

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



STAATSKOERANT

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 678.

14 April 1982.

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14 April 1982.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg 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. 53 van 1982: Wysigingswet op Eiendomsagente, 1982.

No. 53 of 1982: Estate Agents Amendment Act, 1982.

ESTATE AGENTS AMENDMENT ACT, 1982

Act No. 53, 1982

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 regulate anew the circumstances under which attorneys and certain employees of attorneys are estate agents for the purposes of the said Act, and in this regard to make provision for the issuing of a certain certificate of registration; to extend the provisions relating to the non-liability of the Estate Agents Fidelity Fund; to further regulate the circumstances under which certain estate agents may not obtain fidelity fund certificates; to provide for the serving of process in connection with certain applications by the Estate Agents Board on persons who have departed from the Republic; and to determine the duties and powers of inspectors; to amend the Estate Agents Amendment Act, 1980; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 18 March 1982.)

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 insertion after paragraph (c) of the definition of “estate agent” of the following paragraph:
 “(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 No. 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;”;
- 10 (b) by the substitution for paragraph (d) of the definition of “estate agent” of the following paragraph:
 “(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 No. 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 connection with his activities as a practising attorney]**, in the course of and
 25 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—
- Amendment of section 1 of Act 112 of 1976, as amended by section 1 of Act 60 of 1978 and section 1 of Act 57 of 1980.

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- (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 No. 53 of 1979); or
- (ii) through the medium of or as a director of a company other than such professional company; and
- (c) by the substitution for the definition of "fidelity fund certificate" of the following definition:
 "fidelity fund certificate" means a fidelity fund certificate referred to in section 16, and includes for the purposes of sections 26 (a), 27, 28 and 33 (1) (e) and (f), a registration certificate referred to in section 16;".

2. The following section is hereby substituted for section 16 of the principal Act:

Substitution of section 16 of Act 112 of 1976.

16. (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).

[2] (3) If the board upon receipt of any application referred to in subsection (1) or (2) and the levies and contribution referred to in [subsection (1)] those subsections, is satisfied that the applicant concerned complies with the requirements of this Act, the board shall in the prescribed form issue to [such] 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.

[3] (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."

3. Section 19 of the principal Act is hereby amended—

Amendment of section 19 of Act 112 of 1976, as amended by section 6 of Act 57 of 1980.

- (a) by the insertion in subsection (4) after paragraph (b) (iv) of the word "or"; and
- (b) by the addition to subsection (4) of the following paragraph:
 "(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."

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4. Section 27 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

Amendment of section 27 of Act 112 of 1976, as substituted by section 3 of Act 60 of 1978 and amended by section 7 of Act 57 of 1980.

- “(b) any estate agent who is a director of a company—
- 5 (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),
 - 10 or any estate agent who **[immediately]** within a period of six months before or on the date on which such fidelity fund certificate was so withdrawn or such company was so prohibited, was a director of such company.”

15 5. Section 28 of the principal Act is hereby amended by the addition of the following subsection:

Amendment of section 28 of Act 112 of 1976, as amended by section 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.”

6. The following section is hereby inserted in the principal Act after section 32:

Insertion of section 32A in Act 112 of 1976.

- 30 “Powers of inspectors. **32A. (1) Any inspector furnished with inspection** authority in writing by the board may conduct an investigation to determine whether the provisions of this Act are being or have been complied with and may, subject to subsection (5), for that purpose, without giving prior notice, at all reasonable times—
- 35 (a) enter any place in respect of which he has reason to believe that—
 - 40 (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;
 - 45 (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;
 - 50 (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;
 - 55 (c) examine or make extracts from or copies of such fidelity fund certificate, book, record or other document;
 - 60 (d) seize and retain any such fidelity fund certificate, book, record or other document to which any prosecution or charge of improper conduct under this Act may relate: Provided that the person from whose possession or custody any
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5 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—

- 10 (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.

15 (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

25 (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 No. 53 of 1979), or any employee of any such attorney, member or company;
- 30 (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)."

35 7. Section 12 of the Estate Agents Amendment Act, 1980 (Act No. 57 of 1980), is hereby repealed.

Repeal of section 12 of Act 57 of 1980.

8. The following section is hereby substituted for section 15 of the Estate Agents Amendment Act, 1980 (Act No. 57 of 1980):

Substitution of section 15 of Act 57 of 1980.

40 "Short title. 15. This Act shall be called the Estate Agents Amendment Act, 1980 [, and section 12 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*]."

9. This Act shall be called the Estate Agents Amendment Act, 1982.

Short title.