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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 752.

18 April 1984.

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Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geëg 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:—

Hb. 51 van 1984: Wysigingswet op Eiendomsagente, 1984.

No. 51 of 1984: Estate Agents Amendment Act, 1984.

ESTATE AGENTS AMENDMENT ACT, 1984

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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 provisions of the Estate Agents Act, 1976, regarding definitions; to further regulate the constitution of the Estate Agents Board; to delete the requirement that in the determination of the remuneration and allowances of members of the said board who are not in the full-time employ of the State, the Minister of Finance is to be consulted with; to authorize the said board itself to determine the conditions of appointment and the remuneration of staff of the board; to provide for the appointment by the said board of disciplinary committees; to provide for the recovery by the board of certain costs from estate agents; to further regulate the application of moneys in the Estate Agents Fidelity Fund; to extend the disqualifications relating to fidelity fund certificates; and to further regulate the duties of estate agents relating to the auditing of their accounting records, the provisions regarding improper conduct by estate agents, certain appeals to the Supreme Court and certain matters regarding the trust accounts of estate agents; and to provide for matters in connection therewith.

*(English text signed by the State President.)
(Assented to 30 March 1984.)*

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

1. Section 1 of the Estate Agents Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—

5 (a) by the substitution for the definition of "board" of the following definition:

"'board' means the Estate Agents Board established under section 2, and includes, for the purposes of subsections (2) and (3) of section 30, and section 32 (7) (a) (ii) in so far as it relates to the said subsections, any disciplinary committee of the board acting pursuant to and in accordance with the provisions of section 8B";

10 (b) by the addition in the definition of "estate agent" before the proviso of the following paragraph:

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

20 (c) by the insertion after the definition of "fund" of the following definition:

"'immovable property' includes—

25 (a) any unit as defined in section 1 of the Sectional Titles Act, 1971 (Act No. 66 of 1971), and any proposed unit;

Amendment of section 1 of Act 112 of 1976, as amended by section 1 of Act 60 of 1978, section 1 of Act 57 of 1980 and section 1 of Act 53 of 1982.

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- (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 No. 16 of 1967);
- (e) any share in a private company referred to in the Companies Act, 1973 (Act No. 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 No. 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 No. 75 of 1983), and any proposed time-sharing interest."

- 20 2. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 3 of Act 112 of 1976.
- "(1) The board shall consist of not fewer than nine and not more than ~~eleven~~ fourteen members appointed under subsection (2) by the Minister."

- 25 3. The following section is hereby substituted for section 5 of the principal Act: Substitution of section 5 of Act 112 of 1976.

- "Remuneration and allowances of members of board. 5. 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 [in consultation with the Minister of Finance]."

4. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 6 of Act 112 of 1976, as substituted by section 2 of Act 57 of 1980.
- 35 "(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 [Minister may in consultation with the Minister of Finance approve] board may determine."

5. The following section is hereby inserted in the principal Act after section 8A: Insertion of section 8B in Act 112 of 1976.

- "Disciplinary committees. 8B. (1) The board may from time to time appoint such number of disciplinary committees as it deems fit; each consisting of at least three members, from amongst its members.
- (2) A disciplinary committee may exercise or perform any power or function which is granted or entrusted to the board by subsections (2) and (3) of section 30.
- (3) The provisions of section 4 (5) and (6) shall, subject to subsection (5) of this section, apply *mutatis mutandis* in respect of a disciplinary committee.
- (4) The board may, subject to the provisions of this section, alter the constitution of any disciplinary committee before the committee has commenced with an investigation contemplated in section 30 (2).
- (5) If a vacancy occurs on a disciplinary committee after the committee has commenced with an investigation, the investigation may be proceeded with before at least two members of the committee, but if

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only two serving members remain, they may take any decision referred to in section 30 (3) only by unanimous vote.

5 (6) Any person who feels aggrieved by any decision taken by a disciplinary committee in the exercise of its powers and the performance of its functions under section 30, may within one month after the disciplinary committee—

10 (a) has informed him in writing of such decision and upon payment of the prescribed fees request the disciplinary committee in writing to furnish him in writing with its reasons for such decision;

15 (b) has in accordance with paragraph (a) furnished him with its reasons for such decision and after notice to the disciplinary committee, appeal in writing to the board against such decision, and the board may thereupon—

(i) dismiss the said appeal;

20 (ii) if it is of the opinion that the disciplinary committee has not acted in accordance with the relevant provisions of this Act, give an order opposite to the decision of the disciplinary committee or amending the decision of the disciplinary committee;

25 (iii) refer the matter back to the disciplinary committee for further consideration; or

(iv) vary any penalty imposed by the disciplinary committee as it may deem fit.”

6. Section 9 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the proviso of the following paragraph:

Amendment of section 9 of Act 112 of 1976, as amended by section 4 of Act 57 of 1980.

“(b) if the board [, if]—

35 (i) after an investigation [it] has found that an estate agent failed to comply with any duty imposed upon him in terms of this Act [, may recover from such estate agent the costs of such investigation in so far as it relates to such duty.]; or

40 (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,

45 the board may recover the costs of such investigation in so far as it relates to such duty, or the taxed amount of such attorney and client costs, as the case may be, from the estate agent concerned.”

7. Section 18 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph:

Amendment of section 18 of Act 112 of 1976, as amended by section 2 of Act 60 of 1978 and section 5 of Act 57 of 1980.

50 “(ii) of any moneys collected or received by him and payable in respect or on account of a contract of purchase and sale in respect of immovable property [, including any agreement or intermediate transaction as defined in section 1 of the Sale of Land on Instalments Act, 1971 (Act No. 72 of 1971)] or any contract or deed of alienation as defined in section 1 (1) of the Alienation of Land Act, 1981 (Act No. 68 of 1981);”

8. Section 27 of the principal Act is hereby amended by the insertion after paragraph (a) of the following paragraph:

Amendment of section 27 of Act 112 of 1976, as substituted by section 3 of Act 60 of 1978

60 “(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

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5 (ii) fidelity fund certificate is made, to comply with any provision of section 29 (b) or section 32 (3) (b); or 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;”

and amended by section 7 of Act 57 of 1980 and section 4 of Act 53 of 1982.

10 9. Section 29 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:
“(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.”.

Amendment of section 29 of Act 112 of 1976.

20 10. Section 30 of the principal Act is hereby amended—
(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
“(c) fails to pay any moneys due by him to the board or in respect of the fund within [three months] one month after such moneys become due;” and
25 (b) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
“(g) fails to comply with [the requirements] any provision of section 16 (1), (2) or (4), 29 or 32, or contravenes any provision of section 26 or 32A (2) (a) or (b);”.

Amendment of section 30 of Act 112 of 1976, as amended by section 9 of Act 57 of 1980.

30 11. Section 31 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
35 “Any person who feels aggrieved by any decision taken by the board in the exercise of its powers under section 8B (6), 16, 27, 28 or 30 may at any time after he became aware of such decision but not later than one month after the board—”.

Amendment of section 31 of Act 112 of 1976, as amended by section 4 of Act 60 of 1978 and section 10 of Act 57 of 1980.

40 12. Section 32 of the principal Act is hereby amended—
(a) by the substitution for paragraph (c) of subsection (2) of the following paragraph:
“(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.”;
45 (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
50 “(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 [at least once annually] by the auditor referred to in section 29 (b), within four months after the final date of the financial year of the estate agent concerned.”;
55 (c) by the substitution for subsection (4) of the following subsection:

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

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5 “(4) Any auditor who does an audit contemplated in subsection (3) (b), shall **[as soon as may be practicable]** forthwith after completing such audit, transmit a report in the prescribed form in regard to his findings to the board, and a copy thereof to the relevant estate agent.”; and

(d) by the substitution for subsection (5) of the following subsection:

10 “(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 **[of his trust, savings or other interest-bearing account referred to in subsection (2) (a)]** in

15 respect of the matters referred to in section 29 (a).”

13. This Act shall be called the Estate Agents Amendment Short title.
Act, 1984.