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DEPARTMENT OF THE PRIME MINISTER

No. 959.

17 May 1978.

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

No. 60 of 1978: Estate Agents Amendment Act, 1978.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 959.

17 Mei 1978.

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

No. 60 van 1978: Wysigingswet op Eiendomsagente, 1978.

Wet No. 60, 1978

WYSIGINGSWET OP EIENDOMSAGENTE, 1978.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die bepalinge van die Wet op Eiendoms-agente, 1976, betreffende die omskrywing van „eiendoms-agent”; en die aanwending van die gelde in die Eiendoms-agente-getrouheidsfonds; om voorsiening te maak dat ge-trouheidsfondssertifikate aan sekere kategorieë eiendoms-agente onderworpe aan sekere voorwaardes uitgereik word; betreffende die besluite waarteen geappelleer kan word; die trustrekening wat 'n eiendomsagent by 'n bank moet open en hou; en die bevoegdheid om regulasies uit te vaardig; om 'n sekere instelling en sekere regulasies en die verrigting van sekere handelinge en die uitoefening van sekere bevoegdhede geldig te verklaar; en om vir bykomstige aangeleenthede voorsiening te maak.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 2 Mei 1978.)

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

Wysiging van
artikel 1 van
Wet 112 van 1976.

1. Artikel 1 van die Wet op Eiendomsagente, 1976 (hieronder die Hoofwet genoem), word hierby gewysig deur subparagraaf (iv) van paragraaf (a) van die omskrywing van „eiendomsagent” deur die volgende subparagraaf te vervang:

„(iv) **[benewens die verrigting van 'n handeling bedoel in subparagraaf (i), (ii) of (iii), (aa) gelde invorder of ontvang wat betaalbaar is uit hoofde van 'n koop- 10 kontrak, met inbegrip van 'n ooreenkoms of intermediêre transaksie soos omskryf in artikel 1 van die Wet op die Verkoop van Grond op Afbetaling, 1971 (Wet No. 72 van 1971); of (bb) enige ander gelde, met inbegrip van versekeringspremies, invorder of 15 ontvang wat betaalbaar is ten opsigte van onroerende goed of 'n belang in onroerende goed of 'n besigheids-onderneming; of (cc)]** enige ander diens lewer wat deur die Minister op aanbeveling van die raad van tyd tot tyd by kennisgewing in die *Staatskoerant* gespe- 20 sifiseer word;”.

Wysiging van
artikel 18 van
Wet 112 van 1976.

2. Artikel 18 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Behoudens die bepalinge van hierdie Hoofstuk word die fonds gehou en aangewend om persone te vergoed wat 25 geldelike verliese ly weens die diefstal, na die inwerkingtre-ding van hierdie Wet, deur 'n eiendomsagent—

(a) van geld of ander goedere wat deur of namens sodanige persone aan hom in sy hoedanigheid van eiendomsagent 30 toevertrou is;

(b) van gelde wat hy ingevorder of ontvang het en wat betaalbaar is uit hoofde van 'n koopkontrak, met inbegrip van 'n ooreenkoms of intermediêre transaksie soos

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GENERAL EXPLANATORY NOTE:

- []** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the provisions of the Estate Agents Act, 1976, relating to the definition of "estate agent"; and to the application of the moneys in the Estate Agents Fidelity Fund; to provide that fidelity fund certificates be issued subject to certain conditions to certain categories of estate agents; relating to the decisions against which appeals may be lodged; to the trust account which any estate agent shall open and keep with a bank; and to the power to make regulations; to validate a certain establishment and certain regulations and the performance of certain acts and the exercise of certain powers; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 2 May 1978.)

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

1. Section 1 of the Estate Agents Act, 1976 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subparagraph (iv) of paragraph (a) of the definition of "estate agent" of the following subparagraph:

Amendment of
section 1 of
Act 112 of 1976.

- 10 “(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 (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*”;

2. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of
section 18 of
Act 112 of 1976.

- 25 “(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—
 (a) of any money or other property entrusted by or on behalf of such persons to him in his capacity as an estate agent;
 30 (b) of any moneys collected or received by him and payable on account of a contract of purchase and sale, including any agreement or intermediate transaction as defined in

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- omskryf in artikel 1 van die Wet op die Verkoop van Grond op Afbetaling, 1971 (Wet No. 72 van 1971);
- (c) van enige ander gelde, met inbegrip van versekeringspremies, wat hy ingevorder of ontvang het en wat betaalbaar is ten opsigte van onroerende goed, 'n belang in onroerende goed of 'n besigheidsonderneming.''

Vervanging van artikel 27 van Wet 112 van 1976.

3. Artikel 27 van die Hoofwet word hierby deur die volgende artikel vervang:

„Onbevoegdhede met betrekking tot getrouheidsfondssertifikate.

27. [Ondanks andersluidende bepalings van hierdie Wet word] 'n Getrouheidsfondssertifikaat word nie uitgereik nie aan 'n eiendomsagent wat, of, indien so 'n eiendomsagent 'n maatskappy is, 'n maatskappy waarvan, 'n direkteur—

- (a) te eniger tyd weens onbehoorlike gedrag uit 'n vertrouensposisie ontslaan is;
- (b) te eniger tyd skuldig bevind is weens 'n misdryf waarvan oneerlikheid 'n element is;
- (c) 'n ongerehabiliteerde insolvent is;
- (d) geestelik versteurd is; of
- (e) ooreenkomstig artikel 30 (3) (a) mee gehandel is;

Met dien verstande dat indien die raad ten opsigte van iemand wat onderhewig is aan 'n onbevoegdheid bedoel in hierdie artikel, oortuig is dat, met behoorlike inagneming van al die tersaaklike oorwegings, die uitreiking van 'n getrouheidsfondssertifikaat aan so iemand in belang van geregtigheid sal wees, die raad, op die voorwaardes wat die raad met die instemming van die Minister bepaal, 'n getrouheidsfondssertifikaat aan so iemand kan uitreik wanneer hy daarom aansoek doen.''

Wysiging van artikel 31 van Wet 112 van 1976.

4. Artikel 31 van die Hoofwet word hierby gewysig deur al die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

„Iemand wat veronreg voel deur 'n besluit wat die raad by die uitoefening van sy bevoegdhede kragtens artikel 16, 27, 28 of 30 geneem het, kan binne 'n tydperk van een maand nadat die raad—'’.

Wysiging van artikel 32 van Wet 112 van 1976.

5. Artikel 32 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Elke eiendomsagent moet 'n aparte trustrekening, wat 'n verwysing na hierdie artikel moet bevat, by 'n bank open en hou en moet onverwyld daarin die geld stort wat hy op rekening van iemand hou of ontvang.'’.

Wysiging van artikel 33 van Wet 112 van 1976.

6. Artikel 33 van die Hoofwet word hierby gewysig—

- (a) deur die volgende subartikel na subartikel (1) in te voeg:
- „(1A) Verskillende regulasies kan ingevolge subartikel (1) ten opsigte van verskillende eiendomsagente of kategorieë eiendomsagente uitgevaardig word.'’;

- (b) deur subartikel (2) deur die volgende subartikel te vervang:

„(2) Die Minister kan, op die voorwaardes wat hy goedgevind en na oorleg met die raad, by regulasie of by skriftelike kennisgewing, deur die pos gestuur of oorhandig, 'n eiendomsagent of kategorie eiendomsagente van enige van of al die bepalings van hierdie Wet vrystel.'’.

Geldigverklaring van sekere instelling en regulasies en verrigting van

7. Ondanks andersluidende bepalings van die een of ander wet word—

- (a) die Raad vir Eiendomsagente bedoel in artikel 2 van die Hoofwet, geag op 7 Januarie 1977 ingestel te gewees het;

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section 1 of the Sale of Land on Instalments Act, 1971 (Act No. 72 of 1971);

- (c) of any other moneys, including insurance premiums, collected or received by him and payable in respect of immovable property, any interest in immovable property or any business undertaking.”

3. The following section is hereby substituted for section 27 of the principal Act:

Substitution of section 27 of Act 112 of 1976.

“Disqualifications relating to fidelity fund certificates.

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—

- (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, on such conditions as the board with the concurrence of the Minister may determine, a fidelity fund certificate to such person when he applies therefor.”

4. Section 31 of the principal Act is hereby amended by the substitution for all the words preceding paragraph (a) of the following words:

Amendment of section 31 of Act 112 of 1976.

“Any person who feels aggrieved by any decision taken by the board in the exercise of its powers under section 16, 27, 28 or 30 may, within a period of one month after the board—.”

5. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 32 of Act 112 of 1976.

“(1) Every estate agent shall open and keep a separate trust account, which shall contain a reference to this section, with a bank and shall forthwith deposit therein the moneys held or received by him on account of any person.”

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

Amendment of section 33 of Act 112 of 1976.

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

“(1A) Different regulations may in terms of subsection (1) be made in respect of different estate agents or categories of estate agents.”;

- (b) by the substitution for subsection (2) of the following subsection:

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

7. Notwithstanding anything to the contrary contained in any law—

Validation of certain establishment and regulations and of performance of

- (a) the Estate Agents Board referred to in section 2 of the principal Act, shall be deemed to have been established on 7 January 1977;

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sekere handelinge
en uitoefening van
sekere bevoegdhede.

- (b) enige regulasie wat te eniger tyd na die aanname van die Hoofwet maar voor die inwerkingtreding daarvan in-
gevolge die Hoofwet heet uitgevaardig te gewees het,
ongeag of sodanige uitvaardiging nodig was om die
Hoofwet by die inwerkingtreding daarvan in werking te 5
stel, met ingang van die datum waarop dit aldus
uitgevaardig is, hierby geldig verklaar vir sover
sodanige regulasie geldig sou gewees het indien dit na
die inwerkingtreding van die Hoofwet uitgevaardig was;
- (c) die verrigting van enige handeling of die uitoefening van 10
enige bevoegdheid deur enigiemand te eniger tyd na die
aanname van die Hoofwet maar voor die inwerkingtre-
ding daarvan, ongeag of sodanige verrigting of uitoefe-
ning nodig was om die Hoofwet by die inwerkingtreding
daarvan in werking te stel, met ingang van die datum 15
waarop sodanige handeling aldus verrig of sodanige
bevoegdheid aldus uitgeoefen is, hierby geldig verklaar
vir sover sodanige verrigting of uitoefening deur so
iemand geldig sou gewees het indien dit na die
inwerkingtreding van die Hoofwet plaasgevind het. 20

Kort titel.

8. Hierdie Wet heet die Wysigingswet op Eiendomsagente,
1978.

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- (b) any regulation which, at any time after the passing of the principal Act but before the commencement thereof, was purported to be promulgated in terms of the principal Act, irrespective of whether such promulgation was necessary for the purpose of bringing the principal Act into operation at the commencement thereof, is hereby validated as from the date on which it was so promulgated in so far as such regulation would have been valid if it were promulgated after the commencement of the principal Act;
- (c) the performance of any act or the exercise of any power by any person at any time after the passing of the principal Act but before the commencement thereof, irrespective of whether such performance or exercise was necessary for the purpose of bringing the principal Act into operation at the commencement thereof, is hereby validated as from the date on which such act was so performed or such power was so exercised in so far as such performance or exercise by such person would have been valid if it had taken place after the commencement of the principal Act.

certain acts and
exercise of certain
powers.

8. This Act shall be called the Estate Agents Amendment Act, Short title.
1978.

