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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 989.

23 May 1980.

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23 Mei 1980.

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

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

No. 57 of 1980: Estate Agents Amendment Act, 1980.

No. 57 van 1980: Wysigingswet op Eiendomsagente, 1980.

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, relating to definitions; to provide for the designation of inspectors by the Estate Agents Board; the appointment of an executive committee by the Board; relating to the costs of investigations by the Board; the liability of the Estate Agents Fidelity Fund; the issue of fidelity fund certificates to persons not having certain standards of training or practical experience or who are or were directors of certain companies; the power of the court to withdraw fidelity fund certificates in certain circumstances; improper conduct by certain directors of certain companies; the penalties which may be imposed for improper conduct; the periods within which appeals may be lodged against certain decisions of the Board; the refund of certain interest to certain estate agents; and the auditing of certain accounting records; to determine the duties and powers of inspectors; relating to the carrying on of the business of an estate agent at residential premises; and the penalties which may be imposed for certain offences; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 5 May 1980.)

BE IT ENACTED by the State President, the Senate 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—
- (a) by the insertion after the definition of “annual financial statement” of the following definition:
- “‘auditor’ means any person registered in terms of section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951), as an accountant and auditor, and engaged in public practice as such;”;
- (b) by the insertion after the definition of “estate agent” of the following definition:
- “‘executive committee’ means the executive committee appointed in terms of section 8A (1);”;
- (c) by the substitution for the definition of “Minister” of the following definition:

Amendment of section 1 of Act 112 of 1976, as amended by section 1 of Act 60 of 1978.

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“‘Minister’ means the Minister of **[Economic] Commerce and Consumer Affairs**.”.

2. The following section is hereby substituted for section 6 of the principal Act: Substitution of section 6 of Act 112 of 1976.

5 “Staff of board and designation of inspectors. 6. (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.

10 (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.”.

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

“Executive committee. 8A. (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.

20 (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.

25 (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.”.

4. Section 9 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso: Amendment of section 9 of Act 112 of 1976.

35 “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) the board, if 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.”.

45 5. Section 18 of the principal Act is hereby amended— Amendment of section 18 of Act 112 of 1976, as amended by section 2 of Act 60 of 1978.
(a) by the substitution for subsection (1) of the following subsection:

“(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—

50 (a) theft, committed after the commencement of this Act, by an estate agent—

55 **[(a)]** (i) of any money or other property entrusted by or on behalf of such persons to him in his capacity as an estate agent;

[(b)] (ii) of any moneys collected or received by him and payable on account of a contract of purchase and sale, 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);

60 **[(c)]** (iii) of any other moneys, including insurance premiums, collected or received by him and

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payable in respect of immovable property, any interest in immovable property or any business undertaking;

(b) the failure of an estate agent to comply with the provisions of section 32 (1).";

(b) by the substitution for the words preceding paragraph (b) of subsection (3) of the following words:

"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;".

6. Section 19 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words: Amendment of section 19 of Act 112 of 1976.

"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:".

7. Section 27 of the principal Act is hereby amended by the substitution for the words preceding the proviso of the following words: Amendment of section 27 of Act 112 of 1976, as substituted by section 3 of Act 60 of 1978.

"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—

[(a)] (i) has at any time by reason of improper conduct been dismissed from a position of trust;

[(b)] (ii) has at any time been convicted of an offence involving an element of dishonesty;

[(c)] (iii) is an unrehabilitated insolvent;

[(d)] (iv) is of unsound mind; [or]

[(e)] (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;

(b) any estate agent who is a director of a company—

(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 immediately 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:".

8. 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.

"(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.".

9. Section 30 of the principal Act is hereby amended— Amendment of section 30 of Act 112 of 1976.

(a) by the insertion after paragraph (g) of subsection (1) of the following paragraph:

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- “(gA) in his capacity as a director of a company 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;”;
- 5 (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
 “(b) impose on such estate agent a fine not exceeding **[five hundred] one thousand** rand and which is payable to the board;”.
- 10 **10.** Section 31 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
 “Any person who feels aggrieved by any decision taken by the board in the exercise of its powers under section 16, 27, 28 or 30 may **[within a period of]** 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.
- 15 **11.** Section 32 of the principal Act is hereby amended—
- (a) by the addition to subsection (2) of the following paragraph:
 “(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).”;
- Amendment of section 32 of Act 112 of 1976, as amended by section 5 of Act 60 of 1978.
- 20 (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
 “(b) balance his books and records relating to any account referred to in paragraph (a) at intervals of not more than **[three months] one month**, and cause them to be audited at least once annually by the auditor referred to in section 29 (b).”.
- 25 (c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:
 “(c) balance his books and records relating to any account referred to in paragraph (a) at intervals of not more than **[three months] one month**, and cause them to be audited at least once annually by the auditor referred to in section 29 (b).”.
- 30 **12.** The following section is hereby inserted in the principal Act after section 32:
- Insertion of section 32A in Act 112 of 1976.
- 35 **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, for that purpose without giving prior notice, may at all reasonable times—
- 40 (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;
- 45 (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;
- 50 (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;
- 55 (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 specify, with such information in respect of that fidelity fund certificate, book, record or other document as he may desire;
- 60 (c) examine or make extracts from or copies of any such fidelity fund certificate, book, record or other document;

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- 5 (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 fidelity fund certificate, book, record or other document was taken, at his request shall be allowed to make, at his own expense and under the supervision of the inspector concerned, copies thereof or extracts therefrom.
- 10 (2) No person shall—
- 15 (a) fail on demand to put 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.
- 20 (3) Any inspector shall issue a receipt to the owner or person in control of anything seized and retained under this section.
- 25 (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)."

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

- 30 (a) by the insertion after paragraph (g) of subsection (1) of the following paragraph:
 "(gA) relating to the standard of training and practical experience of estate agents;"
- (b) by the insertion after paragraph (i) of subsection (1) of the following paragraphs:
 "(iA) prescribing the times at which accounting records are to be audited in accordance with sections 29 (b) and 32 (3);
 (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) (d);"
- 40 (c) by the insertion after paragraph (k) of subsection (1) of the following paragraph:
 "(kA) prescribing the conditions on which any person may carry on his business as an estate agent from any residential premises;"
- 45

Amendment of section 33 of Act 112 of 1976, as amended by section 6 of Act 60 of 1978.

14. The following section is hereby substituted for section 34 of the principal Act:

Substitution of section 34 of Act 112 of 1976.

50 "Offences and penalties. 34. 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 **[two]** five thousand rand or to imprisonment for a period not exceeding **[two]** five years, or to both such fine and such imprisonment."

55 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*. Short title.