

CODE OF CONDUCT

LET US FIRST LOOK AT THE MANY COMMANDMENTS OF THE PROPERTY PRACTITIONER before we turn to the typical scenarios you face daily!

You must

1. protect the interests of your client at all times to the best of your ability, with due regard to the interests of all other parties concerned.

So, whether you are the selling or listing agent – you always need to consider both seller and buyer.

Same as conveyancers. The seller is the instructing client BUT we also have a duty of care to the buyer.

2. not accept a mandate if the mandate requires specialised skill or knowledge you do not have – unless you are going to be assisted **by a person** who has the required skill or knowledge and this fact is disclosed in writing to the client.

Do not oversell yourself! Stay in your lane...

3. perform your work with such a degree of care and skill as might reasonably be expected of a property practitioner

Act with reasonable care and foresight – always put yourself in the other person's shoes and do unto others as you would have done, unto you. Simple rule. You can never go wrong.

4. not try to sell or let or assist a tenant or buyer in letting or buying if you do not have a mandate.

Effective cause – GOLDEN RULE – no mandate, no comm, even if you DID introduce the buyer and it resulted in a sale! The seller has the full right to delete any commission clause if you did not have mandate

5. not accept a sole mandate (or extend an existing one) unless

all the terms of such mandate (or extension, as the case may be)

are in writing; and

signed by the client (including by way of an electronic signature)

and

the expiry date of the mandate (or extension, as the case may be), is expressed as a calendar date.

FAILURE TO ADHERE TO THIS MEANS THE MANDATE IS NOT ENFORCEABLE!

Whilst we are on this topic – FB posts have been doing the rounds that ALL mandates MUST be in writing. FALSE. They SHOULD, but they “MUST” not. Only SOLE mandates MUST be in writing!

6. not accept a sole mandate which contains a provision whereby you as the agent may extend the mandate.

Otherwise, you have the right to just keep extending it. You may not do that.

7. not include or accept the benefit of any clause in a contract whereby a sole mandate is conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract.

In other words, if you have a buyer’s mandate, you may not agree that once the property is bought, you alone may sell it one day.

This does not include a scenario where the lessor agrees to pay commission should a tenant buy the property.

This does not confer a sole mandate.

This is simply a “deeming provision” where you are deemed to be the effective cause.

8. not make a 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.

i.e. by inflating the likely selling price.

9. not accept a sole mandate unless you have explained the legal implications **in writing** to the client.

How many of you actually know about this or actually do this?

10. **NB!!** - convey to a prospective purchaser or lessee all facts concerning such property as they are, or should reasonably be in the circumstances, within your personal knowledge and which are or could be material to a prospective purchaser or lessee thereof.

This is why the **condition report** is so important.

This document was created to protect YOU and to enable you specifically to comply with this duty!

KYC – Kill your client? NO!

KNOW YOUR CLIENT.



If your client mentions anything about **wanting to add a second dwelling or go double story or run a business from the property or subdivide later on** – THIS SHOULD IMMEDIATELY MAKE YOU STOP THE BUS and recommend that the buyer first looks at the title deed; consults with a town planner etc

YOU are not obliged at all to investigate the viability of such a wish – your job is to sell the property – but your legal duty of care would dictate that you must at least advise the buyer to do a due diligence, guided by appropriate experts.

NBNB!! To take a mandate without a property condition report means that, should the buyer discover any defects after the fact, there will be a statutory presumption, that you did not tell the buyer about any defects.

The onus of proof will rest on you if you want to allege that you did disclose any defects that you were aware of.

And if you cannot prove that you did disclose defects which you may have been aware of, you could be held liable for damages.

You therefore act at risk without a PCR.

If you do have a sale where the seller refuses to commit (EXECUTORS/ INVESTOR SELLERS especially), that is fine, but then CYA!

Add an addendum to the PCR whereby it recorded what defects (if ANY) you did share with the buyer; AND

that the buyer agrees not to hold you liable for any defects that are discovered.

Even if the seller refuses to complete the PCR you MUST still attach it EVEN IF IT IS BLANK! Why?

Because it contains the proposal at the end that a building inspector may be appointed by the purchaser to inspect the property!

11. **NBNB!!!!!!!!!!!!!!!!!!!!!!** You may ONLY inform a seller that he has obtained an offer if that offer has been signed by the offeror **in manuscript.** In other words, you may only produce an offer that has been signed in WET INK!

Stay AWAY FROM ANY form of digital/e-signatures FULL STOP!

12. You must present all offers that you receive unless your seller has instructed you otherwise and explain the advantages/disadvantages of each one.



13. You may not amend any provision of a signed offer or a written mandate or any contract of sale or lease, without the knowledge and express consent of the person you are acting for.

As such if you have **written consent from your client to make an amendment on his / her behalf you MAY.**

Best is to get that client to initial if possible.

14. You shall explain **the meaning and consequences of the material provisions of such offer or contract**, or, if you are unable to do so, refer such party to a person who can do so.

Especially - BOND CLAUSES; VOETSTOOTS; SUBJECT TO SALE OR TRANSFER OF OTHER PROPERTY; DEADLINES; 72hr clauses.

15. You must 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.

16. No estate agent shall be entitled to commission until such time as all suspensive conditions have been met.

In other words, you are ACTUALLY entitled to commission at that point already. You do not have to wait until registration unless your OTP says so.

17. PRIOR INTRO's:

You may not introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if:

you know, or have 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 the client may have to pay commission to such other estate agent.

BIG CHANGE TO OLD CODE!

You will have to work through the other agent and cut a deal for shared comm.

Should you have any questions about the Code of Conduct, you are welcome to contact us.