

## **Paying a fee to sell properties in a Homeowners Association, Body Corporate or Development**

On 14 January 2022 the Regulations, which include the Property Practitioners' Code of Conduct, to the Property Practitioners Act 22 of 2019 (hereinafter referred to as "the Act") came into effect. More than 3 (three) years later, the Property Practitioners Regulatory Authority being the governing body for property practitioners (estate agents), issued a notice that the regulations regarding **Undesirable Business Practices have been temporarily suspended pending the outcome of a final non appealable court order in the case of RCC v Minister of Human Settlements and PPRA (Case Number 2024 11832)**

In terms of the ruling, property practitioners will still have to undergo the necessary training and remain responsible for payment of the cost thereof, but will not have to pay such costs until such time as the final decision is received from the court. However, the property practitioners must provide the relevant managing organization with security in the form of a written undertaking for the payment of the costs referred to above which will become immediately payable in the event that the court finds against the Property Practitioner's Regulatory Authority. Regrettably the Notice does not deal with "arrangements" which were entered into from 14 January 2022 to 2 November 2025 and thus it is uncertain whether penalties issued during such time have also been suspended. However, based on normal legal principles, it is unlikely that the PPRA will enforce any penalties until such stage as the case has been finalized.

### **35 UNDESIRABLE BUSINESS PRACTICES**

**35.1 Pursuant to the provisions of section 63 (1) of the Act, the following business practices are prohibited –**

**35.1.1 any arrangement in terms of which any party or person that directly or indirectly controls or manages any franchised business, requires that any franchise operation or outlet of such franchised business may only be marketed, promoted or disposed of through the agency of the franchisor or a property practitioner designated by the franchisor or which imposes any form of penalty in respect of a failure to do so; and**

**35.1.2 any arrangement in terms of which any party or person that directly or indirectly controls or manages any residential property development, including any body corporate or homeowners' association (the "managing organisation") –**

**35.1.3 receives money or any other reward in exchange for a benefit, advantage or other form of preferential treatment in respect of the marketing of properties in such property development;**

- 35.1.4 *requires that any property in such property development may only be disposed of through the agency of the managing organisation or a property practitioner designated by the managing organisation or which imposes any form of penalty in respect of a failure to do so;*
- 35.1.5 *requires that any property in such property development may only be disposed of to the managing organisation or a person or entity designated by the managing organisation;*
- 35.1.6 *effectively provides an advantage to any one property practitioner or group of property practitioners over and above any other property practitioners, in providing services in relation to properties in such property development; or*
- 35.1.7 *effectively excludes or disadvantages any property practitioner or group of property practitioners from being able to provide services in relation to properties in such property development.*

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