

14 October 2022

Dear Real Estate Partner,

EXEMPTION GRANTED BY THE PROPERTY PRACTITIONERS REGULATORY AUTHORITY ("PPRA")

On 1 February 2022, the Mortgage Origination Council of South Africa (**MORCSA**) joined with the National Property Practitioners Council (**NPPC**) in lodging an exemption application to the provisions of section 58 of the Property Practitioners Act, specifically in regard to the relationships between property practitioners and originators. This was done collaboratively as both the real estate and origination industries strongly hold views that the relationship between our industries is overwhelmingly pro-consumer and pro-competitive, and undoubtedly assists consumers to access competitive home loans while creating no obligation on the part of the consumer to use the originator's service.

Accordingly, the exemption application lodged with the PPRA sought a ruling consistent with that view, exempting estate agents (and therefore also originators) from the application of the provisions of section 58(1)(b) insofar as it relates to "*encouraging*" consumers to utilise the services of mortgage originators (including specific mortgage originators). The exemption does not apply to any other service provider, including any bank directly.

We are pleased to report that the exemption has now been granted pursuant to the Regulations to the Property Practitioners Act (**PPA**). The exemption that was granted reads as follows:

EXEMPTION

Property practitioners are exempted from the application of the provisions of section 58(1)(b) insofar as it relates to any arrangement in terms of which property practitioners encourage consumers to utilise the services of mortgage originators (including specific mortgage originators) in respect of any transaction in respect of which the property practitioner concerned was the effective cause.

The exemption is granted for the period from 01 February 2022 until 31 January 2025.

*It is a condition of the exemption that no arrangement is entered into in terms of which consumers are **obliged** to utilise the services of mortgage originators.*

It is a condition of the exemption that property practitioners as described in section 58 must disclose in writing in advance to the consumer the amount of any fee or commission that will be paid should the consumer use the services of a specific mortgage originator as a service provider.

The exemption is granted as the PPRA is satisfied that the granting of such exemption is in the interests of consumers and promotes the objects of the Property Practitioners Act, 2019.

It is declared that the exemption does not create any special rights or legitimate interests which may apply to the person so exempted.

This exemption may be amended or withdrawn, subject to the relevant provisions of the Property Practitioners Act, 2019.

DISCLOSURE OF COMMISSION REQUIREMENT

As you will note from the above, Property Practitioners are required to disclose in writing in advance to the consumer the amount of any fee or commission that will be paid should the consumer use the services of a specific mortgage originator as a service **provider that was encouraged by the property practitioner**.

Currently there is no specific regulation on how that disclosure is to be made, but we believe the underlying principle is clear, i.e. the disclosure requirement is there to ensure that the home buyer is aware that the estate agent who was the effective cause of the sale transaction, and who is now making the recommendation, will earn a fee or commission.

We accordingly suggest that the following clause be inserted into your standard "Offer to Purchase" agreements. This clause can be adapted to include specific fee / commission disclosures, or specific disclosures can be made separately, provided that they are in writing. You will note that either the fee in Rand can be disclosed or the commission percentage calculated on the home loan amount granted.

Mortgage Origination & Disclosure by the Property Practitioner

1. ***Mortgage origination is a no cost and no obligation service:*** *Mortgage originators submit home loan applications to multiple banks on behalf of home buyers. There is no cost to the home buyer in using the services of a mortgage originator, and there is no obligation on the home buyer to accept any home loan offer sourced by the mortgage originator or to use any specific mortgage originator.*
2. ***Disclosure by the Property Practitioner:*** *As required pursuant to s58 of the Property Practitioners Act, the property practitioner that is the effective cause of this sale transaction undertakes that, should the home buyer accept a home loan grant using the services of a mortgage originator that the property practitioner encouraged, and should that entitle the property practitioner to a referral fee or commission, then that fee or commission will be disclosed by the property practitioner and confirmed in writing.*

Yours sincerely,

MORCSA