. The street address is 19 Sherwood Avenue which is in Germiston. They are purchasing the property for R1 000 000.00 (One million). They have no deposit and are dependent upon obtaining a 100 % bond.



**Scenario 2**

Alan Bixby is purchasing 28 Stellendal Road, situated in Audas Estate in Somerset West. He has made an offer to Gilbert Zulu for R1 000 000.00 (one million). He has a cash deposit of R100 000.00 (one hundred thousand) available in his bank account. He needs to obtain a bond for the balance.

**Scenario 3**

Mrs Susan Boyle wants to make an offer on unit 16 Villa Lisa in Dawn Park to Santa Janse van Rensburg and Braam Janse van Rensburg, her son. The street address is 1 Clean Avenue. The purchase price is R1 500 000.00. The purchaser has a deposit of R 200 000.00 coming from the proceeds from the sale of her house. A bond will be required for the balance.

**Scenario 4**

Jack and Jill Malinowski have made an offer to Philip Swanepoel, for R1 200 000.00. Jack has the funds available in his savings account, but Jill is unemployed. They made the offer on a house in Helderview being Section 34 Cynaroides, Cynaroides Street in the City of Cape Town. They are making the offer in the name of their company, Birds of a Feather (Pty) Ltd.

**Scenario 5**

Piet van Vrou wants to purchase 15 Wattle Road in Primrose, Germiston from the insolvent estate of Hein Bredenkamp. He has made an offer for R1 000 000.00 but the Seller is not wanting to accept his offer. He has R150 000 available in cash which is in a 30-day call account. The balance will come from the proceeds of his house which has not yet been sold. Judy and Franco van Schalkwyk have accepted his offer.

**Scenario 6**

Edna Sison and Bill Sison are purchasing 5 Villa Bianca, 13 Sane Crescent, Edenvale from KC Estates cc represented by Corina Reuselaars. They have made an offer for R950 000.00. They have R50 000 available in their cheque account, R300 000.00 coming from a bond and the balance is sitting in a 45-day investment account with Nedbank.

**Scenario 7**

Monte Jordaan is married out of community of property to Cathy Jordaan, however, he does not want to include Cathy in this purchase. He is making an offer on 28 Acacia Road, which is in the Strand in Cape Town. He wants to offer R2 500 000.00, has R600 000.00 cash available in 60 days and needs to obtain a bond for the balance. The property belongs to Windmeul Ltd who will be represented by Antonette de Jager.

**Scenario 8**

Mark and Veronica van Zyl are getting divorced and are selling their home in Boksburg. Their address is 14 Canon Crescent, Boksburg North. They have an offer for R1 250 000.00 from Dave and Yvonne van Wyk who are purchasing via a 100% bond. The proceeds of the sale need to be split between Mr & Mrs van Zyl.

**Scenario 9**

Marichris and Brenton Bell are ringing the bell for the acceptance of their offer to Innocent Ndlovu for 23 First Avenue, Sunward Park, Boksburg. They made a low offer that they did not expect to be accepted. Their offer was for R1 000 000.00 which they want to pay for it in full from the proceeds of the sale of their home which has already been registered.

**Scenario 10**

Munashe Matopodzi wants to make an offer on 41 Middleton Road, Heildeberg, which is in Heidelberg in the Western Cape. He is making an offer for R1 400 000.00 which will come from the proceeds of his house which has already been sold and is in the process of being transferred.

**Scenario 11**

The partnership of Navara Pabst and Linda Boyd trading as The Golden Girls has made an offer to the Estate Late JS Beukes and ET Beukes whose estate is being handled by Julie Senekal from Absa Trust. Their offer is for R1 300 000.00 with a R300 000.00 cash deposit and the balance coming from a bond. Navara is married in community of property to Nikki and Linda is married out of community of property to Hennie.

**Scenario 12**

Brendon McMurray is in the process of getting divorced from Abigail. He is married in community of property but does not want to include Abigail in the sale. Bobby Lungu has made an offer for two million which Brendon has accepted. The property is located at 4 Ibis Rock, Dormel Street, Midrand. Bobby's money is sitting in a call account and he needs to give the bank 32 days' notice to release the funds. They want this deal to register as quick as possible as Brendon wants to buy another property without Abigail. Are there any possible problems with this deal?

**Scenario 13**

Alice and Tsepo Kunene have a tribal marriage. They are looking to purchase 15 Lucy Street in Rustivia, Germiston, from Jonathan Mavunda who has a COP marriage to Julia. The offer is for R1 000 000.00 and the purchasers need to obtain a 100% bond from the bank.

## Agent Income Tax

In order to trade as a Real Estate Agent and get paid a commission earning, you need to register as a provisional taxpayer. Based on this you will receive a tax directive (currently 18%), which needs to be renewed annually.

### **1. Registration with SARS**

In order to register, you will need to send the following information to your bookkeeper or register with SARS e-filing yourself.

- Your ID
- Your existing income tax number
- Your contact details – cell number, address, email, etc.

### **2. What you can claim:**

- ✓ Training (seminars, conferences NQF costs etc. including accommodation, car hire, flights etc.)
- ✓ Examination fees/ fidelity fund certificates
- ✓ Phone & internet costs
- ✓ Accounting fees (tax returns)
- ✓ Motor costs – petrol, depreciation, maintenance, insurance
- ✓ Stationery
- ✓ Subscription fees – to industry related publications
- ✓ Bank charges, interest on overdraft etc.
- ✓ Purchase of all business-related assets – computers, printers, scanners, cameras etc.
- ✓ Advertising
- ✓ Personal branding – business cards, brochures, stickers etc.
- ✓ Home office 'rental'
- ✓ Client gifts
- ✓ Client entertainment (limited)
- ✓ Research costs (i.e. CMA's, maps, building plans etc.)

- ✓ Office consumables – cleaning materials, coffee, tea etc.

### **3. Managing your expenses**

We recommend that you have a good tax consultant and learn how to manage yourself as a business

### **4. Tax Returns:**

It is compulsory as an agent to submit your tax returns regularly. Non-submission of your returns has a serious impact, not only on Golden Homes, but also for all your sellers and buyers as SARS will not allow a transfer to register if you have outstanding tax issues.

If you are working as an employee and your company deducts PAYE from your commission then they will provide you with an IRP5 which you can then submit to SARS once you have received it. remember, there are deductions that you are entitled to claim so do your homework before submitting your return or let your appointed bookkeeper do it for you.

If you are operating as an independent contractor then you need to register as a provisional taxpayer. This means you will pay tax three times a year being twice for provisional tax (August and January) and then again for annual tax once SARS has determined your taxable income, less your provisional tax paid. This balance will either be an additional amount payable or it would be a tax refund is you have overpaid provisional tax.

It is advisable to deduct a minimum of 10% from every commission you earn and pay it into some fixed deposit call account so that you have it available when tax season is upon you otherwise you could end up owing SARS and then not having the income to pay for it.

***Remember, you are your own business and all businesses need to run a good set of books and pay their tax.***

### **5. Bookkeeping**

It is expedient for you to have a simple money management account where you manage your financial life and keep track of your income and expenditure. A good, simple App is available from Old Mutual called 22seven. This is very basic and does allow you to split your payments into different packages. This App is suitable when you have a bookkeeper managing your monthly accounts and you only want to keep an eye on where your money is going.

Microsoft Money Plus for Home and Business is another option which offers a more detailed money management system. I would recommend this if you are managing your own bookkeeping and tax affairs.

There are many other App's and accounting packages available and I suggest you look into whatever suits you.

***NEVER, NEVER, NEVER, mess with SARS! Pay your taxes on time.***

## EDUCATION AND SUCCESS

As an agent and a businessperson one of your greatest expenses both in time and money should be your personal growth and education.

Getting to know your product information is important as without it you will never be effective in concluding and managing your listings and sales, however, learning life skills are dependent upon your own time and effort. No one can teach you how to present yourself, how to use your tone of voice, how to overcome objections, etc., but yourself. Books and other media, including training sessions are part of your education but the skills demonstrated are only effective if you are willing to practice and train yourself.

Your future is in your hands. How you think and operate personally will determine how far you go.

Success is not a natural phenomenon, it is a learned skill, and everything can be learned when you are willing to do so.

Our media centre has been made available to you and is designed to help you grow and sharpen your personal life and sales skills. We encourage you to use them and regularly revisit the material available and add other information to your own library.

### **1. Invest in Marketing Yourself**

Most agents are afraid to invest. They try to find ways to save as much as they can. Social Media is an excellent way to begin and to maintain marketing yourself. Do not be afraid to expose yourself to the market and keep persevering, even if at first it does not seem to be making a difference. Think about where you can invest to bring in more clients.

There's been a study that shows that agents that make close to R1 000 000 a year spend about 8% of their income on marketing. This is outside of the marketing the Company does for them.

You are your own business and as such you should budget for your personal marketing exercises.

### **2. Spreading your exposure...**

If you're not out there exposing yourself in front of customers every day, then you're losing out big time, because during good times, agents get listing from their friends and connections. However, when times are bad, you'll see a significant number of agents drop out. Good news for top achievers though!

You need to consistently have new leads calling you every day for the rest of your life as an estate agent, if you really want to succeed!

### **3. Set Clear Focused Target**

Set yourself a Geographic Target Area! It has been known, proven or even a fact that consistent top agents are all focused on one area! It need not be just targeted to just a specific area. It can also be a specific condo, a specific district, a specific project, a specific group of clients (e.g. investors) ...etc. Anyway, **you get the idea.**

#### **4. Having a system**

Are you depending on your past clients, friends, relatives or customers that you chanced upon? Never

Many agents only close a few deals a year, and when the economy turns bad, these agents are soon out of the game. Others hop from one agency to another in hope that there will be some magic in the new company that will serve them success on a silver platter.

*All I can say is, success in real estate has nothing with the external. It's all about you!*

#### **5. Standing out from the crowd**

Achievers are always finding ways to stand out from the crowd. You should always ask yourself, why would someone call me over these other agents? How can my marketing be different from others?

#### **6. Investing in New Technologies**

Achievers are always the first to test new technologies and services that can help them increase their sales. When property guru first started, many agents did not believe in it until they started hearing other colleagues getting fantastic results. Most agents want to see proof first, before they dare to take the first step in trying. These are often the late comers or late adopters. There's a reason why top achievers are heading the wave or heading the way. Simply because they try new things ahead of others. The rest just follow after!

#### **7. Recommended reading:**

Every success-oriented person can benefit from the inspiration and savvy of other successful people by listening to audio tapes. As your self-confidence grows, the negative thinkers in your life will have less influence on you. Some good 'brain stretchers' are:

##### **Motivational and inspirational classics**

- |   |                                    |                   |
|---|------------------------------------|-------------------|
| - | How to stay motivated              | Zig Zigler        |
| - | The Greatest Salesman in the World | Og Mandino        |
| - | The Richest Man in Babylon         | George S. Clayson |
| - | Think and Grow Rich                | Napoleon Hill     |
| - | Acres of Diamonds                  | Russell Conwell   |
| - | The Strangest Secret               | Earl Nightingale  |
| - | Seeds of Greatness                 | Denis Waitley     |

##### **Technical and Information**

- |   |                              |                 |
|---|------------------------------|-----------------|
| - | You Can Do It!               | Robert G. Allen |
| - | The Power of Master Planning | Robert G. Allen |
| - | The Challenge                | Robert G. Allen |
| - | Diamonds in the Rough        | Wright Thurston |
| - | Personal Power               | Anthony Robbins |
| - | Total Financial Freedom      | Jay Mitton      |
| - | The Bottom Line              | Thomas Painter  |

**Highly recommended**

- |   |   |                  |
|---|---|------------------|
| - | The Seven Habits of Highly Effective People | Stephan R. Covey |
| - | How to Win Friends and Influence People     | Dale Carnegie    |
| - | Rich Dad, Poor Dad                          | Robert Kiyosaki  |
| - | Rich Women                                  | Robert Kiyosaki  |
|   | Being Skeptical                             | Robert Kiyosaki  |
|   | Guide to Investing                          | Mike Maloney     |

**8. Video training**

Schedule time to view training by David Knox, Mike Ferry and Jordan Belfort. Set aside 30 – 60 minutes a day to listen and learn.

***(note this training is EXCLUSIVE to Golden Homes and may not be copied in any way)***



## Section 4

### ADMINISTRATION AND HUB

#### **1. Support**

Support for training and/or assistance on the Hub is available through Head Office as well as through Jonathan on [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za) or 011 282 4976.

A detailed explanation of how the HUB works and functions is available on the HUB blog site and this should always be consulted before requesting support. If it is a technical issue, then please contact the support desk and we will endeavour to rectify the situation as soon as possible.

***Note: Support is available Monday to Friday between 8:30am to 4:30pm.***

#### **2. Invoicing and Statements**

All orders placed through the HUB will be invoiced to the franchisee on the date the order was placed and will be due and payable at the end of the month in which the goods were delivered. Non-payment of the account will cause all other orders awaiting delivery to be halted until payment has been received.

#### **3. Administration Fees**

The new administration fee of R3 000.00 (excl VAT) includes the following:

Website fee

Admin fee

HUB system

Email addresses

Email backup and storage

Cloud storage

P24 leads (up to 300)

Technical support

Inhouse design

GH Advertising

This fee is subject to annual increase or should any of the suppliers of services to Golden Homes substantially increase their fees to us.

#### **4. Hub Usage and Administration**

The following information is available on the HUB and is accessible to every new agent, principal and administration staff for the training and implementation of using the HUB with their staff.

Every agent is encouraged to use the system to its fullest as it is designed to help them monitor their listings and clients. Each principal can formulate their own inhouse procedures should they wish to do so.

## **5. New Agent or Staff Member**

Every new agent will be given their own unique password to access the HUB together with their email address and email setup. This is supplied on request from the principal or their designated administrator sending an email to [support@goldenhomes.co.za](mailto:support@goldenhomes.co.za). No emails or passwords will be generated without an email request.

## Annexures

Annexure 1 – Trademark Certificate

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17095335/Annexure-1-Trade-Mark-certificate.pdf>

Annexure 2 – Code of Ethics and Business Practices

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17095555/Annexure-2-%E2%80%93-Code-of-Ethics-and-Business-Practices.pdf>

Annexure 3 – Confidentiality and Non-Disclosure

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17095603/Annexure-3-Confidentiality-and-Non-Disclosure-Document-.pdf>

Annexure 4 – SAGH Financial Projections

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17130506/Annexure-4-SAGH-financial-projection.pdf>

Annexure 5 – Residential Franchise Agreement

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17130825/Annexure-5-%E2%80%93-Residential-Franchise-Agreement.pdf>

Annexure 6 – Commercial and Industrial Franchise Agreement

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17130831/Annexure-6-%E2%80%93-Commercial-and-Industrial-Franchise-Agreement.pdf>

Annexure 7 – Franchisee Information Form

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17130837/Annexure-7-%E2%80%93-Franchisee-Information-Form.pdf>

Annexure 8 – How to reserve and estate agency name

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131115/Annexure-8-How-to-reserve-an-estate-agency-name.pdf>

Annexure 9 – How to register and estate agency entity

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131121/Annexure-9-How-to-register-and-estate-agency-entity.pdf>

Annexure 10 - How to register an estate agent

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131127/Annexure-10-How-to-register-an-Estate-Agents.pdf>

Annexure 11 – FIC New registration and Reporting

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131435/Annexure-11-%E2%80%93-FIC-New-registration-and-Reporting.pdf>

Annexure 12 – goAML Registration

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131445/Annexure-12-%E2%80%93-goAML-Registration.pdf>

## Annexure 13 – PAIA Manual

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131452/Annexure-13-%E2%80%93-PAIA-Manual.pdf>

## Annexure 14 – BEE Scorecard

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131456/Annexure-14-%E2%80%93-BEE-Scorecard.pdf>

## Annexure 15 – BEE Certificate SAGH – Example

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17131501/Annexure-15-%E2%80%93-BEE-Certificate-SAGH-%E2%80%93-Example.pdf>

## Annexure 16 – POPI Act

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132211/Annexure-16-%E2%80%93-POPI-Act.pdf>

## Annexure 17 – POPI Manual External Guide

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171331/Annexure-17-%E2%80%93-POPI-Manual-External-Guide.pdf>

## Annexure 19 – CPA Act

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132219/Annexure-19-%E2%80%93-CPA-Act.pdf>

## Annexure 20 – FICA Compliance Manual

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132225/Annexure-19-Fica-Compliance-Manual.pdf>

## Annexure 21 – FIC Act with 2017 amendments

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132230/Annexure-20-%E2%80%93-FIC-Act-with-2017-amendments.pdf>

## Annexure 22 – PAIA Act

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132237/Annexure-21-%E2%80%93-PAIA-Act.pdf>

## Annexure 22 - Practice note HOA revised 8 Sep 2014

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132242/Annexure-22-Practice-note-HOA-revised-8-Sep-2014.pdf>

## Annexure 23 - Competition Act

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17132247/Annexure-23-Competition-Act.pdf>

## Annexure 25 – Companies Act

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133406/Annexure-25-%E2%80%93-Companies-Act.pdf>

## Annexure 26 – Agent Masterfile Information Form

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171911/Annexure-26-%E2%80%93-Agent-Masterfile-Information-Form.pdf>

Annexure 27 – Employment contract agent / internal staff

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133412/Annexure-27-%E2%80%93-Employment-contract-agent-internal-staff.pdf>

Annexure 28 – Employee Handbook Example

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133417/Annexure-28-%E2%80%93-Employee-Handbook-Example.pdf>

Annexure 29 – Service Agreement Agent – Independent Contractor

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133421/Annexure-29-%E2%80%93-Service-Agreement-Agent-%E2%80%93-Independent-Contractor.pdf>

Annexure 30 – Commission Policy Example

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133425/Annexure-30-%E2%80%93-Commission-Policy-Example.pdf>

Annexure 31 – Job Description Example

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133428/Annexure-31-JOB-DESCRIPTION-Example.pdf>

Annexure 32 – SAGH IT Policy

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17133432/Annexure-32-%E2%80%93-SAGH-IT-Policy.pdf>

Annexure 33 – Commission Payment Calculator

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171335/Annexure-33-%E2%80%93-Commission-Payment-Calculator.pdf>

Annexure 34 – Sole Mandate

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17135211/Annexure-34-%E2%80%93-Sole-Mandate.pdf>

Annexure 35 – Shared Mandate

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171343/Annexure-35-%E2%80%93-Shared-Mandate.pdf>

Annexure 36 – Listing sheet

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171347/Annexure-36-%E2%80%93-Listing-sheet.pdf>

Annexure 35 – Seller Disclosure

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171339/Annexure-35-%E2%80%93-Seller-Disclosure.pdf>

Annexure 38 – Evaluation 1

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171351/Annexure-38-%E2%80%93-Evaluation-1.pdf>

## Annexure 39 - Evaluation 2

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171356/Annexure-39-Evaluation-2.pdf>

## Annexure 41 – Bond Repayment Table

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17172254/Annexure-41-%E2%80%93-Bond-Repayment-Table.png>

## Annexure 42 - Affordability Table

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17172528/Annexure-42-Affordability-Table.png>

## Annexure 43 – Bond reduction table

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171400/Annexure-43-%E2%80%93-Bond-reduction-table.pdf>

## Annexure 44 – Listing Presentation

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17140120/Annexure-44-%E2%80%93-Listing-Presentation.pdf>

## Annexure 46 – Commercial Property Broker

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171407/Annexure-46-%E2%80%93-Commercial-Property-Broker.pdf>

## Annexure 48 – Cash Threshold Report

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17140124/Annexure-48-%E2%80%93-Cash-Threshold-Report.pdf>

## Annexure 49 – FICA agent acknowledgment

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17140128/Annexure-49-%E2%80%93-FICA-agent-acknowledgment.pdf>

## Annexure 50 – FICA Compliance Manual

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17171412/Annexure-50-%E2%80%93-FICA-Compliance-Manual.pdf>

## Annexure 51 – FICA confirmation of registration

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17135215/Annexure-51-%E2%80%93-FICA-confirmation-of-registration.pdf>

## Annexure 52 – FICA estate agents memorandum

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17135220/Annexure-52-%E2%80%93-FICA-estate-agents-memorandum.pdf>

## Annexure 53 – GH Letterhead

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17140131/Annexure-53-%E2%80%93-GH-Letterhead.pdf>

## Annexure 54 – Risk management compliance program (RMCP)

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17140135/Annexure-54-%E2%80%93-Risk-management-compliance-program-RMCP.pdf>

Annexure 56 – Suspicious transactions report

<https://goldenhomes.storage.googleapis.com/wp-content/uploads/2022/05/17140139/Annexure-56-%E2%80%93-Suspicious-transactions-report.pdf>