



Website for Estate Agents
www.greenagent.co

greenSquare Investments 90 CC (CC/2008/1217)

t/a greenAGENT

Shop 3, Stadtmittie, Swakopmund

P.O. Box: 80676, Olympia, Windhoek

Email:squaresgroup@gmail.com

Cell: +264 (0)85 588 6222

Fax: 088 618 445

NAMIBIA

ESTATE AGENTS ACT 112 OF 1976

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REGULATIONS

TABLE OF CONTENTS

ACT

1. ESTATE AGENTS ACT 112 OF 1976 Page 2

REGULATIONS

2. CODE OF CONDUCT FOR ESTATE AGENTS Page 20
3. MANNER IN WHICH A CHARGE OF IMPROPER CONDUCT AGAINST ANY ESTATE
AGENT SHALL BE BROUGHT AND INVESTIGATED Page 26
4. ISSUED OF FIDELITY FUND AND REGISTRATION CERTIFICATES Page 32
5. TRUST ACCOUNT OF AN ESTATE AGENT AND INVESTMENT OF TRUST MONEYS Page 36
6. INVESTMENT OF MONEYS IN THE ESTATE AGENTS FIDELITY FUND NOT
IMMEDIATELY REQUIRED FOR THE PURPOSES OF THE FUND Page 39
6. REGULATION RELATING TO THE STANDARD OF TRAINING OF ESTATE AGENTS Page 40
7. SPECIFICATION OF SERVICES Page 42

ESTATE AGENTS ACT 112 OF 1976

TABLE OF CONTENTS

1	Definitions	4
ESTATE AGENTS BOARD		
2	Establishment of Estate Agents Board	6
3	Constitution of board	6
4	Meetings of board	7
5	Remuneration and allowances of members of board	7
6	Staff of board	8
7	Object of board	8
8	Powers of board	8
8A	Executive committee	8
8B	Disciplinary committees	8
9	Funds of board	9
10	Keeping of accounting records, drawing up of financial statements and auditing	9
11	Report by board	10
ESTATE AGENTS FIDELITY FUND		
12	Establishment and control of Estate Agents Fidelity Fund	10
13	Payments out of fund	10
14	Auditing of accounts of fund	11
15	Contributions to fund by estate agents	11
16	Applications for and issue of fidelity fund certificates	11
17	Investment of moneys in fund	12
18	Application of moneys in fund	12
19	Claims against board in respect of fund	12
20	Defences relating to claims against fund	13
21	Transfer of rights and remedies to board	13
22	Computation of claims against future additions to fund	13
23	Board may conclude insurance contracts	13
24	Application of insurance moneys	13

25	Fund exempt from insurance laws	13
26	Prohibition of rendering of services in certain circumstances	13
27	Disqualifications relating to fidelity fund certificates	14
28	Withdrawal of fidelity fund certificates	14

GENERAL PROVISIONS

29	Duty of estate agent to keep accounting records	15
30	Improper conduct by estate agents	15
31	Appeal against certain decisions of board	16
32	Trust account of and investment of trust moneys by estate agent	16
32A	17
33	Regulations	18
34	Offences and penalties	19
35	Delegation of powers of Cabinet	19
36	Application of Act to South West Africa	19
37	Short title and commencement	19

ESTATE AGENTS ACT 112 OF 1976

[ASSENTED TO 5 JULY 1976] [DATE OF COMMENCEMENT: 1 AUGUST 1977]

(Signed by the President)
as amended by
Estate Agents Amendment Act 28 of 1987
{with effect from 1 April 1988}

ACT

To provide for the establishment of an Estate Agents Board and an Estate Agents Fidelity Fund; for the control of certain activities of estate agents; and for incidental matters.

1 Definitions

In this Act, unless the context otherwise indicates-

"annual financial statements"

means a balance sheet, an income statement and any notes thereon;

"auditor"

means any person registered in terms of section 23 of the Public Accountants and Auditors Act, 1951 (Act 51 of 1951), as an accountant and auditor, and engaged in public practice as such;
[Definition of "auditor" inserted by sec 1(a) of Act 28 of 1987.]

"bank"

means a banking institution registered under the Banks Act, 1965 (Act 23 of 1965);

"board"

means the South West African Estate Agents Board established by section 2, and includes, for the purposes of subsections (2) and (3) of section 30, and section 32(7)(a)(ii) in so far as it relates to the said subsections, any disciplinary committee of the board acting pursuant to and in accordance with the provisions of section 8B;
[Definition of "board" substituted by sec 1(b) of Act 28 of 1987.]

"building society"

means a permanent building society registered under the Building Societies Act, 1965 (Act 24 of 1965);

"court"

means the Supreme Court of South West Africa or a judge of that court;
[Definition of "court" substituted by sec 1(c) of Act 28 of 1987.]

"estate agent"

- (a) means any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instructions of or on behalf of any other person-
- (i) sells or purchases immovable property or any interest in immovable property or any business undertaking or negotiates in connection there-with or canvasses or undertakes or offers to canvass a seller or purchaser therefor; or
 - (ii) lets or hires immovable property or any interest in immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor therefor; or
 - (iii) collects or receives any moneys payable on account of a lease of Immovable property or any business undertaking; or
 - (iv) renders any such other service as the Cabinet on the recommendation of the board may specify from time to time by notice in the Official Gazette;
- [Subpara (iv) substituted by sec 1(d) of Act 28 of 1987.]
- (b) for purposes of section 3(2)(a), includes any director of a company which is an estate agent as defined in paragraph (a);

- (c) for purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30 and 33, includes-
- (i) any director of a company which is an estate agent as defined in paragraph (a); and
 - (ii) any person who is employed by an estate agent as defined in paragraph (a) and performs on his behalf any act referred to in subparagraph (i) or (ii) of the said paragraph;
- (cA) for the purposes of section 7, 9(1)(a), 16, 26, 27, 28 and 33, includes any person who is employed by an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979), otherwise than as an attorney or an articulated clerk, and whose duties consist wholly or primarily of the performance of any act referred to in the subparagraph (i) or (ii) of paragraph (a) on behalf of such attorney or professional company;
[Para (cA) inserted by sec 1(e) of Act 28 of 1987.]
- (d) does not include an attorney who, on his own account or as partner in a firm of attorneys or as a member of a professional company, as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979), or an articulated clerk as defined in the said section of that Act, who performs any act referred to in paragraph (a), in the course of and in the name of and from the premises of such attorney's or professional company's practice: Provided that such an act is not performed-
- (i) in partnership with any person other than a partner in the practice of that attorney as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979);
 - (ii) through the medium of or as a director of a company other than such professional company;
- [Para (d) substituted by sec 1(f) of Act 28 of 1987.]*
- (e) for the purposes of section 30(2), (3), (4) and (5) of regulations made under section 33(1)(h), includes any person who was an estate agent at the time when he was guilty of any act or omission which allegedly constitutes improper conduct referred to in section 30;
[Para (e) added by sec 1(g) of Act 28 of 1987.]

"executive committee"

means the executive committee appointed in terms of section 8A(1);
[Definition of "executive committee" inserted by sec (1)(h) of Act 28 of 1987.]

"fidelity fund certificate"

means a fidelity fund certificate referred to in section 16; and includes for the purposes of sections 26(a), 27, 28 and 33(1)(e) and (f), a registration certificate referred to in section 16;
[Definition of "fidelity fund certificate" substituted by sec 1(i) of Act 28 of 1987.]

"fund"

the Estate Agents Fidelity Fund for South West Africa established by section 12(1);
[Definition of "fund" substituted by sec 1(j) of Act 28 of 1987.]

"immovable property"

includes-

- (a) any unit as defined in section 1 of the Sectional Titles Act, 1971 (Act 66 of 1971), and any proposed unit;
 - (b) any right to claim transfer of immovable property;
 - (c) any undivided share in immovable property;
 - (d) any interest in immovable property; other than a right or interest registered or capable of being registered under the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968);
 - (e) any share in a private company referred to in the Companies Act, 1973 (Act 61 of 1973), the whole or the major portion of whose assets consists of immovable property;
- [Definition of "immovable property" inserted by sec 1(k) of Act 28 of 1987.]*

"inspector"

means any person designated under section 6(2) as an inspector;
[Definition of "inspector" inserted by sec 1(k) of Act 28 of 1987.]

"institute"

means any single body having as its aim the promotion and maintenance of the interests of estate agents in the territory on a representative basis and which is recognised by the Cabinet for purposes of this Act;
[Definition of "institute" inserted by sec 1(k) of Act 28 of 1987.]

"Minister"

[Definition of "Minister" deleted by sec 1(l) of Act 28 of 1987.]

"prescribed"

means prescribed by regulation;

"Republic"

[Definition of "Republic" deleted by sec 1(m) of Act 28 of 1987.]

"territory"

means the territory of South West Africa;
[Definition of "territory" inserted by sec 1(n) of Act 28 of 1987.]

"this Act"

includes any regulation issued thereunder.

NAMIBIA ESTATE AGENTS BOARD

2 Establishment of Estate Agents Board

There is hereby established a juristic person to be known as the South West Africa Estate Agents Board.
[Sec 2 substituted by sec 2 of Act 28 of 1987.]

3 Constitution of board

(1) The board shall consist of seven members appointed under subsection (2) by the Cabinet.
[Subsec (1) substituted by sec 3(a) of Act 28 of 1987.]

(2) The Cabinet shall appoint as members of the board-

- (a) four estate agents nominated by the institute;

- (b) three other persons who, in the opinion of the Cabinet, are fit to serve as members of the board.

[Subsec (2) substituted by sec 3(b) of Act 28 of 1987.]

(3) If after the expiry of a period of three months from the date on which the Secretary for Economic Affairs in writing requested the institute to nominate estate agents in accordance with subsection (2)(a), the institute has failed to nominate in accordance with that subsection estate agents, the Cabinet shall appoint suitable estate agents as members of the board in the place of the estate agents he would have appointed if the institute had not so failed to so nominate estate agents.
[Subsec (3) substituted by sec 3(c) of Act 28 of 1987.]

(4) The board shall from time to time elect from among its members a chairman and vice-chairman of the board, who shall hold office for a period of one year, and, if neither the chairman nor the vice-chairman is present at any meeting of the board, the members present shall elect from among their number a person to preside at such meeting.

(5) A member of the board shall hold office for such period, but not more than three years, and on such conditions as the Cabinet may determine at the time of his appointment: Provided that any member shall, subject to the provisions of subsections (2) and (3), on the expiry of his term of office be eligible for reappointment.

(6) No person shall be appointed as a member of the board if he-

- (a) is an unrehabilitated insolvent;

- (b) has failed or is unable to comply in full with a judgment or order, including an order as to costs, given against him by a court of law in civil proceedings;
 - (c) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence to a period of imprisonment without the option of a fine; or
 - (d) is not in possession of an identity document issued under section 2 of the Identification of Persons Act, 1979 (Act 2 of 1979).
[Para (d) substituted by sec 3(d) of Act 28 of 1987.]
- (7) A member of the board shall vacate his office if he-
- (a) becomes subjected to any disqualification referred to in subsection (6);
 - (b) becomes of unsound mind;
 - (c) in the case of a member appointed in accordance with the provisions of section (2)(a) or (3), ceases to be an estate agent;
 - (d) fails to comply with a condition referred to in subsection (5) applicable to him; or
 - (e) has been absent from more than two consecutive meetings of the board without the leave of the board.
- (8) If any member of the board dies, or resigns by notice in writing addressed to the Cabinet, or ceases to be a member of the board in terms of subsection (7), the Cabinet may, with due regard to the provisions of subsections (2) and (3), appoint any person as successor to such member for the unexpired period of office of such member.

4 Meetings of board

- (1) The board shall meet for the first time at a time and place determined by the Cabinet and therefor at least once in each financial year at such times and places as the chairman or, in his absence, the vice-chairman may determine.
- (2) The chairman or, in his absence, the vice-chairman may at any time of his own accord or at the written request of not fewer than four members convene a special meeting of the board.
[Subsec (2) substituted by sec 4(a) of Act 28 of 1987.]
- (3) A notice convening a special meeting of the board shall state the purpose of such meeting.
- (4) The quorum for any meeting of the board shall be four members thereof.
[Subsec (4) substituted by sec 4(b) of Act 28 of 1987.]
- (5) The decision of a majority of the members of the board present at a meeting of the board shall constitute the decision of the board, and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.
- (6) No decision taken by the board or act performed under the authority of the board shall be invalid merely by reason of a vacancy on the board or of the fact that any person not entitled to sit as a member of the board, sat as a member of the board at the time the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the board present at the time and who were entitled to sit as members of the board.

5 Remuneration and allowances of members of board

Any member of the board who is not in the full-time employ of the State, shall be paid out of the funds of the board such remuneration and allowances as may be determined generally or in any particular case by the Cabinet in consultation with the Cabinet.

6 Staff of board

- (1) The work incidental to the carrying out of its functions by the board shall be performed under its directions and control by persons appointed by the board on such conditions and at such remuneration as the board may determine.
- (2) The board may designate persons appointed in terms of subsection (1) and any other persons whom he may deem fit, to perform the functions of inspectors under this Act subject to its control.

[Sec 6 substituted by sec 5 of Act 28 of 1987.]

7 Object of board

The object of the board shall be to maintain and promote the integrity of estate agents.

8 Powers of board

The board shall, in addition to any other power conferred upon it by this Act, have the power-

- (a) to appoint committees, of which persons other than members of the board may with the approval of the Cabinet be members, to advise the board on any matter in respect of which the board possesses any power;
- (b) to frame and publish, with the approval of the Cabinet, a code of conduct which shall be complied with by estate agents and to take such steps as may be necessary or expedient to ensure such compliance;
- (c) to encourage and promote the improvement of the standard of training of and services rendered by estate agents;
- (d) to receive any application for exemption from the provisions of this Act and to submit such application to the Cabinet;
- (e) in general to take such other steps and to perform such other acts as may be necessary or expedient in order to achieve its object.

8A Executive committee

- (1) The board may appoint two or more of its members as an executive committee of the board which, subject to the provisions of subsection (2) and the directions of the board, shall have the power to exercise all the powers and perform all the functions of the board during the periods between meetings of the board.
- (2) Except in so far as the board may direct otherwise, the executive committee shall not have the power to set aside or amend any decision of the board.
- (3) Any act performed or decision taken by executive committee shall be of force and effect except in so far as it is amended or set aside by the board at its next ensuing meeting.

[Sec 8A inserted by sec 6 of Act 28 of 1987.]

8B Disciplinary committees

- (1) The board may from time to time appoint such number of disciplinary committees as it deems fit, each consisting of at least three members, from amongst its members.
- (2) A disciplinary committee may exercise or perform any power or function which is granted or entrusted to the board by subsections (2) and (3) of section 30.
- (3) The provisions of section 4(5) and (6) shall, subject to subsection (5) of this section, apply mutatis mutandis in respect of a disciplinary committee.
- (4) The board may, subject to the provision of this section, alter the constitution of any disciplinary committee before the committee has commenced with an investigation contemplated in section 30(2).

- (5) If a vacancy occurs on a disciplinary committee after the committee has commenced with an investigation, the investigation may be proceeded with before at least two members of the committee, but if only two serving members remain, they may take any decision referred to in section 30(3) only by unanimous vote.
- (6) Any person who feels aggrieved by any decision taken by a disciplinary committee in the exercise of its power and the performance of its functions under section 30, may within one month after the disciplinary committee-
 - (a) has informed him in writing of such decision and upon payment of the prescribed fees request the disciplinary committee in writing to furnish him in writing with its reasons for such decision;
 - (b) has in accordance with paragraph (a) furnished him with its reasons for such decision and after notice to the disciplinary committee, appeal in writing to the board against such decision, and the board may thereupon-
 - (i) dismiss the said appeal;
 - (ii) if it is of the opinion that the disciplinary committee has not acted in accordance with the relevant provisions of this Act, give an order opposite to the decision of the disciplinary committee or amending the decision of the disciplinary committee;
 - (iii) refer the matter back to the disciplinary committee for further consideration; or
 - (iv) vary any penalty imposed by the disciplinary committee as it may deem fit.

[Sec 8B inserted by sec 6 of Act 28 of 1987.]

9 Funds of board

- (1) The funds of the board shall consist of-
 - (a) the prescribed levies paid to the board by estate agents;
 - (b) all moneys derived from any investments;
 - (c) all other moneys which may accrue to the board from any other source.
- (2) The board shall utilize its funds to defray the expenses incurred by the board in the performance of its functions and the exercise of its powers under this Chapter: Provided that-
 - (a) any moneys or other property donated or bequeathed to the board shall be utilized in accordance with the conditions of such donation or bequest;
 - (b) if the board-
 - (i) after an investigation has found that an estate agent failed to comply with any duty imposed upon him in terms of this Act; or
 - (ii) has incurred any liability to pay attorney and client costs in respect any proceedings instituted by it in terms of this Act for the recovery from an estate agent of any amount which is payable by him to the board or fund,
 the board may recover the costs of such investigation in so far as it relates to such duty, or the taxed amount of such attorney and client costs, as the case may be, from the estate agent concerned.

[Subsec (2) substituted by sec 7(a) of Act 28 of 1987.]

- (3) The board shall deposit all the moneys received by it under this Chapter in an account opened by it at any bank approved by the Cabinet.
- (4) The board may invest any moneys received under this Chapter and not required for immediate use in such manner as may be determined by the Cabinet.

[Subsec (4) substituted by sec 7(b) of Act 28 of 1987.]

10 Keeping of accounting records, drawing up of financial statements and auditing

- (1) The financial year of the board shall end in each year upon the date determined by the board with the approval of the Cabinet.
- (2) The board shall cause-
 - (a) to be kept in one of the official languages at an address in the territory approved by the Cabinet such accounting records as are necessary fairly to reflect and explain the state of affairs-
 - (i) of all moneys received or expended by it in terms of this Chapter;

- (ii) of all its assets and liabilities;
 - (iii) of all its financial transactions and the financial position of its business; and
- (b) as soon as possible, but not later than six months, after the end of each financial year, annual financial statements to be prepared showing, with all the appropriate particulars, the moneys received and the expenditure incurred by it during, and its assets and liabilities at the end of, the financial year.
- (3) The accounting records and financial statements referred to in subsection (2) shall be audited by an auditor appointed by the board.

11 Report by board

- (1) The board shall furnish the Cabinet with such information as he may desire from time to time in connection with functions and financial position of the board, and shall in addition submit to the Cabinet an annual report, including annual financial statements audited in accordance with section 10(3), on its functions.
- (2) Every report furnished under subsection (1) shall as soon as may be practicable be laid upon the table of the Nationals Assembly by the Cabinet.
[Subsec (2) substituted by sec 8 of Act 28 of 1987.]

ESTATE AGENTS FIDELITY FUND

12 Establishment and control of Estate Agents Fidelity Fund

- (1) There is hereby established a fund to be known as the Estate Agents Fidelity Fund for South West Africa, into which shall be paid-
- (a) all moneys paid as annual contributions in accordance with the provisions of this Chapter to or on account of the fund;
 - (b) income derived from the investment of moneys in the fund;
 - (c) all moneys recovered by or on behalf of the fund in the exercise of any right of action conferred by this Chapter;
 - (d) all moneys received on behalf of the fund from any insurance company;
 - (e) interest paid to the fund in terms of section 32(2)(c); and
 - (f) any other moneys accruing to the fund from any other source.
- (2) The fund shall be controlled and managed by the board, which shall utilise the moneys in the fund in accordance with the provisions of this Chapter.
- (3) All moneys forming part of the fund shall, until they are invested or spent in accordance with the provisions of this Chapter, be paid into a bank approved by the Cabinet, to the credit of an account to be called the Estate Agents Fidelity Fund Account.

[Sec 12 amended by sec 9 of Act 28 of 1987.]

13 Payments out of fund

Subject to the provisions of this Chapter, there shall be paid out of the fund whenever it is required-

- (a) the amount of all claims, including costs, allowed or established against the fund as hereinafter provided;
- (b) any contribution in the discretion of the board in respect of any expense incurred by any claimant in establishing his claim;
- (c) all legal expenses incurred in defending claims made against the fund or otherwise incurred in relation to the fund;

- (d) all premiums payable in respect of contracts of insurance entered into by the board in terms of section 23;
- (e) the expenses involved in the control of the fund, including remuneration and allowances to members of the board in connection with the management of the fund;
- (f) interest on and redemption of loans negotiated by the board on behalf of the fund;
- (g) any other moneys which shall or may be paid out of the fund in accordance with this Act.

14 Auditing of accounts of fund

The board shall-

- (a) cause to be kept in one of the official languages at an address in the territory approved by the Cabinet such accounting records as are necessary fairly to reflect and explain the state of affairs-
 - (i) of all moneys received or expended by or on behalf of the fund;
 - (ii) of all the assets and liabilities of the fund;
 - (iii) of all the financial transactions of the fund and the financial position of its business;
- (b) as soon as possible, but not later than six months, after the end of each financial year of the fund ending in each year on a date determined by the board with the approval of the Cabinet, cause annual financial statements in respect of the fund to be prepared showing, with all the appropriate particulars, the moneys received and expenditure incurred by the fund during, and its assets and liabilities at the end of, the financial year of the fund;
- (c) cause the accounting records and annual financial statements of the fund to be audited by an auditor appointed by the board; and
- (d) submit to the Cabinet the audited annual financial statements of the fund in respect of each financial year.

15 Contributions to fund by estate agents

Every estate agent shall, on making application in any year for a fidelity fund certificate in accordance with the provisions of section 16, in addition to the levies referred to in section 9(1)(a), pay as an annual contribution to the fund such amount as may be prescribed.

16 Applications for and issue of fidelity fund certificates

- (1) Every estate agent or prospective estate agent, excluding an estate agent referred to in paragraph (cA) of the definition of "estate agent" in section 1, shall, within the prescribed period and in the prescribed manner, apply to the board for a fidelity fund certificate, and such application shall be accompanied by the levy referred to in section 9(1)(a) and the contribution referred to in section 15.
- (2) An estate agent or prospective estate agent referred to in paragraph (cA) of the definition of "estate agent" in section 1, shall, within the prescribed period and in the prescribed manner, apply to the board for a registration certificate, and such application shall be accompanied by the levy referred to in section 9(1)(a).
- (3) If the board upon receipt of any application referred to in subsection (1) or (2) and the levy and contribution referred to in those subsections, is satisfied that the applicant concerned complies with the requirements of this Act, the board shall in the prescribed form issue to the applicant concerned a fidelity fund certificate or a registration certificate, as the case may be, which shall be valid until 31 December of the year to which such application relates.
- (4) No fidelity fund certificate or registration certificate shall be issued unless and until the provisions of this Act are complied with, and any fidelity fund certificate or registration certificate issued in contravention of the provisions of this Act shall be invalid and shall be returned to the board at its request.

[Sec 16 substituted by sec 10 of Act 28 of 1987.]

17 Investment of moneys in fund

Any moneys in the fund not immediately required for the purposes of the fund, shall be invested in the prescribed manner.

18 Application of moneys in fund

- (1) Subject to the provisions of this Chapter, the fund shall be held and applied to reimburse persons who suffer pecuniary loss by reason of-
 - (a) theft, committed after the commencement of the Estate Agents Amendment Act, 1987, by an estate agent-
 - (i) of any money or other property entrusted by or on behalf of such persons to him in his capacity as an estate agent;
 - (ii) of any moneys collected or received by him and payable in respect or on account of a contract of purchase and sale in respect of immovable property, including any agreement or intermediate transaction as defined in section 1(1) of the Sale of Land on Instalments Act, 1971 (Act 72 of 1971);
 - (iii) of any other moneys, including insurance premiums, collected or received by him and payable in respect of immovable property, any interest in immovable property or any business undertaking;

(b) the failure of an estate agent to comply with the provisions of section 32(1).
[Subsec (1) substituted by sec 11(a) of Act 28 of 1987.]

- (2) Every action against the board in respect of the fund may, subject to the provisions of this Act, be brought in the court within whose jurisdiction the cause of action arose.
- (3) No person shall have any claims against the board in respect of a theft or failure referred to in subsection (1) unless-
 - (a) the claimant has, within three months after he became aware of such theft or failure or by the exercise of reasonable care should have become aware of such theft or failure, given notice in writing to the board of such claim;
 - (b) the claimant has, within six months after a written demand was sent to him by the board, furnished to the board such proof as the board may reasonably require:

Provided that if the board is satisfied that, having regard to all the circumstances, a claim was lodged or the proof required by it was furnished as soon as practicable, it may in its discretion extend any of the periods referred to in this subsection.

[Subsec (3) amended by sec 11(b) of Act 28 of 1987.]

19 Claims against board in respect of fund

- (1) The board may, at any time after the commission of any theft, or any failure to comply with the provisions of section 32(1), in respect of which a claim against him relating to the fund arose, receive such claim and may, subject to the provisions of section 18, settle such claim: Provided that no person shall without the permission of the board commence any action against the board, unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the estate agent in respect of whom the claim arose and against all other persons liable in respect of the loss suffered by such claimant.

[Subsec (1) amended by sec 12(a) of Act 28 of 1987.]

- (2) No person shall recover from the board any amount larger than the difference between the amount of the loss suffered by him and the amount or value of all moneys or other benefits which he received or is entitled to receive out of any other source in respect of such loss.
- (3) No amount shall be paid out of the fund as interest on the amount of any judgment obtained or any claim admitted against the fund.
- (4) No right of action shall lie against the board in respect of any loss suffered by-
 - (a) the spouse of an estate agent by reason of any theft committed by such estate agent; or
 - (b) any estate agent by reason of any theft committed-

- (i) by his partner; or
 - (ii) if such estate agent is a company, by any director of such company; or
 - (iii) if he is a director of a company, by any co-director in such company; or
 - (iv) by any person employed by him as an estate agent.
- [Subpara (i) added by sec 12(b) of Act 28 of 1987.]

- (c) any person as a result of theft, or as a result of any other act or omission in connection with trust moneys held or received on account of any other person, by any person referred to in paragraph (cA) of the definition of "estate agent" in section 1 of this Act.

20 Defences relating to claims against fund

In any action against the board in respect of the fund, the board may raise any defence which could have been raised by the person against whom the claim arose.

21 Transfer of rights and remedies to board

If the board settles in full or in part any claim under this Chapter, there shall pass to the board, to the extent of such settlement, all the rights and remedies of the claimant in respect of such claim against the estate agent concerned or any other person or if applicable, in the case of the death, insolvency or other legal incapacity of such estate agent or other person, against the estate of the said estate agent or other person.

22 Computation of claims against future additions to fund

- (1) Only moneys in the fund shall be available for the satisfaction of any judgment obtained in relation to the fund or for the payment of any claim allowed by the board, but if at any time there are insufficient moneys in the fund to settle all such judgments and claims, they shall, to the extent in which they are not so settled, be charged against future accumulations of the fund.
- (2) The board may in its discretion determine the order in which the judgments and claims against the fund may be settled and may, if the moneys in the fund are insufficient to settle in full all such judgments and claims, settle any such judgment or claim *pro rata* to the amount available in the fund.

23 Board may conclude insurance contracts

- (1) The board may in its discretion enter into a contract with an insurer who carries on an insurance business in the territory whereby the board will be indemnified, to the extent and in the manner provided by such contract, against liability to pay claims under this Chapter.
- (2) Any contract referred to in subsection (1) shall be entered into in respect of estate agents generally.

24 Application of insurance moneys

No claimant having a claim against the board under this Chapter shall have-

- (a) by virtue of any contract entered into in terms of section 23 by the board with an insurer, any right of action against such insurer;
- (b) any right or claim in respect of any money paid or payable to the board by such insurer in accordance with such contract, but such money shall be paid into the fund and applied by the board in accordance with the provisions of this Chapter to settle any relevant claim.

25 Fund exempt from insurance laws

No provision of any law relating to insurance shall apply in respect of the fund.

26 Prohibition of rendering of services in certain circumstances

No person shall perform any act as an estate agent unless-

- (a) a valid fidelity fund certificate has been issued to him, and to every person employed as an estate agent by him, and, if such person is a company, to every director of such company;

- (b) he has, in respect of every person who is in his employment, taken out fidelity insurance to an amount which in the opinion of the board is sufficient.

27 Disqualifications relating to fidelity fund certificates

No fidelity fund certificate shall be issued to-

- (a) any estate agent who or, if such estate agent is a company, any company of which any director-
- (i) has at any time by reason of improper conduct been dismissed from a position of trust;
 - (ii) has at any time been convicted of an offence involving an element of dishonesty;
 - (iii) is an unrehabilitated insolvent;
 - (iv) is of unsound mind;
 - (v) has been dealt with in accordance with section 30(3)(a);
 - (vi) does not comply with the prescribed standard of training;
- (b) any estate agent who-
- (i) has failed in respect of his financial year which has expired before the date on which application for a fidelity fund certificate is made, to comply with any provision of section 29(b) or section 32(3)(b); or
 - (ii) has at any time, whether before or after the commencement of the Estate Agents Amendment Act, 1987, been guilty of any act or omission in respect of which any person had to be compensated pursuant to the provisions of section 18 from the fund or the Estate Agents Fidelity Trust Fund, established by the said section 12 before its amendment by section 9 of the last-mentioned Amendment Act, unless the estate agent has repaid the relevant amount in full to the board concerned or the board is of the opinion that satisfactory arrangements for the settlement of such amount have been made and the board concerned has confirmed such arrangements;
- (c) any estate agent who is a director of a company-
- (i) of which the fidelity fund certificate was withdrawn by the board in terms of section 28 or 30; or
 - (ii) which was prohibited in terms of section 32(6) from operating in any way on its trust, savings or other interest-bearing account referred to in section 32(2)(a),
- or any estate agent who within a period of six months before or on the date on which such fidelity fund certificate was so withdrawn or such company was so prohibited, was a director of such company:

Provided that if in respect of any person who is subject to any disqualification referred to in this section, the board is satisfied that, with due regard to all the relevant considerations, the issue of a fidelity fund certificate to such person will be in the interest of justice, the board may issue, on such conditions as the board with the concurrence of the Cabinet may determine, a fidelity fund certificate to such person when he applies therefor.

[Sec 27 substituted by sec 13 of Act 28 of 1987.]

28 Withdrawal of fidelity fund certificates

- (1) The board may withdraw a fidelity fund certificate issued to any person-
- (a) if such person or, if such person is a company, any director of such company becomes subject to any disqualification referred to in section 27;
 - (b) if such person is a company, when such a company is being wound up.
- (2) Any person who has in his possession or under his control any fidelity fund certificate withdrawn in terms of subsection (1), shall at the request of the board return such certificate to the board.
- (3) The court may, on good cause and upon application by the board or any other competent person, withdraw any fidelity fund certificate issued to any person, and thereupon such person or any other person having such certificate in his possession or under his control shall forthwith return it to the board.

[Subsecs (3) added by sec 14 of Act 28 of 1987.]

- (4) If it appears to the court that a person in respect of whom the board intends making an application under subsection (3) or section 32(6), has left the territory and that he probably does not intend to return to the territory and that his whereabouts are unknown, the court may order that service on that person of any process in connection with such application may be effected by the publication of such process in an English and an Afrikaans newspaper circulating in the districts in which the said person's last known business address, as entered in the records of the board, is situated.
[Subsecs (4) added by sec 14 of Act 28 of 1987.]

GENERAL PROVISIONS

29 Duty of estate agent to keep accounting records

Every estate agent shall in respect of his activities as such-

- (a) keep in one of the official languages at an address in the territory such accounting records as are necessary fairly to reflect and explain the state of affairs-
- (i) of all moneys received or expended by him, including moneys deposited to a trust account referred to in section 32(1) or invested in a savings or other interest-bearing account referred to in section 32(2)(a);
 - (ii) of all his assets and liabilities; and
 - (iii) of all his financial transactions and the financial position of his business;
- (b) cause the accounting records referred to in paragraph (a) to be audited by an auditor within four months after the final date of the financial year of the estate agent, which final date shall after the commencement of section 15 of the Estate Agents Amendment Act, 1987, not be altered by him without the prior written approval of the board.

[Para (b) substituted by sec 15 of Act 28 of 1987.]

30 Improper conduct by estate agents

- (1) Any estate agent shall be guilty of improper conduct if he-
- (a) receives any remuneration for any act performed by him as an estate agent from two or more than two persons whose interests are not in all respects identical in respect of the performance of such act, unless such persons agreed thereto in writing;
 - (b) fails in respect of any act performed by him as an estate agent to give proper account, within 30 days of being called upon in writing to do so, to any person having a material interest in the performance of such act;
 - (c) fails to pay any moneys due by him to the board or in respect of the fund within one month after such moneys become due;
[Para (c) substituted by sec 16(a) of Act 28 of 1987.]
 - (d) fails to furnish within such period as the board may determine such information as the board may request and reasonably require in order to exercise its powers properly under this Act;
 - (e) contravenes any provision of the code of conduct referred to in section 8(b) or fails to comply with any such provision;
 - (f) commits any deed of insolvency referred to in section 8 of the Insolvency Act, 1936 (Act 24 of 1936);
 - (g) fails to comply with any provision of section 16(1), (2) or (4), 29 or 32, or contravenes any provision of section 26 or 32A(2)(a) or (b);
[Para (g) substituted by sec 16(b) of Act 28 of 1987.]
 - (gA) in his capacity as a director of a company which is an estate agent and which fail to comply with the requirements of section 29 or 32, did not take all reasonable steps to prevent such failure; and
[Para (gA) inserted by sec 16(c) of Act 28 of 1987.]
 - (h) commits an offence involving an element of dishonesty.

- (2) The board may in the prescribed manner bring and investigate any charge of improper conduct against any estate agent.
- (3) When any estate agent is found guilty of improper conduct by the board, the board may-
 - (a) withdraw the fidelity fund certificate of such estate agent and-
 - (i) if such estate agent is a company, of every director of such company;
 - (ii) if he is a director of a company which is an estate agent, of such company; or
 - (iii) if he in partnership acts as an estate agent, of every partner in such partnership;
 - (b) impose on such estate agent a fine not exceeding R1000 which is payable to the board;
[Para (b) substituted by sec 16(d) of Act 28 of 1987.]
 - (c) reprimand such estate agent.
- (4) The acquittal or conviction of an estate agent by any court of law upon any criminal charge shall not be a bar to proceedings against him under this Act on a charge of improper conduct, notwithstanding the fact that the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted or any other offence on which he might have been convicted at his trial on the said criminal charge.
- (5) If the improper conduct with which the estate agent is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his trial and conviction by such court of law shall, upon the identification of such estate agent as the person referred to in the record as the accused, be sufficient proof of the commission by him of such offence, unless the conviction has been set aside by a superior court: Provided that the estate agent charged shall be entitled to adduce evidence to show that he was in fact wrongly convicted.

31 Appeal against certain decisions of board

Any person who feels aggrieved by any decision taken by the board in the exercise of its powers under section 8B(6), 16, 27, 28 or 30 may at any time after he became aware of such decision but not later than one month after the board-

- (a) has informed him in writing of such decision and upon payment of the prescribed fees, request the board in writing to furnish him in writing with its reasons for such decision;
- (b) has in accordance with paragraph (a) furnished him with its reasons for such decision and after notice to the board, appeal to the court against such decision, and the court may thereupon-
 - (i) dismiss the said appeal;
 - (ii) if it is of the opinion that the board has not acted in accordance with the relevant provision of this Act, give an order opposite to the decision of the board or amending the decision of the board;
 - (iii) refer the matter back to the board for further consideration; or
 - (iv) give such other order, including any order as to costs, as it may deem fit.

[Sec 31 amended by sec 17 of Act 28 of 1987.]

32 Trust account of and investment of trust moneys by estate agent

- (1) Every estate agent shall open and keep a separate trust account, which shall contain a reference to this section, with a bank and shall forthwith deposit therein the moneys held or received by him on account of any person.
[Subsec (1) substituted by sec 18(a) of Act 28 of 1987.]

- (2)
 - (a) Notwithstanding the provisions of subsection (1), any estate agent may invest in a separate savings or other interest-bearing account opened by him with any bank, building society or any institution or class of institution designated by notice in the *Official Gazette* by the Cabinet, any moneys deposited in his trust account which are not immediately required for any particular purpose.
[Para (a) substituted by sec 18(b) of Act 28 of 1987.]
 - (b) Any savings or other interest-bearing account referred to in paragraph (a), shall contain a reference to this subsection.

- (c) Interest on moneys deposited in a trust account referred to in subsection (1), and on moneys invested in terms of paragraph (a), shall, subject to the express terms of the mandate in question, which shall be in writing, be paid to the fund by the estate agent concerned.
[Para (c) substituted by sec 18(c) of Act 28 of 1987.]
- (d) The board may in the prescribed circumstances refund to an estate agent a prescribed portion of the interest paid by such estate agent to the fund in terms of paragraph (c).
[Para (d) added by sec 18(d) of Act 28 of 1987.]
- (3) Every estate agent shall-
- (a) keep separate accounting records of all moneys deposited by him in his trust account and of all moneys invested by him in any savings or other interest-bearing account referred to in subsection (2)(a);
- (b) balance his books and record relating to any account referred to in paragraph (a) at intervals of not more than one month, and cause them to be audited annually by the auditor referred to in section 29(b), within four months after the final date of the financial year of the estate agent concerned.
[Para (b) substituted by sec 18(e) of Act 28 of 1987.]
- (4) Any auditor who does an audit contemplated in subsection (3)(b), shall forthwith after completing such audit, transmit a report in the prescribed form in regard to his findings to the board, and a copy thereof to the relevant estate agent.
[Subsec (4) substituted by sec 18(f) of Act 28 of 1987.]
- (5) Notwithstanding the provisions of subsection (3), the board may, on good cause, at any time order any estate agent by notice in writing to submit to the board within a period stated in such notice, but no less than thirty days, an audited statement fully setting out the state of affairs in respect of the matters referred to section 29(a).
[Subsec (5) substituted by sec 18(g) of Act 28 of 1987.]
- (6) The court may, on good cause, upon application by the board or any other competent person, prohibit any estate agent to operate in any way on his trust, savings or other interest-bearing account referred to in subsection (2)(a) and may appoint a curator bonis to control and administer such trust, savings or other interest-bearing account, with such rights, duties and powers as the court may deem fit.
- (7) If-
- (a) the board under the provisions of this Act-
- (i) refuse to issue a fidelity fund certificate to any estate agent who applied therefor; or
- (ii) has withdrawn a fidelity fund certificate issued to any estate agent; or
- (b) any estate agent ceases to act as such; or
- (c) any estate agent fails to apply timeously for a fidelity fund certificate in respect of any year, the estate agent concerned shall wind up his trust, savings or other interest-bearing account in the prescribed manner and pay out in the prescribed manner the amount standing to the credit of any such account to the person entitled to it.
- (8) The amount standing to the credit of the trust, savings or other interest-bearing account referred to subsection (2)(a), of any estate agent, shall not form part of the assets of such estate agent or, if he was a natural person and has died or has become insolvent, of his deceased or insolvent estate.

32A

- (1) Any inspector furnished with inspection authority in writing by the board may conduct an investigation to determine whether the provisions of this Act are being or have been complied with and may, subject to subsection (5), for that purpose without giving prior notice, at all reasonable times-
- (a) enter any place in respect of which he has reason to believe that-
- (i) any person there is performing an act as an estate agent;
- (ii) it is connected with an act performed by an estate agent;

- (iii) there are books, records or documents to which the provisions of this Act are applicable;
- (b) order any estate agent or the manager, employee or agent of any estate agent-
 - (i) to produce to him the fidelity fund certificate of that estate agent;
 - (ii) to produce to him any book, record or other document in the possession or under the control of that estate agent, manager, employee or agent;
 - (iii) to furnish him, at such place and in such manner as he may reasonably specify, with such information in respect of that fidelity fund certificate, book, record or other document as he may desire;
- (c) examine or make extracts from or copies of such fidelity fund certificate, book, record or other document;
- (d) seize and retain any such fidelity fund certificate, book, record or other document to which any prosecution or charge of improper conduct under this act may relate: Provided that the person from whose possession or custody any fidelity fund certificate, book, record or other document was taken, shall at his request be allowed to make, at his own expense and under the supervision of the inspector concerned, copies thereof or extracts therefrom.
- (2) No person shall-
 - (a) fail on demand to place at the disposal of any inspector anything in his possession or under his control or on his premises which may relate to any inspection;
 - (b) hinder or obstruct any inspector in the exercise of his powers under this section;
 - (c) falsely hold himself out to be an inspector.
- (3) Any inspector shall issue a receipt to the owner or person in control of anything seized and retained under this section.
- (4) Any inspector who exercises any power in terms of this section shall, at the request of any person affected by the exercise of that power, produce the inspection authority in writing furnished to him in accordance with subsection (1).
- (5) Notwithstanding anything contained in this section, the provisions thereof, excluding subsection (2)(c), shall not apply in respect of-
 - (a) any attorney, member of a professional company or articled clerk, as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979), or any employee of any such attorney, member or company;
 - (b) any premises from which such attorney or company conducts his or its practice; and
 - (c) any book, record or document on such premises or in the possession or under the control of any person referred to in paragraph (a).

[Sec 32A inserted by sec 19 of Act 28 of 1987.]

33 Regulations

- (1) The Cabinet may after consultation with the board make regulations-
 - (a) to regulate, control or prohibit any practice followed by estate agents;
 - (b) prescribing the tariff of fees at which estate agents may act as such;
 - (c) prescribing the levies payable to the board by estate agents;
 - (d) prescribing the contributions payable to the fund by estate agents;
 - (e) prescribing the period within and the manner in which application shall be made for a fidelity fund certificate;
 - (f) prescribing the form of a fidelity fund certificate;
 - (g) prescribing the manner in which money in the fund not needed for immediate use, may be invested;

(gA) relating to the standard of training and practical experience of estate agents;
[Para (gA) inserted by sec 20(a) of Act 28 of 1987.]

(h) prescribing the manner in which a charge of improper conduct against any estate agent shall be brought and investigated;

(i) prescribing the fees payable under section 31(a);

(iA) prescribing the times at which accounting records are to be audited in accordance with section 29(b) and 32(3);
[Paras (iA) inserted by sec 20(b) of Act 28 1987.]

(iB) prescribing the portion of the interest which, and the circumstances in which such portion, may be refunded to the estate agent concerned in terms of section 32(2)(d);
[Paras (iB) inserted by sec 20(b) of Act 28 1987.]

(j) prescribing the form of the report referred to in section 32(4);

(k) prescribing the manner in which any account referred to in section 32(7) shall be wound up and the amount standing to the credit of such account shall be paid out;

(kA) prescribing the conditions on which any person may carry on his business as an estate agent from any residential premises;
[Para (kA) inserted by sec 20(c) of Act 28 of 1987.]

(l) as to, generally, any matter considered necessary or expedient to prescribe in order to achieve the objects of this Act.

(lA) Different regulations may in terms of subsection (1) be made in respect of different estate agents or categories of estate agent.
[Subsec (lA) inserted by sec 20(d) of Act 28 of 1987.]

(2)

[Subsec (2) deleted by sec 20(c) of Act 28 of 1987.]

34 Offences and penalties

Any person who contravenes or fails to comply with any provision of this Act or any order or request issued or addressed thereunder, shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

[Sec 34 substituted by sec 21 of Act 28 of 1987.]

35 Delegation of powers of Cabinet

(1) The Cabinet may upon such conditions as it may deem fit, delegate in writing to an officer in the Department of Economic Affairs any or all the powers conferred upon him by this Act, save the power to make regulations.

[Subsec (1) substituted by sec 22 of Act 28 of 1987.]

(2) The Cabinet may at any time in writing revoke any delegation under subsection (1), and the delegation of any power under this Act shall not prevent the exercise of that power by the Cabinet itself.

36 Application of Act to South West Africa

This Act shall apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.

[Sec 36 substituted by sec 23 of Act 28 of 1987.]

37 Short title and commencement

This Act shall be called the Estate Agents Act, 1976, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the Gazette.

CODE OF CONDUCT FOR ESTATE AGENTS

[GN 16 of 3 January 1996 with effect from 31/1/96]

The Estate Agents Board has under section 8(b) of the Estate Agents Act, 1976 (Act 112 of 1976), and with the approval of the Minister of Trade and Industry, framed the Code of Conduct as set out in the Schedule hereto, in substitution for the code of conduct promulgated under Government Notice AG. 98 of 1989, which is hereby withdrawn.

Schedule

1 Definitions

In this Code of Conduct a word or expression to which a meaning has been assigned in The Estate Agents Act, 1976 (Act 112 of 1976) shall bear that meaning, and unless the context otherwise indicates -

"client"

means a person who has given an estate agent a mandate, and where an estate agent has received conflicting mandates in respect of a particular immovable property or any interest in immovable property or any business undertaking, the person whose mandate has first been accepted by the estate agent, is regarded as the client;

"estate agency service"

means any service referred to in subparagraphs (i) - (iv) of paragraph (a) of the definition of "estate agent" in section 1 of the Act;

"franchise"

means an agreement, arrangement or understanding between a franchiser and a franchisee estate agent in terms of which the latter is entitled or required to operate under a trade name which is owned by, or which is associated with the business of, the franchiser or any other person;

"mandate"

means an instruction or an authority given to, and accepted by, an estate agent to render an estate agency service;

"sole mandate"

means a mandate incorporating an undertaking on the part of the person giving the mandate, not to confer a similar mandate on another estate agent before the expiry of a determined or determinable period;

"the ACT"

means the, Estate Agents Act, 1976 (Act 112 of 1976).

2 General duty to protect the public's interest

In terms of estate agents' general duty to members of the public and other persons or bodies, an estate agent -

- (a) shall not in or pursuant to the conduct of his or her business do or omit to do any act which is or may be contrary to the integrity of estate agents in general;
- (b) shall protect the interests of his or her client at all times to the best of his or her ability, with due regard to the interest of all other parties concerned;
- (c) shall not in his or her capacity as an estate agent wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent;
- (d) shall comply with both the Act and the regulations promulgated thereunder;
- (e) shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party as a front or nominee, do anything which would not be permissible for him or her to do if he or she were operating as an estate agent on his or her own account;
- (f) shall not deny equal services to any person for reason of race, creed, sex, or country of national origin;

- (g) shall not discriminate against a prospective purchaser of immovable property or an interest therein or a business undertaking on the grounds that such purchaser will not, or is unlikely to, make use of financial assistance made available by any specific person or financial institution and which the estate agent offers to arrange on his or her behalf.

3 Mandates

No estate agent shall-

- (a) offer, purport or attempt to offer any immovable property for sale or let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee thereof, unless he or she has been given a mandate to do so by the seller or lessor of the property or the duly authorised agent of such seller or lessor;
- (b) on behalf of a prospective purchaser or lessee, offer, purport or attempt to offer to purchase or lease any immovable property or an interest therein or a business undertaking or negotiate in connection therewith or canvass, or undertake or offer to canvass a seller or lessor thereof, unless he or she has been given a mandate to do so by such prospective purchaser or lessee or the duly authorised agent of such purchaser or lessee;
- (c) accept a sole mandate, or the extension of the period of an existing sole mandate, unless-
- (i) all the terms of such mandate or such extension, as the case may be, are in writing and signed by the client; and
 - (ii) the expiry date of such mandate or extension, which shall be expressed as a calendar date, is specifically stipulated in the mandate or extension, as the case may be;
- (d) accept a sole mandate which contains a provision conferring upon him or her-
- (i) an option to extend the sole mandate for a certain period after expiry of the sole mandate; or
 - (ii) a mandate to continue to render the same estate agency service referred to in the sole mandate, after expiry of the sole mandate, unless-
 - (aa) the client has prior to his or her signature of the sole mandate expressly consented in a written document, executed independently of the sole mandate, to the inclusion of such provision; and
 - (bb) such document contains an explanation of the reasons for and implications of the inclusion of such provision; and
 - (cc) such document is signed by both the client and the estate agent in question;
- (e) accept a sole mandate which also confers upon him or her a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate;
- (f) include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him or her, whereby a sole mandate is directly or indirectly conferred upon him or her to sell or let the said immovable property at any time after the conclusion of the said contract;
- (g) accept any mandate or instructions for work in respect of immovable property if his or her interest therein would compete with his or her obligations towards an existing client in respect of the same immovable property without first disclosing such interest in writing to such client;
- (h) knowingly or negligently 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) accept a mandate in respect of any immovable property if the performance of the mandate requires specialised skill or knowledge falling outside his or her field of competence, unless he or she will in the performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client;

- (j) accept a sale mandate to sell or let immovable property, unless he or she has explained in writing to the client-
 - (i) the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent; and
 - (ii) what specific obligations in respect of the marketing of the property will be assumed by the estate agent in his or her endeavour to perform the mandate, and such explanations, if contained in a printed or typed sole mandate document shall be in lettering not smaller than that generally used in the remainder of the document.

4 Duty to disclose

- (1) An estate agent shall-
 - (a) convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him or her to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his or her personal knowledge and which are or could be material to a prospective purchaser or lessee thereof;
 - (b) if he or she conducts his or her business in terms of a franchise, disclose clearly and unambiguously in all his or her correspondence, circulars, advertisements and other documentation that he or she operates in terms of a franchise and state thereon his or her name and the name of the franchiser;
 - (c) if he or she conducts his or her business under a trade name or style other than his or her own name, clearly disclose his or her full name in all correspondence, circulars and other documentation.
 - (d) not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate, which conflicts with the aforesaid mandate, has been accepted by him or her, unless he has disclosed to the person who has given the later mandate the existence of such prior mandate, and the fact that he or she will not be the estate agent's client in respect of that property;
- (2) No estate agent shall-
 - (a) purchase directly or indirectly for himself or herself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he or she has a mandate, without the full knowledge and consent of the person who conferred the mandate; or
 - (b) sell or let to any prospective purchaser or lessee who has retained his or her services any immovable property owned by him or her or in which he or she has any direct or indirect interest, without disclosing to that purchaser or lessee his or her interest in such immovable property.

5 Duty not to make misrepresentations or false statements or to use harmful marketing techniques

No estate agent shall-

- (a) in connection with any mandate given to him or her, publish or cause to be published any advertisement which could create the impression that it was published by the owner, seller or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;
- (b) in connection with his or her activities as an estate agent-
 - (i) prepare or make, or assist any other person to prepare or make, either orally or in writing, any statement which he or she knows or ought to know is false; or
 - (ii) record in any book or account or other record any information which he or she knows or ought to know is false, or keep any book, account or record containing any such information;
- (c) claim to be an expert or to have specialised knowledge in respect of any estate agency service if, in fact, he or she is not such an expert or does not have such special knowledge.
- (d) advertise or otherwise market immovable property in respect of which he or she has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;

- (e) without derogating from the generality of the foregoing-
 - (i) wilfully or negligently mislead or misrepresented in regard to any matter pertaining to the immovable property in respect of which he or she has a mandate;
 - (ii) use any harmful or misleading marketing technique or method to influence any person to confer upon him or her a mandate to render any estate agency service or to sell, purchase, let or hire immovable property, having regard to the general experience which such person has concerning property transactions and the circumstances surrounding the transaction or proposed transaction;
- (f) use any firm name or trading name in respect of his or her business which may give rise to confusion on the part of the public in respect of the nature of the business carried on by him or her;
- (g) inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he or she has been given a mandate to sell or purchase, that he or she has obtained an offer in respect of the property from a purchaser or the seller, as the case may be, unless such offer-
 - (i) is in writing;
 - (ii) has been signed by the offeror; and
 - (iii) is to the knowledge of the estate agent concerned, a bona fide offer;
- (h) affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let, unless-
 - (i) the seller or lessor, as the case may be, has given his or her written consent to do so; and
 - (ii) he or she has in fact been given a mandate to sell or let the property, or has in fact sold or let the property, as the case may be.

6 Duties in respect of offers and contracts

- (1) No estate agent-
 - (a) who has a mandate to sell or purchase immovable property shall wilfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a contract of sale in respect of such property unless the seller or purchaser, as the case may be, has instructed him or her expressly not to present such offer;
 - (b) who has a mandate to sell immovable property, may present competing offers to purchase the property, in such a manner to induce the seller to accept any particular offer without regard to the advantages or disadvantages of each offer for the seller;
 - (c) shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.
- (2) An estate agent shall-
 - (a) explain to every prospective party to any written offer or contract negotiated or procured by him or her in his or her capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he or she is unable to do so refer such party to a person who can do so;
 - (b) if he or she knows that an offer submitted by him or her as an estate agent to any party has been accepted, or has not been accepted by the expiry date thereof, forthwith notify the offeror of such fact;
 - (c) without undue delay furnish every contracting party with a copy of an agreement of sale, lease, option or mandate with which he or she is concerned as an estate agent, and also of an offer to purchase or lease if the offeror specifically requests a copy thereof.

7 Prohibition against undue influence

No estate agent shall without good and sufficient cause, either directly or indirectly, in any manner whatsoever, solicit, encourage, persuade or influence any party or potential party to a pending or a completed transaction to utilise or refrain from utilising-

- (a) the services of any particular legal practitioner, conveyancer or firm of legal practitioners;

- (b) the services or financial assistance offered by any financial institution to members of the public in general; or
- (c) the financial assistance offered to such party by any person.

8 Remuneration

No estate agent shall-

- (a) in connection with any contract of sale or lease negotiated by him or her which is subject to a suspensive condition or a resolutive condition, demand or receive directly or indirectly any remuneration, commission, benefit or gain before the suspensive condition is fulfilled or before it is established that the contract can no longer lapse through the operation of the resolutive condition, as the case may be: Provided that this provision shall not apply if-
 - (i) the party liable for the payment of the remuneration, commission, benefit or gain, in a written document executed independently of the contract in question, has expressly consented to such payment at any time, notwithstanding the fact that the contract is subject to a suspensive or resolutive condition, as the case may be; and
 - (ii) such document contains an explanation of the implications and financial risks attached to such payment; and
 - (iii) such document is signed by both such party and the estate agent;
- (b) convey to his or her client or any other party to a completed or proposed transaction in which he or she acted or acts as an estate agent, that he or she is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the board, or the institute of estate agents;
- (c) introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he or she knows, or has 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 his or her client may have to pay commission to that estate agent, or any other estate agent, should the sale or lease be concluded through his or her intervention: Provided that this provision shall not apply if the estate agent has informed his or her client of such likelihood and obtained his or her written consent to introduce such party to the property or the seller or lessor in question;
- (d) include, or cause to be included, or accept the benefit of, any clause in a mandate or in a contract of sale or lease of immovable property, providing for payment to him or her by the seller or lessor of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of the fact whether the purchaser or lessee is financially able to fulfil his or her obligations in terms of the contract: Provided that this provision shall not apply-
 - (i) the seller or lessor has, prior to his or her signature of the contract or mandate, as the case may be, consented in writing in a document executed independently of the said mandate and contract, to such payment; and
 - (ii) such document contains an explanation of the implications and financial risks attached to such payment; and
 - (iii) such document is signed by both the estate agent and the seller or lessor;
- (e) include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him or her, entitling him or her to deduct from any money entrusted to him or her in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract, but this provision shall not be construed as prohibiting an estate agent from making such deduction when such money is actually paid over by him or her to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain .

9 Trust money and interest

An estate agent-

- (a) shall not solicit or influence any person entitled to trust funds in the agent's possession or under his or her control to make over or pay to the estate agent directly or indirectly any interest on moneys deposited or invested in terms of section 32(1) or (2) of the Act;
- (b) shall, before he or she receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that, unless they agree in writing to whom interest earned on such money must be paid, the interest shall, in terms of section 32(2)(c) of the Act, accrue to the Estate Agents Fidelity Fund;
- (c) shall, if any money is invested by him or her pursuant to section 32(2)(a) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the estate agent-
 - (i) invest such money at the best interest rate available in the circumstances at a bank or building society; and
 - (ii) pay the full amount of the interest which accrued on the investment to the party entitled to such interest, or the board, as the case may be, subject to any written agreement in this regard between him or her and such party;
- (d) shall not include, or cause to be included, or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him or her, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser: Provided that this provision shall not apply if-
 - (i) the purchaser has prior to his or her signature of the contract in question, consented in writing, in a document executed independently of the said contract, to such payment; and
 - (ii) such document contains an explanation of the implications and financial risks attached to such payment; and
 - (iii) such document is signed by the seller and the purchaser and the estate agent.

10 Confidentiality

No estate agent shall, without just cause, divulge to any third party any confidential information obtained by him or her concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he or she acted as an estate agent.

11 Vicarious responsibility

Every estate agent who is the sole proprietor of an estate agency business or a partner in a partnership or a director of a company or a member of a close corporation contemplated under the definition of "estate agent" in section 1 of the Act carrying on the business of an estate agent, shall be held responsible for any contravention of or failure to comply with this code of conduct by any other partner, director, or member or by any estate agent in the service of such sole proprietorship, partnership, company or close corporation, unless he or she has prior to such contravention or failure to comply taken all reasonable steps to prevent the same and could not in the circumstances have prevented such contravention or failure to comply.

MANNER IN WHICH A CHARGE OF IMPROPER CONDUCT AGAINST ANY ESTATE AGENT SHALL BE BROUGHT AND INVESTIGATED

[published under GN R1263 of 22 June 1984, with effect from 22.6.84]

The [South African] Deputy Minister of Industries, Commerce and Tourism, acting on behalf of the Minister of Industries, Commerce and Tourism, has, after consultation with the Estate Agents Board, in terms of section 33(1)(h) of the Estate Agents Act, 1976(Act 112 of 1976), promulgated the regulations set out in the Schedule.

Schedule

1 Definitions

In these regulations any word or expression defined in the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates-

“charge”

means a charge referred to in regulation 2(1);

“complainant”

Means any person who has laid a charge against an estate agent;

“disciplinary committee”

means a disciplinary committee designated in terms of regulation 2(4)(a);

“improper conduct”

Means improper conduct as contemplated in section 30(1) of the Act;

“inquiry”

means an inquiry as contemplated in regulation 5(1);

“party”

In relation to an inquiry, means the respondent or the pro forma prosecutor;

“penalty”

means any action contemplated in section 30(3) of the Act;

“pro forma prosecutor”

means any person appointed in terms of regulation 2(4)(b);

“the Act”

means the Estate Agents Act, 1976(Act 112 of 1976);

“the manager”

means the manager or the secretary of the board;

“the respondent”

means an estate agent against whom a charge has been laid.

- 2
- (1) Any person, including any member of the board or the manager, who feels aggrieved by an act performed by an estate agent or by an omission of an estate agent to perform any act may, by way of an affidavit containing the particulars referred to in sub-regulation (2), lay a charge of improper conduct with the board against such estate agent: Provided that no such affidavit but merely a written notification shall be required in the case of a charge [excluding a charge under section 30(1)(e) of the Act] laid by a member of the board or the manager.
 - (2) An affidavit referred to in sub-regulation (1) shall contain the following particulars, namely:
 - (a) The full name and address of the complainant and of the estate agent concerned;

- (b) a full exposition of the act or omission with which such estate agent is charged;
 - (c) any other fact or information relating to the charge.
- (3) If a charge is laid against a respondent, the manager shall within 30 days after the laying of such charge-
- (a) notify the respondent in writing that such charge has been laid against him;
 - (b) furnish the respondent with a copy of these regulations;
 - (c) inform the respondent in writing of the nature of the act or omission with which he is charged;
 - (d) invite the respondent in writing to furnish the board with an affidavit setting forth his comments on such charge, within a specified period, being not less than 21 days after the date on which he is so invited;
 - (e) inform the respondent in writing that he is under no obligation to make comments envisaged in paragraph (d) and that any comments furnished to the board may be used as evidence against him at any inquiry; and
 - (f) invite the respondent in writing to furnish the board within a specified period, being not less than 21 days after the date on which he is so invited, with an affidavit setting forth any mitigating circumstances if he intends admitting the charge in terms of regulation 4 or intends pleading guilty to the charge in terms of regulation 9(1).
- (4) The board-
- (a) may from time to time appoint such disciplinary committees as it deems fit, which disciplinary committees shall have the power to inquire into and decide upon any charge in terms of these regulations;
 - (b) shall be entitled to appoint a competent person to exercise and perform the powers and duties of a proforma prosecutor in terms of these regulations.
- (5) A disciplinary committee shall appoint one of its members as chairman of such committee.
- (6) The proceedings before a disciplinary committee shall be recorded by a staff member of the board.
- (7) A disciplinary committee may for the proper performance of its functions in terms of these regulations obtain such legal or other advice and consult such persons as it may deem necessary or expedient.
- 3 (1) The manager shall deliver to the disciplinary Committee for its attention, an affidavit referred to in regulation 2(1) , 2(3)(d) and (f), if any.
- (2) If a disciplinary committee, having considered the contents of an affidavit referred to in regulation 2(1) or 2(3)(d), is of the opinion that-
- (a) the act or omission with which the respondent is charged, does not constitute improper conduct by the respondent; or
 - (b) there is no reasonable prospect of proving the charge against the respondent.
- It shall forthwith notify the respondent as well as the complainant that the act or omission with which the respondent has been charged does not constituted improper conduct by the respondent or that there is no reasonable prospect of proving the charge against the respondent, as the case may be, and that the investigation of the charge shall not be proceeded with.
- 4 Should a respondent in his comments, referred to in regulation 2(3)(d), admit that he performed or failed to perform any act as charged and the disciplinary committee is satisfied that such act or omission constitutes improper conduct by the respondent, the disciplinary committee shall after considering the contents of the affidavit if any, referred to in regulation 2(3)(f), determine the penalty to be imposed and shall by notice in writing, sent by post or delivery to the respondent-

- (a) notify the respondent and the complainant that it finds the respondent guilty of improper conduct; and
 - (b) notify the respondent and the complainant of the penalty it has imposed on the respondent.
- 5
- (1) In the event of a charge not being disposed of in terms of regulation 3 or 4, a disciplinary committee shall summon the respondent to appear before it at a time and place specified in the summons for the purpose of an inquiry and to produce at such inquiry any book or other document specified in the summons which the respondent has in his possession or custody or under his control or which is suspected or believed to be in his possession or custody or under his control and which has a bearing on such charge.
 - (2) A summons referred to in sub-regulation (1), shall be-
 - (a) as nearly as possible in the form specified in Schedule A;
 - (b) signed by the manager;
 - (c) served on the respondent by delivering or tendering it to the respondent personally or by sending it to the respondent by prepaid registered post at his address referred to in section 29(a) of the Act, or at his address last known to the board.
- 6
- (1) A disciplinary committee may of its own accord or at the instance of the respondent of the pro forma prosecutor summon any person to be present at an inquiry in order to give evidence and to produce at such inquiry any book or other document which such person has in his possession or custody or under his control or which is suspected or believed to be in his possession or custody or under his control and which has a bearing on the charge which is the subject matter of such inquiry.
 - (2) A summons referred to in sub-regulation (1) shall be-
 - (a) as nearly as possible in the form specified in Schedule B;
 - (b) signed by the manager;
 - (c) served on the person concerned by delivering or tendering it to him personally or by sending it to him by prepaid registered post at his business address or at his address last known to the board.
 - (3) The board shall pay a witness summoned and present at an inquiry, such fees as the board may from time to time determine generally, or in any particular case, subject to the board's right to disallow such payment or any portion thereof if, in the opinion of the disciplinary committee, such witness's evidence or presence at the inquiry was unsatisfactory.
- 7
- If the respondent, after the summons referred to in regulation 5(1) has been served on him but before the commencement of the inquiry, notifies the disciplinary committee in writing that he pleads guilty to the charge as set out in such summons and the disciplinary committee is satisfied that the charge against the respondent can be disposed of without the holding of an inquiry, the disciplinary committee shall in writing notify the respondent and the complainant and any person on whom a summons has been served in terms of regulation 6, that the inquiry in question will no longer be held, and thereupon the provisions of regulation 4 shall mutatis mutandis apply in respect of such charge.
- 8
- (1) If any party proposes adducing evidence at the inquiry by way of an affidavit, he may at least 21 days before the commencement of the inquiry, deliver or send by registered post copies of such affidavit to the other party and the manager for transmission to the disciplinary committee, together with a notice requesting such other party, if he objects to such affidavit being admitted as evidence at the inquiry, to furnish him in writing with such objection at least seven days before the commencement of the inquiry and to lodge a copy thereof with the disciplinary committee.
 - (2) If any party has objected in terms of sub-regulation (1), the affidavit in question shall not be admitted as evidence at the inquiry unless such party agrees at the inquiry to such affidavit being tendered as evidence.
 - (3) If any party has not objected in terms of sub-regulation (1), the affidavit in question shall be admitted as evidence at the inquiry unless such party satisfies the disciplinary committee that he had sound reasons for not so objecting and that same should not be admitted as evidence.

- (4) An affidavit not delivered or sent to the other party and not lodged with the disciplinary committee in terms of sub-regulation (1) shall be admitted as evidence at the inquiry only if such party agrees and the pro forma prosecutor agrees at the inquiry to such affidavit being tendered as evidence.
- 9
- (1) At the commencement of an inquiry the chairman of the disciplinary committee shall read the charge as set out in the summons, referred to in regulation 5(1), to the respondent and shall ask the respondent to plead guilty or not guilty thereto.
 - (2) If the respondent refuses or fails to plead to the charge at the inquiry it shall be recorded that he pleaded not guilty, and there upon the inquiry shall be proceeded with as if the respondent had in fact pleaded not guilty to the charge.
 - (3) A respondent shall be entitled to the assistance of his legal adviser at an inquiry.
- 10
- (1) Subject to the provisions of these regulations, evidence, at an inquiry shall be given orally or by way of affidavits.
 - (2) The chairman of a disciplinary committee shall administer an oath to or accept an affirmation from any person called to give evidence orally at an inquiry.
- 11
- Whenever the respondent has pleaded guilty to a charge in terms of regulation 9(1)-
- (a) and the disciplinary committee is satisfied that the respondent is guilty of improper conduct, the disciplinary committee with the concurrence of the respondent may decide not to hear or accept any further evidence in connection with the charge;
 - (b) the disciplinary committee may and at the instance of the respondent shall hear or accept further evidence in connection with the charge, irrespective of whether or not the disciplinary committee is satisfied that the respondent is guilty of improper conduct.
- 12
- (1) Whenever the respondent has pleaded not guilty to the charge in terms of regulation 9(1) or whenever the disciplinary committee has decided to hear or accept further evidence in connection with the charge in terms of regulation 11(b), the disciplinary committee shall give the pro forma prosecutor the opportunity of adducing evidence in support of the charge.
 - (2) After the pro forma prosecutor has adduced evidence in support of the charge in terms of sub-regulation (1), the disciplinary committee shall give the respondent the opportunity to adduce evidence in his defence against the charge.
 - (3) The disciplinary committee may at any stage of the inquiry call any person except the respondent, unless he has already given evidence orally at the inquiry or unless an affidavit by him has already been admitted as evidence, as a witness and examine him or, if he has already given evidence, re-examine him.
 - (4) After the respondent has adduced evidence in his defence against the charge in terms of sub-regulation (2), the disciplinary committee may allow the pro forma prosecutor to adduce evidence in relation to a matter raised for the first time in the evidence for the respondent, and thereafter shall give the respondent the opportunity to adduce evidence in rebuttal of the evidence so adduced by the pro forma prosecutor.
 - (5) A witness called by the pro forma prosecutor may be cross-examined by the respondent and may also be examined by the disciplinary committee.
 - (6) A witness called by the respondent may be cross-examined by the pro forma prosecutor and may also be examined by the disciplinary committee.
 - (7) A witness called by the disciplinary committee may be cross-examined by the respondent and by the pro forma prosecutor.
 - (8) After a witness has been cross-examined he may be re-examined by the party who called him but only in respect of a matter revealed for the first time in his cross-examination or to explain any matter raised in his cross-examination.

- 13 A disciplinary committee may at any time, for sufficient cause, adjourn the inquiry to a date determined by it.
- 14 (1) After all the evidence in connection with a charge has been adduced or if the disciplinary committee has decided in terms of regulation 11(a) not to hear or accept any further evidence in connection with the charge, the pro forma prosecutor may address the disciplinary committee and thereafter the respondent may address the disciplinary committee.
- (2) The pro forma prosecutor may reply on any matter of law raised by the respondent in his address and may with the concurrence of the disciplinary committee reply on any matter of fact raised by the respondent in his address.
- 15 (1) After the pro forma prosecutor and the respondent have addressed the disciplinary committee in terms of regulation 14, the disciplinary committee shall consider the evidence submitted at the inquiry, in order to come to a decision whether the respondent should be convicted of improper conduct as specified in the charge, or acquitted and shall be entitled to adjourn the inquiry for the purpose of coming to such decision.
- (2) A decision made by a disciplinary committee in terms of sub-regulation (1) shall be conveyed to the respondent and the complainant by the chairman immediately after the hearing, either verbally or by registered post.
- 16 (1) If the disciplinary committee has decided in terms of regulation 15(1) that the respondent [should] be convicted of improper conduct, it shall give-
- (a) the pro forma prosecutor the opportunity of proving whether the respondent has previously been convicted of improper conduct by the board, or by a disciplinary committee; and
- (b) the respondent the opportunity of adducing evidence in mitigation and the respondent and the pro forma prosecutor the opportunity of addressing it in connection with the penalty which the disciplinary committee should impose upon the respondent.
- (2) A certificate signed by the manager and purporting to be an extract from the minutes of the proceedings of the board or a disciplinary committee stating the particulars of the charge brought against the respondent, the conviction of the respondent by the board or a disciplinary committee, and the penalty imposed upon the respondent by the board or a disciplinary committee, shall, upon its mere production by the pro forma prosecutor to a disciplinary committee, be sufficient proof that the respondent had previously been convicted of improper conduct until the respondent proves that he had not been so convicted.
- (3) After the provisions of sub-regulation (1) have been complied with, the disciplinary committee shall convey to the complainant and the penalty imposed upon the respondent.
- 17 If the respondent has not filed an appeal in terms of section 8B or 31 of the Act, against his conviction on a charge of improper conduct or the imposition of a penalty in terms of these regulations, the board may publish a notice in the Gazette in both official languages announcing the conviction of the respondent of improper conduct, as well as the specific section of the Act or the specific regulation promulgated in terms of the Act and in pursuance of which the respondent was convicted as well as the penalty imposed upon him.
- 18 (1) Any person who requests the board in writing to furnish him with reasons for a decision of a disciplinary committee shall pay an amount of N\$10-00 to the board and such request shall be made to the manager within 30 days of the date of such decision.
- (2) The board shall be entitled to make such charge for the furnishing of a copy of the record of the proceedings of an inquiry, as the board may determine from time to time.
- 19 No person-
- (a) having been duly summoned to be present at an inquiry, shall without lawful excuse fail so to appear;
- (b) having been called as a witness at an inquiry, shall without lawful excuse refuse to be sworn or to make an affirmation or to produce any book or other document or to answer any question which he may be required to produce or answer.
- 20 Government Notice R1471 of 29 July 1977, R446 of 12 March 1982 and R1895 of 3 September 1982 are hereby withdrawn.

Schedule A
ESTATE AGENTS ACT, 1976 (Act 112 OF 1976)
Form of summons referred to in regulation 5(2)

To.....

You are hereby summoned to appear on at h at
before a disciplinary committee of the Estate Agents Board for the purposes of an inquiry into improper conduct by you and to produce the following books and documents at the said time and place

.....
.....
The charge against you which will be inquired into at the said time and place and of which you have already been advised in writing by the Board on is the following

.....
If you fail, without lawful excuse, to be present at the time and place stated above, you will be guilty of an offence in terms of section 34 of the Estate Agents Act, 1976, and liable on conviction to a fine not exceeding N\$ 5000-00 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Signed at.....on.....

.....
Manager
Estate Agents Board

Schedule B
ESTATE AGENTS ACT, 1976 (Act 112 OF 1976)
Form of summons referred to in regulation 6(2)

To.....

You are hereby summoned to appear on.....at.....h at.....
before a disciplinary committee of the Estate Agents Board for the purposes of an inquiry into improper conduct by

.....
.....
and to produce the following books and documents at the said time and place

.....
If you fail, without lawful excuse, to be present at the time and place stated above, you will be guilty of an offence in terms of section 34 of the Estate Agents Act, 1976, and liable on conviction to a fine not exceeding N\$ 5000-00 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Signed at.....on.....

.....
Manager
Estate Agents Board

ISSUED OF FIDELITY FUND AND REGISTRATION CERTIFICATES

[published under GN R1798 of 29 August 1986, with effect from 29.8.86]

as corrected by
GN R2106 of 3 October 1986

and as amended by
AGN 97 of 1 November 1989

and as amended by GN 222/1996

The [South African] Deputy Minister of Finance and of Trade and Industry, acting on behalf of the Minister of Trade and Industry has, after consultation with the Estate Agents Board, in terms of section 33 of the Estate Agents Act, 1976 (Act 112 of 1976), made the regulations contained in the Schedule.

Schedule

1 In these regulations 'the Regulations ' means the regulations promulgated by Government Notice R1798 of 1986, corrected by Government Notice R2106 of 1986 and amended by Government Notice AG 97 of 1989.

2 Regulation 2(1) of the Regulations is repealed and substituted by the following regulations:

(1) Any estate agent-

(a) shall for the calendar year 1996 and annually thereafter pay to the Board a levy for N\$450-00; and

(b) excluding an estate agent referred to in paragraph (d) of the definition of 'estate agent' in section 1 of the Act, shall for the calendar year 1996 and annually thereafter pay to the fund a contribution of N\$200-00.

(2) (a) Any person who applies to the board for the issue to him of a fidelity fund certificate or registration certificate; and

(b) any estate agent to whom a fidelity fund certificate or a registration certificate has already been issued for a particular year, but who failed to apply before the date referred to in regulation 4(1) to the board for the issue to him of such certificate in respect of the succeeding or any later calendar year, and who makes such application after the said date,

Shall pay to the board a levy of N\$150-00 in addition to the levy referred to in sub-regulation(1)(a).

[Reg 2 substituted by AGN 222 of 1996.]

3

[Reg 3 deleted by AGN 97 of 1989.]

4 (1) Every estate agent to whom a fidelity fund certificate or a registration certificate has already been issued for a certain year, shall, unless he has ceased or will cease before that year end to operate as an estate agent and has advised the board of such fact in writing not later than 31 October of that year, apply to the board for the issue to him of a fidelity fund certificate or a registration certificate, as the case may be, in respect of the succeeding calendar year.

(2) Any person who intends to commence operating as an estate agent in the course of any calendar year shall apply to the board for the issue to him of a fidelity fund certificate or a registration certificate, as the case may be, in respect of the remainder of that year.

(3) Any estate agent who carries on business otherwise than as an employee or independent contractor in more than one branch or outlet, shall apply for a separate fidelity fund certificate in respect of each branch or outlet, irrespective of the trading name or style under which business is carried on in each such branch or outlet and shall display each such fidelity fund certificate to the satisfaction of the board in a prominent place in each such branch or outlet: Provided that each fidelity fund certificate shall be issued to the estate agent free of charge.

- 5 The applications referred to in regulation 4 shall be accompanied by the levies referred to in regulation 2, and by the contribution referred to in regulation 2, if applicable.
[Reg 5 amended by AGN 97 of 1989]
- 6 Any person who applies on or after 1 July of a particular year in terms of the provisions of regulation 4(2) for the issue to him of a certificate referred to in that regulation, shall pay to the board and to the fund, respectively, one half of the levy and contribution referred to in regulation 2(1).
[Reg 6 substituted by AGN 97 of 1989]
- 7
[Reg 7 deleted by AGN 97 of 1989]
- 8 If the board is satisfied that the applicant concerned is not disqualified in terms of section 27 of the Act and that the application is in order, the board shall issue to the applicant a fidelity fund certificate in the form of Annexure A hereto or a registration certificate in the form of Annexure B hereto, as the case may be, which shall be valid until 31 December of the year to which the application relates.
- 9 (1) A company or close corporation operating as an estate agent is hereby exempted from the payment of the levy and the contribution referred to in regulation 2, provided a fidelity fund certificate has been issued to each of its directors or members contemplated in paragraph (b) of the definition of 'estate agent' in section 1 of the Act .
- (2) Notwithstanding the provisions of sub- regulation (1) such company or close corporation shall in its own name apply in terms of these regulations for the issue to it of a fidelity fund certificate.
- (3) A fidelity fund certificate referred to in sub-regulation (2) shall be issued free of charge and shall to the satisfaction of the board be displayed in a prominent position on the premises of the company or close corporation concerned.
- 10 The holder of a fidelity fund certificate or a registration certificate shall inform the board within 14 days of any change in the information supplied to the board at the time of applying for the issue to him of such certificate and, if the information appearing on the certificate is no longer applicable or has changed, such certificate shall forthwith be forwarded to the board for appropriate amendment thereof or for the issue of a new certificate in substitution therefor.
- 11 Every fidelity fund certificate or registration certificate issued in terms of these regulations shall remain the property of the board.
- 12 (1) If a fidelity fund certificate was issued to an independent contractor or any person referred to in paragraph (c)(ii) of the definition of 'estate agent' in section one of the Act, and such person ceases to be employed by or associated with the employer mentioned in such certificate that employer shall, within 14 days of such person ceasing to be in his employ, or to be thus associated, return such certificate to the board together with a letter informing the board of such fact and, if such information is available, stating with whom that person is taking up employment or becoming associated.
- (2) The provisions of sub-regulation (1) shall mutatis mutandis apply to a registration certificate issued to any person referred to in paragraph (d) of the definition of 'estate agent' in section 1 of the Act.
- (3) If the employer concerned is unable for any reason to return the certificate as required by sub-regulation (1) or (2), as the case may be, the employer shall within 14 days of the termination of employment or ceasing to be associated, inform the board of that fact, stating the reasons why it is unable to return such certificate as well as furnishing all available information concerning the whereabouts of such employee or independent contractor.
- 13 A written request to the board to furnish the reasons for refusing to issue a fidelity fund certificate or a registration certificate to the person making such request shall be accompanied by an amount of N\$20-00.
- 14 Government Notices R956 of 24 May 1977, R989 of 1 June 1977, R1779 of 31 August 1978, R605 of 23 March 1979, R2500 of 13 November 1981, R1787 of 20 August 1982, R2071 of 23 September 1983 and R1935 of 30 August 1985 are hereby withdrawn.

Annexure/Aanhangsel A
CERTIFICATE/SERTIFIKAAT
VALID FROM DATE OF ISSUE TO 31 DECEMBER/
GELDIG VANAF DATUM VAN UITREIKING TOT 31 DESEMBER
ESTATE AGENTS FIDELITY FUND/
EIENDOMSAGENTE-GETROUHEIDSFONDS

Full names/Volle name.....
Name of firm/company/close corporation/
Naam van firma/maatskappy/beslote korporasie.....
.....
Address/Adres.....
.....
Date of issue/Datum van uitreiking.....

This is to certify that subject to the provisions of Act 112 of 1976 the person whose name appears on this Certificate has complied with the provisions of section 16 of Act 112 of 1976 and the regulations promulgated in terms of the said Act ./
Hierby word onderhewig aan die bepalinge van Wet 112 van 1976 gesertifiseer dat die persoon wie se naam op hierdie Sertifikaat verskyn, voldoen het aan die bepalinge van artikel 16 van Wet 112 van 1976 en die regulasies wat kragtens gemelde Wet uitgevaardig is.

For and on behalf of the Estate Agents Board/Vir en namens die Raad vir Eiendomsagente:

.....
Manager/Bestuurder
The Estate Agents Board/ Raad vir Eiendomsagente

This certificate is not valid unless it bears the seal of the Estate Agents Board/Hierdie Sertifikaat is ongeldig tensy die seel van die Raad vir Eiendomsagente daarop aangebring is.

Annexure/Aanhangsel B
CERTIFICATE/SERTIFIKAAT
VALID FROM DATE OF ISSUE TO 31 DECEMBER/
GELDIG VANAF DATUM VAN UITREIKING TOT 31 DESEMBER

REGISTRATION CERTIFICATE ISSUED TO AN ESTATE AGENT REFERRED TO IN PARAGRAPH (d) OF THE DEFINITION OF 'ESTATE AGENT' IN SECTION 1 OF THE ESTATE AGENTS ACT, 1976 (ACT 112 OF 1976). / REGISTRASIE SERTIFIKAAT UITGEREIK AAN 'N EIENDOMSAGENT NA VERWYS IN PARAGRAAF (d) VAN DIE WOORDOMSKRYWING VAN 'EIENDOMSAGENT' IN ARTIKEL 1 VAN DIE WET OP EIENDOMSAGENTE, 1976 (WET 112 VAN 1976).

Full names/Volle name.....

Name of firm/company/close corporation/

Naam van firma/maatskappy/beslote korporasie.....

Address/Adres.....

Date of issue/Datum van uitreiking.....

This is to certify that subject to the provisions of Act 112 of 1976 the person whose name appears on this Certificate has complied with the provisions of section 16 of Act 112 of 1976 and the regulations promulgated in terms of the said Act./
Hierby word onderhewig aan die bepalings van Wet 112 van 1976 gesertifiseer dat die persoon wie se naam op hierdie Sertifikaat verskyn, voldoen het aan die bepalings van artikel 16 van Wet 112 van 1976 en die regulasies wat kragtens gemelde Wet uitgevaardig is.

For and on behalf of the Estate Agents Board/Vir en namens die Raad vir Eiendomsagente:

.....
Manager/Bestuurder

The Estate Agents Board/ Raad vir Eiendomsagente

This certificate is not valid unless it bears the seal of the Estate Agents Board/Hierdie Sertifikaat is ongeldig tensy die seel van die Raad vir Eiendomsagente daarop aangebring is.

TRUST ACCOUNT OF AN ESTATE AGENT AND INVESTMENT OF TRUST MONEYS

[published under GN R1472 of 29 July 1977, with effect from 29/7/77]

as amended by
GN R604 of 23 March 1979
GN R2418 of 28 November 1980
GN R948 of 1 May 1981
GN R1415 of 3 July 1981
GN R2499 of 13 November 1981

The [South African] Minister of Economic Affairs, after consultation with the Estate Agents Board, has made the following regulations in terms of section 33(1), (j), (k) and (l) of the Estate Agents Act, 1976 (Act 112 of 1976).

1 In these regulations, unless the context otherwise indicates -

"the Act"

means the Estate Agents Act, 1976 (Act 112 of 1976);

"these regulations"

includes the Schedule thereto;

"trust balance"

means the balance standing to the credit of any person in the books and records of an estate agent, representing amounts held or received on behalf such person, less any amount paid out in terms of a mandate from such person and less any commission and collection fee due to such estate agent up to the date of balancing.

2.1.1 An estate agent shall cause the accounting records intended in section 29(a) and 32(3)(a) of the Act to be audited in accordance with the provisions of section 29(b) and 32(3)(b), by the auditor intended in section 29(b), within four months of the date stated by him as the end of the financial year of his estate agency business in his application for the issue to him of his valid fidelity fund certificate.

2.1.2 The date intended in regulation 2.1.1 shall not be altered by an estate agent without the prior written consent of the board having been obtained.

2.1.3 The report to be submitted to the board [by an auditor] in terms of section 32(4) of the Act shall be in the form specified in the Schedule to these regulations.

[Reg 2.1 substituted by GN R948 of 1981.]

2.2 If the auditor is unable to furnish an unqualified report in the form of the Schedule hereto, the fact thereof and the reasons therefor shall be fully set out in the report transmitted by him in place thereof which shall otherwise be as far as possible in the form of the said Schedule.

2.3 Every auditor who has commenced or carried out an audit in terms of section 29(b) and 32(3)(b) of the Act shall without delay report direct to the board if -

2.3.1 it comes to his notice that at any date aggregate of the amounts of the funds in an estate agent's trust account kept in terms of section 32(1) of the Act, together with any funds available in a separate savings or other interest-bearing account kept in terms of section 32(2)(a) of the Act and any trust moneys held according to the estate agent's books of account and accounting records in cash on hand, is less than the total of the trust balances shown in the trust account in the ledgers of the estate agent;

2.3.2 any material queries concerning the accounting systems, accounting records, the books of account or the entries therein or the trust account, savings account or interest-bearing account referred to in 2.3.1 which he has raised with such estate agent have not been fully and promptly dealt with to his satisfaction.

3.1 After the occurrence of an event contemplated in section 32(7) of the Act -

3.1.1 no moneys shall be withdrawn from or paid out of the trust account or savings or other interest-bearing account in question without the consent in writing of the board;

3.1.2 the estate agent concerned shall -

3.1.2.1 if it is an event contemplated in section 32(7)(b) of the Act, forthwith notify the board in writing thereof;

3.1.2.2 as soon as may be practicable in writing notify the bank, building society or institution referred to in section 32(2)(a) of the Act with which he keeps the trust account or savings or other interest-bearing account in question of the occurrence of any such event and also that in future no moneys may be withdrawn from or paid out of any such account without the consent in writing of the board: Provided that the board itself may at any time so notify such bank, building society or other institution;

3.1.2.3 as soon as may be practicable in writing furnish the board with the name of the persons entitled to any moneys in any such account, the amount to which any such person is entitled and the reasons therefor;

3.1.2.4 having complied with the requirements of regulations 3.1.2.1, 3.1.2.2 and 3.1.2.3 and with the consent in writing of the board, pay to the persons referred to in regulation 3.1.2.3 and to such other persons who in the opinion of the board are entitled to any moneys in such accounts, out of such accounts the moneys to which they are entitled.

3.2 If after payment in accordance with regulation 3.1.2.4 a balance remains in any of the accounts in question, the board shall publish in the Gazette and in two newspapers circulating in the district in which the estate agent concerned acted as such, a notice stating that there is such a balance and inviting persons to lodge, within 30 days after the date of such notice, with the board in writing any claim which they may have to such balance or part thereof.

3.3 If no person has proved any claim in terms of regulation 3.2 to the balance in question or any part thereof, the estate agent concerned shall be entitled to such balance, or after payment of any part of such balance to any person who has proved that he is entitled thereto in terms of regulation 3.2 the estate agent concerned shall be entitled to the remainder.

3.4 After all the moneys in the accounts in question have been paid in terms of this regulation to the persons entitled thereto, the estate agent concerned shall wind up such accounts and in writing notify the board thereof.

4.1 Any interest received by or credited to an estate agent in respect of any period ending on the last day of February in each year and payable to the fund in terms of section 32(2)(c), shall be paid regularly and promptly but in any event not later than the last day of May in that year, to the fund or its nominee.

4.2 The board may, in terms of section 32(2)(d), refund 50 per cent of all interest paid to the fund in terms of regulation 4.1 to such estate agent.

[Reg 4 substituted by GN R1415 of 1981.]

5 For the purpose of balancing his books and records in terms of section 32(2)(b) of the Act an estate agent shall at intervals of not more than one calendar month extract a list of all the balances standing to the credit of any person and shall keep the lists of such trust balances for not less than three years from the date on which the same were extracted.

[Reg 5 substituted by GN R604 of 1979 and amended by GN R2418 of 1980.]

Schedule

[Schedule substituted by GN R604 of 1979 and amended by GN R2499 of 1981]
Form of Auditor's Report referred to in regulation 2

The Secretary
Estate Agents Board

AUDITOR'S REPORT IN TERMS OF SECTION 32(4) OF THE ESTATE AGENTS ACT, 1976
(ACT 112 OF 1976)

- 1 We have examined the books, records and accounting systems of
.....
Address
for the year ended on
- 2 In our opinion, based on our examination-
 - 2.1 the said estate agent complied during the period in question with the provisions of section 32(1), (2) and (3) of the Act;
 - 2.2 on being the financial year end date, and also on being one other date during that year selected by us, on a surprise basis, the total amount standing to the credit of the trust banking account and any savings or other interest-bearing account kept by the said estate agent in terms of section 31(1) and (2) of the Act, together with any trust moneys which, according to such estate agent's accounting records, were held by him in cash (which moneys we have satisfied ourselves were deposited in such estate agent's trust banking account on the first banking day following any of the said dates on which it might reasonably be expected that such moneys would be banked,) were sufficient to cover the trust balances on the said dates;
 - 2.3 the circumstances under which any negotiable instruments deposited before the dates referred to in 2.2 in the estate agent's trust banking account were not honoured subsequently, appear to be satisfactory;
 - 2.4 the system employed when transferring amounts from such estate agent's trust banking account to his business accounting appears to ensure that, on each occasion any such transfer is made, the balance remaining to the credit of such trust banking account and any savings or other interest-bearing account referred to in section 32(2)(a) of the Act, together with any trust moneys held in cash on hand, amounts to not less than the trust balances;
 - 2.5 interest, after deduction of 50 per cent thereof in terms of Government Notice R1415 of 3 July 1981, amounting to N\$..... on moneys invested in terms of section 32(2)(a) of the Act has been promptly and regularly paid to the Estate Agents Fidelity Fund or as otherwise provided in the express terms of written mandates exhibited to us, as the case may be.
- *3 We have confirmed that the above company/undertaking has taken out an Employers Fidelity Guarantee Policy, No..... in terms of section 26(b) of the Act, with (name of insurance company) for insurance cover up to an amount of N\$....., and that the policy has been renewed for a period of months ending on the day of

*Delete paragraph if provisions of section 26(b) do not apply.

Auditors
Address
.....
Telephone number

INVESTMENT OF MONEYS IN THE ESTATE AGENTS FIDELITY FUND NOT IMMEDIATELY REQUIRED FOR THE PURPOSES OF THE FUND

[published under GN R2206 of 3 November 1978, with effect from 3/11/78]

The [South African] Minister of Economic Affairs has, after consultation with the Estate Agents Board, made the following regulation under section 33(1)(g) of the Estate Agents Act, 1976 (Act 112 of 1976).

Schedule

- 1 Any moneys in the Estate Agents Fidelity Fund not immediately required for the purposes of the Fund, shall be invested by the Estate Agents Board with any permanent building society finally registered under section 5 of the Building Societies Act, 1965 (Act 24 of 1965), and with any banking institution registered other than provisionally under section 4 of the Banks Act, 1965 (Act 23 of 1965).
- 2 Government Notice R388 of 3 March 1978 is hereby withdrawn.

REGULATIONS RELATING TO THE STANDARD OF TRAINING OF ESTATE AGENTS

[published under GN R1409 of 1 July 1983, with effect from 1/1/84]

as amended by
Estate Agents Amendment Act 28 of 1987
[with effect from 1 April 1988]

The [South African] Minister of Industries, Commerce and Tourism has, after consultation with the Estate Agents Board and in terms of section 33 of the Estate Agents Act, 1976 (Act 112 of 1976), promulgated the regulations set out in the Schedule.

Schedule

1 In these regulations any expression to which a meaning has been assigned in the Act shall have that meaning, and unless the context otherwise indicates-

"the Act"

means the Estate Agents Act, 1976 (Act 112 of 1976);

2 The Board shall conduct or cause to be conducted an examination for estate agents at least three times per annum subsequent to the coming into operation of these regulations.

3 The examination referred to in regulation 2 shall be conducted in Windhoek or such other places as the Board may from time to time determine.

[Reg 3 substituted by s 26(2)(b)(i) of Act 28 of 1987.]

4 (a) The Board shall give at least six weeks' notice in the Gazette and in one issue of an Afrikaans newspaper and one issue of an English newspaper circulating in each of the centres concerned of the date on which and the place at which the examination will be held.

(b) Each prospective entrant for the examination shall not less than four weeks prior to the date on which such examination is to be held make written application to the Board to write such examination which application shall be accompanied by a fee of N\$250-00. (The Prescribed Examination Fee Regulation which are promulgated in GNR 2696 of 1983 are repealed with effect from 1/1/1997.)

5 The syllabus for the examination referred to in regulation 2 shall be compiled by the Board, the standard of which syllabus shall be approved by the Minister [Cabinet] and such syllabus shall cover the following aspects of the activities of estate agents:

(a) Property, the property industry and property business;

(b) commerce in rights relating to property and the nature of control in regard to proprietary rights in private law;

(c) the role of the Government in the property industry and the nature of the limitation of private property in public law;

(d) contracts;

(e) economy relating to property;

(f) the time-value of money;

(g) the estate agent;

(h) Government control of an estate agent;

(i) a synopsis of market-valuation;

(j) investment analysis;

(k) financing;

(l) feasibility studies.

6 Subject to the provisions of regulation 8, no person shall perform any act as an estate agent, unless such person has successfully passed the examination intended in regulation 2 and has been issued with a fidelity fund certificate.

7 These regulations shall apply to all estate agents or prospective agents excluding-

(a) principal estate agents who were on any date before or on 31 December 1982; and

(b) employee estate agents who were on any date before or on 31 December 1979,

issued by the Estate Agents Board of the Republic of South Africa with a fidelity fund certificate and who have since the above-mentioned dates, as the case may be, continuously and uninterruptedly been in possession of fidelity fund certificates.

[Reg 7 substituted by s 26(2)(b)(ii) of Act 28 of 1987.]

8 Any principal or employee estate agent to whom a fidelity fund certificate has been issued by the said Board at any time during the periods 1 January 1983 to the date of commencement of the Estate Agents Amendment Act, 1987, and 1 January 1980 to the said date of commencement, respectively, may continue to act as such: Provided that if such estate agent has not passed the examination referred to in regulation 2 by the 31st day of December 1988, he shall forthwith cease to act as such and may not apply to the Board for the issue to him of a fidelity fund certificate until such time as such person has passed the said examination.

[Reg 8 substituted by s 26(2)(b)(ii) of Act 28 of 1987.]

9

[Reg 9 repealed by s 26(2)(b)(iii) of Act 28 of 1987.]

10 The Minister [Cabinet] may, after consultation with the Board, grant exemption in respect of any examination or course for purposes of compliance with the provisions of these regulations.

I, Dawid Jacobus de Villiers, [the South African] Minister of Industries, Commerce and Tourism, do hereby specify the services in the Schedule as services for the purposes of paragraph (a)(iv) of the definition of 'estate agent' in section 1 of the Estate Agents Act, 1976 (Act 112 of 1976).

SPECIFICATION OF SERVICES

[published under GN R1485 of 17 July 1981, with effect from 17/7/81]

DJ De Villiers, Minister of Industries, Commerce and Tourism.

Schedule

- 1 In these regulations any expression to which a meaning has been assigned in the Act shall have that meaning, and unless the context otherwise indicates-

“body corporate”

means a body corporate as defined in the Sectional Titles Act;

“developer”

means a developer as defined in the Sectional Titles Act;

“Sectional Titles Act”

means the Sectional Titles Act, 1971 (Act 66 of 1971);

“share block company”

means a share block company as defined in the Share Blocks Control Act, 1980 (Act 59 of 1980);

“unit”

means a unit as defined in the Sectional Titles Act.

- 2 Collecting or receiving-
- (a) money payable by any person to or on behalf of a developer or a body corporate in terms of the Sectional Titles Act, in respect of a unit or proposed unit;
 - (b) money on behalf of a share block company payable by the holder of a share in such company or his nominee;
 - (c) money in consideration of a promise or an undertaking by the person receiving such money or his agent or nominee to the person paying such money, his agent or nominee to make available to such person, his agent or his nominee, information or details of immovable property, any interest in immovable property or any business undertaking with a view to bringing potential purchasers, sellers, lessors, lessees or occupiers thereof in contact with one another.
- 3 Government Notice R32 of 2 January 1981 is hereby withdrawn.