



GUIDANCE NOTE: THE USE OF THE MANDATORY DISCLOSURE FORM IN ACCORDANCE WITH REGULATION 36 OF THE PROPERTY PRACTITIONERS ACT, 2019

1. PURPOSE

1.1 The Guidance Note provides guidance on the application of section of 67 read with regulation 36 of the Property Practitioners Act, 2019("PPA") and the regulations

2. BACKGROUND

2.1 The guidance provided by PPRA must be considered when interpreting the provisions of the PPA and the regulation. Section 67 of the PPA provides;

Section 67(1) A property practitioner must-

- (a) Not accept a mandate unless the seller or lessor of the property has provided him or her with a fully completed and signed mandatory disclosure in the prescribed form; and***
- (b) Provided a copy of the completed mandatory disclosure form to a prospective purchaser or lease of the property.***

Section 67(2) the completed mandatory disclosure form signed by all relevant parties must be attached to any agreement for the sale or lease of a property, and forms an integral part of that agreement, but if such a disclosure form was not completed, signed, or attached, the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchase.

Section 76(3) A property practitioner who fails to comply with subsection (1) may be held liable by an affected consumer.

Section 67(4) Nothing in this section prevents the Authority from taking action against a property practitioner or imposing an appropriate sanction.

Section 67(5) Nothing in this section prevents a consumer, for his or her own account, from undertaking a property inspection to confirm the state of the property before finalising the transaction.

2.2. Considering the above, Regulation 36 issued under section 67 provides for the prescribed the mandatory disclosure form to be completed by the owner, purchaser and property practitioner however excluded lessor or lessee to complete the form. The PPRA has noted the deficiencies contained in the form and is addressing same through amendment process with the relevant internal structures.

2.3. It must be noted that legally the mandatory disclosure form is prescribed as per section 67 of the PPA and regulation 36 and therefore by making an insertion into the form the property practitioner will amending the already prescribed format which is contrary to the law.

2.4 It also important to note that the PPRA has no Authority to amend the provision of the Act and nor the regulation other than following due parliamentary process.

3. GUIDANCE NOTE: USE AND APPLICATION OF THE MANDATORY DISCLOSURE FORM

3.1 Property practitioners are advised to use the mandatory disclosure form in its original format and should not change or insert new paragraph unless it is specifically provided for in the mandatory disclosure form.

3.2 For practicality, Property Practitioners are encouraged make use of their deed of sale or lease agreement to include any additional information which may have not been catered for in the mandatory disclosure form.

3.3 For practicality, upon signature by the parties namely; owner, purchaser and property practitioners may insert a date next to their signatures without amending the mandatory disclosure form in any way, form, or shape. It must remain in its original format

3.4 Insofar as the lessor or the lessee; the Property Practitioners is referred to regulation 36.1 of the PPA, which provides “***Immovable property condition report in relation to the sale of any immovable property*** “. the regulation refers to the sale of any immovable property and excludes leases however section 67 refers to both seller and lessor, based on the above, Property practitioners are advised as far as leases are concerned, they are to comply with the Act by referring and inserting those disclosures in the lease agreement.

4. COMMUNICATION CHANNEL

Any enquiry relating to the above guidance note may be submitted to reviewcompliance@theppra.org.za

Call Centre: 087 285 3222

ISSUED BY

PROPERTY PRACTITIONERS' REGULATORY AUTHORITY