

## **ANNEXURE F – Limitation of the seller's liability for defects**

### **1. Objective and introduction**

The Agency, in its endeavour to be compliant with its ethical code and its obligations in terms of the Consumer Protection Act 68 of 2008 (CPA), as well as its professional obligation to protect the seller and purchaser alike introduces this document to the seller when listing the property.

The CPA grants certain rights, guarantees and protective measures to a limited category of consumers. The purchaser will only be able to rely on the protection of the CPA if the property is sold by someone who trades in property in the normal course of his/her business (developer, speculator etc.). In transactions where the seller sells a property on an ad hoc basis, the purchaser will not have any rights in terms of the CPA. This document must be read in conjunction with clause 8 of the main agreement.

### **2. The parties' rights and obligations**

#### **2.1. Purchaser's obligation - patent defects**

The purchaser has a legal obligation to conduct a proper inspection of the property, before making an offer, to establish if there are any *patent defects*\* to the property. This report must not be interpreted to be a substitute for any inspections which the purchaser is obliged to perform in respect of patent defects. The seller is not obliged to repair any patent defects, save for those defects agreed upon in the agreement of sale and the purchaser cannot claim damages or claim a reduction in the purchase price for any patent defects after the offer has been accepted.

*\*Patent defects* to the property are those defects which can be seen with the naked eye or can be established after a reasonable inspection of the property by the purchaser. The purchaser is also obliged to familiarise him/herself with the zoning and the existence and correctness of the approved plans of the property at the local municipality.

#### **2.2. Seller's obligation - latent defects**

The seller has a legal and contractual obligation to disclose *latent defects*\*\* to the purchaser. The purpose of this document is to record the latent defects the seller or his/her nominee is aware of in writing.

*\*\*Latent defects* to the property are those defects which cannot be seen with the naked eye or cannot be established after a reasonable inspection of the property by the purchaser and that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired and/or removed and/or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the property.

### **3. Right to advice or inspections**

The purchaser is entitled to appoint an expert and/or person with technical skills and knowledge to detect defects and non-compliance aspects concerning the property at his/her own cost before making the offer.

Any report given by the expert does not absolve the purchaser from his/her obligation to inspect the property to establish if there are patent defects to the property. The report given by such a property inspector or professional person also does not discharge the obligation of the seller to disclose any latent defects that he/she is aware of.

4. **Legal status of this document**

This document forms part of a concerted effort by “the agent” and “the agency” to comply with the CPA. This document does not constitute a guarantee and/or warranty of any kind or nature made directly by the seller or by the agent representing the seller to the purchaser. This report should therefore not be regarded as a substitute for any guarantees or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the property.

5. **The estate agent’s responsibilities**

There is no legal, contractual or ethical duty on the “agent” or the “agency”, and the agent also did not create the impression that a thorough inspection of the property will be concluded on behalf of either of the parties. The seller hereby authorises the agent to provide a copy of this document to any prospective purchaser before an offer is made.

The seller undertakes to inform the agent in writing if he/she becomes aware of any additional latent defects than those disclosed herein before acceptance of any offer the agent may present.

6. **Disclosure by another person than the seller**

If the seller has not resided in the property for the past 2 (two) years and is subsequently not in a position to make a full disclosure relating the latent defects, he/she hereby give permission to the tenant to disclose any latent defects and supply any additional information regarding items 1-8 below. \* ***delete paragraph if not applicable***

7. **Statement concerning the latent defects the seller/nominee is aware of**

The undermentioned seller/s or their nominees

<p><b>Seller/ Nominee One</b></p> <p>Name: _____</p> <p>Id / Reg No: _____ and <b><i>(if applicable)</i></b> herein represented by the undersigned and duly authorised thereto being _____</p> <p><b>Seller/ Nominee Two</b></p> <p>Name: _____</p> <p>Id / Reg No: _____ and <b><i>(if applicable)</i></b> herein represented by the undersigned and duly authorised thereto being _____</p>	SELLER
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The seller or his/her nominee declares that the information provided in this document is, to the best of his/her knowledge and belief, true and correct as on date of signature hereof regarding the “property”.

<p><b>The “Property”</b></p> <p>*<u>Sectional title</u>: Unit no _____ with door no _____ together with garage _____, carport _____, parking no _____, including an undivided share in the common property of the sectional title scheme known as: _____ situated at: _____</p> <p style="text-align: center;">OR</p> <p>*<u>Full title</u>: Erf No _____ Suburb/Township _____</p> <p>Street address _____</p> <p>_____</p>	PROPERTY
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**8. Seller / Nominee declaration**

- The seller hereby declares that he/she has been the owner of the property for the past \_\_\_\_ years and resided in it since \_\_\_\_/\_\_\_\_/20\_\_\_\_
- The nominee hereby declares that he/she has leased the property for the past \_\_\_\_ years.

Seller or Nominee (tenant), if authorised	Yes	No	N/A
1. I am aware of defects to the roof.			
2. I am aware of defects to the electrical system.			
3. I am aware of defects to the plumbing systems, including any defects pertaining to the swimming pool..			
4. I am aware of defects to the heating and/or air-conditioning systems, including air filters and humidifiers.			
5. I am aware of defects to the septic system or other sanitary disposal systems.			
6. I am aware of defects to the property and/or in the basement or foundations of the property, including cracks, seepage and bulges. Other such defects include, but are not limited to, flooding, dampness or wet walls and unsafe concentrations of mould or defects in drain tiling or sump pumps.			
7. I am aware of structural defects to the property.			
8. I am aware that remodelling or refurbishment has affected the structure of the property.			
9. I am aware of any listed invasive species of vegetation on the property.			
<b>Seller only</b>			
10. I am aware of boundary line disputes, encroachments or encumbrances, including a joint driveway.			
11. I am aware that any additions and/or improvements made to and/or any erections made on the property have been done or were made only after the required consents and/or permissions and permits to do so were properly obtained.			
12. I am aware that the structure on the property has been designated as a historic building.			
13. I am aware of authoritative issues such as building/sectional plan approvals or zoning which have not been complied with.			
14. I am aware of defects in the gas installation.			
15. I am aware of defects in the electric fence.			

\_\_\_\_\_  
Purchaser 1

\_\_\_\_\_  
Purchaser 2

\_\_\_\_\_  
Agent

\_\_\_\_\_  
Seller 1

\_\_\_\_\_  
Seller 2

9. **Further details relating to any latent defects the seller is aware of:**

If the seller/nominee is aware of any *latent defects*, he/she can provide further information if he/she has personal knowledge thereof.

Additional information (if the seller/nominee has any personal knowledge on any items that is marked "yes")

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Thus done and signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
**Seller/ Nominee**

\_\_\_\_\_  
**Seller/ Nominee**

The seller confirms that he/she ☐ **does\*** ☐ **does not\*** sell immovable property in the normal course of his/her business as defined in the CPA. This differentiation will have an impact on whether the transaction between the seller and purchaser is governed by the CPA or not.

(\*Delete if not applicable)

**SELLER**

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
**Prospective purchaser 1**

\_\_\_\_\_  
**Prospective purchaser 2**

**Purchaser's acknowledgment and confirmation**

- The prospective purchaser acknowledges receipt of a copy of this statement
- The prospective purchaser confirms that he/she was informed by the agent of his/her legal obligation to conduct a proper inspection of the property to establish the presence of any patent defects before making the offer.
- The prospective purchaser confirms that he/she has been informed that he/she may employ the services of an expert to detect defects in and non-compliance aspects concerning the property at his/her own cost.

**PROPERTY**

**"The agent"** acknowledges receipt of this disclosure form.

\_\_\_\_\_  
**Agent**

\_\_\_\_\_  
**Date**

**AGENT**

***This Annexure must be read with clause 8 of the agreement of sale.***

\_\_\_\_\_  
Purchaser 1

\_\_\_\_\_  
Purchaser 2

\_\_\_\_\_  
Agent

\_\_\_\_\_  
Seller 1

\_\_\_\_\_  
Seller 2