
BOARD NOTICES RAADSKENNISGEWINGS

BOARD NOTICE 116 OF 2004

PROPERTY VALUERS PROFESSION ACT, 2000

CALL FOR COMMENT: RULES - DISCIPLINARY PROCEEDINGS

The South African Council for the Property Valuers Profession, under section 37 of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), intends to make the rules set out in the Annexure.

Interested persons are invited to submit written comments on the proposed rules within thirty days of publication of this notice to the Acting Registrar, South African Council for the Property Valuers Profession, by -

- Mail to P O Box 114, MENLYN, 0063;
- Fax to 012 - 348 7528;
- Hand delivery to 77 Kariba Street, Lynnwood Glen, Pretoria; or
- e-mail to info@sacpvp.co.za.

CD Vorster
Acting Registrar

(Note: Words and phrases in italics are defined in the Act or in these Rules)

PROPERTY VALUERS PROFESSION ACT, 2000

RULES

DISCIPLINARY PROCEEDINGS

The South African Council for the Property Valuers Profession, under section **37**, read with sections **28** to **36** of the Property Valuers Profession Act, **2000** (Act No. **47** of **2000**), hereby makes the rules in the Schedule.

SCHEDULE

Definitions

1. In these rules any word or expression to which a meaning has been assigned in *the Act* shall bear that meaning, and, unless the context otherwise indicates –

“appellant” means *a registered person* found guilty of improper conduct;

“complaint” means any matter brought against *a registered person* in terms of section **29** of *the Act*;

“complainant” means a person who lodges *a complaint*;

“Executive Committee” means *the Executive Committee* established in terms of section **18** of *the Act*;

“investigating committee” means *an investigating committee* established in terms of section **18** of *the Act*;

“respondent” means *a registered person* against whom a matter has been brought in terms of section **29** of *the Act* or *a registered person* charged with improper conduct in terms of section **30** of *the Act*;

“supervisor” means a professional valuer or a professional associated valuer without restrictions under whose supervision and control a *candidate* performs his or her work in the property valuers profession, recorded and confirmed as such by *the Council*;

“the Act” means the Property Valuers Profession Act, **2000** (Act No. **47** of **2000**);

“the Rules” means the Rules for the Property Valuers Profession, **2003**, made under section **37** of *the Act*, published in Board Notice **77** of **2003**, in Government *Gazette* No. **25275** of **8** August 2003, as amended; and

“the Valuers’ Rules” means the Valuers’ Rules made under section **22** of the Valuers’ Act, **1982** (Act No. **23** of **1982**), published in *Government Gazette* No. **8718** of **20** May **1983**, as amended.

**PART I
COMPLIANT
(Section 29(1))**

Lodging of Complaint

2. (1) Any person (“the complainant”) who feels aggrieved by an act or omission on the part of a *registered person* may lodge *a complaint* with *the Council*.
- (2) *A complaint* shall –
- (a) be in writing and in the form of **an** affidavit or an affirmation;
 - (b) contain the full name, business, postal and e-mail addresses of the complainant;
 - (c) detail the specific act or omission relating to the alleged improper conduct which the *registered person* is charged with;
 - (d) include all supporting evidence relating to *the complaint*;
 - (e) identify witnesses who may be able to provide evidence in support of *the complaint*;
 - (f) indicate *the complainant’s* willingness to –
 - (i) assist an *investigating* committee with the investigation or with the obtaining of material information in respect of the matter concerned; and
 - (ii) appear before *a disciplinary tribunal* at the time and place specified in a subpoena, to be questioned or to produce a book, document or object; and
 - (g) be signed by *the complainant* or by his or her duly appointed representative.
- (3) *The Council* or its designate may of its **own** accord refer any information which comes to its notice and which *prima facie* indicates improper conduct on the part of *a registered person* to an *investigating committee*.

Processing of Complaint

3. (1) *The Registrar* shall immediately upon receipt of *a complaint* referred to in rule 2 –
- (a) acknowledge receipt in writing; and
 - (b) submit *the complaint* to *the Executive Committee* for information and instructions.
- (2) *The Executive Committee* may, if it has reasonable grounds to suspect that *a registered person* has not committed an act which may render him or her guilty of improper conduct, dismiss *the complaint* and inform *the complainant* concerned accordingly in writing.

**PART II
INVESTIGATING COMMITTEE
(Section 29)**

Composition of Investigating Committee

4. (1) *An investigating committee* may consist of one person but shall not consist of more than three persons.

- (2) If *an investigating committee* consisting of more than one person is established, *the Council* may –
- (a) take the provisions of section 31(2) of *the Act* into consideration; and
 - (b) designate the chairperson of such a committee.
5. (1) If, during any stage of an investigation of a charge of improper conduct, a member of an *investigating committee* dies or becomes disqualified or vacates his or her office as contemplated in subsections (1) and (2) of section 6 of *the Act*, the investigation shall –
- (a) in the case of an *investigating committee* consisting of one member, be discontinued and shall start anew before another *investigating committee* to be established by *the Council*; or
 - (b) in the case of an *investigating committee* consisting of more than one member, the investigation shall proceed before the remaining members if they form a majority of the members before whom the investigation initially started, and if those remaining members do not form such a majority, the investigation shall start anew before another *investigating committee* to be established by the Council unless all the parties to the investigation agree in writing and unconditionally to accept the recommendations of the *investigating committee*.
- (2) Subject to subrule (1), the recommendation of the majority of an *investigating committee* consisting of more than one member shall be the recommendation of such a committee.

Recording of Proceedings

6. (1) In the case of formal proceedings before an *investigating committee*, such proceedings shall be recorded in the manner determined by the chairperson of *the investigating Committee*.
- (2) The chairperson of an *investigating committee* shall convey the determination referred to in subrule (2) to *the Registrar*.

Supplementary Powers

7. Subject to subsection (3) of section 29 of *the Act*, an *investigating committee* may also, for the purposes of its investigation –
- (a) consult or seek further information or evidence regarding *the complaint* from *the complainant* or any person or body, including *the respondent* or his or her employer or supervisor;
 - (b) seek legal or other advice or assistance from any person or body; and
 - (c) with the necessary changes, exercise the powers referred to or contemplated in subsections (3), (4) or (5) of section 32 of *the Act*.

PART III**CHARGE****(Section 30)****Dismissal of Charge and Assistance**

8. (1) **The Council** may, if it is convinced that no sufficient grounds exist for a charge of improper conduct to be preferred against *a registered person*, dismiss *the complaint* and inform *the complainant* accordingly in writing.
- (2) The Council may, for the purposes of section 30 of *the Act*, appoint a person to assist it in the performance of its functions in terms of that section.

Additional Documents and Information

9. The following additional documents and information shall be attached to a charge sheet referred to in subsection (3) of section 30 of *the Act* –
- (a) a copy of the Code of Conduct drawn up in terms of section 28 of *the Act*;
 - (b) an extract of sections 29 to 34 of *the Act*; and
 - (c) a copy of the Rules for Disciplinary Proceedings.

Further Particulars

10. (1) *A respondent* may, within 14 days after the receipt of a charge sheet, request *the Council* in writing for such further particulars as are reasonably necessary for him or her to admit or deny the charge.
- (2) On receipt of a request for further particulars *the Council* shall, within 14 days after receipt thereof, furnish the requested particulars or respond to the request in writing.

PART IV**DISCIPLINARY TRIBUNAL****(Section 31)****Presiding Officer and Related Matters**

11. (1) When *the Council* appoints or has appointed *a disciplinary tribunal*, it shall also –
- (a) designate one of the members thereof as the presiding officer;
 - (b) instruct *the Registrar* –

- (i) to convey the appointment to the persons concerned in writing; and
 - (ii) to submit copies of all documents and other information in the possession of the *Council* pertaining to the complaint to the presiding officer of *the disciplinary tribunal*.
- (2) *The Council* may also request the presiding officer of *a disciplinary tribunal* to keep *the Council* informed about a charge submitted to it.

PART V

DISCIPLINARY HEARING (Section 32)

Procedure

- 12. (1) The presiding officer of *a disciplinary tribunal* –
 - (a) shall, having regard to the seriousness, complexity or urgency of a charge referred to *the disciplinary tribunal*, determine the procedure to be followed at a hearing before it; and
 - (b) may determine the manner in which the hearing shall be recorded and convey that determination to *the Registrar*.
- (2) The provisions of rule 5 shall apply, with the necessary changes, to a hearing before *a disciplinary tribunal*.

PART VI

APPEAL (Section 34)

Notice of Appeal

- 13. Subject to section 34 of *the Act*, an appellant shall deliver to *the Council* a written notice of appeal, dated and signed by or for him or her, containing at least the following:
 - (a) The name, postal and e-mail addresses and telephone and fax numbers of *the appellant* and his or her representative, if not already in the possession of *the Council*.
 - (b) Whether the whole or part of the finding is appealed against, and, if in part, then which **part**.

- (c) The grounds of appeal, also specifying the findings of fact or rulings of law appealed against.

14. *The Registrar* shall immediately on receipt of a notice of appeal referred to in rule 13 –

- (a) acknowledge receipt in writing; and
- (b) submit the notice to *the Council*.

Assistance

15. *The Council* may, for the purposes of section 34 of *the Act*, appoint a person or persons to assist it in the performance of its functions in terms of that section.

Determination of Appeal Hearing and Appeal Hearing

16. (1) *The Council* shall –

- (a) within 120 days after receipt of a notice of appeal referred to in rule 13 determine the date on which the appeal shall be heard; and
 - (b) notify *the appellant* concerned in writing of the place, date and time of the appeal hearing and invite him or her to submit oral or written arguments or submissions, including full and clear grounds of appeal as well as properly motivated and substantiated legal or other arguments and representations in support of the appeal, should he or she wish to do so.
- (2) *An appellant* may be assisted or represented by another person at an appeal hearing.
- (3) The appeal shall be considered by virtue of the written submissions made by *the appellant*.

PART VI

GENERAL

Duties of Registrar

17. *The Registrar* shall also at the request of the chairperson of an *investigation committee* or the presiding officer of a *disciplinary tribunal*, render assistance to those functionaries, including the persons referred to in rules 7, 8(2) and 15 and section 32(2) of *the Act*.

Subpoena

18. For the purposes of these Rules the subpoena shall be in the format set out in Annexure 'A'.

Repeal of Valuers' Rules

19. So much of *the Valuers' Rules* as is unrepealed is hereby repealed.

Repeal of Rules

20. Rules 15 and 16 of *the* Rules are hereby repealed.

Short Title and Commencement

21. ~~These~~ Rules shall be called the Rules for Disciplinary Proceedings, and shall commence on ... (date).

ANNEXURE A

SOUTH AFRICAN COUNCIL FOR THE PROPERTY VALUERS PROFESSION SUBPOENA

(Rule 18)

SUBPOENA TO APPEAR BEFORE INVESTIGATING COMMITTEE/DISCIPLINARY TRIBUNAL

To –

(Name of witness)

(Address of witness)

You are hereby summoned in terms of section 32(3), (7) and (8) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), to appear on ... (date) at ... (time) at ... (address) before ... to be questioned and to produce the following book(s), document(s) or object(s), namely –

(Specify, or delete if inapplicable)

in connection with a charge of improper conduct against

Signed this ... day of . . .

Chairperson / Presiding Officer
Investing Committee/ Disciplinary Tribunal

Place

Section 32(8) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), read as follows:

- “(8) (a) A witness who has been subpoenaed may not-
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or

- (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness.
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.”