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No. 10202

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 728.

23 April 1986

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23 April 1986

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 40 van 1986: Wysigingswet op Eiendomsagente, 1986.

No. 40 of 1986: Estate Agents Amendment Act, 1986.

ESTATE AGENTS AMENDMENT ACT, 1986

Act No. 40, 1986

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Estate Agents Act, 1976, so as to provide that the board may in certain circumstances pay audit fees out of its funds and thereafter recover them from the estate agent concerned; to make further provision regarding payments to be made out of the Estate Agents Fidelity Fund; to amend the requirements in connection with the issue of a fidelity fund certificate; to provide that interest may in certain circumstances be paid out of the Estate Agents Fidelity Fund; to provide that an independent contractor rendering services to an estate agent shall be the holder of a fidelity fund certificate but that fidelity insurance need not be taken out in respect of him; to require that a fidelity fund certificate be returned to the board in the case of certain disabilities of the holder thereof and on the liquidation of a company or a close corporation; to make further provision concerning acts constituting improper conduct; to further regulate the requirements concerning trust accounts and the auditing thereof; and to provide that an estate agent shall not be entitled to remuneration in respect of transactions concluded by him while not complying with certain provisions of the Act; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 9 April 1986.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

1. Section 9 of the Estate Agents Act, 1976 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

- “(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 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

Amendment of section 9 of Act 112 of 1976, as amended by section 4 of Act 57 of 1980 and section 6 of Act 51 of 1984.

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such attorney and client costs or the amount of such audit fees, as the case may be, from the estate agent concerned.”.

2. Section 13 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

Amendment of section 13 of Act 112 of 1976.

“(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;”.

3. Section 16 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

Amendment of section 16 of Act 112 of 1976, as substituted by section 2 of Act 53 of 1982.

“(3) 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 [complies with the requirements of this Act] 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.”.

4. Section 19 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

Amendment of section 19 of Act 112 of 1976, as amended by section 6 of Act 57 of 1980 and section 3 of Act 53 of 1982.

“(3) [No amount shall be paid] The board may at its discretion pay out of the fund [as] 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 No. 55 of 1975).”.

5. The following section is hereby substituted for section 26 of the principal Act:

Substitution of section 26 of Act 112 of 1976, as amended by section 3 of Act 10 of 1985.

“Prohibition of rendering of services as estate agent in certain circumstances. 26. 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, including an independent contractor rendering services to him, and, if such person is a company, to every director of such company, and, if such person is a close corporation, to every member referred to in paragraph (b) of the definition of ‘estate agent’ of such corporation; and

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

6. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

Amendment of section 28 of Act 112 of 1976, as amended by section 8 of Act 57 of 1980, section 5 of Act 53 of 1982 and section 5 of Act 10 of 1985.

“(5) Subject to the provisions of subsection (1), any person or, if such person is a company, any director of such company or, if such person is a close corporation, any member referred to in paragraph (b) of the definition of estate agent of such corporation, shall, if he becomes subject to any disqualification referred to in section 27, immediately cease to perform any act which he performs as an estate agent and shall forthwith return his fidelity fund certificate to the board.

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(6) The provisions of subsection (5) shall *mutatis mutandis* apply to a company or close corporation being wound up in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be.”.

7. Section 30 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) fails in respect of any act performed by him as an estate agent to give a full and proper **[account]** 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;”;

(b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(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;”;

(c) by the deletion of paragraph (f) of subsection (1).

Amendment of section 30 of Act 112 of 1976, as amended by section 9 of Act 57 of 1980 and section 6 of Act 10 of 1985.

8. Section 32 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Every estate agent shall open and keep **[a] one or more separate trust [account] accounts**, which shall contain a reference to this section, with a bank or building society and such estate agent or his employee, as the case may be, shall forthwith deposit therein the moneys held or received by him in his capacity as an estate agent or as an employee of such estate agent, on **[account] behalf** of any person, and the name of such bank or building society and the number of each such trust account shall forthwith be notified to the board.”;

(b) by the substitution for subsection (4) of the following subsection:

“(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 **[prescribed]** form from time to time determined by the board, in regard to his findings **[to the board]**, and a copy thereof to the relevant estate agent.”;

(c) by the substitution for paragraph (c) of subsection (7) of the following paragraph:

“(c) any estate agent **[fails to apply timeously for a fidelity fund certificate in respect of any year]** becomes subject to any disqualification referred to in **section 27**.”.

Amendment of section 32 of Act 112 of 1976, as amended by section 5 of Act 60 of 1978, section 11 of Act 57 of 1980 and section 12 of Act 51 of 1984.

9. Section 33 of the principal Act is hereby amended—

(a) by the deletion of paragraph (iA) of subsection (1);

(b) by the substitution for paragraph (iB) of subsection (1) of the following paragraph:

“(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 **[(3)] (2) (d)**”; and

(c) by the deletion of paragraph (j) of subsection (1).

Amendment of section 33 of Act 112 of 1976, as amended by section 6 of Act 60 of 1978 and section 13 of Act 57 of 1980.

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10. The following section is hereby inserted after section 34 of the principal Act:

Insertion of
section 34A in
Act 112 of 1976.

“Estate
agent not en-
titled to re-
muneration
5 in certain cir-
cumstances.
34A. Any person acting contrary to the provisions
of section 26, shall not be entitled to remuneration in
respect of a transaction concluded by him as an es-
tate agent while failing to comply with the provisions
of section 26.”.

11. This Act shall be called the Estate Agents Amendment Act, 1986. Short title.