



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Prys 20c Price
Oorsee 30c Overseas
POSVRY—POST FREE

Vol. 133]

KAAPSTAD, 23 JULIE 1976

[No. 5221

CAPE TOWN, 23 JULY 1976

DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 1240. 23 Julie 1976.

No. 1240. 23 July 1976.

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. 112 van 1976: Wet op Eiendomsagente, 1976.

No. 112 of 1976: Estate Agents Act, 1976.

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

ACT

To provide for the establishment of an Estate Agents Board and an Estate Agents Fidelity Fund; for the control of certain activities of estate agents; and for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 5 July 1976.)*

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

1. In this Act, unless the context otherwise indicates— Definitions.
- (i) "annual financial statements" means a balance sheet, an income statement and any notes thereon; (iv)
 - (ii) "bank" means a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965); (i)
 - (iii) "board" means the Estate Agents Board established under section 2; (x)
 - (iv) "building society" means a permanent building society registered under the Building Societies Act, 1965 (Act No. 24 of 1965); (ii)
 - (v) "court" means a court of the provincial or local division of the Supreme Court of South Africa having jurisdiction, or a judge of any such court; (viii)
 - (vi) "estate agent"—
 - (a) means any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instructions of or on behalf of any other person—
 - (i) sells or purchases immovable property or any interest in immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a seller or purchaser therefor; or
 - (ii) lets or hires immovable property or any interest in immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor therefor; or
 - (iii) collects or receives any moneys payable on account of a lease of immovable property or any business undertaking; or
 - (iv) in addition to the performance of any act referred to in subparagraph (i), (ii) or (iii)—
 - (aa) collects or receives any moneys 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); or
 - (bb) collects or receives any other moneys, including insurance premiums, payable in respect of immovable property or any interest in immovable property or any business undertaking; or

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

- (cc) renders any such other service as the Minister on the recommendation of the board may specify from time to time by notice in the *Gazette*;
- (b) for purposes of section 3 (2) (a), includes any director of a company which is an estate agent as defined in paragraph (a);
- (c) for purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30 and 33, includes—
- (i) any director of a company which is an estate agent as defined in paragraph (a); and
 - (ii) any person who is employed by an estate agent as defined in paragraph (a) and performs on his behalf any act referred to in subparagraph (i) or (ii) of the said paragraph;
- (d) does not include an attorney who on his own account or as partner in a firm of attorneys or as member of a professional company performs any act referred to in paragraph (a), in connection with his activities as a practising attorney:

Provided that, for the purposes of this definition, "advertise" does not include to advertise in compliance with the provisions of any law; (iii)

- (vii) "fidelity fund certificate" means a fidelity fund certificate referred to in section 16; (vi)
- (viii) "fund" means the Estate Agents Fidelity Fund established under section 12 (1); (v)
- (ix) "Minister" means the Minister of Economic Affairs; (ix)
- (x) "prescribed" means prescribed by regulation; (xii)
- (xi) "Republic" includes the territory of South West Africa; (xi)
- (xii) "this Act" includes any regulation issued thereunder. (vii)

CHAPTER I

ESTATE AGENTS BOARD

2. There is hereby established a juristic person to be known as the Estate Agents Board. Establishment of Estate Agents Board.

3. (1) The board shall consist of not fewer than nine and not more than eleven members appointed under subsection (2) by the Minister. Constitution of board.

(2) The Minister shall appoint as members of the board—

- (a) not fewer than eight estate agents from among at least fourteen estate agents whose names have been submitted for that purpose by associations or organizations of more than five years standing which, in the opinion of the Minister, are representative of estate agents in the Republic;
- (b) not more than three other persons who, in the opinion of the Minister, are fit to serve as members of the board.

(3) If after the expiry of a period of three months from the date on which the Secretary for Commerce in writing requested the associations or organizations referred to in subsection (2) (a) to submit a list of estate agents as contemplated in that subsection, such associations or organizations have failed to submit the said list to the said Secretary or have submitted to the said Secretary a list of estate agents which is defective in some or

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

other respect, the Minister shall appoint suitable estate agents as members of the board in the place of the estate agents he would have appointed if the said associations or organizations had not so failed to submit the said list or had not submitted a list defective in some or other respect.

(4) The board shall from time to time elect from among its members a chairman and vice-chairman of the board, who shall hold office for a period of one year, and, if neither the chairman nor the vice-chairman is present at any meeting of the board, the members present shall elect from among their number a person to preside at such meeting.

(5) A member of the board shall hold office for such period, but not more than three years, and on such conditions as the Minister may determine at the time of his appointment: Provided that any member shall, subject to the provisions of subsections (2) and (3), on the expiry of his term of office be eligible for reappointment.

(6) No person shall be appointed as a member of the board if he—

- (a) is an unrehabilitated insolvent;
- (b) has failed or is unable to comply in full with a judgement or order, including an order as to costs, given against him by a court of law in civil proceedings;
- (c) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence to a period of imprisonment without the option of a fine; or
- (d) is not a South African citizen permanently resident in the Republic.

(7) A member of the board shall vacate his office if he—

- (a) becomes subjected to any disqualification referred to in subsection (6);
- (b) becomes of unsound mind;
- (c) in the case of a member appointed in accordance with the provisions of section (2) (a) or (3), ceases to be an estate agent;
- (d) fails to comply with a condition referred to in subsection (5) applicable to him; or
- (e) has been absent from more than two consecutive meetings of the board without the leave of the board.

(8) If any member of the board dies, or resigns by notice in writing addressed to the Minister, or ceases to be a member of the board in terms of subsection (7), the Minister may, with due regard to the provisions of subsections (2) and (3), appoint any person as successor to such member for the unexpired period of office of such member.

4. (1) The board shall meet for the first time at a time and place determined by the Minister and thereafter at least once in each financial year at such times and places as the chairman or, in his absence, the vice-chairman may determine. Meetings of board.

(2) The chairman or, in his absence, the vice-chairman may at any time of his own accord or at the written request of not fewer than six members convene a special meeting of the board.

(3) A notice convening a special meeting of the board shall state the purpose of such meeting.

(4) The quorum for any meeting of the board shall be six members thereof.

(5) The decision of a majority of the members of the board present at a meeting of the board shall constitute the decision of the board, and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(6) No decision taken by the board or act performed under the authority of the board shall be invalid merely by reason of a vacancy on the board or of the fact that any person not entitled to sit as a member of the board, sat as a member of the board at

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

the time the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the board present at the time and who were entitled to sit as members of the 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 generally or in any particular case by the Minister in consultation with the Minister of Finance. Remuneration and allowances of members of board.

6. 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. Staff of board.

7. The object of the board shall be to maintain and promote the integrity of estate agents. Object of board.

8. The board shall, in addition to any other power conferred upon it by this Act, have the power— Powers of board.

- (a) to appoint committees, of which persons other than members of the board may with the approval of the Minister be members, to advise the board on any matter in respect of which the board possesses any power;
- (b) to frame and publish, with the approval of the Minister, a code of conduct which shall be complied with by estate agents and to take such steps as may be necessary or expedient to ensure such compliance;
- (c) to encourage and promote the improvement of the standard of training of and services rendered by estate agents;
- (d) to receive any application for exemption from the provisions of this Act and to submit such application to the Minister;
- (e) in general to take such other steps and to perform such other acts as may be necessary or expedient in order to achieve its object.

9. (1) The funds of the board shall consist of— Funds of board.

- (a) the prescribed levies paid to the board by estate agents;
- (b) all moneys derived from any investments;
- (c) all other moneys which may accrue to the board from any other source.

(2) The board shall utilize its funds to defray the expenses incurred by the board in the performance of its functions and the exercise of its powers under this Chapter: Provided that any moneys or other property donated or bequeathed to the board shall be utilized in accordance with the conditions of such donation or bequest.

(3) The board shall deposit all the moneys received by it under this Chapter in an account opened by it at any bank approved by the Minister.

(4) The board may invest any moneys received under this Chapter and not required for immediate use, with the Public Debt Commissioners or in such other manner as may be determined by the Minister in consultation with the Minister of Finance.

10. (1) The financial year of the board shall end in each year upon the date determined by the board with the approval of the Minister. Keeping of accounting records, drawing up of financial statements and auditing.

(2) The board shall cause—

- (a) to be kept in one of the official languages at an address in the Republic approved by the Minister such accounting records as are necessary fairly to reflect and explain the state of affairs—

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

- (i) of all moneys received or expended by it in terms of this Chapter;
 - (ii) of all its assets and liabilities;
 - (iii) of all its financial transactions and the financial position of its business; and
- (b) as soon as possible, but not later than six months, after the end of each financial year, annual financial statements to be prepared showing, with all the appropriate particulars, the moneys received and the expenditure incurred by it during, and its assets and liabilities at the end of, the financial year.
- (3) The accounting records and financial statements referred to in subsection (2) shall be audited by an auditor appointed by the board.

11. (1) The board shall furnish the Minister with such information as he may desire from time to time in connection with the functions and financial position of the board, and shall in addition submit to the Minister an annual report, including annual financial statements audited in accordance with section 10 (3), on its functions. Report by board.

(2) Every report furnished under subsection (1) shall as soon as may be practicable be laid upon the Table of the Senate and of the House of Assembly by the Minister.

CHAPTER II

ESTATE AGENTS FIDELITY FUND

12. (1) There is hereby established a fund to be known as the Estate Agents Fidelity Fund, into which shall be paid— Establishment and control of Estate Agents Fidelity Fund.

- (a) all moneys paid as annual contributions in accordance with the provisions of this Chapter to or on account of the fund;
- (b) income derived from the investment of moneys in the fund;
- (c) all moneys recovered by or on behalf of the fund in the exercise of any right of action conferred by this Chapter;
- (d) all moneys received on behalf of the fund from any insurance company;
- (e) interest paid to the fund in terms of section 32 (2) (c); and
- (f) any other moneys accruing to the fund from any other source.

(2) The fund shall be controlled and managed by the board, which shall utilize the moneys in the fund in accordance with the provisions of this Chapter.

(3) All moneys forming part of the fund shall, until they are invested or spent in accordance with the provisions of this Chapter, be paid into a bank approved by the Minister, to the credit of an account to be called the Estate Agents Fidelity Fund Account.

13. Subject to the provisions of this Chapter, there shall be paid out of the fund whenever it is required— Payments out of fund.

- (a) the amount of all claims, including costs, allowed or established against the fund as hereinafter provided;
- (b) any contribution in the discretion of the board in respect of any expense incurred by any claimant in establishing his claim;
- (c) all legal expenses incurred in defending claims made against the fund or otherwise incurred in relation to the fund;
- (d) all premiums payable in respect of contracts of insurance entered into by the board in terms of section 23;
- (e) the expenses involved in the control of the fund, including remuneration and allowances to members of the board in connection with the management of the fund;

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

- (f) interest on and redemption of loans negotiated by the board on behalf of the fund;
- (g) any other moneys which shall or may be paid out of the fund in accordance with this Act.

14. The board shall—

Auditing of accounts of fund.

- (a) cause to be kept in one of the official languages at an address in the Republic approved by the Minister such accounting records as are necessary fairly to reflect and explain the state of affairs—
 - (i) of all moneys received or expended by or on behalf of the fund;
 - (ii) of all the assets and liabilities of the fund;
 - (iii) of all the financial transactions of the fund and the financial position of its business;
- (b) as soon as possible, but not later than six months, after the end of each financial year of the fund ending in each year on a date determined by the board with the approval of the Minister, cause annual financial statements in respect of the fund to be prepared showing, with all the appropriate particulars, the moneys received and expenditure incurred by the fund during, and its assets and liabilities at the end of, the financial year of the fund;
- (c) cause the accounting records and annual financial statements of the fund to be audited by an auditor appointed by the board; and
- (d) submit to the Minister the audited annual financial statements of the fund in respect of each financial year.

15. Every estate agent shall, on making application in any year for a fidelity fund certificate in accordance with the provisions of section 16, in addition to the levies referred to in section 9 (1) (a), pay as an annual contribution to the fund such amount as may be prescribed.

Contributions to fund by estate agents.

16. (1) Every estate agent or prospective estate agent 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.

Applications for and issue of fidelity fund certificates.

(2) If the board upon receipt of any application and the levies and contribution referred to in subsection (1), is satisfied that the applicant concerned complies with the requirements of this Act, the board shall in the prescribed form issue to such applicant a fidelity fund certificate which shall be valid until 31 December of the year to which such application relates.

(3) No fidelity fund certificate shall be issued unless and until the provisions of this Act are complied with, and any fidelity fund certificate issued in contravention of the provisions of this Act shall be invalid and shall be returned to the board at its request.

17. Any moneys in the fund not immediately required for the purposes of the fund, shall be invested in the prescribed manner.

Investment of moneys in fund.

18. (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 theft, committed after the commencement of this Act, by an estate agent of any money or other property entrusted by or on behalf of such persons to him in his capacity as an estate agent.

Application of moneys in fund.

(2) Every action against the board in respect of the fund may, subject to the provisions of this Act, be brought in the court within whose jurisdiction the cause of action arose.

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

(3) No person shall have any claim against the board in respect of a theft referred to in subsection (1) unless—

- (a) the claimant has, within three months after he became aware of such theft or by the exercise of reasonable care should have become aware of such theft, given notice in writing to the board of such claim;
- (b) the claimant has, within six months after a written demand was sent to him by the board, furnished to the board such proof as the board may reasonably require:

Provided that if the board is satisfied that, having regard to all the circumstances, a claim was lodged or the proof required by it was furnished as soon as practicable, it may in its discretion extend any of the periods referred to in this subsection.

19. (1) The board may, at any time after the commission of any theft 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: Provided that no person shall without the permission of the board commence any action against the board, unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the estate agent in respect of whom the claim arose and against all other persons liable in respect of the loss suffered by such claimant. Claims against board in respect of fund.

(2) No person shall recover from the board any amount larger than the difference between the amount of the loss suffered by him and the amount or value of all moneys or other benefits which he received or is entitled to receive out of any other source in respect of such loss.

(3) No amount shall be paid out of the fund as interest on the amount of any judgment obtained or any claim admitted against the fund.

(4) No right of action shall lie against the board in respect of any loss suffered by—

- (a) the spouse of an estate agent by reason of any theft committed by such estate agent; or
- (b) any estate agent by reason of any theft committed—
 - (i) by his partner; or
 - (ii) if such estate agent is a company, by any director of such company; or
 - (iii) if he is a director of a company, by any co-director in such company; or
 - (iv) by any person employed by him as an estate agent.

20. In any action against the board in respect of the fund, the board may raise any defence which could have been raised by the person against whom the claim arose. Defences relating to claims against fund.

21. If the board settles in full or in part any claim under this Chapter, there shall pass to the board, to the extent of such settlement, all the rights and remedies of the claimant in respect of such claim against the estate agent concerned or any other person or if applicable, in the case of the death, insolvency or other legal incapacity of such estate agent or other person, against the estate of the said estate agent or other person. Transfer of rights and remedies to board.

22. (1) Only moneys in the fund shall be available for the satisfaction of any judgment obtained in relation to the fund or for the payment of any claim allowed by the board, but if at any time there are insufficient moneys in the fund to settle all such judgments and claims, they shall, to the extent in which they are not so settled, be charged against future accumulations of the fund. Computation of claims against future additions to fund.

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

(2) The board may in its discretion determine the order in which the judgments and claims against the fund may be settled and may, if the moneys in the fund are insufficient to settle in full all such judgments and claims, settle any such judgment or claim *pro rata* to the amount available in the fund.

23. (1) The board may in its discretion enter into a contract with an insurer who carries on an insurance business in the Republic whereby the board will be indemnified, to the extent and in the manner provided by such contract, against liability to pay claims under this Chapter. Board may conclude insurance contracts.

(2) Any contract referred to in subsection (1) shall be entered into in respect of estate agents generally.

24. No claimant having a claim against the board under this Chapter shall have— Application of insurance moneys.

- (a) by virtue of any contract entered into in terms of section 23 by the board with an insurer, any right of action against such insurer;
- (b) any right or claim in respect of any money paid or payable to the board by such insurer in accordance with such contract, but such money shall be paid into the fund and applied by the board in accordance with the provisions of this Chapter to settle any relevant claim.

25. No provision of any law relating to insurance shall apply in respect of the fund. Fund exempt from insurance laws.

26. No person shall perform any act as an estate agent unless— Prohibition of rendering of services in certain circumstances.

- (a) a valid fidelity fund certificate has been issued to him, and to every person employed as an estate agent by him, and, if such person is a company, to every director of such company;
- (b) he has, in respect of every person who is in his employment, taken out fidelity insurance to an amount which in the opinion of the board is sufficient.

27. Notwithstanding anything to the contrary contained in this Act, no fidelity fund certificate shall be issued to any estate agent who or, if such estate agent is a company, any company of which any director— Disqualifications relating to fidelity fund certificates.

- (a) has at any time by reason of improper conduct been dismissed from a position of trust;
- (b) has at any time been convicted of an offence involving an element of dishonesty;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind; or
- (e) has been dealt with in accordance with section 30 (3) (a):

Provided that if in respect of any person who is subject to any disqualification referred to in this section, the board is satisfied that, with due regard to all the relevant considerations, the issue of a fidelity fund certificate to such person will be in the interest of justice, the board may issue a fidelity fund certificate to such person when he applies therefor.

28. (1) The board may withdraw a fidelity fund certificate issued to any person— Withdrawal of fidelity fund certificates.

- (a) if such person or, if such person is a company, any director of such company becomes subject to any disqualification referred to in section 27;
- (b) if such person is a company, when such company is being wound up.

(2) Any person who has in his possession or under his control any fidelity fund certificate withdrawn in terms of subsection (1), shall at the request of the board return such certificate to the board.

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

CHAPTER III

GENERAL PROVISIONS

29. Every estate agent shall in respect of his activities as such—
- Duty of estate agent to keep accounting records.
- (a) keep in one of the official languages at an address in the Republic such accounting records as are necessary fairly to reflect and explain the state of affairs—
 - (i) of all moneys received or expended by him, including moneys deposited to a trust account referred to in section 32 (1) or invested in a savings or other interest-bearing account referred to in section 32 (2) (a);
 - (ii) of all his assets and liabilities; and
 - (iii) of all his financial transactions and the financial position of his business;
 - (b) cause the accounting records referred to in paragraph (a) to be audited by an auditor.
30. (1) Any estate agent shall be guilty of improper conduct if he—
- Improper conduct by estate agents.
- (a) receives any remuneration for any act performed by him as an estate agent from two or more than two persons whose interests are not in all respects identical in respect of the performance of such act, unless such persons agreed thereto in writing;
 - (b) fails in respect of any act performed by him as an estate agent to give proper account, 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;
 - (c) fails to pay any moneys due by him to the board within three months after such moneys become due;
 - (d) fails to furnish within such period as the board may determine such information as the board may request and reasonably require in order to exercise its powers properly under this Act;
 - (e) contravenes any provision of the code of conduct referred to in section 8 (b) or fails to comply with any such provision;
 - (f) commits any deed of insolvency referred to in section 8 of the Insolvency Act, 1936 (Act No. 24 of 1936);
 - (g) fails to comply with the requirements of section 29 or 32;
 - (h) commits an offence involving an element of dishonesty.
- (2) The board may in the prescribed manner bring and investigate any charge of improper conduct against any estate agent.
- (3) When any estate agent is found guilty of improper conduct by the board, the board may—
- (a) withdraw the fidelity fund certificate of such estate agent and—
 - (i) if such estate agent is a company, of every director of such company;
 - (ii) if he is a director of a company which is an estate agent, of such company; or
 - (iii) if he in partnership acts as an estate agent, of every partner in such partnership;
 - (b) impose on such estate agent a fine not exceeding five hundred rand and which is payable to the board;
 - (c) reprimand such estate agent.

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

(4) The acquittal or conviction of an estate agent by any court of law upon any criminal charge shall not be a bar to proceedings against him under this Act on a charge of improper conduct, notwithstanding the fact that the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted or any other offence on which he might have been convicted at his trial on the said criminal charge.

(5) If the improper conduct with which the estate agent is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his trial and conviction by such court of law shall, upon the identification of such estate agent as the person referred to in the record as the accused, be sufficient proof of the commission by him of such offence, unless the conviction has been set aside by a superior court: Provided that the estate agent charged shall be entitled to adduce evidence to show that he was in fact wrongly convicted.

31. Any person who feels aggrieved by any decision taken by the board in the exercise of its powers under section 16, 28 or 30 may, within a period of one month after the board—

Appeal against certain decisions of board.

- (a) has informed him in writing of such decision and upon payment of the prescribed fees, request the board in writing to furnish him in writing with its reasons for such decision;
- (b) has in accordance with paragraph (a) furnished him with its reasons for such decision and after notice to the board, appeal to the court against such decision, and the court may thereupon—
 - (i) dismiss the said appeal;
 - (ii) if it is of the opinion that the board has not acted in accordance with the relevant provision of this Act, give an order opposite to the decision of the board or amending the decision of the board;
 - (iii) refer the matter back to the board for further consideration; or
 - (iv) give such other order, including any order as to costs, as it may deem fit.

32. (1) Every estate agent shall open and keep a separate trust account with a bank and shall forthwith deposit therein the moneys held or received by him on account of any person.

Trust account of and investment of trust moneys by estate agent.

- (2) (a) Notwithstanding the provisions of subsection (1), any estate agent may invest in a separate savings or other interest-bearing account opened by him with any bank, building society or any institution or class of institution designated by notice in the *Gazette* by the Minister in consultation with the Minister of Finance, any moneys deposited in his trust account which are not immediately required for any particular purpose.
- (b) Any savings or other interest-bearing account referred to in paragraph (a), shall contain a reference to this subsection.
- (c) Interest 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.
- (3) Every estate agent shall—
 - (a) keep separate accounting records of all moneys deposited by him in his trust account and of all moneys invested by him in any savings or other interest-bearing account referred to in subsection (2) (a);

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

(b) balance his books and records relating to any account referred to in paragraph (a) at intervals of not more than three months, and cause them to be audited at least once annually by the auditor referred to in section 29 (b).

(4) Any auditor who does an audit contemplated in subsection 3 (b), shall as soon as may be practicable 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.

(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).

(6) The court may, on good cause, upon application by the board or any other competent person, prohibit any estate agent to operate in any way on his trust, savings or other interest-bearing account referred to in subsection (2) (a) and may appoint a *curator bonis* to control and administer such trust, savings or other interest-bearing account, with such rights, duties and powers as the court may deem fit.

(7) If—

(a) the board under the provisions of this Act—

(i) refuses to issue a fidelity fund certificate to any estate agent who applied therefor; or

(ii) has withdrawn a fidelity fund certificate issued to any estate agent; or

(b) any estate agent ceases to act as such; or

(c) any estate agent fails to apply timeously for a fidelity fund certificate in respect of any year,

the estate agent concerned shall wind up his trust, savings or other interest-bearing account in the prescribed manner and pay out in the prescribed manner the amount standing to the credit of any such account to the persons entitled to it.

(8) The amount standing to the credit of the trust, savings or other interest-bearing account, referred to in subsection (2) (a), of any estate agent, shall not form part of the assets of such estate agent or, if he was a natural person and has died or has become insolvent, of his deceased or insolvent estate.

33. (1) The Minister may after consultation with the board Regulations. make regulations—

(a) to regulate, control or prohibit any practice followed by estate agents;

(b) prescribing the tariff of fees at which estate agents may act as such;

(c) prescribing the levies payable to the board by estate agents;

(d) prescribing the contributions payable to the fund by estate agents;

(e) prescribing the period within and the manner in which application shall be made for a fidelity fund certificate;

(f) prescribing the form of a fidelity fund certificate;

(g) prescribing the manner in which money in the fund not needed for immediate use, may be invested;

(h) prescribing the manner in which a charge of improper conduct against any estate agent shall be brought and investigated;

ESTATE AGENTS ACT, 1976

Act No. 112, 1976

- (i) prescribing the fees payable under section 31 (a);
- (j) prescribing the form of the report referred to in section 32 (4);
- (k) prescribing the manner in which any account referred to in section 32 (7) shall be wound up and the amount standing to the credit of such account shall be paid out;
- (l) as to, generally, any matter considered necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) The Minister may, on such conditions as he may think fit and after consultation with the board, by regulation exempt any estate agent or category of estate agents from any of or all the provisions of this Act.

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 thousand rand or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment. Offences and penalties.

35. (1) The Minister may upon such conditions as he may deem fit, delegate to an official in the Department of Commerce any of or all the powers conferred upon him by this Act, save the power to make regulations. Delegation of powers of Minister.

(2) The Minister may at any time in writing revoke any delegation under subsection (1), and the delegation of any power under this Act shall not prevent the exercise of that power by the Minister himself.

36. This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel. Application of Act to South West Africa.

37. This Act shall be called the Estate Agents Act, 1976, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.