

ESTATE AGENCY AFFAIRS ACT 112 OF 1976

(Short title, formerly 'Estate Agents Act', substituted by s. 20 of Act 90 of 1998)

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

(Afrikaans text signed by the State President)

as amended by

Estate Agents Amendment Act 60 of 1978

Estate Agents Amendment Act 57 of 1980

Estate Agents Amendment Act 53 of 1982

Estate Agents Amendment Act 51 of 1984

Estate Agents Amendment Act 10 of 1985

Estate Agents Amendment Act 40 of 1986

Estate Agents Amendment Act 144 of 1993

Estate Agents Amendment Act 21 of 1996

General Law Amendment Act 49 of 1996

Estate Agents Amendment Act 90 of 1998

ACT

To provide for the establishment of an Estate Agency Affairs Board and an Estate Agents Fidelity Fund: for the control of certain activities of estate agents in the public interest; and for incidental matters.

[Long title substituted by s. 21 of Act 90 of 1998.]

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 s. 1 (a) of Act 57 of 1980.]

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

'board' means the Estate Agency Affairs Board established under section 2, and includes, for the purposes of section 32 (7) (a) (ii), any committee of inquiry;

[Definition of 'board' substituted by s. 1 (a) of Act 51 of 1984 and by s. 1 (a) of Act 90 of 1998.]

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

'close corporation' means a close corporation referred to in the Close Corporations Act, 1984 (Act 69 of 1984);

[Definition of 'close corporation' inserted by s. 1 (a) of Act 10 of 1985.]

'committee of inquiry' means a committee of inquiry referred to in section 8B (1);

[Definition of 'committee of inquiry' inserted by s. 1 (b) of Act 90 of 1998.]

'court' means a court of the provincial or local division of the Supreme Court of South Africa having jurisdiction, or a judge of any such court;

'employ' includes using the services of an independent contractor;

[Definition of 'employ' inserted by s. 1 (c) of Act 90 of 1998.]

'employee' includes an independent contractor;

[Definition of 'employee' inserted by s. 1 (c) of Act 90 of 1998.]

'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 or publicly exhibits for sale immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas a seller or purchaser therefor; or

[Sub-para. (i) substituted by s. 1 (d) of Act 90 of 1998.]

(ii) lets or hires or publicly exhibits for hire 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

[Sub-para. (ii) substituted by s. 1 (d) of Act 90 of 1998.]

(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 Minister on the recommendation of the board may specify from time to time by notice in the *Gazette*;

[Sub-para. (iv) substituted by s. 1 of Act 60 of 1978.]

(b) for purposes of section 3 (2) (a), includes any director of a company or a member who is competent and entitled to take part in the running of the business and the management, or a manager who is an officer, of a close corporation which is an estate agent as defined in paragraph (a);

Para. (b) substituted by s. 1 (b) of Act 10 of 1985.]

(c) for purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30, 33 and 34B, includes-

(i) any director of a company, or a member referred to in paragraph (b), of a close corporation which is an estate agent as defined in paragraph (a); and

[Sub-para. (i) substituted by s. 1 (c) of Act 10 of 1985.]

- (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;

[Para. (c) amended by s. 1 (e) of Act 90 of 1998.]

(cA) for the purposes of sections 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 subparagraph (i) or (ii) of paragraph (a) on behalf of such attorney or professional company;

[Para. (cA) inserted by s. 1 (a) of Act 53 of 1982.]

- (d) does not include an attorney who, on his own account or as a 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); or
 - (ii) through the medium of or as a director of a company other than such professional company;

[Para. (d) substituted by s. 1 (b) of Act 53 of 1982.]

(e) for the purposes of section 30 (2), (3), (4), (5), (6), (7) and (8) and of regulations made under section 33 (1) (h), includes any person who was an estate agent at the time when he or she was guilty of any act or omission which allegedly constitutes conduct deserving of sanction referred to in section 30:

[Para. (e) added by s. 1 (b) of Act 51 of 1984 and substituted by s. 1 (f) of Act 90 of 1998.]

Provided that, for the purposes of this definition, 'advertise' does not include to advertise in compliance with the provisions of any law;

'executive committee' means the executive committee appointed in terms of section 8A (1);

[Definition of 'executive committee' inserted by s. 1 (b) of Act 57 of 1980.]

'fidelity fund certificate' means a fidelity fund certificate referred to in section 16, and includes for the purposes of sections 26, 27, 28 and 33 (1) (e) and (f), a registration certificate referred to in section 16;

[Definition of 'fidelity fund certificate' substituted by s. 1 (c) of Act 53 of 1982 and by s. 1 (g) of Act 90 of 1998.]

'fund' means the Estate Agents Fidelity Fund established under section 12 (1);

'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 Mining Titles Registration Act, 1967 (Act 16 of 1967);
- (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;
- (f) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980), and any proposed share;
- (g) any time-sharing interest as defined in section 1 of the Property Time-Sharing Control Act, 1983 (Act 75 of 1983), and any proposed time-sharing interest;
- (h) any interest of a member of a close corporation of which the assets consist wholly or mainly of immovable property;

[Para. (h) added by s. 1 (d) of Act 10 of 1985.]

- (i) any housing interest as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act 65 of 1988), and any proposed housing interest;

[Para. (i) added by by s. 1 (h) of Act 90 of 1998.]

[Definition of 'immovable property' inserted by s. 1 (c) of Act 51 of 1984.]

'interest', in relation to a member of a close corporation, a member's interest as defined in section 1 of the Close Corporation Act, 1984 (Act 69 of 1984);

[Definition of 'interest' inserted by s. 1 (e) of Act 10 of 1985.]

'member', in relation to a close corporation, a member as defined in section 1 of the Close Corporations Act, 1984 (Act 69 of 1984);

[Definition of 'member' inserted by s. 1 (f) of Act 10 of 1985.]

'Minister' means the Minister of Trade and Industry;

[Definition of 'Minister' substituted by s. 1 (c) of Act 57 of 1980 and by s. 1 (i) of Act 90 of 1998.]

'officer', in relation to a close corporation, an officer as defined in paragraph (a) of the definition of 'officer' in section 1 of the Close Corporations Act, 1984 (Act 69 of 1984);

[Definition of 'officer' inserted by s. 1 (g) of Act 10 of 1985.]

'prescribed' means prescribed by regulation;

'Republic'

[Definition of 'Republic' deleted by s. 1 of Act 49 of 1996.]

'this Act' includes any regulation issued thereunder;

'trust money' means-

- (a) money or other property entrusted to an estate agent in his or her capacity as an estate agent;
- (b) money collected or received by an estate agent and payable in respect of or on account of any act referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of 'estate agent';
- (c) any other moneys, including insurance premiums, collected or received by an estate agent and payable in respect of any immovable property, business undertaking or contract for the building or erection of any improvements on immovable property.

[Definition of 'trust money' added by s. 1 (j) of Act 90 of 1998.]

**CHAPTER I
ESTATE AGENCY AFFAIRS BOARD (ss 2-11)**

2 Establishment of Estate Agency Affairs Board

There is hereby established a juristic person to be known as the Estate Agency Affairs Board.

[S. 2 substituted by s. 2 of Act 90 of 1998.]

3 Constitution of board

(1) The board shall consist of fifteen members appointed under subsection (2) by the Minister.

[Sub-s. (1) substituted by s. 2 of Act 51 of 1984 and by s. 1 (a) of Act 21 of 1996.]

(2) The Minister shall appoint as members of the Board-

- (a) five members from the estate agents' industry;
- (b) five members from civil society, representing consumer interest; and
- (c) five members from related professions and institutions such as the legal profession, financial institutions, property owners and developers.

[Sub-s. (2) substituted by s. 1 (b) of Act 21 of 1996.]

(3) If after the expiry of a period of three months from the date on which the Secretary for Commerce in writing requested the associations or organizations referred to in subsection (2) (a) to submit a list of estate agents as

contemplated in that subsection, such associations or organizations have failed to submit the said list to the said Secretary or have submitted to the said Secretary a list of estate agents which is defective in some or other respect, the Minister shall appoint suitable estate agents as members of the board in the place of the estate agents he would have appointed if the said association or organizations had not so failed to submit the said list or had not submitted a list defective in some or other respect.

(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 Minister 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

[Para. (c) substituted by s. 1 (c) of Act 21 of 1996.]

- (d) is not a South African citizen permanently resident in the Republic.

(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 subsection (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 Minister, or ceases to be a member of the board in terms of subsection (7), the Minister 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 Minister and thereafter 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 six members convene a special meeting of the board.

(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 six members thereof.

(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 from time to time generally or in any particular case by the Minister.

[S. 5 substituted by s. 3 of Act 51 of 1984.]

6 Staff of board and designation of inspectors

(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.

[Sub-s. (1) substituted by s. 4 of Act 51 of 1984.]

(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.

[S. 6 substituted by s. 2 of Act 57 of 1980.]

7 Objects of board

Having due regard to the public interest, the objects of the board shall be to-

- (a) maintain and promote the standard of conduct of estate agents; and
- (b) regulate the activities of estate agents.

[S. 7 substituted by s. 3 of Act 90 of 1998.]

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 Minister 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 Minister, 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 Minister;
- (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 three or more than three 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 the executive committee shall be of force and effect except in so far as it is set aside or amended by the board at its next ensuing meeting.

[S. 8A inserted by s. 3 of Act 57 of 1980.]

8B Committee of inquiry

(1) The board may from time to time appoint such number of committees of inquiry as it deems fit, each consisting of at least three members, one of whom shall be appointed on account of his knowledge of the law, from among its members or from the ranks of persons who have knowledge of the law or experience in the resolution of disputes or such other knowledge or experience as, in the opinion of the board, renders them suitable for appointment as members of a committee of inquiry.

[Sub-s. (1) substituted by s. 1 of Act 144 of 1993 and amended by s. 4 (d) of Act 90 of 1998.]

(2) A committee of inquiry may exercise or perform any power or function which is granted or entrusted to it in terms of this Act.

[Sub-s. (2) substituted by s. 4 (a) of Act 90 of 1998.]

(3) The provisions of section 4 (5) and (6) shall, subject to subsection (5) of this section, apply *mutatis mutandis* in respect of a committee of inquiry.

[Sub-s. (3) amended by s. 4 (d) of Act 90 of 1998.]

(4) The board may, subject to the provisions of this section, alter the constitution of any committee of inquiry before the committee has commenced with an investigation contemplated in section 30 (2).

[Sub-s. (4) amended by s. 4 (d) of Act 90 of 1998.]

(5) If a vacancy occurs on a committee of inquiry 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), (7) or (8) only by unanimous vote.

[Sub-s. (5) substituted by s. 4 (b) of Act 90 of 1998.]

(6)

[Sub-s. (6) deleted by s. 4 (c) of Act 90 of 1998.]

[S. 8B inserted by s. 5 of Act 51 of 1984 and amended by s. 4 (d) of Act 90 of 1998.]

8C Appeal against decisions of committees of inquiry

(1) Any person who feels aggrieved by any decision taken by a committee of inquiry in the exercise of its powers and the performance of its functions under section 8B (2), may, subject to subsection (3), within 30 days after the committee of inquiry-

- (a) has informed that person in writing of the decision and upon payment of the prescribed fee request the committee of inquiry in writing to furnish him or her in writing with its reasons for the decision;
- (b) has in accordance with paragraph (a) furnished that person with its reasons for the decision and after notice to the committee of inquiry, appeal to the board against the decision in the prescribed manner.

(2) The board shall hear the appeal against the decision of the committee of inquiry in the prescribed manner and may after considering the appeal-

- (a) confirm, amend or reverse the decision;
- (b) remit the matter for further hearing, with such instructions as regards the taking of further evidence or otherwise as the board may deem necessary;
- (c) confirm or suspend any penalty imposed;
- (d) set aside any penalty imposed and impose any other penalty contemplated in section 30 (3);
- (e) make an order contemplated in section 30 (7) (a).

(3) (a) If a committee of inquiry has found an estate agent not guilty on a charge of conduct deserving of sanction, any person who lodges an appeal against the decision to the board shall pay to the board a deposit, in an amount determined by the board, to cover the costs of the board and the estate agent concerned in respect of the appeal.

(b) The deposit contemplated in paragraph (a) shall be refunded in full if the appeal is successful or partly successful.

(4) A court may, on application by the board, order that a decision of, or penalty imposed by, a committee of inquiry not be stayed or suspended pending an appeal to the board, if the court considers such an order to be in the public interest.

[S. 8C inserted by s. 5 of Act 90 of 1998.]

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;
 - (ii) has incurred any liability to pay attorney and client costs in respect of 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 the fund, or
 - (iii) has incurred any liability to pay audit fees in respect of an audit

done on the instructions of the board in a case where an audit contemplated in sections 29 and 32 (4) has not been done,

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 or the amount of such audit fees, as the case may be, from the estate agent concerned.

[Sub-s. (2) amended by s. 4 of Act 57 of 1980. Para. (b) substituted by s. 6 of Act 51 of 1984 and by s. 1 of Act 40 of 1986.]

(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 Minister.

(4) The board may invest any moneys received under this Chapter and not required for immediate use, with the Public Debt Commissioners or in such other manner as may be determined by the Minister in consultation with the Minister of Finance.

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 Minister.

(2) The board shall cause-

- (a) to be kept in one of the official languages at an address in the Republic approved by the Minister 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 Minister with such information as he may desire from time to time in connection with the functions and financial position of the board, and shall in addition submit to the Minister 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 Senate and of the House of Assembly by the Minister.

CHAPTER II ESTATE AGENTS FIDELITY FUND (ss 12-28)

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, 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 utilize 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 Minister, to the credit of an account to be called the Estate Agents Fidelity Fund Account.

12A Determination of liabilities of fund and investment of moneys in fund

(1) The Board shall after the end of each financial year of the fund determine to what extent, if at all, the total income of the fund during that financial year exceeded the expenditure incurred by or accrued to the fund during that financial year and shall, if the fund's income exceeded its liabilities, determine how much of the excess may be utilised during the next financial year for the purposes of the grants and other payments contemplated in section 12B.

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

[S. 12A inserted by s. 6 of Act 90 of 1998.]

12B Grants and other payments from fund

(1) The board may, from the amount determined by it in terms of section 12A and subject to such terms and conditions as it may deem fit-

- (a) make grants with regard to-
 - (i) research in fields of activity relevant to the business of estate agents in general;
 - (ii) the maintenance and promotion of the standard of conduct of estate agents in general;
 - (iii) the maintenance and promotion of the training standards of estate agents in general;
- (b) make grants to any association or society of estate agents for the purposes of enabling that association or society to further the practice of estate agency or to maintain and promote the interests of estate agents in general;
- (c) pay an honorarium or compensation to any person or institution for services with the object of enhancing the standard of conduct of estate agents in general, rendered at the request of the board; and
- (d) utilise such amount as it may determine for the purposes of-
 - (i) advertising and promoting the services and facilities offered by estate agents in general; or
 - (ii) promoting public awareness in respect of matters relating to the acquisition and disposal of immovable property.

(2) The board may at any time revoke any grant contemplated in subsection (1) (a) or (b).

[S. 12B inserted by s. 6 of Act 90 of 1998.]

12C Group insurance schemes

(1) The board may in the public interest arrange any group insurance scheme with any insurer registered or deemed to be registered under the Insurance Act, 1943 (Act 27 of 1943), for the provision of indemnity insurance to cover estate agents' liability to members of the public on the grounds of malpractice, up to an amount determined by the board.

(2) Any premium payable in respect of the insurance contemplated in subsection (1) shall be paid from the fund.

[S. 12C inserted by s. 6 of Act 90 of 1998.]

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, accounting and other expenses incurred in investigating and defending claims made against the fund or otherwise incurred in relation to the fund;

[Para. (c) substituted by s. 2 of Act 40 of 1986.]

- (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 Republic approved by the Minister 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 Minister, 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 Minister 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 and registration 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 levies 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) Subject to sections 28 (1), 28 (5) and 30 (6), if the board upon receipt of any application referred to in subsection (1) or (2) and the levies and contribution referred to in those subsections, is satisfied that the applicant concerned is not disqualified in terms of section 27 from being issued with a fidelity fund certificate, 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.

[Sub-s. (3) substituted by s. 3 of Act 40 of 1986 and by s. 7 (a) of Act 90 of 1998.]

(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 and registration certificate issued in contravention of the provisions of this Act shall be invalid and shall be returned to the board at its request.

[S. 16 substituted by s. 2 of Act 53 of 1982.]

(5) An estate agent who applies to the board for a fidelity fund certificate or a registration certificate, as the case may be, after the prescribed period referred to in subsection (1) or (2), or whose application is not accompanied by the levy referred to in section 9 (1) (a) or the contribution referred to in section 15, as the case may be, shall pay to the board a prescribed penalty in addition to the levy or contribution and no fidelity fund certificate or registration certificate shall be issued to the estate agent until the penalty has been paid.

[Sub-s. (5) added by s. 7 (b) of Act 90 of 1998.]

17

[S. 17 repealed by s. 8 of Act 90 of 1998.]

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 of trust money, committed after the commencement of this Act, by an estate agent;

[Para. (a) amended by s. 7 of Act 51 of 1984 and substituted by s. 9 of Act 90 of 1998.]

- (b) the failure of an estate agent to comply with section 32 (1) or 32 (2) (e).

[Para (b) substituted by s. 9 of Act 90 of 1998.]

[Sub-s. (1) substituted by s. 2 of Act 60 of 1978 and by s. 5 (a) of Act 57 of 1980.]

(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 claim 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;

[Para. (a) substituted by s. 5 (b) of Act 57 of 1980.]

- (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.

[Sub-s. (3) amended by s. 5 (b) of Act 57 of 1980.]

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 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.

[Sub-s. (1) amended by s. 6 of Act 57 of 1980.]

(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) The board may at its discretion pay out of the fund interest on the amount of any judgment obtained or any claim admitted against the fund: Provided that-

- (a) such interest shall not run from a date earlier than the date on which the board received notice in writing by or on behalf of a claimant of his claim against the fund; and
- (b) the rate of interest shall not exceed the prevailing rate of interest prescribed under section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975).

[Sub-s. (3) substituted by s. 4 of Act 40 of 1986.]

(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
 - (iiiA) if such estate agent is a close corporation, by any member of such corporation; or

[Sub-para. (iiiA) inserted by s. 2 of Act 10 of 1985.]

- (iiiB) if he is a member of a close corporation, by any co-member in such corporation; or

[Sub-para. (iiiB) inserted by s. 2 of Act 10 of 1985.]

- (iv) by any person employed by him as an estate agent; or
- (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.

[Para. (c) added by s. 3 (b) of Act 53 of 1982.]

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 Republic 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 as estate agent in certain circumstances

No person shall perform any act as an estate agent unless a valid fidelity fund certificate has been issued to him or her and to every person employed by him or her as an estate agent and, if such person is-

- (a) a company, to every director of that company; or
- (b) a close corporation, to every member referred to in paragraph (b) of the definition of 'estate agent' of that corporation.

[S. 26 amended by s. 3 of Act 10 of 1985 and substituted by s. 5 of Act 40 of 1986 and by s. 10 of Act 90 of 1998.]

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, or if such estate agent is a close corporation, any corporation of which any member referred to in paragraph (b) of the definition of 'estate agent'-
 - (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 in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to assume a position of trust and to be issued with a fidelity fund certificate;

[Sub-para. (iii) substituted by s. 11 (a) of Act 90 of 1998.]

- (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;
- (vii) does not have the prescribed practical experience;

[Para. (a) amended by s. 4 (a) of Act 10 of 1985.]

- (aA) 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 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, unless the estate agent has repaid the relevant amount in full to the board, or the board is of the opinion that satisfactory arrangements for the settlement of such amount have been made and has confirmed such arrangements;

[Para. (aA) inserted by s. 8 of Act 51 of 1984.]

- (aB) any estate agent referred to in paragraph (a) of the definition of 'estate agent' if such estate agent carries or intends to carry on

business as an estate agent under a trade name which is identical or confusingly similar to the trade name of an estate agent-

- (i) already issued with a fidelity fund certificate; or
- (ii) whose fidelity fund certificate is suspended or has lapsed or been withdrawn in terms of this Act;

[Para. (aB) inserted by s. 11 (b) of Act 90 of 1998.]

- (b) any estate agent who is a director of a company, or who is a member referred to in paragraph (b) of the definition of 'estate agent', of a close corporation-
 - (i) of which the fidelity fund certificate was withdrawn by the board in terms of section 28 or 30;
 - (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 or close corporation was so prohibited, was a director of such company or such a member of such corporation:

[Para. (b) substituted by s. 4 of Act 53 of 1982 and by s. 4 (b) of Act 10 of 1985.]

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 may determine, a fidelity fund certificate to such person when he or she applies therefor.

[S. 27 substituted by s. 3 of Act 60 of 1978 and amended by s. 7 of Act 57 of 1980 and by s. 11 (c) of Act 90 of 1998.]

28 Withdrawal and lapse of fidelity fund certificates

[Heading substituted by s. 12 (a) of Act 90 of 1998.]

(1) The board, the executive committee or a committee of inquiry may withdraw a fidelity fund certificate issued to any person-

- (a) who has been summoned in the prescribed manner to appear before the board or any committee of inquiry if such person without just cause fails to comply with the summons and prior to the date of the appearance stated in the summons, has not been excused in writing by the board or the committee of inquiry, as the case may be, from so appearing;
- (b) if that person is a company or a close corporation, and the fidelity fund certificate of any director of the company or of any member of the corporation has lapsed in terms of subsection (5);
- (c) if such person or, if such person is a company, any director of that company or, if such person is a close corporation, any member referred to in paragraph (b) of the definition of 'estate agent', of that corporation, becomes subject to any disqualification referred to in section 27 (a) (vi) or (vii), (aA) or (b).

[Sub-s. (1) substituted by s. 5 of Act 10 of 1985 and by s. 12 (b) of Act 90 of 1998.]

(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.

[Sub-s. (3) added by s. 8 of Act 57 of 1980.]

(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 Republic and that he probably does not intend to return to the Republic 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 Afrikaans and an English newspaper circulating in the district in which the said person's last known business address, as entered in the records of the board, is situated.

[Sub-s. (4) added by s. 5 of Act 53 of 1982.]

(5) A fidelity fund certificate issued to any person shall lapse immediately and be of no force and effect if that person-

- (a) becomes subject to any disqualification referred to in section 27 (a) (i) to (v);
- (b) is a company or a close corporation, and the company or close corporation is being wound up, whether provisionally or otherwise, or is deregistered, as the case may be.

[Sub-s. (5) added by s. 6 of Act 40 of 1986 and substituted by s. 12 (c) of Act 90 of 1998.]

(6) Any person who is in possession or control of a fidelity fund certificate which has lapsed in terms of subsection (5) shall forthwith return that certificate to the board.

[Sub-s. (6) added by s. 6 of Act 40 of 1986 and substituted by s. 12 (d) of Act 90 of 1998.]

(7) No person whose fidelity fund certificate has been withdrawn in terms of subsection (1) or has lapsed in terms of subsection (5), may directly or indirectly participate in the management of any business carried on by an estate agent in his or her capacity as such, or participate in the carrying on of such business, or be employed, directly or indirectly, in any capacity in such business, except with the written consent of the board and subject to such conditions as the board may determine.

[Sub-s. (7) added by s. 12 (e) of Act 90 of 1998.]

(8) No estate agent shall directly or indirectly in any capacity whatsoever employ a person referred to in subsection (7), or allow or permit such person directly or indirectly to participate in any capacity in the management or the carrying on of his or her business as an estate agent, except with the written consent of the board, and subject to such conditions as the board may impose.

[Sub-s. (8) added by s. 12 (e) of Act 90 of 1998.]

[S. 28 amended by s. 12 (a) of Act 90 of 1998.]

CHAPTER III GENERAL PROVISIONS (ss 29-37)

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 Republic 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 9 of the Estate Agents Amendment Act, 1984, not be altered by him without the prior written approval of the board.

[Para. (b) substituted by s. 9 of Act 51 of 1984.]

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 a full and proper explanation in writing, 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;

[Para. (b) substituted by s. 7 (a) of Act 40 of 1986.]

- (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 s. 10 (a) of Act 51 of 1984.]

- (d) fails to furnish in writing within such period as the board may determine such information as the board may request in writing and reasonably require in order to exercise its powers properly under this Act;

[Para. (d) substituted by s. 7 (b) of Act 40 of 1986.]

- (e) contravenes any provision of the code of conduct referred to in section 8 (b) or fails to comply with any such provision;
- (f)

[Para. (f) deleted by s. 7 (c) of Act 40 of 1986.]

- (g) fails to comply with any provision of section 28 (8), 29 or 32, or contravenes any provision of section 26, 32A (2) (a) or (b) or 34B;

[Para. (g) substituted by s. 10 (b) of Act 51 of 1984 and by s. 13 (a) of Act 90 of 1998.]

- (gA) in his capacity as a director of a company, or member referred to in paragraph (b) of the definition of 'estate agent', of a close corporation, which is an estate agent and which failed to comply with the requirements of section 29 or 32, did not take all reasonable steps to prevent such failure;

[Para. (gA) inserted by s. 9 (a) of Act 57 of 1980 and substituted by s. 6 (a) of Act 10 of 1985.]

- (h) commits an offence involving an element of dishonesty.

(2) The board or a committee of inquiry may in the prescribed manner bring and investigate any charge of conduct deserving of sanction against any estate agent.

[Sub-s. (2) substituted by s. 13 (b) of Act 90 of 1998.]

(3) When any estate agent is found guilty of conduct deserving of sanction by the board or a committee of inquiry, the board or committee of inquiry (as the case may be) 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 or she is a director of a company which is an estate agent, of such company;
 - (iii) if he or she in partnership acts as an estate agent, of every partner in such partnership;
 - (iv) if such estate agent is a close corporation, of every member referred to in paragraph (b) of the definition of 'estate agent' of that corporation; or
 - (v) if he or she is a member of a close corporation which is an estate agent, of such corporation;
- (b) impose on such estate agent a fine not exceeding R25 000 or such higher amount as may be prescribed by the Minister by notice in the *Gazette* in order to counter the effect of inflation, and which is payable to the board;
- (c) reprimand such estate agent:

Provided that a fine or any portion thereof or the withdrawal of any fidelity fund certificate may be suspended for a period not exceeding three years and on such further conditions as the board or committee of inquiry (as the case may be) may determine.

[Sub-s. (3) amended by s. 9 (b) of Act 57 of 1980 and by s. 6 of Act 10 of 1985 and substituted by s. 13 (b) of Act 90 of 1998.]

(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.

(6) If any fine referred to in subsection (3) (b) is not paid in full to the board within one month after it has been imposed, or arrangements for payment is not made to the satisfaction of the board within that period, the fidelity fund certificate of the person on whom the fine has been imposed shall be suspended immediately and be of no force and effect until the fine has been paid or the arrangements have been made.

[Sub-s. (6) added by s. 13 (c) of Act 90 of 1998.]

(7) (a) The board or, subject to paragraph (d), a committee of inquiry may, whenever a fine has been imposed on an estate agent as contemplated in subsection (3) (b), order that any portion of the fine, but not exceeding 80% of such fine, be applied towards the payment of compensation to any person who suffered a pecuniary loss as a result of the conduct of the estate agent in question.

- (b) The board shall, on receipt of the fine imposed on the estate agent in question, make the payment contemplated in paragraph (a):
Provided that no such payment shall be made until all appeals in respect of the imposition of the fine have lapsed or been finalised or been abandoned.
- (c) This subsection shall not preclude any person from pursuing any civil remedy against the estate agent referred to in paragraph (a):
Provided that if an award is made by a court in favour of a person who has received payment from the board as contemplated in paragraph (b), the court shall take the payment into account.
- (d) A committee of inquiry may exercise the same powers conferred on the Board under paragraph (a), provided at least one member of such committee is qualified-
 - (i) to be admitted as an advocate under the Admission of Advocates Act, 1964 (Act 67 of 1964);
 - (ii) to be admitted as an attorney under the Attorneys Act, 1979 (Act 53 of 1979); or
 - (iii) to be appointed as a magistrate under the Magistrates' Courts Act, 1944 (Act 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act 90 of 1993),

and for an uninterrupted period of at least five years practised as an advocate or attorney or occupied the post of magistrate, or for that period was involved in the tuition of law or rendered services as a legal consultant.

[Sub-s. (8) added by s. 13 (c) of Act 90 of 1998.]

(8) If an estate agent who has been charged with conduct deserving of sanction has been found-

- (a) not guilty by the board or a committee of inquiry;
- (b) guilty by a committee of inquiry, and the estate agent's appeal to the board in terms of section 8C against the decision or penalty is successful or partly successful,

the board may, on recommendation of the committee of inquiry concerned (if applicable), make a contribution from the fund, in the amount determined by the board, towards the costs incurred by the estate agent in respect of the hearing before the board or the committee of inquiry (as the case may be) and, if applicable, the appeal heard by the board.

[Sub-s. (8) added by s. 13 (c) of Act 90 of 1998.]

31 Appeal against decisions of board

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

- (a) has informed him or her in writing of such decision and upon payment of the prescribed fees, request the board in writing to furnish him or her in writing with its reasons for such decision;
- (b) has in accordance with paragraph (a) furnished him or her 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.

(2) A court may, on application by the board, order that a decision of, or penalty imposed by, the board not be stayed or suspended pending an appeal to the court under the provisions of this section, if the court considers such an order to be in the public interest.

[S. 31 amended by s. 4 of Act 60 of 1978, by s. 10 of Act 57 of 1980 and by s. 11 of Act 51 of 1984 and substituted by s. 14 of Act 90 of 1998.]

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

(1) Every estate agent shall open and keep one or more separate trust accounts, which shall contain a reference to this section, with a bank and such estate agent or his or her employee, as the case may be, shall forthwith deposit therein all trust money held or received by or on behalf of such estate agent and the name of such bank and the number of each such trust account shall forthwith be notified to the board.

[Sub-s. (1) substituted by s. 5 of Act 60 of 1978, by s. 8 (a) of Act 40 of 1986 and by s. 15 (a) of Act 90 of 1998.]

(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 *Gazette* by the Minister in consultation with the Minister of Finance, any moneys deposited in his trust account which are not immediately required for any particular purpose.

- (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 s. 12 (a) of Act 51 of 1984.]

- (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 s. 11 (a) of Act 57 of 1980.]

- (e) Trust money in an account invested in terms of paragraph (a) or deposited in terms of subsection (1) shall be retained by the estate agent in question in that account until the estate agent is lawfully entitled to it or instructed to make payment therefrom to any person.

[Para. (e) added by s. 15 (b) of Act 90 of 1998.]

(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 records relating to any account referred to in paragraph (a) at intervals of not more than one month, and cause them to be audited 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 s. 11 (b) of Act 57 of 1980 and by s. 12 (b) of Act 51 of 1984.]

- (c) administer the accounts referred to in subsections (1) and (2) (a) in the prescribed manner.

[Para. (c) added by s. 15 (c) of Act 90 of 1998.]

(4) Any auditor who does an audit contemplated in subsection (3) (b), shall forthwith after completing such audit, transmit to the board a report in the form from time to time determined by the board, in regard to his findings, and a copy thereof to the relevant estate agent.

[Sub-s. (4) substituted by s. 12 (c) of Act 51 of 1984 and by s. 8 (b) of Act 40 of 1986.]

(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 not less than thirty days, an audited statement fully setting out the state of affairs in respect of the matters referred to in section 29 (a).

[Sub-s. (5) substituted by s. 12 (d) of Act 51 of 1984.]

(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) refuses 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 becomes subject to any disqualification referred to in section 27,

[Para. (c) substituted by s. 8 (c) of Act 40 of 1986.]

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 persons entitled to it.

(8) The amount standing to the credit of the trust, savings or other interest-bearing account, referred to in 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 Powers of inspectors

(1) Any inspector furnished with inspection authority in writing by the board may conduct an investigation to determine whether the provisions of the 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 conduct deserving sanction 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).

[S. 32A inserted by s. 6 of Act 53 of 1982 and amended by s. 16 of Act 90 of 1998.]

33 Regulations

- (1) The Minister 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;

(eA) prescribing the penalty payable to the board in terms of section 16 (5);

[Para. (eA) inserted by s. 17 (a) of Act 90 of 1998.]

(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 s. 13 (a) of Act 57 of 1980.]

(h) prescribing the manner in which a charge of conduct deserving of sanction against any estate agent shall be brought and investigated and the manner in which a person must be summoned to appear before a committee of inquiry or the board;

[Para. (h) substituted by s. 17 (b) of Act 90 of 1998.]

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

(iA)

[Para. (iA) inserted by s. 13 (b) of Act 57 of 1980 and deleted by s. 9 (a) of Act 40 of 1986.]

(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);

[Para. (iB) inserted by s. 13 (b) of Act 57 of 1980 and substituted by s. 9 (b) of Act 40 of 1986.]

(j)

[Para. (j) deleted by s. 9 (c) of Act 40 of 1986.]

(jA) prescribing the manner in which any account referred to in section 32 (3) (c) shall be administered;

[Para. (jA) inserted by s. 17 (c) of Act 90 of 1998.]

(jB) prescribing the procedure to be followed in respect of an appeal to

the board and the manner in which the appeal must be heard.

[Para. (jB) inserted by s. 17 (c) of Act 90 of 1998.]

- (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 s. 13 (c) of Act 57 of 1980.]

- (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 agents.

[Sub-s. (lA) inserted by s. 6 (a) of Act 60 of 1978.]

(2) The Minister may, on such conditions as he may think fit and after consultation with the board, by regulation or by notice in writing, sent by post or delivered, exempt any estate agent or category of estate agents from any of or all the provisions of this Act.

[Sub-s. (2) substituted by s. 6 (b) of Act 60 of 1978.]

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 five thousand rand or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

[S. 34 substituted by s. 14 of Act 57 of 1980.]

34A Estate agent not entitled to remuneration in certain circumstances

(1) No estate agent shall be entitled to any remuneration or other payment in respect of or arising from the performance of any act referred to in subparagraph

(i), (ii), (iii) or (iv) of paragraph (a) of the definition of 'estate agent', unless at the time of the performance of the act a valid fidelity fund certificate has been issued-

- (a) to such estate agent; and
- (b) if such estate agent is a company, to every director of such company or, if such estate agent is a close corporation, to every member referred to in paragraph (b) of the definition of 'estate agent' of such corporation.

(2) No person referred to in paragraph (c) (ii) of the definition of 'estate agent', and no estate agent who employs such person, shall be entitled to any remuneration or other payment in respect of or arising from the performance by such person of any act referred to in that paragraph, unless at the time of the performance of the act a valid fidelity fund certificate has been issued to such person.

[S. 34A inserted by s. 10 of Act 40 of 1986 and substituted by s. 18 of Act 90 of 1998.]

34B Prohibition of completion of documents by certain estate agents

(1) An estate agent who has not complied with the prescribed standard of training may not in his or her capacity as an estate agent draft or complete any document or clause in a document-

- (a) conferring any mandate on any estate agent to perform any act referred to in paragraph (a) of the definition of 'estate agent'; or
- (b) relating to the sale or lease of immovable property.

(2) Any estate agent who contravenes subsection (1) shall not be entitled to any payment, remuneration or damages in respect of or by reason of any document contemplated in that subsection or for bringing about the transaction or agreement embodied in that document.

[S. 34B inserted by s. 19 of Act 90 of 1998.]

35 Delegation of powers of Minister

(1) The Minister may upon such conditions as he may deem fit, delegate to an official in the Department of Commerce any of or all the powers conferred upon him by this Act, save the power to make regulations.

(2) The Minister 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 Minister himself.

36

[S. 36 repealed by s. 1 of Act 49 of 1996.]

37 Short title and commencement

This Act shall be called the Estate Agency Affairs Act, 1976.

[S. 37 substituted by s. 20 of Act 90 of 1998.]