

## **PPA UPDATE / VITAL Q&A**

Now that the Property Practitioner Act as commenced, we wish to provide some feedback to some of the questions we have received. It is to be noted that this is purely our interpretation of the Act, bearing in mind what its intention appears to be and having consulted with some industry leaders:

- 1. If I have been battling with my FFC for many months already, may I also now assume to be in possession of an FFC, once 30 business days have passed after 1 February 2022?** All the Act says is that the PPRA must consider all applications within 30 working days. They can write to you and say they need another 20 business days. You may then also demand an FFC after the 30 or additional 20 working days. If no FFC arrives after 30 / the additional 20 working days, then you are deemed to be in possession of one. Having consulted with a board member, it would appear that this clause will NOT apply retrospectively. This means, that if your application was filed on or before 31 January 2022, you will remain unable to trade until you get an FFC, full stop. You will have to take the FFC to court to force them to provide you with one. Or you could possibly withdraw the old application and file a new one to circumvent this roadblock. It would appear that this deeming provision therefore only applies to applications filed as from 1 February 2022. The bad news is then, that you cannot confirm on your agreements (as is now required) that you warrant having a valid FFC, simply because 30 working days has passed after 1 February 2022, if your application was filed before then. This will only apply to applicants who lodge applications as from 1 February 2022.
- 2. What exactly must I put on letterheads etc?** The Regulations state that you must put the following on all letterheads/marketing material (this would include business cards): “Registered with the PPRA”. Nothing else. On all agreements you must insert the name of the PP/CEA, “who hereby warrants the validity of his/her Fidelity Fund Certificate as at date of signature of this agreement”. Nothing else.
- 3. Must we still do logbooks and NQF?** Until the PPRA expressly says otherwise we are advising all agents that they continue to do their Logbooks/NQF if they want to meet the 30 June 2022 deadline. We do not know at all whether this is going to be scrapped or delayed. There is difference of opinion on this between industry leaders and we would suggest you err on the side of caution until we have absolute clarity.

4. **May a NON-SA CITIZEN obtain an FFC?** The Act says that the PPRA may not issue an FFC “to any person who is not a South African citizen and does not lawfully reside in the Republic”. Contrary to the view we have held before, this is interpreted by the PPRA (we have confirmation from a board member in this regard) to mean that that only NON-SA CITIZENS who are here ILLEGALLY, may not get an FFC. Those who are here legally MAY therefor apply.
5. **May I still recommend a transferring attorney?** Yes, you may, provided this is not because of an “arrangement”, which is interpreted to mean any financial incentive – promises of gifts; fee sharing (i.e. a % of the attorney’s transfer fee); competitions where the recommendation of an attorney earns you the chance to win a prize etc. It should be based purely on good service, nothing else. This will bring the PP’s behaviour in line with the attorneys’ code of conduct which has prohibited touting (buying work) for centuries.
6. **May we still receive commission from bond originators?** Given that they also have to hold FFCs we believe that you may, yes. It is similar to an attorney who refers a transfer to another firm and is then entitled to share in the transfer fee. (Attorneys may only share fees with other attorneys in order to avoid corruption). The same applies to agents who provide leads outside of their area. If, however bond originators are removed from the PPA (as they are trying to do) then we are not too sure whether this prohibition will then apply.
7. **May we use a house sitter at a show house who is not an FFC holder?** If the purpose is literally only to open the door and keep an eye on everything then, yes. If the house sitter in any way engages with visitors and offers advice etc, then the house sitter may very well need an FFC as he/she is then entering the arena of a property practitioner.
8. **If I manage one or more short-term rental accommodations that are owned by 1) myself, or 2) a company I am a Director of, or 3) a third party, would I need an FFC?** You only need an FFC if you are holding out to do such work for gain on behalf of a third party. Only scenario 3 will require an FFC if you are doing so for gain.
9. **How are bridging finance companies involved in this, and should they now have an FFC?** Unless they are registered with the Financial Services Board, they too will need FFCs and be registered as PP’s.