



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 678.

14 April 1982.

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

No. 53 van 1982: Wysigingswet op Eiendomsagente, 1982.

No. 678.

14 April 1982.

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

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

Wet No. 53, 1982

WYSIGINGSWET OP EIENDOMSAGENTE, 1982

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Tot wysiging van die Wet op Eiendomsagente, 1976, ten einde die omstandighede waaronder prokureurs en sekere werknemers van prokureurs by die toepassing van genoemde Wet eiendomsagente is, opnuut te reël, en in hierdie verband voorsiening te maak vir die uitreiking van 'n sekere registrasiesertifikaat; die bepalinge betreffende nie-aanspreeklikheid van die Eiendomsagente-getrouheidsfonds uit te brei; die omstandighede waaronder sekere eiendomsagente nie getrouheidsfondssertifikate kan verkry nie, verder te reël; voorsiening te maak vir die betekening van prosesstukke in verband met sekere aansoeke deur die Raad vir Eiendomsagente aan persone wat die Republiek verlaat het; en om die pligte en bevoegdhede van inspekteurs te bepaal; om die Wysigingswet op Eiendomsagente, 1980, te wysig; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 18 Maart 1982.)

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

Wysiging van
artikel 1 van
Wet 112 van 1976,
soos gewysig
deur artikel 1 van
Wet 60 van 1978
en artikel 1 van
Wet 57 van 1980.

1. Artikel 1 van die Wet op Eiendomsagente, 1976 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur die volgende paragraaf na paragraaf (c) van die omskrywing van „eiendomsagent” in te voeg:

„(cA) by die toepassing van artikels 7, 9 (1) (a), 16, 26, 27, 28 en 33, ook enige persoon wat in diens is by 'n prokureur of 'n professionele maatskappy soos omskryf in artikel 1 van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), in 'n ander hoedanigheid as 'n prokureur of 'n klerk onder leerkontrak, en wie se verpligtinge in die geheel of hoofsaaklik bestaan uit die verrigting van enige handeling bedoel in subparagraaf (i) of (ii) van paragraaf (a) ten behoeve van sodanige prokureur of professionele maatskappy;”;

(b) deur paragraaf (d) van die omskrywing van „eiendomsagent” deur die volgende paragraaf te vervang:

„(d) nie ook 'n prokureur wat, vir eie rekening of as vennoot in 'n prokureursfirma of as lid van 'n professionele maatskappy soos omskryf in artikel 1 van die Wet op Prokureurs, 1979 (Wet 53 van 1979), of 'n klerk onder leerkontrak soos omskryf in genoemde artikel van daardie Wet, wat 'n handeling bedoel in paragraaf (a) [, in verband met sy werksaamhede as 'n praktiserende prokureur] in die loop van en in die naam van en vanaf die perseel van sodanige prokureur of professionele maatskappy se praktyk verrig nie: Met dien verstande dat so 'n handeling nie verrig word nie—

ESTATE AGENTS AMENDMENT ACT, 1982

Act No. 53, 1982

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Estate Agents Act, 1976, so as to regulate anew the circumstances under which attorneys and certain employees of attorneys are estate agents for the purposes of the said Act, and in this regard to make provision for the issuing of a certain certificate of registration; to extend the provisions relating to the non-liability of the Estate Agents Fidelity Fund; to further regulate the circumstances under which certain estate agents may not obtain fidelity fund certificates; to provide for the serving of process in connection with certain applications by the Estate Agents Board on persons who have departed from the Republic; and to determine the duties and powers of inspectors; to amend the Estate Agents Amendment Act, 1980; and to provide for incidental matters.

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

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

1. Section 1 of the Estate Agents Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—
 - 5 (a) by the insertion after paragraph (c) of the definition of “estate agent” of the following paragraph:

“(cA) for the purposes of sections 7, 9 (1) (a), 16, 26,

27, 28 and 33, includes any person who is employed by an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), otherwise than as an attorney or an articled clerk, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i) or (ii) of paragraph (a) on behalf of such attorney or professional company;”;

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 - 15 (b) by the substitution for paragraph (d) of the definition of “estate agent” of the following paragraph:

“(d) does not include an attorney who, on his own account or as a partner in a firm of attorneys or as a member of a professional company, as defined in

20 section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), or an articled clerk as defined in the said section of that Act, who performs any act referred to in paragraph (a) **[,in connection with his activities as a practising attorney]**, in the course of and

25 in the name of and from the premises of such attorney’s or professional company’s practice: Provided that such an act is not performed—

Amendment of section 1 of Act 112 of 1976, as amended by section 1 of Act 60 of 1978 and section 1 of Act 57 of 1980.

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- (i) in vennootskap met enige ander persoon as 'n vennoot in die praktyk van daardie prokureur soos omskryf in artikel 1 van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979); of
- (ii) deur bemiddeling van of as 'n direkteur van 'n ander maatskappy as so 'n professionele maatskappy'; en
- (c) deur die omskrywing van „getrouheidsfondssertifikaat” deur die volgende omskrywing te vervang:
„getrouheidsfondssertifikaat” 'n getrouheidsfondssertifikaat bedoel in artikel 16, en by die toepassing van artikels 26 (a), 27, 28 en 33 (1) (e) en (f), ook 'n registrasiesertifikaat in artikel 16 bedoel;”.

Vervanging van
artikel 16 van
Wet 112 van 1976.

2. Artikel 16 van die Hoofwet word hierby deur die volgende artikel vervang:

„Aansoeke om en uitreiking van getrouheidsfondssertifikate en registrasiesertifikate.

16. (1) Elke eiendomsagent of voornemende eiendomsagent, uitgesonderd 'n eiendomsagent bedoel in paragraaf (cA) van die omskrywing van „eiendomsagent” in artikel 1, 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) 'n Eiendomsagent of voornemende eiendomsagent bedoel in paragraaf (cA) van die omskrywing van „eiendomsagent” in artikel 1, moet binne die voorgeskrewe tydperk en op die voorgeskrewe wyse by die raad om 'n registrasiesertifikaat aansoek doen, en so 'n aansoek word vergesel van die heffing bedoel in artikel 9 (1) (a).

[2] (3) Indien die raad by ontvangs van 'n aansoek bedoel in subartikel (1) of (2) en die heffing en bydrae in daardie subartikels 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]** die betrokke aansoeker 'n getrouheidsfondssertifikaat of 'n registrasiesertifikaat, na gelang van die geval, uit, wat geldig is tot 31 Desember van die jaar waarop die betrokke aansoek betrekking het.

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

Wysiging van
artikel 19 van
Wet 112 van 1976,
soos gewysig deur
artikel 6 van
Wet 57 van 1980.

3. Artikel 19 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (4) die woord „of” na paragraaf (b) (iv) by te voeg; en
- (b) deur die volgende paragraaf by subartikel (4) te voeg:
„(c) iemand ly weens diefstal gepleeg, of weens enige ander handeling of versuim in verband met trustgelde op rekening van iemand anders gehou of ontvang, deur 'n persoon bedoel in paragraaf (cA) van die omskrywing van „eiendomsagent” in artikel 1 van hierdie Wet.”.

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- (i) in partnership with any person other than a partner in the practice of that attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); or
- 5 (ii) through the medium of or as a director of a company other than such professional company;"; and
- (c) by the substitution for the definition of "fidelity fund certificate" of the following definition:
- 10 "fidelity fund certificate" means a fidelity fund certificate referred to in section 16, and includes for the purposes of sections 26 (a), 27, 28 and 33 (1) (e) and (f), a registration certificate referred to in section 16;".

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

Substitution of
section 16 of
Act 112 of 1976.

- "Applications for and issue of fidelity fund certificates and registration certificates.
- 20 16. (1) Every estate agent or prospective estate agent, excluding an estate agent referred to in paragraph (cA) of the definition of 'estate agent' in section 1, shall, within the prescribed period and in the prescribed manner, apply to the board for a fidelity fund certificate, and such application shall be accompanied by the levies referred to in section 9 (1) (a) and the contribution referred to in section 15.

- 25 (2) An estate agent or prospective estate agent referred to in paragraph (cA) of the definition of 'estate agent' in section 1, shall, within the prescribed period and in the prescribed manner, apply to the board for a registration certificate, and such application shall be accompanied by the levy referred to in section 9 (1) (a).

- 30 [2] (3) If the board upon receipt of any application referred to in subsection (1) or (2) and the levies and contribution referred to in [subsection (1)] those subsections, is satisfied that the applicant concerned complies with the requirements of this Act, the board shall in the prescribed form issue to [such] the applicant concerned a fidelity fund certificate or a registration certificate, as the case may be, which shall be valid until 31 December of the year to which such application relates.

- 35 [3] (4) No fidelity fund certificate or registration certificate shall be issued unless and until the provisions of this Act are complied with, and any fidelity fund certificate and registration certificate issued in contravention of the provisions of this Act shall be invalid and shall be returned to the board at its request."
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- 50 3. Section 19 of the principal Act is hereby amended—
- (a) by the insertion in subsection (4) after paragraph (b) (iv) of the word "or"; and
- (b) by the addition to subsection (4) of the following paragraph:

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

- 55 "(c) any person as a result of theft, or as a result of any other act or omission in connection with trust moneys held or received on account of any other person, by any person referred to in paragraph (cA) of the definition of 'estate agent' in section 1 of this Act."

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Wysiging van
artikel 27 van
Wet 112 van 1976,
soos vervang deur
artikel 3 van
Wet 60 van 1978
en gewysig deur
artikel 7 van
Wet 57 van 1980.

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4. Artikel 27 van die Hoofwet word hierby gewysig deur paragraaf (b) deur die volgende paragraaf te vervang:

- „(b) 'n eiendomsagent wat 'n direkteur is van 'n maatskappy—
- (i) waarvan die getrouheidsfondssertifikaat ingevolge artikel 28 of 30 deur die raad ingetrek is; of
 - (ii) wat ingevolge artikel 32 (6) verbied is om op enige wyse op sy trust- of spaar- of ander rentegewende rekening bedoel in artikel 32 (2) (a) te werk, of 'n eiendomsagent wat **[onmiddellik]** binne 'n tydperk van ses maande voor of op die datum waarop sodanige getrouheidsfondssertifikaat aldus ingetrek is of maatskappy aldus verbied is, 'n direkteur van daardie maatskappy was.”.

Wysiging van
artikel 28 van
Wet 112 van 1976,
soos gewysig deur
artikel 8 van
Wet 57 van 1980.

5. Artikel 28 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

- „(4) Indien dit vir die hof blyk dat iemand ten opsigte van wie die raad van voorneme is om 'n aansoek ingevolge subartikel (3) of artikel 32 (6) te doen, die Republiek verlaat het en dat hy waarskynlik nie van voorneme is om na die Republiek terug te keer nie en dat dit onbekend is waar hy hom bevind, kan die hof gelas dat die betekening aan daardie persoon van enige prosesstuk in verband met so 'n aansoek kan geskied deur die publikasie van daardie prosesstuk in 'n Afrikaanse en 'n Engelse koerant wat in omloop is in die distrik waarin genoemde persoon se laasbekende besigheidsadres, soos in die stukke van die raad aangeteken, geleë is.”.

Invoeging van
artikel 32A in
Wet 112 van 1976.

6. Die volgende artikel word hierby in die Hoofwet na artikel 32 ingevoeg:

„Bevoegdhede van inspekteurs.

- 32A.** (1) 'n Inspekteur aan wie die raad skriftelik inspeksiebevoegdhede verleen het, kan ondersoek instel om te bepaal of die bepalings van hierdie Wet nagekom is of word en kan, behoudens subartikel (5), vir daardie doel te alle redelike tye en sonder voorafgaande kennisgewing—
- (a) 'n plek betree of binnegaan ten opsigte waarvan hy rede het om te glo dat—
 - (i) iemand daar 'n handeling as eiendomsagent verrig;
 - (ii) dit in verband staan met 'n handeling wat deur 'n eiendomsagent verrig word;
 - (iii) daar boeke, aantekeninge of stukke is waarop die bepalings van hierdie Wet van toepassing is;
 - (b) 'n eiendomsagent of die bestuurder, werknemer of agent van 'n eiendomsagent gelas om aan hom—
 - (i) die getrouheidsfondssertifikaat van daardie eiendomsagent te toon;
 - (ii) enige boek, aantekening of ander stuk in die besit of onder die beheer van daardie eiendomsagent, bestuurder, werknemer of agent te toon;
 - (iii) op die plek en wyse wat hy redelikerwys aandui die inligting te verstrek wat hy ten opsigte van sodanige getrouheidsfondssertifikaat, boek, aantekening of ander stuk verlang;
 - (c) enige sodanige getrouheidsfondssertifikaat, boek, aantekening of ander stuk inspekteur of uittreksels daaruit of afskrifte daarvan maak;
 - (d) enige sodanige getrouheidsfondssertifikaat, boek, aantekening of ander stuk waarop 'n vervolging of 'n aanklag weens onbehoorlike gedrag ingevolge hierdie Wet betrekking het, in beslag neem en in bewaring hou: Met dien verstande

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

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

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

- 5 (i) of which the fidelity fund certificate was withdrawn by the board in terms of section 28 or 30;
- (ii) which was prohibited in terms of section 32 (6) from operating in any way on its trust, savings or other interest-bearing account referred to in section 32 (2) (a),

10 or any estate agent who **[immediately]** within a period of six months before or on the date on which such fidelity fund certificate was so withdrawn or such company was so prohibited, was a director of such company."

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

Amendment of section 28 of Act 112 of 1976, as amended by section 8 of Act 57 of 1980.

"(4) If it appears to the court that a person in respect of

20 whom the board intends making an application under subsection (3) or section 32 (6), has left the Republic and that he probably does not intend to return to the Republic and that his whereabouts are unknown, the court may order that service on that person of any process in connection with such application may be effected by the publication of such process in an Afrikaans and an English newspaper circulating in the district in which the said person's last known business address, as entered in the records of the board, is

25 situated."

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

Insertion of section 32A in Act 112 of 1976.

30 "Powers of inspectors.

32A. (1) Any inspector furnished with inspection

authority in writing by the board may conduct an investigation to determine whether the provisions of this Act are being or have been complied with and may, subject to subsection (5), for that purpose,

35 without giving prior notice, at all reasonable times—

(a) enter any place in respect of which he has reason to believe that—

- (i) any person there is performing an act as an estate agent;
- 40 (ii) it is connected with an act performed by an estate agent;
- (iii) there are books, records or documents to which the provisions of this Act are applicable;

45 (b) order any estate agent or the manager, employee or agent of any estate agent—

- (i) to produce to him the fidelity fund certificate of that estate agent;
- 50 (ii) to produce to him any book, record or other document in the possession or under the control of that estate agent, manager, employee or agent;
- (iii) to furnish him, at such place and in such manner as he may reasonably specify, with such information in respect of that fidelity fund certificate, book, record or other document as he may desire;
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(c) examine or make extracts from or copies of such fidelity fund certificate, book, record or other document;

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(d) seize and retain any such fidelity fund certificate, book, record or other document to which any prosecution or charge of improper conduct under this Act may relate: Provided that the person from whose possession or custody any

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dat die persoon uit wie se besit of bewaring 'n getrouheidsfondssertifikaat, boek, aantekening of ander stuk geneem is, op sy versoek toegelaat word om, onder toesig van die betrokke inspekteur en op eie koste, afskrifte daarvan of uittreksels daaruit te maak. 5

(2) Niemand mag—

(a) in gebreke bly om op aanvraag enigiets in sy besit of onder sy beheer of op sy perseel wat betrekking kan hê op 'n inspeksie, tot die beskikking van 'n inspekteur te stel nie; 10

(b) 'n inspekteur by die uitoefening van sy bevoegdheid kragtens hierdie artikel hinder of dwarsboom nie;

(c) valslik voorgee dat hy 'n inspekteur is nie. 15

(3) 'n Inspekteur moet 'n kwitansie gee aan die eienaar of persoon in beheer van enigiets wat kragtens hierdie artikel in beslag geneem en in bewaring gehou is.

(4) 'n Inspekteur wat 'n bevoegdheid ingevolge hierdie artikel uitoefen, moet op versoek van iemand wat deur die uitoefening van daardie bevoegdheid geraak word, die skriftelike inspeksiebevoegdheid toon wat ooreenkomstig subartikel (1) aan hom verleen is. 20 25

(5) Ondanks enigiets in hierdie artikel vervat, is die bepalings daarvan, uitgesonderd subartikel 2 (c), nie van toepassing nie ten opsigte van—

(a) enige prokureur, lid van 'n professionele maatskappy of klerk onder leerkontrak, soos omskryf in artikel 1 van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), of enige werknemer van so 'n prokureur, lid of maatskappy; 30

(b) enige perseel vanwaar so 'n prokureur of maatskappy sy praktyk voortsit; en 35

(c) enige boek, aantekening of stuk op so 'n perseel, of in die besit of onder die beheer van iemand in paragraaf (a) bedoel.”

Herroeping van artikel 12 van Wet 57 van 1980.

7. Artikel 12 van die Wysigingswet op Eiendomsagente, 1980 (Wet No. 57 van 1980), word hierby herroep. 40

Vervanging van artikel 15 van Wet 57 van 1980.

8. Artikel 15 van die Wysigingswet op Eiendomsagente, 1980 (Wet No. 57 van 1980), word hierby deur die volgende artikel vervang:

„Kort titel.

15. Hierdie Wet heet die Wysigingswet op Eiendomsagente, 1980 [en artikel 12 tree in werking op 'n datum wat deur die Staatspresident by proklamasie in die Staatskoerant bepaal word].” 45

Kort titel.

9. Hierdie Wet heet die Wysigingswet op Eiendomsagente, 1982.

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fidelity fund certificate, book, record or other document was taken, shall at his request be allowed to make, at his own expense and under the supervision of the inspector concerned, copies thereof or extracts therefrom.

(2) No person shall—

- (a) fail on demand to place at the disposal of any inspector anything in his possession or under his control or on his premises which may relate to any inspection;
- (b) hinder or obstruct any inspector in the exercise of his powers under this section;
- (c) falsely hold himself out to be an inspector.

(3) Any inspector shall issue a receipt to the owner or person in control of anything seized and retained under this section.

(4) Any inspector who exercises any power in terms of this section shall, at the request of any person affected by the exercise of that power, produce the inspection authority in writing furnished to him in accordance with subsection (1).

(5) Notwithstanding anything contained in this section, the provisions thereof, excluding subsection

(2) (c), shall not apply in respect of—

- (a) any attorney, member of a professional company or articulated clerk, as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), or any employee of any such attorney, member or company;
- (b) any premises from which such attorney or company conducts his or its practice; and
- (c) any book, record or document on such premises or in the possession or under the control of any person referred to in paragraph (a)."

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

Repeal of section 12 of Act 57 of 1980.

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

Substitution of section 15 of Act 57 of 1980.

"Short title.

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

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

Short title.

