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GENERAL NOTICE

DEPARTMENT OF COMMERCE

ESTATE AGENTS ACT, 1976

The following Draft Bill 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, is hereby published for general information and comment.

Any comment should be forwarded to the Secretary for Commerce, Private Bag X84, Pretoria, 0001, before 9 January 1976.

ALGEMENE KENNISGEWING

DEPARTEMENT VAN HANDEL

WET OP EIENDOMSAGENTE, 1976

Die volgende Konsepwetsontwerp om voorsiening te maak vir die instelling van 'n Raad vir Eiendomsagente en 'n Eiendomsagente-Getrouheidsfonds; vir die beheer van sekere bedrywighede van eiendomsagente; en vir bykomstige aangeleenthede word hierby ter algemene inligting en vir kommentaar gepubliseer.

Kommentaar moet voor 9 Januarie 1976 aan die Sekretaris van Handel, Privaatsak X84, Pretoria, 0001, gestuur word.

WETSONTWERP

Om voorsiening te maak vir die instelling van 'n Raad vir Eiendomsagente en 'n Eiendomsagente-Getrouheidsfonds; vir die beheer van sekere bedrywighede van eiendomsagente; en vir bykomstige aangeleenthede.

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- (i) „bank” 'n bankinstelling geregistreer kragtens die Bankwet, 1965 (Wet No. 23 van 1965);
- (ii) „bouvereniging” 'n permanente bouvereniging geregistreer kragtens die Bouverenigingswet, 1965 (Wet No. 24 van 1965);
- (iii) „eiendomsagent”—
 - (a) iemand wat teen vergoeding, vir eie rekening of in vennootskap, in opdrag van of namens iemand anders—
 - (i) onroerende goed of 'n belang in onroerende goed of 'n besigheidsonderneming koop, verkoop, huur of verhuur of ten opsigte daarvan onderhandel of 'n koper, verkoper, huurder of verhuurder daarvoor werf of onderneem of aanbied om 'n koper, verkoper, huurder of verhuurder daarvoor te werf;
 - (ii) gelde invorder of ontvang wat betaalbaar is uit hoofde van 'n koopkontrak, met inbegrip van 'n intermediêre transaksie of 'n ooreenkoms soos omskryf in artikel 1 van die Wet op die Verkoop van Grond op Afbetaling, 1971 (Wet No. 72 van 1971), of 'n huurkontrak van onroerende goed of 'n belang in onroerende goed of 'n besigheidsonderneming;
 - (iii) enige ander gelde, met inbegrip van ver-sekeringspremies, invorder of ontvang wat betaalbaar is ten opsigte van onroerende goed of 'n belang in onroerende goed of 'n besigheidsonderneming; of
 - (iv) enige ander diens lewer wat deur die Minister op aanbeveling van die raad van tyd tot tyd by kennisgewing in die *Staatskoerant* gespesifiseer word; en
 - (b) by die toepassing van artikels 7, 8, 9, 12, 15, 16, 18, 19, 21, 27, 30 en 33, ook—
 - (i) 'n direkteur van 'n maatskappy wat 'n eiendomsagent is soos omskryf in paragraaf (a); en

BILL

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.

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) "bank" means a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965); (i)
- (ii) "board" means the Estate Agents Board established under section 2; (ix)
- (iii) "building society" means a permanent building society registered under the Building Societies Act, 1965 (Act No. 24 of 1965); (ii)
- (iv) "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; (vii)
- (v) "estate agent"—
 - (a) means any person who for remuneration, on his own account or in partnership, on the instructions of or on behalf of any other person—
 - (i) sells, purchases, rents or leases immovable property or any interest in immovable property or any business undertaking or negotiates in connection therewith or canvasses a purchaser, seller, lessee or lessor therefor or undertakes or offers to canvass a purchaser, seller, lessee or lessor therefor;
 - (ii) 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 a lease of immovable property or any interest in immovable property or any business undertaking;
 - (iii) 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
 - (iv) 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*; and
 - (b) for the purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 27, 30 and 33, includes—
 - (i) any director of a company which is an estate agent as defined in paragraph (a); and

- (ii) iemand wat in diens is by en ten behoeve van 'n eiendomsagent soos omskryf in paragraaf (a) 'n handeling bedoel in daardie paragraaf verrig; (v)
- (iv) „fonds” die Eiendomsagente-Getrouheidsfonds ingestel kragtens artikel 12 (1); (vii)
- (v) „getrouheidsfondssertifikaat” 'n getrouheidsfondssertifikaat bedoel in artikel 16; (vi)
- (vi) „hierdie Wet” ook 'n regulasie daarkragtens uitgevaardig; (xi)
- (vii) „hof” 'n hof van die provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika wat regsbevoegdheid het, of 'n regter van so 'n hof; (iv)
- (viii) „Minister” die Minister van Ekonomiese Sake; (viii)
- (ix) „raad” die Raad vir Eiendomsagente ingestel kragtens artikel 2; (ii)
- (x) „Republiek” ook die gebied Suidwes-Afrika; (x)
- (xi) „voorgeskrewe” by regulasie voorgeskrewe. (ix)

HOOFSTUK I

RAAD VIR EIENDOMSAGENTE

Instelling van Raad vir Eiendomsagente.

Samestelling van die raad.

2. Daar word hierby 'n regspersoon met die naam die Raad vir Eiendomsagente ingestel.

3. (1) Die raad bestaan uit minstens nege en hoogstens elf lede wat ingevolge subartikel (2) deur die Minister aangestel word.

(2) Die Minister stel as lede van die raad aan—

(a) nie minder as agt eiendomsagente uit minstens veertien eiendomsagente wie se name vir dié doel voorgelê is deur verenigings of organisasies wat langer as vyf jaar bestaan en wat na die oordeel van die Minister verteenwoordigend is van eiendomsagente in die Republiek;

(b) hoogstens drie ander persone wat na die oordeel van die Minister geskik is om as lede van die raad te dien.

(3) Indien na die verstryking van 'n tydperk van drie maande vanaf die datum waarop die Sekretaris van Handel die verenigings of organisasies bedoel in subartikel (2) (a) skriftelik versoek het om 'n lys van eiendomsagente soos beoog in daardie subartikel voor te lê, daardie verenigings of organisasies in gebreke gebly het om genoemde lys aan bedoelde Sekretaris voor te lê of 'n lys van eiendomsagente wat in een of ander opsig gebrekkig is aan bedoelde Sekretaris voorgelê het, moet die Minister geskikte eiendomsagente as lede van die raad aanstel in die plek van die eiendomsagente wat hy sou aangestel het indien bedoelde verenigings of organisasies nie aldus in gebreke gebly het om genoemde lys voor te lê nie of nie aldus 'n lys voorgelê het wat in een of ander opsig gebrekkig is nie.

(4) Die raad kies van tyd tot tyd uit sy lede 'n voorsitter en ondervoorsitter van die raad wat hulle ampte vir 'n tydperk van een jaar beklee en indien nóg die voorsitter nóg die ondervoorsitter op 'n vergadering van die raad teenwoordig is, kies die aanwesige lede iemand uit hulle midde om op daardie vergadering voor te sit.

(5) 'n Lid van die raad beklee sy amp vir die tydperk, maar hoogstens drie jaar, en op die voorwaardes wat die Minister ten tyde van sy aanstelling bepaal: Met dien verstande dat 'n lid, behoudens die bepalinge van subartikels (2) en (3), by die verstryking van sy ampstermyn weer aangestel kan word.

(6) Niemand word as lid van die raad aangestel nie indien hy—

- (ii) any person who is employed by and performs on behalf of an estate agent as defined in paragraph (a) any act referred to in the said paragraph; (iii)
- (vi) "fidelity fund certificate" means a fidelity fund certificate referred to in section 16; (v)
- (vii) "fund" means the Estate Agents Fidelity Fund established under section 12 (1); (iv)
- (viii) "Minister" means the Minister of Economic Affairs; (viii)
- (ix) "prescribed" means prescribed by regulation; (xi)
- (x) "Republic" includes the territory of South West Africa; (x)
- (xi) "this Act" includes any regulation issued thereunder. (vi)

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 less 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 less 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 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 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 member of the board if he—

- (a) 'n ongerehabiliteerde insolvent is;
 - (b) versuim of nie in staat is nie om ten volle te voldoen aan 'n vonnis of bevel, en koste waarvoor hy ingevolge daarvan aanspreeklik is, wat teen hom deur 'n geregs-hof in 'n siviele geding gegee is;
 - (c) te eniger tyd skuldig bevind is weens 'n misdryf waar-van oneerlikheid 'n element is of weens 'n ander mis-dryf tot 'n tydperk van gevangenisstraf sonder die keuse van 'n boete veroordeel is; of
 - (d) nie 'n Suid-Afrikaanse burger is wat permanent in die Republiek woonagtig is nie.
- (7) 'n Lid van die raad ontruim sy amp indien hy—
- (a) onderworpe raak aan 'n onbevoegdheid bedoel in subartikel (5) (a), (b) of (d);
 - (b) geestelik versteurd raak;
 - (c) skuldig bevind word weens 'n misdryf waarvan on-eerlikheid 'n element is of weens 'n ander misdryf tot 'n tydperk van gevangenisstraf sonder die keuse van 'n boete veroordeel word;
 - (d) in die geval van 'n lid wat ooreenkomstig die bepalings van subartikel (2) (a) of (3) aangestel is, ophou om 'n eiendomsagent te wees;
 - (e) in gebreke bly om te voldoen aan 'n voorwaarde bedoel in subartikel (5) wat op hom van toepassing is; of
 - (f) sonder verlof van die raad van meer as twee agter-eenvolgende vergaderings van die raad afwesig was.
- (8) Indien 'n lid van die raad te sterwe kom of by skriftelike kennisgewing gerig aan die Minister bedank of ingevolge sub-artikel (7) ophou om 'n lid van die raad te wees, kan die Minister, met behoorlike inagneming van die bepalings van subartikels (2) en (3), iemand as opvolger van daardie lid vir die onverstreke ampstermyn van daardie lid aanstel.

Vergaderings
van die raad.

4. (1) Die raad vergader vir die eerste keer op die tyd en plek wat die Minister bepaal en daarna minstens een keer in elke boekjaar op die tye en plekke wat die voorsitter of, indien hy afwesig is, die ondervoorsitter bepaal.

(2) Die voorsitter of, indien hy afwesig is, die ondervoorsitter kan te eniger tyd uit eie beweging of op die skriftelike versoek van minstens ses lede 'n spesiale vergadering van die raad belê.

(3) 'n Kennisgewing waardeur 'n spesiale vergadering van die raad belê word, moet die doel van daardie vergadering uiteensit.

(4) Die kworum vir 'n vergadering van die raad is ses lede daarvan.

(5) Die beslissing van 'n meerderheid van die lede van die raad wat op 'n vergadering van die raad aanwesig is, maak 'n besluit van die raad uit, en by staking van stemme oor enige aangeleentheid, het die persoon wat op die betrokke vergadering voorsit, benewens sy beraadslagende stem 'n beslissende stem.

(6) Geen besluit van die raad of handeling op gesag van die raad verrig, is ongeldig nie bloot vanweë 'n vakature in die raad of omdat iemand wat nie geregtig was om as 'n lid van die raad sitting te neem nie, as lid van die raad sitting geneem het toe die besluit geneem of die handeling gemagtig is, indien die besluit geneem of die handeling gemagtig is deur die meerderheid van die lede van die raad wat toe aanwesig was en geregtig was om as lede van die raad sitting te neem.

Besoldiging en
toelaes van lede
van raad.

5. Aan 'n lid van die raad wat nie voltyds in diens van die Staat is nie, word uit die fondse van die raad die besoldiging en toelaes betaal wat die Minister in oorleg met die Minister van Finansies, in die algemeen of in 'n besondere geval, van tyd tot tyd bepaal.

- (a) is an unrehabilitated insolvent;
- (b) has failed or is unable to comply in full with a judgment or order, and the costs for which he is liable in terms thereof, 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 (5) (a), (b) or (d);
- (b) becomes of unsound mind;
- (c) is convicted of an offence involving an element of dishonesty or is sentenced for any other offence to a period of imprisonment without the option of a fine;
- (d) in the case of a member appointed in accordance with the provisions of section (2) (a) or (3), ceases to be an estate agent;
- (e) fails to comply with a condition referred to in subsection (5) applicable to him; or
- (f) 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 less 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 member of the board at 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 employment 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.

- Personeel van raad.** 6. Die werk verbonde aan die verrigting van sy werksaamhede deur die raad word onder sy opdrag en beheer verrig deur persone deur die raad aangestel op die voorwaardes en teen die besoldiging wat die Minister in oorleg met die Minister van Finansies goedkeur.
- Oogmerke van raad.** 7. Die oogmerke van die raad is om die integriteit van eiendomsagente te handhaaf en te bevorder.
- Bevoegdheid van raad.** 8. Die raad het benewens enige ander bevoegdheid wat ingevolge hierdie Wet aan hom verleen word, ook die bevoegdheid—
- om komitees, waarvan met die goedkeuring van die Minister ander persone as lede van die raad lede kan wees, aan te stel om die raad van advies te dien betreffende 'n aangeleentheid ten opsigte waarvan die raad 'n bevoegdheid besit;
 - om met die goedkeuring van die Minister 'n gedragskode op te stel en te publiseer wat deur eiendomsagente nagekom moet word en die stappe te doen wat nodig of dienstig is om sodanige nakoming te verseker;
 - om die verbetering van die standaard van opleiding van en dienste gelewer deur eiendomsagente aan te moedig en te bevorder;
 - in die algemeen om die ander stappe te doen en die ander handelinge te verrig wat nodig of dienstig is ten einde sy oogmerke te bereik.
- Fondse van raad.** 9. (1) Die fondse van die raad bestaan uit—
- die voorgeskrewe heffings wat deur eiendomsagente aan die raad betaal word;
 - rente uit beleggings verkry;
 - enige ander geld wat die raad uit 'n ander bron toeval.
- (2) Die raad wend sy fondse aan ter bestryding van die uitgawes wat die raad by die verrigting van sy werksaamhede en die uitoefening van sy bevoegdhede ingevolge hierdie Hoofstuk aangaan: Met dien verstande dat geld of ander goed wat aan die raad geskenk of bemaak word, ooreenkomstig die voorwaardes van die betrokke skenking of bemaking aangewend moet word.
- (3) Die raad moet al die gelde wat hy ingevolge hierdie Hoofstuk ontvang in 'n rekening stort wat hy geopen het by 'n bank wat deur die Minister goedgekeur is.
- (4) Die raad kan gelde wat hy ingevolge hierdie Hoofstuk ontvang en wat nie vir onmiddellike gebruik nodig is nie, belê by die Staatskuldkommissaris of op 'n ander wyse wat deur die Minister in oorleg met die Minister van Finansies bepaal word.
- Hou van aantekeninge, opmaak van rekeningstate en balansstaat, en ouditering.** 10. (1) Die boekjaar van die raad eindig in elke jaar op die datum wat die raad met die goedkeuring van die Minister bepaal.
- (2) Die raad laat behoorlike aantekeninge hou van al die geld wat hy ingevolge hierdie Hoofstuk ontvang of bestee en van al sy bates en laste en van al sy finansiële transaksies, en moet so gou doenlik na die end van elke boekjaar rekeningstate en 'n balansstaat laat opmaak wat, met al die gepaste besonderhede, die geld deur hom ontvang en die uitgawes deur hom aangegaan gedurende, en sy bates en laste aan die end van, daardie boekjaar aantoon.
- (3) Die aantekeninge, rekeningstate en balansstaat bedoel in subartikel (2) word geouditeer deur 'n ouditeur wat deur die raad aangestel word.
- Verslae deur raad.** 11. (1) Die raad moet aan die Minister die inligting verstrek wat hy van tyd tot tyd verlang in verband met die werksaamhede en geldelike toestand van die raad, en moet daarbenewens aan die Minister 'n jaarverslag, met inbegrip van die aantekeninge, rekeningstate en balansstaat wat ooreenkomstig artikel 10 (3) geouditeer is, oor sy werksaamhede voorlê.

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, whereof with the approval of the Minister persons other than members of the board may 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) 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 records, drawing up of accounts and balance sheet, and auditing.**

(2) The board shall cause proper records to be kept of all money received or expended by it in terms of this Chapter and of all its assets and liabilities and of all its financial transactions, and shall as soon as possible after the end of each financial year cause statements of account and a balance sheet 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 records, accounts and balance sheet 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 the records, accounts and balance sheet audited in accordance with section 10 (3), on its functions. **Report by board.**

(2) Elke verslag wat kragtens subartikel (1) verstrekk word, word so gou doenlik deur die Minister in die Senaat en in die Volksraad ter Tafel gelê.

HOOFSTUK II

EIENDOMSAGENTE GETROUHEIDSFONDS

Instelling en
beheer van
Eiendomsagente-
Getrouheidsfonds.

12. (1) Daar word hierby 'n fonds ingestel met die naam die Eiendomsagente-Getrouheidsfonds waarin gestort word—

- (a) alle gelde wat as jaarlikse bydraes ooreenkomstig die bepalings van hierdie Hoofstuk aan of op rekening van die fonds betaal word;
- (b) inkomste verkry uit belegging van gelde in die fonds;
- (c) alle gelde wat deur of namens die fonds verhaal word by die uitoefening van 'n reg van aksie deur hierdie Hoofstuk verleen;
- (d) alle gelde wat namens die fonds van 'n versekeringsmaatskappy ontvang is; en
- (e) enige ander geld wat die fonds uit 'n ander bron toeval.

(2) Die fonds word beheer en bestuur deur die raad wat ooreenkomstig die bepalings van hierdie Hoofstuk die gelde in die fonds aanwend.

(3) Alle gelde wat deel van die fonds uitmaak, word totdat dit ooreenkomstig die bepalings van hierdie Hoofstuk belê of bestee word, inbetaal by 'n bank wat deur die Minister goedgekeur word tot die kredit van 'n rekening met die naam Die Eiendomsagente-Getrouheidsfondstrekening.

Betalings uit die
fonds.

13. Behoudens die bepalings van hierdie Hoofstuk, word daar wanneer dit vereis word uit die fonds betaal—

- (a) die bedrag van alle eise met inbegrip van koste toegeken of vasgestel teen die fonds soos hieronder bepaal;
- (b) 'n bydrae na goëddunke van die raad ten opsigte van uitgawes aangegaan deur 'n eiser om sy eis te bewys;
- (c) alle regskoste aangegaan by die verdediging van eise teen die fonds ingestel of andersins met betrekking tot die fonds aangegaan;
- (d) alle premies wat betaalbaar is ten opsigte van versekeringskontrakte wat ingevolge artikel 23 deur die raad aangegaan word;
- (e) die onkoste verbonde aan die beheer van die fonds, met inbegrip van besoldiging en toelae aan lede van die raad in verband met die bestuur van die fonds;
- (f) rente op en delging van lenings wat deur die raad namens die fonds aangegaan is; en
- (g) enige ander gelde wat ooreenkomstig hierdie Wet uit die fonds betaal moet of kan word.

Ouditering van
rekeninge van
fonds.

14. Die rekeninge van die fonds word geouditeer deur 'n ouditeur wat deur die raad aangestel word en die raad lê ten opsigte van elke boekjaar, wat in elke jaar eindig op 'n datum wat die raad met die goedkeuring van die Minister bepaal, 'n balansstaat en wins- en verliesrekening van die fonds aan die Minister voor.

Bydrae aan die
fonds deur eien-
domsagente.

15. Elke eiendomsagent moet, wanneer hy in enige jaar ooreenkomstig die bepalings van artikel 16 aansoek doen om 'n getrouheidsfondssertifikaat, benewens die heffings bedoel in artikel 9 (1) (a), as 'n jaarlikse bydrae tot die fonds die bedrag betaal wat voorgeskryf word.

(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; and
- (e) any other moneys accruing to the fund from any other source.

(2) The fund shall be controlled and managed by the board who 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 it is 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 from the fund whenever it is required—

Payment 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;
- (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 from the fund in accordance with this Act.

14. The accounts of the fund shall be audited by an auditor appointed by the board, and the board shall submit to the Minister a balance sheet and a profit and loss account of the fund in respect of each financial year ending in each year on a date determined by the board with the approval of the Minister.

Auditing of accounts of fund.

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 annual contribution to the fund such amount as may be prescribed.

Contributions to fund by estate agents.

Aansoeke om en uitreiking van getrouheidsfondssertifikate.

16. (1) Elke eiendomsagent of voornemende eiendomsagent moet binne die voorgeskrewe tydperk en op die voorgeskrewe wyse by die raad om 'n getrouheidsfondssertifikaat aansoek doen en so 'n aansoek word vergesel van die heffing bedoel in artikel 9 (1) (a) en die bydrae bedoel in artikel 15.

(2) Indien die raad by ontvangs van 'n aansoek, en die heffing en bydrae, bedoel in subartikel (1) oortuig is dat die betrokke aansoeker aan die vereistes van hierdie Wet voldoen, reik die raad in die voorgeskrewe vorm aan daardie aansoeker 'n getrouheidsfondssertifikaat uit wat geldig is tot die een-en-dertigste Desember van die jaar waarop die betrokke aansoek betrekking het.

(3) Geen getrouheidsfondssertifikaat word uitgereik tensy en totdat aan die bepalings van hierdie Wet voldoen is nie en 'n getrouheidsfondssertifikaat wat in stryd met die bepalings van hierdie Wet uitgereik is, is ongeldig en moet op versoek van die raad aan hom terugbesorg word.

Belegging van gelde in fonds.

17. Enige gelde in die fonds wat nie onmiddellik vir die doeleindes van die fonds nodig is nie, word op die voorgeskrewe wyse belê.

Aanwending van gelde in fonds.

18. (1) Behoudens die bepalings van hierdie Hoofstuk word die fonds gehou en aangewend om persone te vergoed wat geldelike verliese ly weens die diefstal na die inwerkingtreding van hierdie Wet deur 'n eiendomsagent, van geld of ander goedere deur of namens sodanige persone wat aan hom in sy hoedanigheid as eiendomsagent toevertrou is.

(2) Elke aksie teen die raad ten opsigte van die fonds kan behoudens die bepalings van hierdie Wet ingestel word in die hof binne wie se jurisdiksie die skuldoorsaak ontstaan het.

(3) Niemand het 'n eis teen die raad weens enige diefstal bedoel in subartikel (1) nie tensy—

(a) die eiser binne drie maande nadat hy van die diefstal te wete gekom het of deur die uitoefening van redelike sorg van die diefstal te wete moes gekom het, die raad skriftelik van daardie eis in kennis gestel het;

(b) binne ses maande nadat 'n skriftelike aanvraag deur die raad aan hom gestuur word, die eiser die bewyse wat die raad redelikerwys vereis, aan die raad verskaf het;

Met dien verstande dat indien, met inagneming van al die omstandighede, die raad oortuig is dat 'n eis of die bewyse deur hom vereis so spoedig doenlik ingedien of verskaf is, hy enige van die tydperke in hierdie subartikel genoem, na goeddunke kan verleng.

Eise teen raad ten opsigte van fonds.

19. (1) Die raad kan te eniger tyd na die pleging van 'n diefstal ten opsigte waarvan 'n eis teen hom met betrekking tot die fonds ontstaan het, daardie eis ontvang en kan, behoudens die bepalings van artikel 18, daardie eis vereffen: Met dien verstande dat niemand sonder toestemming van die raad, 'n aksie teen die raad begin nie, tensy en totdat die eiser gebruik gemaak het van alle toepaslike regte van aksie en ander regsmiddels beskikbaar teen die eiendomsagent ten opsigte van wie die eis ontstaan het en teen alle ander persone wat aanspreeklik is ten opsigte van die verlies wat deur daardie eiser gely is.

(2) Niemand verhaal van die raad 'n bedrag wat groter is as die verskil tussen die bedrag van die verlies deur hom gely en die bedrag of waarde van alle gelde of ander voordele wat hy ten opsigte van daardie verlies uit 'n ander bron ontvang het of geregtig is om te ontvang nie.

(3) Geen bedrag word uit die fonds betaal as rente op die bedrag van enige vonnis verkry of van enige eis teen die fonds erken.

(4) Geen reg van aksie bestaan teen die raad nie ten opsigte van 'n verlies wat—

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 the thirty-first 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 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 the jurisdiction of which the cause of action arose.

(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 becomes 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 has been lodged or the proof required by it has been 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) die gade van 'n eiendomsagent ly weens diefstal gepleeg deur daardie eiendomsagent; of
- (b) 'n eiendomsagent ly weens diefstal gepleeg—
- deur sy vennoot; of
 - indien hy 'n maatskappy is, deur 'n direkteur van daardie maatskappy; of
 - indien hy 'n direkteur van 'n maatskappy is, deur 'n mede-direkteur in daardie maatskappy; of
 - deur iemand wat as eiendomsagent in sy diens is.
- 20.** In 'n aksie teen die raad ten opsigte van die fonds, kan die raad enige verweer opper wat die persoon teen wie die eis ontstaan het, sou kon opper.
- 21.** Wanneer die raad enige eis kragtens hierdie Hoofstuk ten volle of gedeeltelik vereffen, gaan daar op die raad, in die mate van sodanige vereffening, alle regte en regs-middels oor wat die eiser ten opsigte van daardie eis teen die betrokke eiendomsagent of enige ander persoon of wanneer toepaslik, in geval van die dood, insolvensie of ander regsonbevoegdheid van daardie eiendomsagent of ander persoon, teen die boedel van bedoelde eiendomsagent of ander persoon het.
- 22.** (1) Alleen gelde in die fonds is beskikbaar ter voldoening aan 'n vonnis wat met betrekking tot die fonds verkry is of ter betaling van 'n eis deur die raad toegestaan, maar indien daar te eniger tyd onvoldoende gelde in die fonds is om alle sodanige vonnisse en eise te vereffen word hulle in die mate waarin hulle nie aldus vereffen word nie, teen toekomstige byvoegings tot die fonds in berekening gebring.
- (2) Die raad kan na goeddunke beslis oor die volgorde waarin die vonnisse en eise teen die fonds vereffen word en kan indien die geld in die fonds onvoldoende is om alle sodanige vonnisse en eise ten volle te vereffen, enige sodanige vonnis of ten volle te vereffen, enige sodanige vonnis of eis ten volle of gedeeltelik vereffen.
- (3) By die uitoefening van sy bevoegdhede ingevolge hierdie artikel, moet die raad—
- die betreklike mate van ontbering in aanmerking neem wat deur die verskillende eisers gely is of waarskynlik deur hulle gely sal word as hulle eise teen die raad nie ten volle of gedeeltelik vereffen word nie;
 - behoudens die bepalings van paragraaf (a), eise vir bedrae van hoogstens eenduisend rand, behalwe in spesiale of buitengewone omstandighede, ten volle vereffen voordat eise van meer as eenduisend rand in groter mate as eenduisend rand vereffen word; en
 - wanneer alle ander oorwegings ewe sterk is, aan die eisers onder mekaar voorrang verleen ooreenkomstig die datums van die vonnisse of die datums waarop die eise deur die raad erken is, na gelang van die geval.
- 23.** (1) Die raad kan na goeddunke met 'n versekeraar wat 'n versekeringsbesigheid in die Republiek dryf, 'n kontrak aangaan waardeur die raad, in die mate en op die wyse in die kontrak bepaal, skadeloos gestel word teen aanspreeklikheid om eise ingevolge hierdie Hoofstuk te betaal.
- (2) 'n Kontrak bedoel in subartikel (1) word ten opsigte van eiendomsagente in die algemeen aangegaan.
- 24.** Geen eiser wat ingevolge hierdie Hoofstuk 'n eis teen die raad het, het—
- op grond van 'n kontrak wat ingevolge artikel 23 deur die raad met 'n versekeraar aangegaan is, 'n reg van aksie teen daardie versekeraar nie;
 - 'n reg of eis ten opsigte van geld wat deur sodanige versekeraar ooreenkomstig sodanige kontrak aan die

Verwere van raad met betrekking tot eise teen fonds.

Oorgang van regte en regs-middels op raad.

Berekening van eise teen toekomstige byvoegings tot fonds.

Raad kan versekeringskontrakte aangaan.

Aanwending van versekeringsgelde.

- (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 it 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.

(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 claim in full or in part.

(3) In the exercise of its powers under this section, the board shall—

- (a) take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants if their claims against the board are not settled in full or in part;
- (b) subject to the provisions of paragraph (a), settle in full claims for amounts not exceeding one thousand rand, except in special or extraordinary circumstances, before claims for more than one thousand rand are settled to a greater extent than one thousand rand; and
- (c) if all other considerations are equal, give preference to the claimants among themselves according to the dates of the judgments or the dates when the claims were admitted by the board, as the case may be.

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 in terms of section 23 into 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

- raad betaal word of betaalbaar is nie, maar daardie geld word in die fonds gestort en deur die raad, ooreenkomstig die bepalings van hierdie Hoofstuk, aangewend om enige tersaaklike eis te vereffen.
- Inkomste van fonds van belastinge en heffings vrygestel.** 25. Die inkomste van die fonds is vrygestel van die bepalings van 'n wet betreffende die betaling van enige belasting of heffing aan die Staat.
- Fonds van versekeringswette vrygestel.** 26. Geen bepaling van 'n wet betreffende versekering is ten opsigte van die fonds van toepassing nie.
- Verbod op lewering van dienste as eiendomsagent onder sekere omstandighede.** 27. Niemand mag as eiendomsagent 'n handeling verrig nie tensy—
- daar aan hom, en aan elke persoon wat as eiendomsagent in sy diens is, en, indien hy 'n maatskappy is, aan elke direkteur van daardie maatskappy 'n geldige getrouheidsfondssertifikaat uitgereik is; en
 - hy ten opsigte van elke persoon wat in sy diens is getrouheidsversekering uitgeneem het vir 'n bedrag wat na die oordeel van die raad voldoende is.
- Onbevoegdheid met betrekking tot getrouheidsfondssertifikaat.** 28. Ondanks andersluidende bepalings van hierdie Wet word 'n getrouheidsfondssertifikaat nie uitgereik nie aan iemand wat of, indien so iemand 'n maatskappy is, waarvan 'n direkteur—
- te eniger tyd weens onbehoorlike gedrag uit 'n vertrouensposisie ontslaan is;
 - te eniger tyd skuldig bevind is weens 'n misdryf waarvan oneerlikheid 'n element is of weens 'n ander misdryf tot 'n tydperk van gevangenisstraf sonder die keuse van 'n boete veroordeel is;
 - 'n ongerehabiliteerde insolvent is; of
 - geestelik versteurd is.
- Intrekking van getrouheidsfondssertifikaat.** 29. (1) Die raad kan 'n getrouheidsfondssertifikaat wat aan iemand uitgereik is, intrek—
- wanneer so iemand of, indien hy 'n maatskappy is, 'n direkteur van daardie maatskappy onderhewig raak aan 'n onbevoegdheid bedoel in artikel 28;
 - wanneer hy, indien hy 'n maatskappy is, gelikwedeer word.
- (2) Iemand wat in besit van of onder wie se beheer 'n getrouheidsfondssertifikaat is wat ingevolge subartikel (1) ingetrek is, moet op versoek van die raad daardie sertifikaat aan hom terugbesorg.
- ### HOOFSTUK III
- #### ALGEMENE BEPALINGS
- Onbehoorlike gedrag deur eiendomsagente.** 30. (1) 'n Eiendomsagent is skuldig aan onbehoorlike gedrag indien hy—
- vir 'n handeling wat hy as eiendomsagent verrig het, vergoeding ontvang van twee of meer as twee persone wie se belange ten opsigte van die verrigting van daardie handeling nie in alle opsigte dieselfde is nie;
 - in gebreke bly om ten opsigte van 'n handeling wat hy as eiendomsagent verrig—
 - voldoende boek te hou; of
 - voldoende rekenskap te gee aan iemand wat 'n wesentlike belang het by die verrigting van daardie handeling;
 - in gebreke bly om gelde wat deur hom aan die raad of ten opsigte van die fonds verskuldig is, te betaal binne drie maande nadat daardie gelde betaalbaar word;

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. The income of the fund shall be exempt from the provisions of any law relating to the payment of any tax or levy to the State. Income of fund exempted from taxes and levies.

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

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

28. Notwithstanding anything to the contrary contained in this Act, no fidelity fund certificate shall be issued to any person who or, if such person is a 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 or has been sentenced for any other offence to a period of imprisonment without the option of a fine;
- (c) is an unrehabilitated insolvent; or
- (d) is of unsound mind.

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

- (a) if such person or, if it is a company, any director of such company becomes subject to any disqualification referred to in section 28;
- (b) if it 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.

CHAPTER III

GENERAL PROVISIONS

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 estate agent from two or more than two persons whose interest are not in all respects identical in respect of the performance of such act;
- (b) fails in respect of any act performed by him as estate agent—
 - (i) to keep proper books of account; or
 - (ii) to give proper account 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) in gebreke bly om binne die tydperk wat die raad bepaal die inligting te verstrek wat die raad skriftelik verlang en redelikerwys benodig ten einde sy bevoegdhede ingevolge hierdie Wet behoorlik te kan uitoefen;
- (e) 'n bepaling van die gedragskode beoog in artikel 8 (b) oortree of versuim om daaraan te voldoen;
- (f) 'n daad van insolvensie bedoel in artikel 8 van die Insolvensiewet, 1936 (Wet No. 24 van 1936), begaan.

(2) Die raad kan 'n aanklag weens onbehoorlike gedrag teen 'n eiendomsagent op die voorgeskrewe wyse inbring en ondersoek.

(3) Wanneer die raad 'n eiendomsagent aan onbehoorlike gedrag skuldig bevind, kan die raad—

(a) die getrouheidsfondssertifikaat van daardie eiendomsagent en, indien hy—

(i) 'n maatskappy is, van elke direkteur van daardie maatskappy;

(ii) 'n direkteur is van 'n maatskappy wat 'n eiendomsagent is, van daardie maatskappy; of

(iii) in vennootskap as eiendomsagent optree, van elkeen van sy vennote, intrek;

(b) daardie eiendomsagent 'n boete oplê wat vyfhonderd rand nie te bowe gaan nie en aan die raad betaalbaar is; of

(c) daardie eiendomsagent tereg wys.

(4) Die vryspreking of die skuldbevinding van 'n eiendomsagent deur 'n geregshof op 'n kriminele aanklag, belet nie dat stappe kragtens hierdie Wet op 'n aanklag van onbehoorlike gedrag teen hom ingestel word nie, selfs al sou die feite uiteengesit in die aanklag van onbehoorlike gedrag, as hulle bewys sou word, die misdryf uitmaak wat uiteengesit is in die kriminele aanklag waarop hy aldus vrygespreek is of skuldig bevind is of 'n ander misdryf waaraan hy by sy verhoor op bedoelde kriminele aanklag skuldig bevind kon gewees het.

(5) As die onbehoorlike gedrag waarvan die eiendomsagent aangekla word, neerkom op 'n misdryf waaraan hy deur 'n geregshof skuldig bevind is, is 'n gesertifiseerde afskrif van die notule van sy verhoor en skuldbevinding deur daardie hof, nadat daardie eiendomsagent geïdentifiseer is as die persoon wat in die notule as die beskuldigde genoem word, voldoende bewys dat hy daardie misdryf begaan het, tensy die skuldbevinding deur 'n hoër hof ter syde gestel is: Met dien verstande dat die aangeklaagde eiendomsagent die reg het om getuienis aan te voer om aan te toon dat hy in werklikheid verkeerdlik skuldig bevind is.

Appel teen sekere besluite van raad.

31. Iemand wat veronreg voel deur 'n besluit wat die raad by die uitoefening van sy bevoegdhede kragtens artikel 16, 29 of 30 geneem het, kan binne 'n tydperk van een maand nadat die raad—

(a) hom skriftelik van daardie besluit in kennis gestel het en teen betaling van die voorgeskrewe gelde, die raad skriftelik versoek om sy redes vir daardie besluit skriftelik aan hom te verstrek;

(b) sy redes vir daardie besluit ooreenkomstig paragraaf (a) aan hom verstrek het en na kennisgewing aan die raad, na die hof teen daardie besluit appelleer, en daarop kan die hof—

(i) bedoelde appel van die hand wys;

(ii) indien hy van oordeel is dat die raad nie ooreenkomstig die betrokke bepaling van hierdie Wet gehandel het nie, 'n bevel gee teenoorgesteld aan die besluit van die raad of wat die besluit van die raad wysig;

(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 the Insolvency Act, 1936 (Act No. 24 of 1936).

(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 it 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.

(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, 29 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;

Trustrekening van en belegging van trustgelde deur eiendomsagent.

- (iii) die saak vir verdere oorweging na die raad terugverwys; of
- (iv) die ander bevel gee, met inbegrip van 'n bevel aangaande koste, wat hy dienstig ag.

32. (1) Elke eiendomsagent moet 'n aparte trustrekening by 'n bank open en hou en moet daarin die gelde stort wat hy op rekening van iemand hou of ontvang.

(2) (a) Ondanks die bepalings van subartikel (1) kan 'n eiendomsagent enige gelde wat in sy trustrekening gestort is en wat nie onmiddellik vir een of ander bepaalde doel benodig word nie, in 'n aparte spaar- of ander rentegewende rekening belê wat deur hom geopen is by 'n bank of bouvereniging of enige instelling of klas instelling wat deur die Minister in ooreenstemming met die Minister van Finansies by kennisgewing in die *Staatskoerant* aangewys word.

(b) 'n Spaar- of ander rentegewende rekening bedoel in paragraaf (a) moet 'n verwysing na hierdie subartikel bevat.

(c) Enige rente op gelde ooreenkomstig paragraaf (a) belê, moet deur die betrokke eiendomsagent betaal word aan die persoon wat op daardie gelde geregtig is.

(3) Elke eiendomsagent moet—

(a) aparte aantekeninge hou van alle gelde wat hy in sy trustrekening gestort het en van alle gelde wat hy in 'n spaar- of ander rentegewende rekening bedoel in subartikel (2) (a) belê het;

(b) sy boeke en aantekeninge wat op 'n rekening bedoel in paragraaf (a) betrekking het jaarliks by tussenpose van hoogstens vyftien maande afsluit en deur 'n ouditeur laat ouditeer.

(4) 'n Ouditeur wat 'n oudit beoog in subartikel (3) (d) gedoen het, moet so gou doenlik nadat hy daardie oudit voltooi het, 'n sertifikaat oor sy bevindings op die voorgeskrewe vorm aan die betrokke eiendomsagent verstrek en daardie eiendomsagent moet daardie sertifikaat binne veertien dae nadat hy dit ontvang het, aan die raad voorlê.

(5) Ondanks die bepalings van subartikel (3) kan die raad, indien daar goeie gronde is, te eniger tyd 'n eiendomsagent by skriftelike kennisgewing aansê om binne 'n tydperk in daardie kennisgewing vermeld, maar minstens dertig dae, 'n geouditeerde staat waarin die stand van sake van sy trust- of spaar- of ander rentegewende rekening volledig uiteengesit word, aan die raad voor te lê.

(6) Indien daar goeie gronde is, kan die hof op aansoek van die raad of 'n ander bevoegde persoon, 'n eiendomsagent verbied om op enige wyse op sy trust- of spaar- of ander rentegewende rekening te opereer en kan 'n *curator bonis* aanstel om met die regte, pligte en bevoegdhede wat die hof goedvind, daardie trust- of spaar- of ander rentegewende rekening te beheer en te administreer.

(7) Indien—

(a) die raad ingevolge die bepalings van hierdie Wet—

- (i) weier om 'n getrouheidsfondssertifikaat uit te reik aan 'n eiendomsagent wat daarom aansoek doen; of

(ii) 'n getrouheidsfondssertifikaat intrek wat aan 'n eiendomsagent uitgereik is; of

(b) 'n eiendomsagent ophou om as sodanig op te tree; of

(c) 'n eiendomsagent in gebreke bly om ten opsigte van enige jaar betyds om 'n getrouheidsfondssertifikaat aansoek te doen,

moet die betrokke eiendomsagent sy trust- of spaar- of ander rentegewende rekening op die voorgeskrewe wyse afsluit en die bedrag wat in krediet van enige sodanige rekening staan, op die voorgeskrewe wyse uitbetaal aan die persone wat daarop geregtig is.

- (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 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) Any interest on moneys invested in accordance with paragraph (a), shall be paid to the person entitled to such moneys by the estate agent concerned.

(3) Every estate agent shall—

(a) keep separate records of all moneys deposited by him in his trust account and of all moneys invested by him on any savings or other interest-bearing account referred to in subsection (2) (a);

(b) balance his books and records relating to any account referred to in paragraph (a) at intervals of not more than fifteen months, and cause them to be audited by an auditor.

(4) Any auditor who does an audit contemplated in subsection 3 (b), shall as soon as may be practicable after completing such audit, furnish the relevant estate agent with a certificate in the prescribed form in regard to his findings, and such estate agent shall, within fourteen days of the receipt of such certificate by him, submit such certificate to the board.

(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.

(6) Upon good cause shown, the court may, 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 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) Die bedrag wat in krediet van die trust- of spaar- of ander rentegewende rekening van 'n eiendomsagent staan, maak nie deel uit van die bates van daardie eiendomsagent of, indien hy 'n natuurlike persoon is en te sterwe kom of insolvent raak, van sy bestorwe of insolvente boedel nie.

Regulasies.

33. Die Minister kan in oorleg met die raad regulasies uitvaardig—

- (a) om 'n praktyk wat deur eiendomsagente gevolg word, te reël, te beheer of te verbied;
- (b) wat die geldetarief voorskryf waarteen eiendomsagente as sodanig mag optree;
- (c) wat die heffings voorskryf wat deur eiendomsagente aan die raad betaal moet word;
- (d) wat die bydraes voorskryf wat deur eiendomsagente aan die fonds betaal moet word;
- (e) wat die tydperk waarbinne en die wyse waarop aansoek om 'n getrouheidsfondssertifikaat gedoen moet word, voorskryf;
- (f) wat die vorm van 'n getrouheidsfondssertifikaat voorskryf;
- (g) wat die wyse voorskryf waarop geld in die fonds wat nie vir onmiddellike gebruik nodig word nie, belê moet word;
- (h) wat die wyse voorskryf waarop 'n aanklag van onbehoorlike gedrag teen 'n eiendomsagent ingebring en ondersoek moet word;
- (i) wat die gelde voorskryf wat ingevolge artikel 31 (a) betaal moet word;
- (j) wat die vorm voorskryf van 'n sertifikaat bedoel in artikel 32 (4);
- (k) wat die wyse voorskryf waarop 'n rekening bedoel in artikel 32 (7) afgesluit moet word en die bedrag wat in krediet staan van enige sodanige rekening uitbetaal moet word;
- (l) betreffende, oor die algemeen enige aangeleentheid wat nodig of dienstig geag word om voorgeskryf te word ten einde die oogmerke van hierdie Wet te verwesenlik.

Misdrywe en strawwe.

34. Iemand wat 'n bepaling van hierdie Wet of 'n bevel of versoek daarkragtens uitgereik of gerig, oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweeduisend rand of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of met sowel daardie boete as daardie gevangenisstraf.

Delegering van Minister se bevoegdhede.

35. (1) Die Minister kan op sodanige voorwaardes as wat hy goedvind, enige van of al die bevoegdhede aan hom ingevolge hierdie Wet verleen behalwe in bevoegdheid om regulasies uit te vaardig, skriftelik aan 'n beampte in die Departement van Handel deleger.

(2) Die Minister kan te eniger tyd 'n delegering kragtens subartikel (1) skriftelik intrek en geen delegering van 'n bevoegdheid belet die uitoefening van sodanige bevoegdheid deur die Minister self nie.

Toepassing van Wet in Suidwes-Afrika.

36. Hierdie Wet en enige wysiging daarvan is ook van toepassing in die gebied Suidwes-Afrika, met inbegrip van die Oostelike Caprivi Zipfel.

Kort titel en inwerkingtreding.

37. Hierdie Wet heet die Wet op Eiendomsagente, 1976, en die bepalinge daarvan tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(8) The amount standing to the credit of the trust, savings or other interest-bearing account 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. The Minister may in consultation with the board make Regulations. 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;
- (i) prescribing the fees payable under section 31 (a);
- (j) prescribing the form of a certificate 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 be paid out;
- (l) as to, generally, any matter considered necessary or expedient to prescribe in order to achieve the objects 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 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.

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