



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprys • Selling price
(AVB uitgesluit/GST excluded)

Plaaslik 45c Local
Buitelands 60c Other countries
Posvry • Post free

VOL. 250

KAAPSTAD, 23 APRIL 1986

No. 10202

CAPE TOWN, 23 APRIL 1986

KANTOOR VAN DIE STAATSPRESIDENT

No. 728.

23 April 1986

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

No. 40 van 1986: Wysigingswet op Eiendomsagente, 1986.

STATE PRESIDENT'S OFFICE

No. 728.

23 April 1986

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

No. 40 of 1986: Estate Agents Amendment Act, 1986.

Wet No. 40, 1986

WYSIGINGSWET OP EIENDOMSAGENTE, 1986

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 Wet op Eiendomsagente, 1976, ten einde voorsiening te maak dat die raad in sekere omstandighede ouditgelde uit sy fondse kan betaal en daarna op die betrokke eiendomsagent kan verhaal; verdere voorsiening te maak aangaande betalings wat uit die Eiendomsagents-getroouheidsfonds gemaak kan word; die vereistes in verband met die uitreiking van 'n getrouheidsfondssertifikaat te wysig; voorsiening te maak dat rente in sekere omstandighede uit die Eiendomsagents-getroouheidsfonds betaal kan word; te bepaal dat 'n onafhanklike kontrakteur wat aan 'n eiendomsagent dienste lewer die houer moet wees van 'n getrouheidsfondssertifikaat maar dat getrouheidsfondsverzekering nie ten opsigte van hom uitgeneem hoef te word nie; te vereis dat 'n getrouheidsfondssertifikaat aan die raad terugbesorg word in die geval van sekere onbevoegdhede van die houer daarvan en by die likwidasie van 'n maatskappy of beslote korporasie; verdere voorsiening te maak in verband met handelinge wat onbehoorlike gedrag uitmaak; die vereistes in verband met trustrekeninge en die ouditering daarvan verder te reël; en te bepaal dat 'n eiendomsagent nie geregtig is op vergoeding ten opsigte van transaksies deur hom gesluit terwyl hy nie aan sekere vereistes van die Wet voldoen nie; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 9 April 1986.)

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

Wysiging van artikel 9 van Wet 112 van 1976, soos gewysig deur artikel 4 van Wet 57 van 1980 en artikel 6 van Wet 51 van 1984.

1. Artikel 9 van die Wet op Eiendomsagente, 1976 (hieronder die Hoofwet genoem), word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

"(b) indien die raad—

- (i) na 'n ondersoek bevind het dat 'n eiendomsagent in gebreke gebly het om enige verpligting na te kom wat hom ingevolge hierdie Wet opgelê is; **[of]**
- (ii) 'n verpligting opgeloop het om prokureur-en-kliënt-koste te betaal ten opsigte van enige verrigtinge wat hy ingevolge hierdie Wet ingestel het vir die verhaal op 'n eiendomsagent van enige bedrag wat deur hom aan die raad of die fonds betaalbaar is; **of**
- (iii) 'n verpligting opgeloop het om ouditgelde te betaal ten opsigte van 'n oudit wat in opdrag van die raad gedoen is in 'n geval waar 'n oudit beoog in artikels 29 en 32 (4) nie gedoen is nie,

die raad die koste van daardie ondersoek vir sover dit op daardie verpligting betrekking het, of die getak-

5

10

15

20

ESTATE AGENTS AMENDMENT ACT, 1986

Act No. 40, 1986

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 provide that the board may in certain circumstances pay audit fees out of its funds and thereafter recover them from the estate agent concerned; to make further provision regarding payments to be made out of the Estate Agents Fidelity Fund; to amend the requirements in connection with the issue of a fidelity fund certificate; to provide that interest may in certain circumstances be paid out of the Estate Agents Fidelity Fund; to provide that an independent contractor rendering services to an estate agent shall be the holder of a fidelity fund certificate but that fidelity insurance need not be taken out in respect of him; to require that a fidelity fund certificate be returned to the board in the case of certain disabilities of the holder thereof and on the liquidation of a company or a close corporation; to make further provision concerning acts constituting improper conduct; to further regulate the requirements concerning trust accounts and the auditing thereof; and to provide that an estate agent shall not be entitled to remuneration in respect of transactions concluded by him while not complying with certain provisions of the Act; and to provide for incidental matters.

(*English text signed by the State President.*)
(Assented to 9 April 1986.)

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

1. Section 9 of the Estate Agents Act, 1976 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (b) of subsection (2) of the following para-

graph:

(b) if the board—

(i) after an investigation has found that an estate agent failed to comply with any duty imposed upon him in terms of this Act; **[or]**

(ii) has incurred any liability to pay attorney and client costs in respect of any proceedings instituted by it in terms of this Act for the recovery from an estate agent of any amount which is payable by him to the board or the fund; **or**

(iii) **has incurred any liability to pay audit fees in respect of an audit done on the instructions of the board in a case where an audit contemplated in sections 29 and 32(4) has not been done,**

the board may recover the costs of such investigation in so far as it relates to such duty or the taxed amount of

Amendment of
section 9 of
Act 112 of 1976,
as amended by
section 4 of
Act 57 of 1980 and
section 6 of
Act 51 of 1984.

Wet No. 40, 1986

WYSIGINGSWET OP EIENDOMSAGENTE, 1986

Wysiging van artikel 13 van Wet 112 van 1976.

Wysiging van artikel 16 van Wet 112 van 1976, soos vervang deur artikel 2 van Wet 53 van 1982.

Wysiging van artikel 19 van Wet 112 van 1976, soos gewysig deur artikel 6 van Wet 57 van 1980 en artikel 3 van Wet 53 van 1982.

Vervanging van artikel 26 van Wet 112 van 1976, soos gewysig deur artikel 3 van Wet 10 van 1985.

Wysiging van artikel 28 van Wet 112 van 1976, soos gewysig deur artikel 8 van Wet 57 van 1980, artikel 5 van Wet 53 van 1982 en artikel 5 van Wet 10 van 1985.

seerde bedrag van daardie prokureur-en-kliënt-koste, of die bedrag van daardie ouditgelde, na gelang van die geval, op die betrokke eiendomsagent kan verhaal.”.

2. Artikel 13 van die Hoofwet word hierby gewysig deur paraaf (c) deur die volgende paragraaf te vervang:

“(c) alleregs-, rekeningkundige en ander koste aangegaan by die ondersoek en verdediging van eise teen die fonds ingestel of andersins met betrekking tot die fonds aangegaan;”.

3. Artikel 16 van die Hoofwet word hierby gewysig deur sub- 10 artikel (3) deur die volgende subartikel te vervang:

“(3) Indien die raad by ontvangs van 'n aansoek bedoel in subartikel (1) of (2) en die heffing en bydrae in daardie subartikels bedoel, oortuig is dat die betrokke aansoeker [aan die vereistes van hierdie Wet voldoen] nie kragtens artikel 27 15 onbevoeg is vir die uitreiking van 'n getrouheidsfondssertifikaat aan hom nie, reik die raad in die voorgeskrewe vorm aan die betrokke aansoeker 'n getrouheidsfondssertifikaat of registrasiesertifikaat, na gelang van die geval, uit, wat geldig is tot 31 Desember van die jaar waarop die betrokke 20 aansoek betrekking het.”.

4. Artikel 19 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) [Geen bedrag word] Die raad kan na goeddunke rente uit die fonds betaal [nie as rente] op die bedrag van 25 enige vonnis verkry of van enige eis teen die fonds erken: Met dien verstande dat—

- (a) die rente nie loop nie van 'n datum vroeër as die datum waarop die raad skriftelike kennis van of namens die eiser van sy eis teen die fonds ontvang het; en 30
- (b) die rentekoers nie die geldende rentekoers wat kragtens artikel 1 (2) van die Wet op die Voorgeskrewe Rentekoers, 1975 (Wet No. 55 van 1975), voorgeskryf is, mag oorskry nie.”.

5. Artikel 26 van die Hoofwet word hierby deur die volgende 35 artikel vervang:

“Verbod op levering van dienste as eiendomsagent onder sekere omstandighede.

26. Niemand mag as eiendomsagent 'n handeling verrig nie tensy—

- (a) daar aan hom en aan elke persoon wat as eiendomsagent in sy diens is, met inbegrip van 'n 40 onafhanklike kontrakteur wat aan hom dienste lewer, en, indien hy 'n maatskappy is, aan elke direkteur van daardie maatskappy, en, indien hy 'n beslote korporasie is, aan elke lid bedoel in paragraaf (b) van die omskrywing van 'eiendomsagent' van daardie korporasie, 'n geldige getrouheidsfondssertifikaat uitgereik is; en 45
- (b) hy ten opsigte van elke persoon wat in sy diens is, uitgesonderd sodanige onafhanklike kontrakteur, getrouheidsversekering uitgeneem het vir 'n bedrag wat na die oordeel van die raad voldoende is.”.

6. Artikel 28 van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg:

“(5) Behoudens die bepalings van subartikel (1) moet 55 enige persoon of, indien so 'n persoon 'n maatskappy is, enige direkteur van so 'n maatskappy of, indien so 'n persoon 'n beslote korporasie is, enige lid bedoel in paragraaf (b) van die omskrywing van 'eiendomsagent', van sodanige korporasie, indien hy onderhewig raak aan 'n onbevoegdheid bedoel in artikel 27, onmiddellik enige handeling wat hy as eiendomsagent verrig, staak en onverwyld sy getrouheidsfondssertifikaat aan die raad terugbesorg.

ESTATE AGENTS AMENDMENT ACT, 1986

Act No. 40, 1986

such attorney and client costs or the amount of such audit fees, as the case may be, from the estate agent concerned.”.

2. Section 13 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) all legal, accounting and other expenses incurred in investigating and defending claims made against the fund or otherwise incurred in relation to the fund;”.

3. Section 16 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the board upon receipt of any application referred to in subsection (1) or (2) and the levies and contribution referred to in those subsections, is satisfied that the applicant concerned [complies with the requirements of this Act] is not disqualified in terms of section 27 from being issued with a fidelity fund certificate, the board shall in the prescribed form issue to 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.”.

4. Section 19 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) [No amount shall be paid] The board may at its discretion pay out of the fund [as] interest on the amount of any judgment obtained or any claim admitted against the fund: Provided that—

- (a) such interest shall not run from a date earlier than the date on which the board received notice in writing by or on behalf of a claimant of his claim against the fund; and
- (b) the rate of interest shall not exceed the prevailing rate of interest prescribed under section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).”.

35 5. The following section is hereby substituted for section 26 of the principal Act:

“Prohibition of rendering of services as estate agent in certain circumstances.

26. No person shall perform any act as an estate agent unless—

- (a) a valid fidelity fund certificate has been issued to him, and to every person employed as an estate agent by him, including an independent contractor rendering services to him, and, if such person is a company, to every director of such company, and, if such person is a close corporation, to every member referred to in paragraph (b) of the definition of ‘estate agent’ of such corporation; and
- (b) he has, in respect of every person who is in his employment, with the exception of such independent contractor, taken out fidelity insurance to an amount which in the opinion of the board is sufficient.”.

Substitution of section 26 of Act 112 of 1976, as amended by section 3 of Act 10 of 1985.

6. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

- 55 “(5) Subject to the provisions of subsection (1), any person or, if such person is a company, any director of such company or, if such person is a close corporation, any member referred to in paragraph (b) of the definition of estate agent of such corporation, shall, if he becomes subject to any disqualification referred to in section 27, immediately cease to perform any act which he performs as an estate agent and shall forthwith return his fidelity fund certificate to the board.

Amendment of section 28 of Act 112 of 1976, as amended by section 8 of Act 57 of 1980, section 5 of Act 53 of 1982 and section 5 of Act 10 of 1985.

Amendment of section 13 of Act 112 of 1976.

Amendment of section 16 of Act 112 of 1976, as substituted by section 2 of Act 53 of 1982.

Amendment of section 19 of Act 112 of 1976, as amended by section 6 of Act 57 of 1980 and section 3 of Act 53 of 1982.

Wet No. 40, 1986

WYSIGINGSWET OP EIENDOMSAGENTE, 1986

(6) Die bepalings van subartikel (5) is *mutatis mutandis* van toepassing op 'n maatskappy of 'n beslote korporasie wat gelikwiede word kragtens die Maatskappywet, 1973 (Wet No. 61 van 1973), of die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), na gelang van die geval.".

5

Wysiging van artikel 30 van Wet 112 van 1976, soos gewysig deur artikel 9 van Wet 57 van 1980 en artikel 6 van Wet 10 van 1985.

7. Artikel 30 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

"(b) in gebreke bly om, binne 30 dae nadat hy skriftelik versoek word om dit te doen, ten opsigte van 'n handeling wat hy as eiendomsagent verrig [**voldoende rekenskap**], 'n volledige en behoorlike skriftelike verduideliking te gee aan iemand wat 'n wesentlike belang het by die verrigting van daardie handeling;";
- (b) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:

"(d) in gebreke bly om skriftelik binne die tydperk wat die raad bepaal die inligting te verstrek wat die raad skriftelik verlang en redelikerwys nodig het ten einde sy bevoegdhede ingevolge hierdie Wet behoorlik te kan uitoefen;"; en
- (c) deur paragraaf (f) van subartikel (1) te skrap.

15

8. Artikel 32 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Elke eiendomsagent moet [**n**] een of meer aparte [**trustrekening**] trustrekeninge, wat 'n verwysing na hierdie artikel moet bevat, by 'n bank of bougenootskap open en hou en sodanige eiendomsagent, of sy werkgever, na gelang van die geval, moet onverwyld daarin die geld stort wat hy [**op rekening**] in sy hoedanigheid van eiendomsagent of van werknemer van so 'n eiendomsagent, ten behoeve van enige persoon [**van iemand**] hou of ontvang en die naam van sodanige bank of bougenootskap en die nommer van elke sodanige trustrekening onverwyld aan die raad verstrek.";
- (b) deur subartikel (4) deur die volgende subartikel te vervang:

"(4) 'n Ouditeur wat 'n audit beoog in subartikel (3) gedoen het, moet onverwyld nadat hy daardie audit voltooi het, 'n verslag oor sy bevindings [**op**] in die [**voorgeskrewe**] vorm wat die raad van tyd tot tyd bepaal, aan die raad, en 'n afskrif daarvan aan die betrokke eiendomsagent, deurstuur."; en
- (c) deur paragraaf (c) van subartikel (7) deur die volgende paragraaf te vervang:

"(c) 'n eiendomsagent [**in gebreke bly om ten opsigte van enige jaar betyds om 'n getrouheidsfondssertifikaat aansoek te doen**] onderhewig raak aan 'n onbevoegdheid bedoel in artikel 27,".

45

50

55

Wysiging van artikel 33 van Wet 112 van 1976, soos gewysig deur artikel 6 van Wet 60 van 1978 en artikel 13 van Wet 57 van 1980.

9. Artikel 33 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (iA) van subartikel (1) te skrap;
- (b) deur in die Engelse teks paragraaf (iB) van subartikel (1) deur die volgende paragraaf te vervang:

"(iB) prescribing the portion of the interest which, and the circumstances in which such portion, may be refunded to the estate agent concerned in terms of section 32 [**(3) (2) (d)**"; en
- (c) deur paragraaf (j) van subartikel (1) te skrap.

60

ESTATE AGENTS AMENDMENT ACT, 1986

Act No. 40, 1986

5 (6) The provisions of subsection (5) shall *mutatis mutandis* apply to a company or close corporation being wound up in terms of the Companies Act, 1973 (Act No. 61 of 1973), or the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be.”.

7. Section 30 of the principal Act is hereby amended—
 10 (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) fails in respect of any act performed by him as an estate agent to give a full and proper [account] explanation in writing, within 30 days of being called upon in writing to do so, to any person having a material interest in the performance of such act;”;
 15 (b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:
 “(d) fails to furnish in writing within such period as the board may determine such information as the board may request in writing and reasonably require in order to exercise its powers properly under this Act;”; and
 20 (c) by the deletion of paragraph (f) of subsection (1).

Amendment of section 30 of Act 112 of 1976, as amended by section 9 of Act 57 of 1980 and section 6 of Act 10 of 1985.

8. Section 32 of the principal Act is hereby amended—
 25 (a) by the substitution for subsection (1) of the following subsection:
 “(1) Every estate agent shall open and keep [a] one or more separate trust [account] accounts, which shall contain a reference to this section, with a bank or building society and such estate agent or his employee, as the case may be, shall forthwith deposit therein the moneys held or received by him in his capacity as an estate agent or as an employee of such estate agent, on [account] behalf of any person, and the name of such bank or building society and the number of each such trust account shall forthwith be notified to the board.”;
 30 (b) by the substitution for subsection (4) of the following subsection:
 “(4) Any auditor who does an audit contemplated in subsection (3) (b), shall forthwith after completing such audit, transmit to the board a report in the [prescribed] form from time to time determined by the board, in regard to his findings [to the board], and a copy thereof to the relevant estate agent.”; and
 35 (c) by the substitution for paragraph (c) of subsection (7) of the following paragraph:
 “(c) any estate agent [fails to apply timeously for a fidelity fund certificate in respect of any year] becomes subject to any disqualification referred to in section 27.”.

Amendment of section 32 of Act 112 of 1976, as amended by section 5 of Act 60 of 1978, section 11 of Act 57 of 1980 and section 12 of Act 51 of 1984.

9. Section 33 of the principal Act is hereby amended—
 50 (a) by the deletion of paragraph (iA) of subsection (1);
 (b) by the substitution for paragraph (iB) of subsection (1) of the following paragraph:
 “(iB) prescribing the portion of the interest which, and the circumstances in which such portion, may be refunded to the estate agent concerned in terms of section 32 [(3)] (2) (d);”; and
 55 (c) by the deletion of paragraph (j) of subsection (1).

Amendment of section 33 of Act 112 of 1976, as amended by section 6 of Act 60 of 1978 and section 13 of Act 57 of 1980.

Wet No. 40, 1986**WYSIGINGSWET OP EIENDOMSAGENTE, 1986**

Invoeging van artikel 34A in Wet 112 van 1976.

10. Die volgende artikel word hierby in die Hoofwet na artikel 34 ingevoeg:

"Eiendomsagent nie geregtig op vergoeding in opsigte van 'n transaksie wat hy as eiendomsagent sekere omstandighede aangegaan het terwyl hy nie aan die bepalings van artikel 26 voldoen nie." 5

Kort titel.

11. Hierdie Wet heet die Wysigingswet op Eiendomsagente, 1986.

ESTATE AGENTS AMENDMENT ACT, 1986

Act No. 40, 1986

10. The following section is hereby inserted after section 34 of the principal Act:

“Estate agent not entitled to remuneration in certain circumstances. **34A.** Any person acting contrary to the provisions of section 26, shall not be entitled to remuneration in respect of a transaction concluded by him as an estate agent while failing to comply with the provisions of section 26.”

Insertion of
section 34A in
Act 112 of 1976.

11. This Act shall be called the Estate Agents Amendment Short title. Act, 1986.

