



fninc

Attorneys Notaries Conveyancers

1st Floor, 2 Albury Park, Albury Road, Dunkeld West, 2196. Docex 11 Hyde Park. t +27 11 560 7100 f +27 11 759 7960

MANDATORY DISCLOSURE FORMS IN TERMS OF SECTION 67 OF THE PROPERTY PRACTITIONER ACT

Section 67 of the Property Practitioners Act (PPA) makes it mandatory for a Property Practitioner (PP) to not accept a mandate unless the seller or lessor of the property provides the PP with a fully completed and signed Mandatory Disclosure as set out in regulation 36 of the Act.

Section 67 furthermore states that the PP must provide the completed Mandatory Disclosure to a purchaser or lessee before making an offer.

The following provisions of the PPA relating to Mandatory Disclosure requires highlighting:

1. The disclosure form is a standard template as set out in regulation 36 of the PPA and deviations from the prescribed template should first be approved by the exemption committee of the PPRA, which they will do upon receipt of a completed form E1 as per section 4 of the PPA together with your proposed mandatory disclosure form.
2. The disclosure form must be signed by all parties and attached to the sale or lease agreement to form an integral part of the sale agreement.
3. A PP must retain all accounting records, correspondence, agreements, mandates, disclosure forms and other documents relating to the financing, sale, purchase or lease of property for a period of five-years in terms of section 55(1) of the PPA.
4. A PP must not accept a mandate unless the seller or lessor of the property has provided him/her with a fully completed and signed mandatory disclosure in the prescribed form.
5. A PP must provide a copy of the completed mandatory disclosure form to a prospective purchaser or lessee who intends to make an offer for the purchase or lease of a property.
6. The Act is only applicable to PP. It does not apply to private sellers, unless that private seller happens to be a developer selling stock from its own development.
7. If no such report was completed, signed or attached, the agreement must be interpreted as if no defects or deficiencies of the property were disclosed.

The sale/lease will remain valid but there will be a statutory presumption that the PP did not disclose any defects at all to the purchaser / lessee which suggests that the property is free from defects and deficiencies. This may result in a purchaser/ tenant actioning the PP for damages if a latent defect is discovered after conclusion of the transfer/lease.

If you, as a PP, are aware of any latent defects, ensure that you have captured this on the disclosure form, as you are a co-signatory to the mandatory disclosure and as such it suggests you have considered the content of the prescribed form and are also bound thereto by virtue of your signature.

www.fninc.co.za

Directors: JG Faurie (BProc LLB), HS Naude (LLB), SB Ncala (BProc), SK Bloch (LLB – Cum Laude)

Professional Assistant: D Subramony (LLB), MC Davies (LLB), M Kleynhans (LLB)

Registration number 2010/020857/21 VAT registration number 4470257165

Consider this form and your signature thereto in light of regulations 34.3.2.1 and 34.3.4.2 of your Code of Conduct.

8. The disclosure form does not affect the operation of the voetstoots clause. The purchaser will still have to prove in court that the seller or agent was:

- a. aware of the defect, and;
- b. that it was withheld or concealed from the purchaser/ lessee and;
- c. it was done deliberately and fraudulently,

to override the general protection of the voetstoots clause and succeed with a claim against a seller.

The obligation to conduct a thorough inspection of the property, either personally or with the assistance of a professional, prior to making an offer still rests with the purchaser as pertinently pointed out in paragraphs 8 and 9 of the prescribed disclosure form.

9. The purpose of the disclosure form is threefold:

- a. To protect the PP by arming him/her with some significant knowledge about the property to be advertised by him/her.
- b. To alert the purchaser to the material defects in the property and to remind the purchaser of the right to have the property inspected independently at his/her own cost prior to making an offer.
- c. To allow the seller/landlord the opportunity to apply his/her mind to the condition of the property and to disclose any of the defects referred to in the prescribed form.

10. The Disclosure form is not a warranty of any kind as clearly stated in the mandatory disclosure.

11. If the seller refuses to complete a mandatory disclosure because he/she is the executor of a deceased estate or liquidator of an insolvent estate or investor owner who has never set foot on the property, paragraph 7 in the prescribed mandatory disclosure allows for a person other than the owner to conduct an inspection of the property on the seller's authorisation and to complete the mandatory disclosure on the seller's behalf. The owner will still need to sign the mandatory disclosure form.

12. Should the PP still not be able to obtain a mandatory disclosure form, the PP's attention is drawn to the pre-emptory provisions of the PPA, disallowing the PP from accepting a mandate, which could result in the PP being held liable by an affected party or by the Regulatory Authority who may impose sanctions on the PP.

13. It would behove the agent in this position to obtain written indemnification from the purchaser or tenant from prosecution and/or liability and the assumption of all risks, associated with buying or renting a property with an incomplete mandatory disclosure, by the purchaser or tenant.

14. Note that regulation 38 considers failure to comply with Section 67 a "minor" transgression, which could result in the PP facing a R15 000 fine.

Although care has been taken to ensure the accuracy of the above information, FN Inc and its members, employees, agents and representatives cannot be held liable for any loss suffered, as a result of the use of this information.

Updated January 2024