

PROPERTY PRACTITIONERS ACT

CODE OF CONDUCT

Supplementation

This code of conduct may be supplemented by the Authority after the effective date so as to provide for the regulation of any industry not catered for in this code of conduct as at the effective date, provided always that the Authority shall consult in good faith with the industry representative bodies in the industry concerned as to the terms of such proposed code of conduct prior to any such supplementation.

1.2 Duties Applicable to All Property Practitioners

1.2.1 In terms of a property practitioner's general duty to members of the public and other persons or bodies, a property practitioner -

1.2.1.1 shall not in or pursuant to the conduct of his business do or omit to do any act which is or may be contrary to the integrity of property practitioners in general;

1.2.1.2 shall protect the interests of his client at all times to the best of his ability, with due regard to the interests of all other parties concerned;

1.2.1.3 shall **not accept a mandate if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence**, or he has not completed the required qualifications, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge, and this fact is disclosed in writing to the client;

1.2.1.4 shall not in his capacity as a property practitioner wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of a property practitioner;

1.2.1.5 shall comply with both the Act, these regulations and all applicable bylaws; and

1.2.1.6 shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party, or by using such company, close corporation or third party as a front or nominee do anything which would not be permissible for him to do if he were operating as a property practitioner.

1.2.1.7 A property practitioner -

1.2.1.8 shall not solicit or influence any person entitled to trust funds under his control to make over or pay to the property practitioner directly or indirectly any interest on moneys deposited or invested in terms of section 54 (1) or 54 (2) of the Act;

1.2.1.9 shall, before he receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that unless they agree in writing to whom interest earned on such money must be paid, the interest may accrue to the Property Practitioners Fidelity Fund; and

1.2.1.10 shall, if any money is invested by him pursuant to section 54 (2) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the property practitioner -

1.2.1.10.1 invest such money at the best interest rate available in the circumstances at the bank or building society where he normally keeps his trust account or accounts; and

1.2.1.10.2 pay the full amount of the interest which accrued on the investment to the party entitled to such interest.

1.2.2 No property practitioner shall, without just cause, divulge to any third party any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he acted as a property practitioner.

1.3 Duties Applicable to Estate Agents

Mandates

1.3.1 No estate agent shall -

1.3.1.1 offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee therefor, unless he has been given a mandate to do so by the seller or lessor of the property, or his duly authorised agent;

1.3.1.2 on behalf of a prospective purchaser or lessee, offer, purport or attempt to offer to purchase or lease any immovable property or negotiate in connection therewith or canvass, or undertake or offer to canvass a seller or lessor therefor, unless he has been given a mandate to do so by such prospective purchaser or lessee, as the case may be, or his duly authorised agent;

1.3.1.3 accept a sole mandate or the extension of the period of an existing sole mandate, unless -

1.3.1.3.1 all the terms of such mandate (or extension, as the case may be), are in writing and signed by the client in a manner acceptable in law, including by way of an electronic signature as permitted under the Electronic Transactions and Communications Act, 2002; and

1.3.1.3.2 the expiry date of the mandate (or extension, as the case may be), which shall be expressed as a calendar date, is specifically recorded in the written sole mandate (or extension, as the case may be);

1.3.1.4 accept a sole mandate which contains a provision conferring upon him -

1.3.1.4.1 an option to extend the sole mandate for a certain period after expiry of the sole mandate; or

1.3.1.4.2 a mandate to continue to render the same service referred to in the sole mandate, after expiry of the sole mandate;

1.3.1.5 accept a sole mandate which also confers upon him a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate;

1.3.1.6 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract;

1.3.1.7 accept any mandate or instructions for work in respect of immovable property if his interest therein would compete with his obligations towards an existing client in respect of the same immovable property without first disclosing such interest in writing to such client;

1.3.1.8 knowingly or negligently make a material misrepresentation concerning the likely market value or rental income of immovable property to a seller or lessor thereof, in order to obtain a mandate in respect of such property;

1.3.1.9 accept a mandate in respect of any immovable property if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge, and this fact is disclosed in writing to the client; or

1.3.1.10 accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client –

1.3.1.10.1 the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent; and

1.3.1.10.2 what specific obligations in respect of the marketing of the property will be assumed by the estate agent in his endeavour to perform the mandate, provided that such explanations, if contained in a standard pre-printed or

typed sole mandate document, shall be in lettering not smaller than that generally used in the remainder of the document.

Duty to disclose

1.3.2 An estate agent shall -

1.3.2.1 convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, **within his personal knowledge** and which are or could be material to a prospective purchaser or lessee thereof;

1.3.2.2 if he conducts his business under a trade name or style other than his own name, clearly disclose his full name in all correspondence, circulars and other written documentation; and

1.3.2.3 not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate, which **conflicts** with the aforesaid mandate, has been accepted by him, unless he has disclosed to the person who has given the later mandate the existence of such prior mandate, and the fact that he will not be the estate agent's only client in respect of that property.

1.3.3 No estate agent shall purchase directly or indirectly for himself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of, or interest in, such immovable property.

Duty not to make misrepresentations or false statements or to use harmful marketing techniques

1.3.4 No estate agent shall -

1.3.4.1 in his capacity as an estate agent publish or cause to be published any advertisement which could create the impression that it was published by the owner, seller or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;

1.3.4.2 wilfully or negligently, in relation to his activities as an estate agent, prepare, make or assist any other person to prepare or make any **false statement, whether orally or in writing**, or sign any false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of account or other records;

1.3.4.3 claim to be an expert or to have specialised knowledge in respect of any service if, in fact, he is not such an expert or does not have such special knowledge;

1.3.4.4 advertise or otherwise market immovable property in respect of which he has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;

1.3.4.5 without derogating from the generality of the foregoing –**1.3.4.5.1 willfully or negligently mislead or misrepresent** in regard to any matter pertaining to the immovable property in respect of which he has a mandate; or

1.3.4.5.2 use any harmful or misleading marketing technique or method or undesirable practice as declared in terms of section 63 of the Act to influence any person to confer upon him a mandate to render any service or to sell, purchase, let or hire immovable property, having regard to the general experience which such person has concerning property transactions and the circumstances surrounding the transaction or proposed transaction;

1.3.4.6 use any firm or trading name in respect of his business if such name may give rise to confusion on the part of the public in respect of the nature of the business carried on by him;

1.3.4.7 inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from a purchaser or seller (as the case may be), unless such offer –

1.3.4.7.1 is in writing;

1.3.4.7.2 has been signed by the offeror in manuscript, albeit that the offer was subsequently electronically transmitted to the estate agent; and

1.3.4.7.3 is, to the knowledge of the estate agent concerned, a bona fide offer; or

1.3.4.8 **affix any board or notice to immovable property** indicating that such property is for sale or hire or has been sold or let, unless –

1.3.4.8.1 the seller or lessor (as the case may be) has given his **consent** to do so; and

1.3.4.8.2 the estate agent concerned in fact has a mandate to sell or let the property, or in fact has sold or let the property, as the case may be; or

1.3.4.9 affix or erect any advertising board or notice to solicit business -

1.3.4.9.1 on local authority property, without express written approval by the local authority; or

1.3.4.9.2 which is in contravention of the regulations of the advertising by-laws of the applicable local authority.

Duties in respect of offers and contracts

1.4 No estate agent -

1.4.1 who has a mandate to sell or purchase immovable property shall willfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a legally valid contract of sale in respect of such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;

1.4.2 who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to unduly influence the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller;

1.4.3 shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.

1.5 An estate agent shall -

1.5.1 explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he is unable to do so, refer such party to a person who can do so;

1.5.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted forthwith notify the offeror of such fact; and

1.5.3 without undue delay furnish every contracting party with a copy of an agreement of sale, lease, option or mandate with which he is concerned as an estate agent, provided that the foregoing shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.

Remuneration

1.6 No estate agent shall -

1.6.1 stipulate for, demand or receive directly or indirectly any remuneration, commission, benefit or gain arising from or connected with any completed, pending or proposed contract of sale or lease which is subject to -

1.6.1.1 a suspensive condition, until such time as that condition has been fulfilled; or

1.6.1.2 a resolutive condition, during the time that the transaction may fall away as a result of the operation of the said resolutive condition;

1.6.2 convey to his client or any other party to a completed or proposed transaction in which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the Authority or any institute or association of estate agents or any other body;

1.6.3 introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that:

1.6.3.1 such person has already been introduced to such property or the seller or lessor thereof by another estate agent; and

1.6.3.2 that there is a likelihood that his client may have to pay commission to such other estate agent, or to more than one estate agent, should the sale or lease be concluded through his intervention;

1.6.4 include, or cause to be included, or accept the benefit of, any clause in a mandate or in a contract of sale or lease of immovable property, providing for payment to him by the seller or lessor of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of whether the purchaser or lessee is financially able to fulfill his obligations in terms of the said contract;

1.6.5 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, entitling him to deduct from any money entrusted to him in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract, provided that the foregoing shall not be construed so as to prohibit an estate agent from making such deduction when such money is actually paid over by him to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain; or

1.6.6 include, or cause to be included, or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser; provided that the foregoing shall not apply if -

1.6.6.1 good cause exists; and

1.6.6.2 the purchaser has prior to his signature of the contract in question, consented in writing in a document executed independently of the said contract, to such payment; and

1.6.6.3 such document contains an explanation of the implications and financial risks of such payment for the purchaser; and

1.6.6.4 such document is signed by both the seller and the purchaser and the estate agent in question; and

1.6.7 shall not operate a trust account, other than in compliance with the Act and these regulations.

2 UNDESIRABLE BUSINESS PRACTICES

2.1 Pursuant to the provisions of section 63 (1) of the Act, the following business practices are prohibited –

2.1.1.1 any arrangement in terms of which any party or person that directly or indirectly controls or manages any franchised business, requires that any franchise operation or outlet of such franchised business may only be marketed, promoted or disposed of through the agency of the franchisor, or a property practitioner designated by the franchisor or which imposes any form of penalty in respect of a failure to do so; and

2.1.1.2 any arrangement in terms of which any party or person that directly or indirectly controls or manages any residential property development, including any body corporate or homeowners' association (the "managing organisation") –

2.1.1.3 receives money or any other reward in exchange for a benefit, advantage or other form of preferential treatment in respect of the marketing of properties in such property development;

2.1.1.4 requires that any property in such property development may only be disposed of through the agency of the managing organisation or a property practitioner designated by the managing organisation, or which imposes any form of penalty in respect of a failure to do so;

2.1.1.5 requires that any property in such property development may only be disposed of to the managing organisation or a person or entity designated by the managing organisation;

2.1.1.6 effectively provides an advantage to any one property practitioner or group of property practitioners over and above any other property practitioners, in providing services in relation to properties in such property development; or

2.1.1.7 effectively excludes or disadvantages any property practitioner or group of property practitioners from being able to provide services in relation to properties in such property development.

3 MANDATORY DISCLOSURE

3.1 The mandatory disclosure referred to in section 67 of the Act shall be in the following format -

IMMOVABLE PROPERTY CONDITION REPORT IN RELATION TO THE SALE OF ANY IMMOVABLE PROPERTY

1 Disclaimer

This condition report concerns the immovable property situated at [insert deeds office and physical description] (the "Property"). This report does not constitute a guarantee or warranty of any kind by the owner of the Property or by the property practitioners representing that owner in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the Property.

2 Definitions

In this form -

2.1 "to be aware" means to have actual notice or knowledge of a certain fact or state of affairs; and

2.2 "defect" means any condition, whether latent or patent, that would or could have a significant deleterious or adverse impact on, or affect, the value of the property, that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired, removed or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the Property.

3 Disclosure of information

The owner of the Property discloses the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property. The owner hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement, and to disclose any information contained in this statement, to any person in connection with any actual or anticipated sale of the Property.

4 Provision of additional information

The owner represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable". Should the owner have responded to any of the statements with a "yes", the owner shall be obliged to provide, in the additional information area of this form, a full explanation as to the response to the statement concerned.

6 Owner's certification

The owner hereby certifies that the information provided in this report is, to the best of the owner's knowledge and belief, true and correct as at the date when the owner signs this report.

7 Certification by person supplying information

If a person other than the owner of the property provides the required information that person must certify that he/she is duly authorised by the owner to supply the information and that he/she has supplied the correct information on which the owner relied for the purposes of this report and, in addition, that the information contained herein is, to the best of that person's knowledge and belief, true and correct as at the date on which that person signs this report.

8 Notice regarding advice or inspections

Both the owner as well as potential buyers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property. Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties pertaining to the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties.

9 Buyer's acknowledgement

The prospective buyer acknowledges that he/she has been informed that professional expertise and/or technical skill and knowledge may be required to detect defects in, and non-compliant aspects concerning, the property.

The prospective buyer acknowledges receipt of a copy of this statement.

10 Signatures

Signed at _____ on _____

Signature of owner/s _____

Signed at _____ on _____

Signature of purchaser/s _____

Signature of property practitioner _____

4 WORDING ON LETTERHEADS AND IN AGREEMENTS

4.1 The following wording must appear on all letterheads or marketing material pertaining to a property practitioner: "Registered with the PPRA" and where a candidate estate agent is making use of such letterheads or is referenced in such marketing material, the fact that such individual is a candidate estate agent must be clearly stated.

4.2 Any agreement in connection with a property transaction to which the property practitioner is a party must contain a clause in the following terms: "[Insert name of property practitioner as defined in the agreement] hereby warrants the validity of his / her / its Fidelity Fund certificate as at the date of signature of this Agreement."

CHAPTER 8: ADMINISTRATIVE AND OTHER MATTERS

5 DISTINCTION BETWEEN MINOR AND MAJOR CONTRAVENTIONS

Contraventions of the Act are classified as minor or substantial, and attract the maximum fines as set out below –

38 DISTINCTION BETWEEN MINOR AND MAJOR CONTRAVENTIONS

Contraventions of the Act are classified as minor or substantial, and attract the maximum fines as set out below –

| NO | SECTION REFERENCE | CONTRAVENTION MINOR OR SUBSTANTIAL | MAXIMUM FINE |
|-----------|--------------------------|--|--|
| 1. | 23 (1) | Minor | R 5 000 |
| 2. | 41 (1) | Minor | R 5 000 |
| 3. | 47 (1) | Substantial | R 15 000 |
| 4. | 47 (2) | Substantial | R 10 000 |
| 5. | 47 (4) | Minor | R 450 per full month |
| 6. | 47 (5) | Minor | R 1 500 |
| 7. | 47 (6) | Minor | R 500 |
| 8. | 47 (7) | Minor | R 2 000 |
| 9. | 48 (1) | Substantial | R 25 000 |
| 10. | 48 (4) | Substantial | R 10 000, in respect of the failure to effect a repayment when requested to do so. |
| 11. | 51 (5) | Minor | R 1 500 |
| 12. | 52 (2) | Substantial | R 1 500 |
| 13. | 52 (6) | Substantial where withdrawn, minor where lapsed. | R 25 000 where withdrawn R 7 500 where lapsed. |
| 14. | 52 (7) | Substantial where withdrawn, minor where lapsed | R 25 000 where substantial R 7 500 where minor |
| 15. | 53 (1) (a) to (c) | Substantial | R 1 500 |

| NO | SECTION REFERENCE | CONTRAVENTION MINOR OR SUBSTANTIAL | MAXIMUM FINE |
|-----|-------------------|--|---|
| 16. | 54 (1) (a) to (c) | Minor | R 7 500 |
| 17. | 54 (2) (a) to (b) | Minor | In respect of subparagraph (a) R 750 and in respect of subparagraph (b) R 1 500. |
| 18. | 54 (3) (a) to (b) | Substantial in respect of subparagraph (a) and minor in respect of subparagraph (b). | R 40 000 in respect of subparagraph (a) and R 7 500 in respect of subparagraph (b). |
| 19. | 54 (5) (a) to (c) | Minor | R 25 000 |
| 20. | 54 (6) | Minor | R 20 per day in respect of each day (but subject to a maximum of R 5 000). |
| 21. | 54 (7) | Minor | R 1 500 |
| 22. | 54 (9) (a) to (d) | Minor | R 7 500 |
| 23. | 54 (10) | Substantial | R 25 000 |
| 24. | 54 (14) | Minor | R 1 000 |
| 25. | 55 (1) (a) to (f) | Substantial (is stated in the Act as being an offence) | R 1 500 per annum |
| 26. | 55 (4) (a) to (b) | Minor | R 7 500 |
| 27. | 56 (1) | Minor | R 7 500 |
| 28. | 56 (2) | Minor | R 7 500 |
| 29. | 56 (3) | Minor | R 7 500 |
| 30. | 56 (5) | Minor | R 7 500 |
| 31. | 57 (1) | Minor | R 2 500 |
| 32. | 58 (1) (a) to (b) | Substantial in respect of (a) and minor in respect of (b). | R 25 000 in respect of (a) and R 2 500 in respect of (b). |

| NO | SECTION REFERENCE | CONTRAVENTION MINOR OR SUBSTANTIAL | MAXIMUM FINE |
|-----|-------------------|---|--|
| 33. | 59 (1) (a) to (c) | Substantial | R 5 000 |
| 34. | 61 (3) | Minor | R 750 |
| 35. | 62 (1) (a) (k) | Substantial in respect of subparagraph (h). Minor in respect of all other subparagraphs. | R 25 000 in respect of subparagraph (h). R 5 000 in respect of subparagraphs (a), (f), (g) and (j). R 1 500 in respect of each other subparagraph, other than (k). In respect of (k), as may be provided for in the Act or otherwise under this regulation. |
| 36. | 64 (1) and (2) | Minor | R 1 500 |
| 37. | 64 (4) | Minor | R 1 500 |
| 38. | 65 (1) | Substantial | R 25 000 |
| 39. | 65 (2) | Minor | R 1 500 |
| 40. | 66 (1) (a) to (d) | Substantial (is stated in the Act as being an offence) | R 25 000 |
| 41. | 67 (1) | Minor | R 15 000 |
| 42. | 69 (2) | Minor | R 1 500 |

6 SPECIFICATION OF OTHER SERVICES

6.1 Pursuant to the provisions of subsection (a) (vi) of the definition of "property practitioner" in the Act, the following services are specified –

6.1.1 the sale, by auction or otherwise, by any person as part of the activities of operating a property development business, of any property or any interest, right or title in or to a property or a property development, provided that the foregoing shall not apply in circumstances where such sale, auction or other activity is conducted solely through the auspices of a property practitioner falling within subsection (a) (i) of the definition of "property practitioner" who is the holder of a current fidelity fund certificate issued under the provisions of the Act; and

6.1.2 an activity falling within subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act insofar as it pertains to business undertakings shall include any activity that relates to small, micro and medium enterprises, franchised businesses or new start-up ventures or newly created franchise concepts, whether such enterprise is sold as a whole as a going concern or as part of a business or by means of transferring the beneficial ownership in such enterprise.

7 DOCUMENT RETENTION

7.1 In terms of section 55 (1) (f) of the Property Practitioners Act 22 of 2019, it is prescribed that the following documents must be retained in accordance with the provisions of section 55 –

7.1.1 copies of all electronic communications sent or received by the property practitioner to and from members of the public in the course of carrying out its activities as a property practitioner, other than in circumstances where a property practitioner is acting in the course and scope of his or her employment by a person or entity that is a registered property practitioner in terms of the Property Practitioners Act 22 of 2019; and

7.1.2 where a property practitioner employs any other property practitioner, copies of all electronic communications sent or received by such **employee property practitioner to or from members of the public in the course and scope of carrying out his or her employment duties, provided that such obligation shall not extend to electronic communications on social media which are generally accessible by members of the public.**

8 ADMINISTRATIVE MATTERS

In terms of section 70 (1) (a) of the Act, incidental matters of a procedural or administrative nature are prescribed as set out in the schedules hereto.

SCHEDULE 1

ADMINISTRATIVE MATTERS RELATING TO EXEMPTIONS

Manner and Form of Application

8.1 For the purposes of section 4 of the Property Practitioners Act, 22 of 2019 ("Act"), the following is prescribed –

8.1.1 An application for exemption under section 4 of the Act must be submitted in writing to the Authority either by email or by hand delivery to the offices of the Authority as set out further below.

8.1.2 The application for exemption must be made using form E1 below.

8.1.3 Any objection to an exemption must be made using form E2 below.

Process Pertaining to Exemptions

8.2 Where application has been made for exemption in respect of any matter contemplated in the Act, no action will be taken against the applicant in relation to non-compliance with the matter in relation to which exemption is sought, until such exemption application has been finalised in accordance with the process set out in this Schedule

1. If such any exemption application is refused, notice of such refusal together with the reasons therefor must be given to the applicant and the applicant must be given a reasonable period of time within which to bring about compliance with the matter which is the subject of such exemption application in which regard the Authority must, if it requires such compliance, issue a compliance notice as contemplated in section 26. The foregoing shall only apply where the exemption application precedes the action taken. It shall in no way affect any action that had already been mounted or proceedings against the applicant that are already underway on the date on which the application was lodged.

8.3 An **application for exemption must be either uploaded through the Authority's web portal** or otherwise must be sent by the applicant to the Authority's email address at [insert email address] or otherwise sent by post or delivered by hand to the following address of the Authority -

Property Practitioners Regulatory Authority, 63 Wierda Road East (Cnr Johan), Wierda Valley, Sandton, Johannesburg, 2196

8.4 The **Authority must, within 60 working days, consider any application** for exemption submitted to it which is compliant with the provisions of this regulation, unless the Authority, on good grounds in writing, informs the applicant of the reasons why that period is to be extended, provided that such extension may not exceed **20 working days**.

8.5 The period of 60 working days referred to in regulation 8.4 foregoing commences afresh if the Authority requests the applicant to submit additional information or to correct said application.

8.6 If the Authority fails to comply with regulation 8.4 foregoing, the application is deemed to have been approved and the Authority may not take any action against the applicant in relation to non-compliance with the matter which has been the subject of such exemption application, for so long as the exemption remains of force and effect.

8.7 An application for exemption may be made by any person or organisation, whether such person or organisation is a property practitioner or not. **Without limiting the foregoing, an application for exemption may be made by a representative organisation or association on behalf of its members or membership.**

Administration of Exemption Applications

8.8 As a matter of practice, exemptions should be granted in circumstances where none of the considerations in section 4 (5) (a), (b), (c) or (e) arises and, having regard to any considerations as referred to in section 4 (5) (d), such exemption will not have a material adverse effect upon consumers' rights.

8.9 As a matter of practice, exemptions from the provisions of section 58 (1) (b) should be granted (a) in circumstances where it can be shown on a balance of probabilities that such will be to the **benefit of consumers or members of the public or (b) otherwise in circumstances where good and sufficient cause exists for such exemption.**

8.10 Where natural persons apply for exemption from either or both provisions of section 50 (a) (vii) and 50 (a) (x), such exemptions should ordinarily be granted. Applications for exemption from the provisions of 50 (a) (vii) and 50 (a) (x) may be submitted simultaneously with any application for registration as a property practitioner, for a fidelity fund certificate or for renewal of a fidelity fund certificate.

8.11 In considering whether an exemption should be granted, regard should be had to the administrative burden on the Authority of not granting such exemption.

8.12 In considering any exemption application, due regard should be had to the legitimate expectations of the applicant, regard being had to previous practice in regard to exemption applications of the kind in question.

8.13 An exemption application may be submitted simultaneously with an application for registration as a property practitioner or with an application for a fidelity fund certificate and, in such event, such application must be dealt with simultaneously if the granting of such registration or the issue of such fidelity fund certificate is or may reasonably be considered to be, contingent upon the exemption application being granted.

8.14 Any person who applies for registration or a fidelity fund certificate may be exempted from the obligation to pay any prescribed fees pertaining thereto or otherwise be permitted by the Authority to discharge such fees over such period of time as the Authority may consider reasonable in the circumstances if either (a) such applicant provides the Authority with reasonable proof of financial hardship or (b) the interests of justice so require.

8.15 Where a party that applies for exemption acts solely as a conduit or platform for the placing of advertisements by property practitioners, such exemption should in the absence of other considerations relating to protecting the interests of consumers, be granted.

8.16 Where it is alleged that a property practitioner that is a business property practitioner has a partner, director, trustee or member that does not hold a fidelity fund certificate as required in terms of section 48 (2), written confirmation from the auditors or attorneys of the business property practitioner concerned that such partner, director, trustee or member (the "non-compliant executive member") has subsequently been removed, has resigned or has withdrawn from such position will be proof of such fact, provided that it is accompanied by an affidavit by a partner, director trustee or member of the business property practitioner concerned as follows –

I, [insert name] with identity number [insert details] [alternatively, insert passport number and details of the issuing country], being a [insert capacity] of [insert the full name of the business property practitioner concerned] (with registration number [insert details]) [delete the reference to the registration number if the property practitioner in question does not have a registration number], do hereby state and make oath/affirm that [insert the full name of the non-compliant executive member] (with identity number [insert details]) [alternatively, insert passport number and details of the issuing country], has as of [insert date] ceased to act as a [insert the relevant capacity] of [insert the full name of the business property practitioner concerned] or to have any involvement with the management of or the direction of the affairs of [insert the full name of the business property practitioner concerned].

8.17 Where a property practitioner that is a business property practitioner has non-executive directors or has finance, marketing, information technology or human resource directors or any other director who is not directly concerned with the management and oversight of individual property practitioners, exemption should ordinarily be granted from the provisions of section 48 (1) (b) and 48 (2) in respect of such persons, upon application being made to the Authority.

8.18 Where an exemption application has or is likely to have an effect on significant numbers of property practitioners, the Authority must consult with industry bodies representing property practitioners before considering and finalising such exemption application.

8.19 Other than for sole proprietors, all property practitioners who are natural persons will, upon making application for a Fidelity Fund certificate, be deemed by the fact of such application itself to have applied for exemption from the provisions section 50 (vii) of the Act and the Authority must by default grant such exemption.

8.20 All property practitioners who are natural persons will, upon making application for a Fidelity Fund certificate, be deemed by the fact of such application itself to have applied for exemption from the provisions of section 50 (x) of the Act and the Authority must by default grant such exemption.

8.21 For the purposes of sub regulations 8.19 and 8.20 foregoing and regardless of what is provided for elsewhere in these Regulations (including this Schedule 1), it shall not be necessary for any property practitioner who is deemed to have applied for exemption under the provisions of such sub- regulations, to make any formal application for such exemption, the fact of the application for a Fidelity Fund in and of itself being deemed to comprise such application for exemption.

FORM E1– APPLICATION FOR EXEMPTION FROM PROVISIONS OF THE PROPERTY PRACTITIONERS ACT, 2019

| | |
|---|--|
| Full names of the applicant: | |
| If the applicant is a natural person: | |
| South African identity number of the applicant: | |
| If no South African identity number is available, then: | |
| Passport number of the applicant: | |
| Country of issue of passport: | |
| State the place of residence of the applicant: | |
| State the principal place of business of the applicant, if applicable: | |
| State the name of the employer of the applicant, if applicable: | |
| If the applicant is not a natural person: | |
| State the form of the applicant (e.g., company, close corporation, trust, association): | |
| State the registration number of the applicant, if applicable: | |
| State the place of registration of the applicant, if applicable: | |
| State the principal place of business of the applicant, if applicable: | |
| Provide full details of the directors, members, trustees or similar persons exercising control over the applicant (attached separately, if necessary): | |
| Please also provide full details of shareholders, members, beneficiaries or other persons who have a direct financial interest in the applicant (attached separately, if necessary): | |
| Briefly state the reason exemption is applied for (full reasons may be attached separately): | |
| | |

If the applicant is or has at any time been the holder of a fidelity fund certificate issued by the Authority or its predecessor in title the Estate Agency Affairs Board, attach a copy of the most recent version of the fidelity fund certificate held by the applicant.

Please separately attach comprehensive reasons as to why exemption is being applied for and also provide all relevant supporting documentation.

State the specific sections and subsections of the Property Practitioners Act, 2019 from which exemption is sought:

State the period for which exemption is sought:

If the applicant is not a natural person, also attach an authorising resolution by the board of directors, members or trustees or similar body exercising control of the applicant which authorises the signatory below to submit the exemption application on behalf of the applicant.

Signed at _____ on _____

Signature on behalf of the Applicant _____

Full names: _____

**FORM E2 – OBJECTION TO EXEMPTION GRANTED UNDER THE PROVISIONS OF
THE PROPERTY PRACTITIONERS ACT, 2019**

| | |
|---|--|
| Full names of the objecting party: | |
| If the objecting party is a natural person: | |
| South African identity number of the objecting party: | |
| If no South African identity number is available, then: | |
| Passport number of the objecting party: | |
| Country of issue of passport: | |
| State the place of residence of the objecting party: | |
| State the principal place of business of the objecting party, if applicable: | |
| State the name of the employer of the objecting party, if applicable: | |
| If the objecting party is not a natural person: | |
| State the form of the objecting party (e.g., company, close corporation, trust, association): | |
| State the registration number of the objecting party, if applicable: | |
| State the place of registration of the objecting party, if applicable: | |
| State the principal place of business of the objecting party, if applicable: | |
| Provide full details of the directors, members, trustees or similar persons exercising control over the objecting party (attached separately, if necessary): | |
| Please also provide full details of shareholders, members, beneficiaries or other persons who have a direct financial interest in the objecting party (attached separately, if necessary): | |
| Briefly state the basis of the objection (full reasons may be attached separately): | |
| | |

State the specific sections and subsections of the Property Practitioners Act, 2019 in respect of which exemption has been granted and to which objection is made:

If the objecting party is or has at any time been the holder of a fidelity fund certificate issued by the Authority or its predecessor in title the Estate Agency Affairs Board, attach a copy of the most recent version of the fidelity fund certificate held by the objecting party.

Please separately attach comprehensive reasons as to why exemption is objected to and also provide all relevant supporting documentation.

If the objecting party is not a natural person, also attach an authorising resolution by the board of directors, members or trustees or similar body exercising control of the applicant which authorises the signatory below to submit the objection on behalf of the objecting party.

Signed at _____ on _____

Signature on behalf of the Objecting party _____

Full names: _____

SCHEDULE 2

ADMINISTRATIVE MATTERS RELATING TO REGISTRATIONS AND FIDELITY FUND CERTIFICATES

8.22 Where a natural person acts as a property practitioner in different capacities within the same industry, a single fidelity fund certificate shall be issued to that natural person in respect of all capacities in which they act as a property practitioner within that industry.

8.23 A fidelity fund certificate will state the industry in respect of which such fidelity fund certificate applies but will not otherwise state the capacity in which the holder holds that fidelity fund certificate.

8.24 The Authority may not as a precondition to issuing a fidelity fund certificate require a property practitioner to bring into compliance any matter pertaining to any period preceding the date upon which a fidelity fund certificate was previously issued to the property practitioner concerned, unless either (a) that fidelity fund certificate was issued subject to the property practitioner bringing such specific matter into compliance or (b) a complaint has been lodged with the Authority in relation to any such non-compliance by the property practitioner concerned.

8.25 All fidelity fund certificates, and registration certificates will be issued by uploading the same to the Authority's web portal and making such accessible to the property practitioner concerned. A fidelity fund certificate or a registration certificate will be issued to and come into the possession of a property practitioner once such certificate is made available on the Authority's web portal, such that a copy of it is capable of being downloaded by the property practitioner concerned. Should the Authority not observe the time period contemplated in section 49 (1), then in accordance with section 49 (3), an application for a fidelity fund certificate is deemed to have been approved by the Authority which must, upon the applicant's written request, issue the fidelity fund certificate within 10 working days.

Furthermore, the property practitioner will be deemed to be compliant with all provisions of the Act requiring possession of a fidelity fund certificate, and no action relating to non-possession of a fidelity fund certificate may be taken against such property practitioner.

8.26 For the purposes of section 56 (5) of the Act, a conveyancer must obtain a copy of both (a) the Fidelity Fund certificate of the business operation concerned issued pursuant to the provisions of regulation 26A and (b) the Fidelity Fund certificate of the natural person property practitioner or natural person property practitioners who were concerned with the transaction in question.

8.27 A fidelity fund certificate downloaded from the Authority's web portal will, if saved and retained in the original file format together with its original properties, constitute an original fidelity fund certificate for the purposes of the Act and will retain that character if sent unaltered as part of an electronic message as contemplated in the Electronic Communications and Transactions Act, 25 of 2002. A fidelity fund certificate may in accordance with the foregoing be provided electronically to a conveyancer for the purposes of compliance with section 56 (5).

8.28 **Prior to withdrawing a fidelity fund certificate** (whether in terms of section 52 (1) or otherwise) and without derogating from the requirements of administrative law, the Authority must –

8.28.1 **give notice** of its intention to withdraw such fidelity fund certificate; and

8.28.2 first grant the person in question an **opportunity to make representations within a period of 30 days** as to why such fidelity fund certificate should not be withdrawn; and

8.28.3 first grant the person in question an opportunity to apply within a period of 30 **days for exemption**, should they wish to do so.

SCHEDULE 3

GRANTS FROM THE FIDELITY FUND

8.29 For the purposes of section 6 (1) grants from the Fidelity Fund may not without ministerial consent cause the Fidelity Fund to be reduced to a sum of less than R 70,000,000 (four hundred million Rand), provided always that the aforesaid amount will be escalated annually on 01 January of each year by the increase in CPI over the preceding year, with the first such escalation occurring on 01 January 2021.

8.30 For the purposes of the foregoing "CPI" means the consumer price index, statistical release P018 as published from time to time by Statistics South Africa from time to time provided that if, at any time, such index shall cease to be published then there will be used other official information or index as may published by Statistics South Africa from time to time in lieu of statistical release P018.

8.31 All amounts not required for the purposes referred to in section 6 of the Property Practitioners Act shall be allocated to and paid over to the Transformation Fund for utilisation by the Transformation Fund in accordance with the provisions of the Act as read with these Regulations.

SCHEDULE 4

GENERAL ADMINISTRATIVE MATTERS

8.32 For the purposes of section 54 (14), the relevant confirmation or update must be uploaded to the Authority's web portal, provided always that a property practitioner may send such confirmation or update to the email address or deliver such confirmation update by post or by hand to the physical address provided for in regulation 8.3 of Schedule 1 (Administrative Matters Relating to Exemptions).

8.33 Where a property practitioner who is a natural person acts on behalf of any business property practitioner, that natural person property practitioner must reflect on all emails, letters, contracts, business cards, marketing materials and similar forms of communication the full name, email address and telephone number of the business property practitioner on behalf of whom that natural person property practitioner is acting.

8.34 All emails, letters, contracts, business cards, marketing materials and similar forms of communications must, in addition to the matters prescribed for in terms of section 53 (1) further reflect, in respect of each property practitioner –

8.34.1 that is a sole proprietorship or business property practitioner, that such holds a fidelity fund certificate in the capacity of a business property practitioner;

8.34.2 whether or not that business property practitioner operates a trust account;

8.34.3 in respect of each natural person that is associated with or operates under the auspices of that business property practitioner, the name of such natural person together with a statement that such natural person holds a fidelity fund certificate and the capacity in which such person acts as a property practitioner in relation to that business property practitioner, being either a principal, a full status property practitioner or an intern.

8.35 For the purposes of section 62 (2) (1) (d), the Authority must grant a property practitioner a period of at least 30 days to provide the relevant requested information, calculated from the date upon which that property practitioner first receives such request for information.

8.36 A person who wishes to claim for compensation from the Property Practitioners Fidelity Fund in respect of theft of trust money by a property practitioner shall not be required to take any steps against the property practitioner concerned, other than as provided for in section 4 (2) of the Act.

8.37 The financial statements of a property practitioner must either be prepared in accordance with a recognised financial reporting framework or a basis of accounting as determined by the property practitioner taking cognisance of other applicable laws and regulations which may prescribe the financial reporting framework to be applied in the preparation of the financial statements based on the type of business through which the property practitioner practices.

8.38 An audit report required under the provisions of the Act (as read together with these regulations) shall be in such form as is determined by the auditor carrying out said audit as being most appropriate in the circumstances, provided that if the South African Institute of Chartered Accountants (or its successor in title) determines one or more forms of audit report to be used for the purposes of the Act (as read together with these regulations), then the auditor shall use such form of report, provided further that –

8.38.1 in carrying out his obligations the auditor shall comply with the auditing pronouncements in terms of the Auditing Profession Act, 26 of 2005; and

8.38.2 if the auditor is unable to furnish an unqualified report, the fact thereof and the reasons therefor will be fully set out in the report and all alterations to an audit report must be signed by the auditor concerned.

8.39 In carrying out its functions under the Act and the regulations, the Authority must consult in good faith with the various representative organisations in industries regulated by the Authority and must have due regard to both the expertise of such representative organisations in the relevant fields that they represent, and the concerns and considerations raised by such representative organisations.

8.40 In carrying out its functions under the Act and the regulations, the Authority must, upon request being made by any person whose rights have been materially and adversely affected by any administrative action of the Authority who has not been given reasons for such action, furnish adequate reasons in writing to such person.

SCHEDULE 5

TRANSITION

8.41 An applicant shall not be precluded from registering as a property practitioner or obtaining a Fidelity Fund certificate under the Act in consequence of such person having been in any way non-compliant with any of the provisions of the previous Act unless -

8.41.1 the Authority is able to show that such applicant is on the effective date subject to criminal prosecution or disciplinary proceedings which has or have commenced in respect of a failure on the part of such person to comply with any provisions of the previous Act or its regulations; or

8.41.2 the Authority is able to show that such applicant had a fidelity fund certificate issued under the previous Act withdrawn as a result of a failure on the part of such applicant to comply with any of the provisions of the previous Act or its regulations.

8.42 A property practitioner who failed to register as an "estate agent" under the previous Act or failed to obtain a Fidelity Fund certificate under the previous Act when they were required to do so, shall not be subject to prosecution or any disciplinary action in respect of such failure, provided that such property practitioner registers with the Authority within a period of no more than six months of the effective date and such person subsequently obtains a Fidelity Fund certificate in accordance with the provisions of the Act and these regulations within a period of no more than 12 months following the date upon which such person registers with the Authority.

8.43 The Authority shall be entitled to from time to time in good faith consultation with the representative bodies of the industry or industries concerned, to take steps in respect of and arrange for the regularisation of the affairs of, the property practitioners in such industry or industries in order to enable the property practitioners concerned to bring themselves into compliance with the provisions of the Act and the regulations.

8.44 Each person who on the effective date holds a fidelity fund certificate issued under the previous Act shall be entitled to continue acting as a property practitioner under the Act, using such existing fidelity fund certificate, until the end of the year during which the effective date falls.

8.45 To the extent that any person has during the 12 month period preceding the effective date obtained any qualification which would entitle such person under the provisions of the previous Act and its regulations to be registered as an estate agent or to carry on the activities of an estate agent (including whether as non-principal or as principal), the Authority must recognise such qualifications for the purposes of the Act and these regulations and allow such person to register as an carry on the activities of, a property practitioner