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GOVERNMENT GAZETTE

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No. 19413

KAAPSTAD, 30 OKTOBER 1998

OFFICE OF THE PRESIDENT

No. 1393.

30 October 1998

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

No. 90 of 1998: Estate Agents Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1393.

30 Oktober 1998

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

No. 90 van 1998: Wysigingswet op Eiendomsagente, 1998.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President.)
(Assented to 20 October 1998.)*

ACT

To amend the Estate Agents Act, 1976, so as to substitute certain words; to amend or to insert certain definitions; to amend the objects of the Estate Agency Affairs Board; to further regulate appeals to the Board; to provide for grants and payments from the fidelity fund and the arrangement of group insurance schemes by the Board; to provide for the imposition of a penalty for the late application for the issue of a fidelity fund certificate or a registration certificate; to provide that the fidelity fund shall be obliged to pay compensation to a person who suffered a loss by reason of theft by an estate agent of trust money; to make further provision for the disqualifications relating to the issuing of fidelity fund certificates, and for the withdrawal of a fidelity fund certificate and a registration certificate; to provide for the circumstances under which a fidelity fund certificate and a registration certificate shall lapse; to further regulate the grounds upon which an estate agent shall be guilty of conduct deserving of sanction; to provide anew for the penalties which the Board or a committee of inquiry may impose; to provide for the suspension of a fidelity fund certificate if a fine imposed by the Board is not paid within one month; to authorise the Board and a committee of inquiry to order that any portion of a fine imposed by it be applied to compensate any person who suffered a loss as a result of the conduct of the estate agent concerned; to authorise the Board to make a contribution from the fidelity fund towards the costs incurred by an estate agent who has been found not guilty on a charge of conduct deserving of sanction; to make further provision for the keeping of a trust account by an estate agent; to provide for circumstances under which an estate agent shall not be entitled to remuneration; and to prohibit the drafting or completion of certain documents by estate agents who have not complied with the prescribed standard of training; and to provide for matters connected therewith.

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

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

(Engelse teks deur die President geteken.)
(Goedgekeur op 20 Oktober 1998.)

WET

Tot wysiging van die Wet op Eiendomsagente, 1976, ten einde sekere woorde te vervang; sekere woordomskrywings te wysig of in te voeg; die oogmerke van die Raad vir Eiendomsagentskapsaangeleenthede te wysig; appelle na die Raad verder te reël; voorsiening te maak vir toekennings en betalings uit die getrouheidsfonds en die reël van groepversekeringskemas deur die Raad; voorsiening te maak vir die oplegging van 'n boete vir die laat aansoek om die uitreiking van 'n getrouheidsfondssertifikaat of 'n registrasiesertifikaat; te bepaal dat die getrouheidsfonds verplig sal wees om vergoeding te betaal aan 'n persoon wat 'n verlies gely het vanweë dieftsal van trustgeld deur 'n eiendomsagent; verdere voorsiening te maak vir die gronde van onbevoegdheid met betrekking tot die uitreiking van getrouheidsfondssertifikate en vir die intrekking van 'n getrouheidsfondssertifikaat en 'n registrasiesertifikaat; voorsiening te maak vir die omstandighede waaronder 'n getrouheidsfondssertifikaat en 'n registrasiesertifikaat verval; die gronde ingevolge waarvan 'n eiendomsagent skuldig bevind kan word aan gedrag wat strafmaatreëls regverdig, verder te reël; opnuut voorsiening te maak vir die strawwe wat die Raad of 'n komitee van ondersoek kan ople; voorsiening te maak vir die opskorting van 'n getrouheidsfondssertifikaat indien 'n boete opgelê deur die Raad nie binne een maand betaal word nie; die Raad en 'n komitee van ondersoek te magtig om te gelas dat enige deel van 'n boete deur hom opgelê, aangewend word om 'n persoon wat vanweë die optrede van die betrokke eiendomsagent skade gely het, te vergoed; die Raad te magtig om 'n bydrae uit die getrouheidsfonds te maak tot die koste wat 'n eiendomsagent wat onskuldig bevind is op 'n aanklag van gedrag wat strafmaatreëls regverdig, opgeloop het; verdere voorsiening te maak vir die hou van 'n trustrekening deur 'n eiendomsagent; voorsiening te maak vir die omstandighede waaronder 'n eiendomsagent nie op vergoeding geregtig sal wees nie; en die opstel of voltooiing van sekere dokumente deur eiendomsagente wat nie aan die voorgeskrewe standaard van opleiding voldoen het nie, te verbied; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Amendment of section 1 of Act 112 of 1976, as amended by section 1 of Act 60 of 1978, section 1 of Act 57 of 1980, section 1 of Act 53 of 1982, section 1 of Act 51 of 1984, section 1 of Act 10 of 1985 and section 1 of Act 49 of 1996

1. Section 1 of the Estate Agents Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of “board” of the following definition:
“‘board’ means the Estate [Agents] Agency Affairs Board established under section 2, and includes, for the purposes of [subsections (2) and (3) of section 30, and] section 32(7)(a)(ii) [insofar as it relates to the said subsections], any [disciplinary] committee [of the board acting pursuant to and in accordance with the provisions of section 8B] of inquiry;”;
 - (b) by the insertion after the definition of “close corporation”, of the following definition:
“‘committee of inquiry’ means a committee of inquiry referred to in section 8B(1);”;
 - (c) by the insertion, after the definition of “court”, of the following definitions:
“‘employ’ includes using the services of an independent contractor; ‘employee’ includes an independent contractor;”;
 - (d) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of the definition of “estate agent” of the following subparagraphs, respectively:
(i) sells or purchases or publicly exhibits for sale immovable property [or any interest in immovable property] or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas a seller or purchaser therefor; or
(ii) lets or hires or publicly exhibits for hire immovable property [or any interest in immovable property] or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor therefor; or”;
 - (e) by the substitution in paragraph (c) of the definition of “estate agent” for the words preceding subparagraph (i) of the following words:
“(c) for purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30 [and], 33 and 34B, includes—”;
 - (f) by the substitution for paragraph (e) of the definition of “estate agent” of the following paragraph:
“(e) for purposes of section 30(2), (3), (4), [and] (5), (6), (7) and (8) and of regulations made under section 33(1)(h), includes any person who was an estate agent at the time when he or she was guilty of any act or omission which allegedly constitutes [improper] conduct deserving of sanction referred to in section 30;”;
 - (g) by the substitution for the definition of “fidelity fund certificate” of the following definition:
“‘fidelity fund certificate’ means a fidelity fund certificate referred to in section 16, and includes for the purposes of sections [26(a)] 26, 27, 28 and 33(1)(e) and (f), a registration certificate referred to in section 16;”;
 - (h) by the addition to the definition of “immovable property” of the following paragraph:
“(i) any housing interest as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988), and any proposed housing interest;”;
 - (i) by the substitution for the definition of “Minister” of the following definition:
“‘Minister’ means the Minister of [Commerce and Consumer Affairs] Trade and Industry;”;
 - (j) by the addition of the following definition:
“‘trust money’ means—
(a) money or other property entrusted to an estate agent in his or her capacity as an estate agent;”

Wysiging van artikel 1 van Wet 112 van 1976, soos gewysig deur artikel 1 van Wet 60 van 1978, artikel 1 van Wet 57 van 1980, artikel 1 van Wet 53 van 1982, artikel 1 van Wet 51 van 1984, artikel 1 van Wet 10 van 1985 en artikel 1 van Wet 49 van 1996

- 5 1. Artikel 1 van die Wet op Eiendomsagente, 1976 (hieronder die Hoofwet genoem), word hierby gewysig—
- (a) deur subparagrawe (i) en (ii) van paragraaf (a) van die omskrywing van “eiendomsagent” deur onderskeidelik die volgende subparagrawe te vervang:
- 10 (i) onroerende goed [**of 'n belang in onroerende goed**] of 'n besigheidsonderneming koop of verkoop of in die openbaar as te koop ten toon te stel of ten opsigte daarvan onderhandel of 'n koper of verkoper daarvoor werf of onderneem of aanbied om 'n koper of verkoper daarvoor te werf; of
- 15 (ii) onroerende goed [**of 'n belang in onroerende goed**] of 'n besigheidsonderneming huur of verhuur of in die openbaar as te huur ten toon te stel of ten opsigte daarvan onderhandel of 'n huurder of verhuurder daarvoor werf of onderneem of aanbied om 'n huurder of verhuurder daarvoor te werf; of”;
- 20 (b) deur in paragraaf (c) van die omskrywing van “eiendomsagent” die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
“by die toepassing van artikels 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30 [en], 33 en 34B, ook—”;
- 25 (c) deur paragraaf (e) van die omskrywing van “eiendomsagent” deur die volgende paragraaf te vervang:
“(e) by die toepassing van artikel 30(2), (3), (4), [en] (5), (6), (7) en (8) en van regulasies kragtens artikel 33(1)(h) uitgevaardig, ook enige persoon wat 'n eiendomsagent was op die tydstip waarop hy of sy skuldig was aan die handeling of versuim wat volgens bewering [**onbehoorlike**] gedrag wat strafmaatreëls regverdig bedoel in artikel 30 uitmaak;”;
- 30 (d) 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)] 26, 27, 28 en 33(1)(e) en (f), ook 'n registrasiesertifikaat in artikel 16 bedoel;”;
- 35 (e) deur die volgende omskrywing na die omskrywing van “hof” in te voeg:
“in diens ook die gebruikmaking van die dienste gelewer deur 'n onafhanklike kontrakteur;”;
- (f) deur die volgende omskrywing na die omskrywing van “inspekteur” in te voeg:
“'komitee van ondersoek 'n komitee van ondersoek bedoel in artikel 8B(1);”;
- (g) deur die omskrywing van “Minister” deur die volgende omskrywing te vervang:
“'Minister' die Minister van Handel en [**Verbruikersake**] Nywerheid;”;
- 45 (h) deur in die omskrywing van “onroerende goed” die volgende paragraaf by te voeg:
“(i) 'n behuisingsbelang soos omskryf in artikel 1 van die Wet op Ontwikkelingskemas vir Afgetrede Persone, 1988 (Wet No. 65 van 1988), en 'n beoogde behuisingsbelang;”;
- 50 (i) deur die omskrywing van “raad” deur die volgende omskrywing te vervang:
“'raad' die Raad vir [**Eiendomsagente**] Eiendomsagentskapsaanleenthede ingestel kragtens artikel 2, en ook, by die toepassing van [**subartikels (2) en (3) van artikel 30, en**] artikel 32(7)(a)(ii) [**vir sover dit op genoemde subartikels betrekking het**], 'n [**tugkomitee**] komitee van ondersoek [**van die raad handelende uit hoofde van en ooreenkomstig die bepalings van artikel 8B**];”;
- (j) deur die volgende omskrywing na die omskrywing van “raad” in te voeg:
“'trustgeld'—
- (a) geld of ander goed wat aan 'n eiendomsagent in sy of haar hoedanigheid as eiendomsagent toevertrou word;

- (b) money collected or received by an estate agent and payable in respect of or on account of any act referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of 'estate agent';
- (c) any other moneys, including insurance premiums, collected or received by an estate agent and payable in respect of any immovable property, business undertaking or contract for the building or erection of any improvements on immovable property.”.

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Substitution of section 2 of Act 112 of 1976

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

“Establishment of Estate Agency Affairs Board

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2. There is hereby established a juristic person to be known as the Estate [Agents] Agency Affairs Board.”.

Substitution of section 7 of Act 112 of 1976

3. The following section is hereby substituted for section 7 of the principal Act:

“Objects of board

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7. [The object] Having due regard to the public interest, the objects of the board shall be to—

- (a) maintain and promote the [integrity] standard of conduct of estate agents; and
- (b) regulate the activities of estate agents.”.

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Amendment of section 8B of Act 112 of 1976, as inserted by section 5 of Act 51 of 1984

4. Section 8B of the principal Act is hereby amended—

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

“(2) A [disciplinary] committee of inquiry may exercise or perform any power or function which is granted or entrusted to [the board by subsections (2) and (3) of section 30] it in terms of this Act.”;

- (b) by the substitution for subsection 5 of the following subsection:

“(5) If a vacancy occurs on a [disciplinary] committee of inquiry after the committee has commenced with an investigation, the investigation may be proceeded with before at least two members of the committee, but if only two serving members remain, they may take any decision referred to in section 30(3), (7) or (8) only by unanimous vote.”;

- (c) by the deletion of subsection (6); and

- (d) by the substitution for the words “disciplinary committee” and “disciplinary committees”, wherever they occur, of the words “committee of inquiry” and “committees of inquiry”, respectively.

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Insertion of section 8C in Act 112 of 1976

5. The following section is hereby inserted in the principal Act after section 8B:

“Appeal against decisions of committees of inquiry

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- 8C.** (1) Any person who feels aggrieved by any decision taken by a committee of inquiry in the exercise of its powers and the performance of its functions under section 8B(2), may, subject to subsection (3), within 30 days after the committee of inquiry—

- (b) geld wat deur 'n eiendomsagent ingevorder of ontvang word en wat betaalbaar is ten opsigte van of uit hoofde van enige handeling bedoel in subparagraph (i), (ii), (iii) of (iv) van paragraaf (a) van die omskrywing van 'eiendomsagent';
- 5 (c) enige ander gelde, met inbegrip van versekeringspremies, wat deur 'n eiendomsagent ingevorder of ontvang word en wat betaalbaar is ten opsigte van onroerende goed, 'n besigheidsonderneming of 'n kontrak vir die bou of oprigting van enige verbeterings op onroerende goed;"; en
- 10 (k) deur die volgende omskrywing by te voeg:
" 'werkneem' ook 'n onafhanklike kontrakteur."

Vervanging van artikel 2 van Wet 112 van 1976

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

"Instelling van Raad vir Eiendomsagentskapsaangeleenthede

- 15 2. Daar word hierby 'n regspersoon met die naam die Raad vir [Eiendomsagente] Eiendomsagentskapsaangeleenthede ingestel."

Vervanging van artikel 7 van Wet 112 van 1976

3. Artikel 7 van die Hoofwet word hierby deur die volgende artikel vervang:

"Oogmerke van raad

- 20 7. Die [oogmerk] oogmerke van die raad is om met behoorlike inagneming van die openbare belang—
(a) die [integriteit] standaard van eiendomsagente se optrede te handhaaf en te bevorder; en
(b) die aktiwiteit van eiendomsagente te reguleer.".

25 Wysiging van artikel 8B van Wet 112 van 1976, soos ingevoeg deur artikel 5 van Wet 51 van 1984

4. Artikel 8B van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:
"(2) 'n [Tugkomitee] Komitee van ondersoek kan enige bevoegdheid of werkzaamheid wat [deur subartikels (2) en (3) van artikel 30 aan die raad] ingevolge hierdie Wet aan hom verleen of opgedra word, uitoefen of verrig.";
- 30 (b) deur subartikel (5) deur die volgende subartikel te vervang:
"(5) Indien 'n vakature in 'n [tugkomitee] komitee van ondersoek ontstaan nadat die komitee met 'n ondersoek begin het, kan met die ondersoek voor minstens twee lede van die komitee voortgegaan word, maar indien slegs twee dienende lede oorbly, kan hulle 'n beslissing bedoel in artikel 30(3), (7) of (8) slegs by eenparige besluit neem.";
- 35 (c) deur subartikel (6) te skrap; en
(d) deur die woorde "tugkomitee" en "tugkomitees", waar dit ook al voorkom, deur onderskeidelik die woorde "komitee van ondersoek" en "komitees van ondersoek" te vervang.

Invoeging van artikel 8C in Wet 112 van 1976

5. Die volgende artikel word hierby in die Hoofwet na artikel 8B ingevoeg:

45 "Appèl teen beslissings van komitees van ondersoek

8C. (1) Iemand wat hom of haar veronreg voel deur 'n besluit wat 'n komitee van ondersoek by die uitoefening van sy bevoegdhede en die verrigtinge van sy werkzaamhede kragtens artikel 8B(2) geneem het, kan, behoudens subartikel (3), binne 30 dae nadat die komitee van ondersoek—

- (a) has informed that person in writing of the decision and upon payment of the prescribed fee request the committee of inquiry in writing to furnish him or her in writing with its reasons for the decision;
- (b) has in accordance with paragraph (a) furnished that person with its reasons for the decision and after notice to the committee of inquiry, appeal to the board against the decision in the prescribed manner.
- (2) The board shall hear the appeal against the decision of the committee of inquiry in the prescribed manner and may after considering the appeal—
- (a) confirm, amend or reverse the decision;
- (b) remit the matter for further hearing, with such instructions as regards the taking of further evidence or otherwise as the board may deem necessary;
- (c) confirm or suspend any penalty imposed;
- (d) set aside any penalty imposed and impose any other penalty contemplated in section 30(3);
- (e) make an order contemplated in section 30(7)(a).
- (3) (a) If a committee of inquiry has found an estate agent not guilty on a charge of conduct deserving of sanction, any person who lodges an appeal against the decision to the board shall pay to the board a deposit, in an amount determined by the board, to cover the costs of the board and the estate agent concerned in respect of the appeal.
- (b) The deposit contemplated in paragraph (a) shall be refunded in full if the appeal is successful or partly successful.
- (4) A court may, on application by the board, order that a decision of, or penalty imposed by, a committee of inquiry not be stayed or suspended pending an appeal to the board, if the court considers such an order to be in the public interest.”.

Insertion of sections 12A, 12B and 12C in Act 112 of 1976

6. The following sections are hereby inserted in the principal Act after section 12:

“Determination of liabilities of fund and investment of moneys in fund

12A. (1) The Board shall after the end of each financial year of the fund determine to what extent, if at all, the total income of the fund during that financial year exceeded the expenditure incurred by or accrued to the fund during that financial year and shall, if the fund's income exceeded its liabilities, determine how much of the excess may be utilised during the next financial year for the purposes of the grants and other payments contemplated in section 12B.

(2) Any moneys in the fund not immediately required for the purposes of the fund, shall be invested in the prescribed manner.

Grants and other payments from fund

12B. (1) The board may, from the amount determined by it in terms of section 12A and subject to such terms and conditions as it may deem fit—

- (a) make grants with regard to—
- (i) research in fields of activity relevant to the business of estate agents in general;
- (ii) the maintenance and promotion of the standard of conduct of estate agents in general;
- (iii) the maintenance and promotion of the training standards of estate agents in general;

- (a) daardie persoon skriftelik van die besluit in kennis gestel het en teen betaling van die voorgeskrewe gelde, die komitee van ondersoek skriftelik versoek om sy redes vir die besluit skriftelik aan hom of haar te verstrek;
- 5 (b) sy redes vir die besluit ooreenkomsdig paragraaf (a) aan daardie persoon verstrek het en na kennisgewing aan die komitee van ondersoek, op die voorgeskrewe wyse na die raad teen die besluit appelleer.
- 10 (2) Die raad hoor die appèl teen die besluit van die komitee van ondersoek op die voorgeskrewe wyse aan en kan na oorweging van die appèl—
- (a) die besluit bevestig, wysig of omverwerp;
- (b) die saak vir verdere beregting terugverwys met die opdragte betrefende die afname van verdere getuenis of ander optrede wat die raad nodig ag;
- 15 (c) enige opgelegde straf bevestig of opskort;
- (d) enige opgelegde straf tersyde stel en enige ander straf beoog in artikel 30(3) oplê;
- (e) 'n bevel beoog in artikel 30(7)(a) uitvaardig.
- 20 (3) (a) Indien 'n komitee van ondersoek 'n eiendomsagent onskuldig bevind het op 'n aanklag van gedrag wat strafmaatreëls regverdig, moet 'n persoon wat 'n appèl teen sodanige beslissing by die raad aanhangig maak 'n deposito aan die raad betaal, welke bedrag die raad bepaal, ten einde die koste van die raad en die betrokke eiendomsagent met betrekking tot die appèl te dek.
- (b) Die deposito beoog in paragraaf (a) word ten volle terugbetaal indien die appèl slaag of gedeeltelik slaag.
- 25 (4) 'n Hof kan op aansoek van die raad beveel dat 'n besluit van, of straf opgelê deur, 'n komitee van ondersoek nie uitgestel of opgeskort word hangende 'n appèl na die raad nie, indien die hof sodanige bevel ag in die openbare belang te wees.”.

Invoeging van artikels 12A, 12B en 12C in Wet 112 van 1976

6. Die volgende artikels word hierby in die Hoofwet na artikel 12 ingevoeg:

35 **“Vasstelling van verpligtinge van fonds en belegging van geld in fonds”**

- 12A.** (1) Die Raad moet na die einde van elke finansiële jaar van die fonds bepaal tot welke mate, indien enigsins, die totale inkomste van die fonds gedurende daardie finansiële jaar die uitgawes aangegaan deur of toegeval tot die fonds gedurende daardie finansiële jaar, oorskry het en moet, indien die fonds se inkomste sy verpligtinge oorskry het, bepaal hoeveel van die oorskot gedurende die volgende finansiële jaar aangewend mag word vir doeleindes van die toekennings en ander betalings in artikel 12B beoog.
- 40 (2) Enige geld in die fonds wat nie onmiddellik vir doeleindes van die fonds benodig word nie, moet op die voorgeskrewe wyse belê word.

45 **Skenkings en ander betalings uit fonds**

- 12B.** (1) Die raad kan, uit die bedrag ingevolge artikel 12A deur hom bepaal en onderhewig aan die bedinge en voorwaardes wat hy goeddink—
- (a) skenkings maak met betrekking tot—
- 50 (i) navorsing in werksterreine wat vir die sake van eiendomsagente in die algemeen van belang is;
- (ii) die handhawing en bevordering van die standaard van gedrag van eiendomsagente in die algemeen;
- (iii) die handhawing en bevordering van die opleidingstandaarde van eiendomsagente in die algemeen;

- (b) make grants to any association or society of estate agents for the purposes of enabling that association or society to further the practice of estate agency or to maintain and promote the interests of estate agents in general;
 - (c) pay an honorarium or compensation to any person or institution for services with the object of enhancing the standard of conduct of estate agents in general, rendered at the request of the board; and
 - (d) utilise such amount as it may determine for the purposes of—
 - (i) advertising and promoting the services and facilities offered by estate agents in general; or
 - (ii) promoting public awareness in respect of matters relating to the acquisition and disposal of immovable property.
- (2) The board may at any time revoke any grant contemplated in subsection (1)(a) or (b).

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- Group insurance schemes**
- 12C.** (1) The board may in the public interest arrange any group insurance scheme with any insurer registered or deemed to be registered under the Insurance Act, 1943 (Act No. 27 of 1943), for the provision of indemnity insurance to cover estate agents' liability to members of the public on the grounds of malpractice, up to an amount determined by the board.
- (2) Any premium payable in respect of the insurance contemplated in subsection (1) shall be paid from the fund.”.

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Amendment of section 16 of Act 112 of 1976, as amended by section 2 of Act 53 of 1982 and section 3 of Act 40 of 1986

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7. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:

“(3) [If] Subject to sections 28(1), 28(5) and 30(6), 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 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.”; and
- (b) by the addition of the following subsection:

“(5) An estate agent who applies to the board for a fidelity fund certificate or a registration certificate, as the case may be, after the prescribed period referred to in subsection (1) or (2), or whose application is not accompanied by the levy referred to in section 9(1)(a) or the contribution referred to in section 15, as the case may be, shall pay to the board a prescribed penalty in addition to the levy or contribution and no fidelity fund certificate or registration certificate shall be issued to the estate agent until the penalty has been paid.”.

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Repeal of section 17 of Act 112 of 1976

- 8. Section 17 of the principal Act is hereby repealed.**

- 5
- (b) skenkings maak aan enige genootskap of vereniging van eiendomsagente met die doel om daardie genootskap of vereniging in staat te stel om die bedryf van die eiendomsagentskapwese uit te bou of om die belang van eiendomsagente in die algemeen te handhaaf en te bevorder;
 - (c) 'n honorarium of vergoeding betaal aan enige persoon of instelling vir dienste wat op versoek van die raad gelewer is met die doel om die standaard van gedrag van eiendomsagente in die algemeen te verhoog; en
 - 10 (d) die bedrag wat hy bepaal, aanwend vir doeleindes van—
 - (i) die bemarking en bevordering van die dienste en fasiliteite wat deur eiendomsagente in die algemeen aangebied word; of
 - (ii) die bevordering van openbare bewustheid ten opsigte van aangeleenthede betreffende die verkryging en vervreemding van onroerende goed.
- 15
- (2) Die raad kan te eniger tyd 'n skenking beoog in subartikel (1)(a) of (b) intrek.

Groepversekeringskemas

- 20
- 12C.** (1) Die raad kan in die openbare belang enige groepversekeringskema reël met enige versekeraar wat kragtens die Versekeringswet, 1943 (Wet No. 27 van 1943), geregistreer is of geregistreer geag word, vir die voorsiening van skadeloosstellingversekering om eiendomsagente se aanspreeklikheid weens wanprakteke teenoor lede van die publiek te dek tot 'n bedrag wat die raad bepaal.
- 25
- (2) Enige premie wat ten opsigte van die versekering beoog in subartikel (1) betaalbaar is, moet uit die fonds betaal word.”.

Wysiging van artikel 16 van Wet 112 van 1976, soos gewysig deur artikel 2 van Wet 53 van 1982 en artikel 3 van Wet 40 van 1986

- 30
7. Artikel 16 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (3) deur die volgende subartikel te vervang:
- 35
- “(3) [Indien] Behoudens artikels 28(1), 28(5) en 30(6), 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 nie kragtens artikel 27 onbevoeg is vir die uitreiking van 'n getrouheidsfondssertifikaat aan hom of haar 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 aansoek betrekking het.”; en
- 40
- (b) deur die volgende subartikel by te voeg:
- 45
- “(5) 'n Eiendomsagent wat by die raad aansoek doen om 'n getrouheidsfondssertifikaat of 'n registrasiesertifikaat, na gelang van die geval, na die voorgeskrewe tydperk bedoel in subartikel (1) of (2), of wie se aansoek nie vergesel gaan van die heffing bedoel in artikel 9(1)(a) of die bydrae bedoel in artikel 15, na gelang van die geval, nie, moet aan die raad 'n voorgeskrewe boete bykomstig tot die heffing of bydrae betaal en geen getrouheidsfondssertifikaat of registrasiesertifikaat word aan die eiendomsagent uitgereik nie totdat die boete betaal is.”.

50 Herroeping van artikel 17 van Wet 112 van 1976

8. Artikel 17 van die Hoofwet word hierby herroep.

Amendment of section 18 of Act 112 of 1976, as amended by section 2 of Act 60 of 1978, section 5 of Act 57 of 1980 and section 7 of Act 51 of 1984

9. Section 18 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

- "(a) theft of trust money, committed after the commencement of this Act, by an estate agent; 5
- (b) the failure of an estate agent to comply with section 32(1) or 32(2)(e)."

Substitution of section 26 of Act 112 of 1976, as substituted by section 5 of Act 40 of 1986

10. The following section is hereby substituted for section 26 of the principal Act: 10

"Prohibition of rendering of services as estate agent in certain circumstances

26. No person shall perform any act as an estate agent unless a valid fidelity fund certificate has been issued to him or her and to every person employed by him or her as an estate agent and, if such person is—

- (a) a company, to every director of that company; or**
- (b) a close corporation, to every member referred to in paragraph (b) of the definition of 'estate agent' of that corporation."**

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Amendment of section 27 of Act 112 of 1976, as amended by section 3 of Act 60 of 1978, section 7 of Act 57 of 1980, section 4 of Act 53 of 1982, section 8 of Act 51 of 1984 and section 4 of Act 10 of 1985 20

11. Section 27 of the principal Act is hereby amended—

- (a) by the substitution for subparagraph (iii) of paragraph (a) of the following subparagraph:
 "(iii) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to assume a position of trust and to be issued with a fidelity fund certificate;"; 25

- (b) by the insertion after paragraph (aA) of the following paragraph:
 "(aB) any estate agent referred to in paragraph (a) of the definition of 'estate agent' if such estate agent carries or intends to carry on business as an estate agent under a trade name which is identical or confusingly similar to the trade name of an estate agent—
 (i) already issued with a fidelity fund certificate; or
 (ii) whose fidelity fund certificate is suspended or has lapsed or been withdrawn in terms of this Act;"; and 30 35

- (c) by the substitution for the proviso to that section of the following proviso:
 "Provided that if in respect of any person who is subject to any disqualification referred to in this section, the board is satisfied that, with due regard to all the relevant considerations, the issue of a fidelity fund certificate to such person will be in the interest of justice, the board may issue, on such conditions as the board [with the concurrence of the Minister] may determine, a fidelity fund certificate to such person when he or she applies therefor." 40

Wysiging van artikel 18 van Wet 112 van 1976, soos gewysig deur artikel 2 van Wet 60 van 1978, artikel 5 van Wet 57 van 1980 en artikel 7 van Wet 51 van 1984

9. Artikel 18 van die Hoofwet word hierby gewysig deur paragrawe (a) en (b) van subartikel (1) deur onderskeidelik die volgende paragrawe te vervang:

- 5 “(a) diefstal van trustgeld, gepleeg deur 'n eiendomsagent na die inwerkingtreding van hierdie Wet;
 (b) die versuim van 'n eiendomsagent om aan artikel 32(1) of 32(2)(e) te voldoen.”.

Vervanging van artikel 26 van Wet 112 van 1976, soos vervang deur artikel 5 van Wet 40 van 1986

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

“Verbod op lewering van dienste as eiendomsagent onder sekere omstandighede”

- 15 **26.** Niemand mag enige handeling as 'n eiendomsagent verrig nie tensy 'n geldige getrouheidsfondssertifikaat aan hom of haar en aan elke persoon wat as 'n eiendomsagent in sy of haar diens is en, indien sodanige persoon—
 (a) 'n maatskappy is, aan elke direkteur van daardie maatskappy uitgereik is; of
 (b) 'n beslote korporasie is, aan elke lid bedoel in paragraaf (b) van die omskrywing van 'eiendomsagent' van daardie korporasie uitgereik is.”.

Wysiging van artikel 27 van Wet 112 van 1976, soos gewysig deur artikel 3 van Wet 60 van 1978, artikel 7 van Wet 57 van 1980, artikel 4 van Wet 53 van 1982, artikel 8 van Wet 51 van 1984 en artikel 4 van Wet 10 van 1985

11. Artikel 27 van die Hoofwet word hierby gewysig—

- (a) deur subparagraph (iii) van paragraaf (a) deur die volgende subparagraph te vervang:
 “(iii) 'n ongerehabiliteerde insolvent is ten opsigte van wie die kurator van die insolvente boedel nie gesertifiseer het dat die insolvent 'n gesikte persoon is om 'n vertrouensposisie te aanvaar en om met 'n getrouheidsfondssertifikaat uitgereik te word nie;";
 (b) deur die volgende paragraaf na paragraaf (aA) in te voeg:
 “(AB) 'n eiendomsagent bedoel in paragraaf (a) van die omskrywing van 'eiendomsagent' indien sodanige eiendomsagent 'n besigheid as 'n eiendomsagent bedryf, of beoog om te bedryf, onder 'n handelsnaam wat identies is aan of verwarrend dieselfde is as die handelsnaam van 'n eiendomsagent—
 (i) wat alreeds met 'n getrouheidsfondssertifikaat uitgereik is; of
 (ii) wie se getrouheidsfondssertifikaat opgeskort is of verväl het of ingevolge hierdie Wet ingetrek is;"; en
 (c) deur die voorbehoud by daardie artikel deur die volgende voorbehoud te vervang:
 “Met dien verstande dat indien die raad ten opsigte van iemand wat onderhewig is aan 'n onbevoegdheid bedoel in hierdie artikel, oortuig is dat, met behoorlike inagneming van al die tersaaklike oorwegings, die uitreiking van 'n getrouheidsfondssertifikaat aan so iemand in belang van geregtigheid sal wees, die raad, op die voorwaardes wat die raad [met die instemming van die Minister] bepaal, 'n getrouheidsfonds-sertifikaat aan so iemand kan uitrek wanneer hy of sy daarom aansoek doen.”.

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, section 5 of Act 10 of 1985, and section 6 of Act 40 of 1986

12. Section 28 of the principal Act is hereby amended—

- (a) by the substitution for the heading to section 28 of the following heading: “**Withdrawal and lapse of fidelity fund certificates**”; 5
- (b) by the substitution for subsection (1) of the following subsection:
 - “**(1) The board, the executive committee or a committee of inquiry** may withdraw a fidelity fund certificate issued to any person—
- (a) who has been summoned in the prescribed manner to appear before the board or any committee of inquiry if such person without just cause fails to comply with the summons and prior to the date of the appearance stated in the summons, has not been excused in writing by the board or the committee of inquiry, as the case may be, from so appearing; 10
- (b) if that person is a company or a close corporation, and the fidelity fund certificate of any director of the company or of any member of the corporation has lapsed in terms of subsection (5); 15
- (c) if such person or, if such person is a company, any director of that company or, if such person is a close corporation, any member referred to in paragraph (b) of the definition of ‘estate agent’, of that corporation, becomes subject to any disqualification referred to in section 27(a)(vi) or (vii), (aA) or (b).”;
- (c) by the substitution for subsection (5) of the following subsection:
 - “**(5) A fidelity fund certificate issued to any person shall lapse immediately and be of no force and effect if that person—**
- (a) becomes subject to any disqualification referred to in section 27(a)(i) to (v); 25
- (b) is a company or a close corporation, and the company or close corporation is being wound up, whether provisionally or otherwise, or is deregistered, as the case may be.”;
- (d) by the substitution for subsection (6) of the following subsection:
 - “**(6) Any person who is in possession or control of a fidelity fund certificate which has lapsed in terms of subsection (5) shall forthwith return that certificate to the board.**”; and
- (e) by the addition of the following subsections:
 - “(7) No person whose fidelity fund certificate has been withdrawn in terms of subsection (1) or has lapsed in terms of subsection (5), may directly or indirectly participate in the management of any business carried on by an estate agent in his or her capacity as such, or participate in the carrying on of such business, or be employed, directly or indirectly, in any capacity in such business, except with the written consent of the board and subject to such conditions as the board may determine.
 - (8) No estate agent shall directly or indirectly in any capacity whatsoever employ a person referred to in subsection (7), or allow or permit such person directly or indirectly to participate in any capacity in the management or the carrying on of his or her business as an estate agent, except with the written consent of the board, and subject to such conditions as the board may impose.”.

Amendment of section 30 of Act 112 of 1976, as amended by section 9 of Act 57 of 1980, section 10 of Act 51 of 1984, section 6 of Act 10 of 1985 and section 7 of Act 40 of 1986 50

13. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

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, artikel 5 van Wet 10 van 1985, en artikel 6 van Wet 40 van 1986

- 12.** Artikel 28 van die Hoofwet word hierby gewysig—
- 5 (a) deur die opskrif by artikel 28 deur die volgende opskrif te vervang:
“Intrekking en verval van getrouheidsfondssertifikate”;
- 10 (b) deur subartikel (1) deur die volgende subartikel te vervang:
“(1) Die raad, die uitvoerende komitee of ‘n komitee van ondersoek kan ‘n getrouheidsfondssertifikaat intrek wat uitgereik is aan ‘n persoon—
- 15 (a) wat op die voorgeskrewe wyse gedagvaar is om voor die raad of ‘n komitee van ondersoek te verskyn, indien sodanige persoon sonder gegronde rede versuim om aan die dagvaarding te voldoen en nie voor die datum van verskynning in die dagvaarding vermeld, skriftelik deur die raad of die komitee van ondersoek, na gelang van die geval, verskoon is om aldus te verskyn nie;
- 20 (b) indien daardie persoon ‘n maatskappy of beslote korporasie is, en die getrouheidsfondssertifikaat van ‘n direkteur van die maatskappy of ‘n lid van die korporasie ingevolge subartikel (5) verval het;
- 25 (c) indien sodanige 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 daardie korporasie, onderhewig raak aan ‘n onbevoegdheid bedoel in artikel 27(a)(vi) of (vii), (aA) of (b).”;
- 30 (c) deur subartikel (5) deur die volgende subartikel te vervang:
“(5) ‘n Getrouheidsfondssertifikaat wat uitgereik is aan enige persoon verval onmiddellik en is van nul en gener waarde indien daardie persoon—
- 35 (a) onderworpe raak aan enige onbevoegdheid bedoel in artikel 27(a)(i) tot (v);
(b) ‘n maatskappy of ‘n beslote korporasie is, en die maatskappy of beslote korporasie gelikwieder word, hetsy voorlopig of andersins, of gederegistreer word, na gelang van die geval.”;
- 40 (d) deur subartikel (6) deur die volgende subartikel te vervang:
“(6) Enige persoon wat in besit is van ‘n getrouheidsfondssertifikaat wat ingevolge subartikel (5) verval het, moet onverwyld daardie sertifikaat aan die raad terugbesorg.”; en
- 45 (e) deur die volgende subartikels by te voeg:
“(7) Geen persoon wie se getrouheidsfondssertifikaat ingevolge subartikel (1) ingetrek is of ingevolge subartikel (5) verval het, mag regstreeks of onregstreeks deelneem aan die bestuur van enige besigheid wat deur ‘n eiendomsagent in sy of haar hoedanigheid as sodanig bedryf word nie, deelneem aan die bedryf van sodanige besigheid, of regstreeks of onregstreeks in enige hoedanigheid in sodanige besigheid in diens wees nie, behalwe met die skriftelike toestemming van die raad en onderworpe aan die voorwaardes wat die raad bepaal.
- 50 (8) Geen eiendomsagent mag ‘n persoon bedoel in subartikel (7) regstreeks of onregstreeks in enige hoedanigheid hoegenaamd in diens neem nie, of toelaat of toestem dat sodanige persoon regstreeks of onregstreeks in enige hoedanigheid in die bestuur of die bedryf van sy of haar besigheid as ‘n eiendomsagent deelneem nie, behalwe met die skriftelike toestemming van die raad en onderworpe aan die voorwaardes wat die raad oplê.”.

Wysiging van artikel 30 van Wet 112 van 1976, soos gewysig deur artikel 9 van Wet 57 van 1980, artikel 10 van Wet 51 van 1984, artikel 6 van Wet 10 van 1985 en artikel 7 van Wet 40 van 1986

- 13.** Artikel 30 van die Hoofwet word hierby gewysig—
- 60 (a) deur paragraaf (g) van subartikel (1) deur die volgende paragraaf te vervang:

- “(g) fails to comply with any provision of section [16(1), (2) or (4)] 28(8), 29 or 32, or contravenes any provision of section 26 [or], 32A(2)(a) or (b) or 34B;”;
- (b) by the substitution for subsections (2) and (3) of the following subsections, respectively:
- “(2) The board or a committee of inquiry may in the prescribed manner bring and investigate any charge of [improper] conduct deserving of sanction against any estate agent.
- (3) When any estate agent is found guilty of [improper] conduct deserving of sanction by the board or a committee of inquiry, the board or committee of inquiry (as the case may be) may—
- (a) withdraw the fidelity fund certificate of such estate agent and—
- (i) if such estate agent is a company, of every director of such company;
- (ii) if he or she is a director of a company which is an estate agent, of such company;
- (iii) if he or she in partnership acts as an estate agent, of every partner in such partnership;
- (iv) if such estate agent is a close corporation, of every member referred to in paragraph (b) of the definition of ‘estate agent’ of that corporation; or
- (v) if he or she is a member of a close corporation which is an estate agent, of such corporation;
- (b) impose on such estate agent a fine not exceeding [one thousand rand] R25 000 or such higher amount as may be prescribed by the Minister by notice in the *Gazette* in order to counter the effect of inflation, and which is payable to the board;
- (c) reprimand such estate agent:
- Provided that a fine or any portion thereof or the withdrawal of any fidelity fund certificate may be suspended for a period not exceeding three years and on such further conditions as the board or committee of inquiry (as the case may be) may determine.”;
- (c) by the addition of the following subsections:
- “(6) If any fine referred to in subsection (3)(b) is not paid in full to the board within one month after it has been imposed, or arrangements for payment is not made to the satisfaction of the board within that period, the fidelity fund certificate of the person on whom the fine has been imposed shall be suspended immediately and be of no force and effect until the fine has been paid or the arrangements have been made.
- (7) (a) The board or, subject to paragraph (d), a committee of inquiry may, whenever a fine has been imposed on an estate agent as contemplated in subsection (3)(b), order that any portion of the fine, but not exceeding 80% of such fine, be applied towards the payment of compensation to any person who suffered a pecuniary loss as a result of the conduct of the estate agent in question.
- (b) The board shall, on receipt of the fine imposed on the estate agent in question, make the payment contemplated in paragraph (a): Provided that no such payment shall be made until all appeals in respect of the imposition of the fine have lapsed or been finalised or been abandoned.
- (c) This subsection shall not preclude any person from pursuing any civil remedy against the estate agent referred to in paragraph (a): Provided that if an award is made by a court in favour of a person who has received payment from the board as contemplated in paragraph (b), the court shall take the payment into account.
- (d) A committee of inquiry may exercise the same powers conferred on the Board under paragraph (a), provided at least one member of such committee is qualified—

- “(g) in gebreke bly om aan ’n bepaling van artikel [16(1), (2) of (4)] 28(8), 29 of 32 te voldoen, of ’n bepaling van artikel 26 [of], 32A(2)(a) of (b) of 34B oortree;”;
- (b) deur subartikels (2) en (3) deur onderskeidelik die volgende subartikels te vervang:
- “(2) Die raad of ’n komitee van ondersoek kan ’n klag weens [onbehoorlike] gedrag wat strafmaatreëls regverdig teen ’n eiendomsagent op die voorgeskrewe wyse inbring en ondersoek.
- (3) Wanneer die raad of ’n komitee van ondersoek ’n eiendomsagent aan [onbehoorlike] gedrag wat strafmaatreëls regverdig skuldig bevind, kan die raad of komitee van ondersoek (na gelang van die geval)—
- (a) die getrouheidsfondssertifikaat van daardie eiendomsagent intrek en, indien hy—
- (i) ’n maatskappy is, dié van elke direkteur van daardie maatskappy;
- (ii) of sy ’n direkteur is van ’n maatskappy wat ’n eiendomsagent is, dié van daardie maatskappy;
- (iii) of sy in vennootskap as eiendomsagent optree, dié van elkeen van sy of haar vennote;
- (iv) ’n beslote korporasie is, dié van elke lid bedoel in paragraaf (b) van die omskrywing van ‘eiendomsagent’ van daardie korporasie; of
- (v) ’n lid is van ’n beslote korporasie wat ’n eiendomsagent is, dié van daardie korporasie
- [intrek];
- (b) daardie eiendomsagent ’n boete oplê wat [**duisend rand**] R25 000, of die hoér bedrag wat deur die Minister by kennisgewing in die Staatskoerant voorgeskryf word ten einde die uitwerking van inflasie teen te werk, nie te bowe gaan nie, en wat aan die raad betaalbaar is;
- (c) daardie eiendomsagent teregwys:
Met dien verstande dat ’n boete of enige gedeelte daarvan of die intrekking van ’n getrouheidsfondssertifikaat, opgeskort mag word vir ’n tydperk van hoogstens drie jaar en onderworpe aan die verdere voorwaardes wat die raad of komitee van ondersoek (na gelang van die geval) bepaal.”;
- (c) deur die volgende subartikels by te voeg:
- “(6) Indien ’n boete bedoel in subartikel (3)(b) nie ten volle aan die raad betaal word binne een maand nadat dit opgelê is nie, of reëlings vir sodanige betaling nie binne sodanige tydperk tot bevrediging van die raad getref word nie, word die getrouheidsfondssertifikaat van die persoon wat beboet is onmiddellik opgeskort en is dit van nul en gener waarde totdat die boete of die reëlings getref is.
- (7) (a) Die raad of, behoudens paragraaf (d), ’n komitee van ondersoek kan, wanneer ’n eiendomsagent ’n boete opgelê is soos beoog in subartikel (3)(b), beveel dat ’n gedeelte van die boete, maar wat nie 80% van sodanige boete te bowe gaan nie, aangewend word ter betaling van vergoeding aan enige persoon wat geldelike verlies as gevolg van die optrede van die betrokke eiendomsagent gely het.
- (b) Die raad moet, by ontvangs van die boete wat die betrokke eiendomsagent opgelê is, die betaling beoog in paragraaf (a) maak: Met dien verstande dat geen sodanige betaling deur die raad gemaak word nie totdat alle appelle ten opsigte van die oplegging van die boete, verval het of afgehandel is of van afstand gedoen is.
- (c) Hierdie subartikel verhinder nie ’n persoon om ’n siviele geding teen die eiendomsagent bedoel in paragraaf (a) aanhangig te maak nie: Met dien verstande dat indien ’n toekenning deur ’n hof gemaak word ten gunste van ’n persoon wat betaling van die raad ontvang het soos beoog in paragraaf (b), die hof die betaling, in ag moet neem.
- (d) ’n Komitee van ondersoek kan dieselfde bevoegdhede uitoefen wat aan die Raad kragtens paragraaf (a) verleen word, met dien verstande dat minstens een lid van sodanige komitee gekwalifiseer is—

- (i) to be admitted as an advocate under the Admission of Advocates Act, 1964 (Act No. 67 of 1964);
(ii) to be admitted as an attorney under the Attorneys Act, 1979 (Act No. 53 of 1979); or
(iii) to be appointed as a magistrate under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993),
and for an uninterrupted period of at least five years practised as an advocate or attorney or occupied the post of magistrate, or for that period was involved in the tuition of law or rendered services as a legal consultant.
- (8) If an estate agent who has been charged with conduct deserving of sanction has been found—
(a) not guilty by the board or a committee of inquiry;
(b) guilty by a committee of inquiry, and the estate agent's appeal to the board in terms of section 8C against the decision or penalty is successful or partly successful,
the board may, on recommendation of the committee of inquiry concerned (if applicable), make a contribution from the fund, in the amount determined by the board, towards the costs incurred by the estate agent in respect of the hearing before the board or the committee of inquiry (as the case may be) and, if applicable, the appeal heard by the board; and
- (d) by the substitution for the words "improper conduct", wherever they occur, of the words "conduct deserving of sanction".

Substitution of section 31 of Act 112 of 1976, as amended by section 4 of Act 60 of 1978, section 10 of Act 57 of 1980 and section 11 of Act 51 of 1984

14. The following section is hereby substituted for section 31 of the principal Act:

"Appeal against decisions of board"

- 31.** (1) Any person who feels aggrieved by any decision taken by the board in the exercise of its powers under section [8B(6)], 8C, 16, 27, 28 or 30 may at any time after he or she became aware of such decision but not later than one month after the board—
(a) has informed him or her in writing of such decision and upon payment of the prescribed fees, request the board in writing to furnish him or her in writing with its reasons for such decision;
(b) has in accordance with paragraph (a) furnished him or her with its reasons for such decision and after notice to the board, appeal to the court against such decision, and the court may thereupon—
(i) dismiss the said appeal;
(ii) if it is of the opinion that the board has not acted in accordance with the relevant provision of this Act, give an order opposite to the decision of the board or amending the decision of the board;
(iii) refer the matter back to the board for further consideration; or
(iv) give such other order, including any order as to costs, as it may deem fit.
- (2) A court may, on application by the board, order that a decision of, or penalty imposed by, the board not be stayed or suspended pending an appeal to the court under the provisions of this section, if the court considers such an order to be in the public interest.”.

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, section 12 of Act 51 of 1984 and section 8 of Act 40 of 1986

15. Section 32 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

- (i) om toegelaat te word as 'n advokaat kragtens die Wet op die Toelating van Advokate, 1964 (Wet No. 67 van 1964);
 (ii) om toegelaat te word as 'n prokureur kragtens die Wet op Prokureurs, 1979 (Wet No. 53 van 1979); of
 5 (iii) om aangestel te word as 'n landdros kragtens die Wet op Landdroshewe, 1944 (Wet No. 32 van 1944), saamgelees met artikel 10 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), en vir 'n ononderbroke tyd van ten minste vyf jaar as advokaat of prokureur gepraktiseer het of die pos van landdros beklee het, of vir daardie tydperk by die onderrig van die regte betrokke was of dienste as regskonsultant gelewer het.
- 10 (8) Indien 'n eiendomsagent wat aangekla is van gedrag wat strafmaatreëls regverdig—
 (a) onskuldig bevind word deur die raad of 'n komitee van ondersoek;
 15 (b) skuldig bevind word deur 'n komitee van ondersoek, en sodanige eiendomsagent se appèl ingevolge artikel 8C teen die beslissing of straf slaag of gedeeltelik slaag,
 kan die raad, op aanbeveling van die betrokke komitee van ondersoek (indien van toepassing), 'n bydrae, in die omvang deur die raad bepaal, uit die fonds maak tot die koste wat deur die eiendomsagent aangegaan is ten opsigte van die verhoor deur die raad of die komitee van ondersoek (na gelang van die gevval) en, indien van toepassing, die appèl wat deur die raad aangehoor is."; en
- 20 (d) deur die woorde "onbehoorlike gedrag", waar dit ook al voorkom, deur die woorde "gedrag wat strafmaatreëls regverdig" te vervang.
- 25

Vervanging van artikel 31 van Wet 112 van 1976, soos gewysig deur artikel 4 van Wet 60 van 1978, artikel 10 van Wet 57 van 1980 en artikel 11 van Wet 51 van 1984

14. Artikel 31 van die Hoofwet word hierby deur die volgende artikel vervang:

"Appèl teen sekere besluite van raad

- 30 31. (1) Iemand wat hom veronreg voel deur 'n besluit wat die raad by die uitoefening van sy bevoegdhede kragtens artikel [8B(6)] 8C, 16, 27, 28 of 30 geneem het, kan te eniger tyd nadat hy of sy van daardie besluit bewus geword het maar nie later nie as een maand nadat die raad—
 (a) hom of haar skriftelik van daardie besluit in kennis gestel het en teen betaling van die voorgeskrewe gelde, die raad skriftelik versoek om sy redes vir daardie besluit skriftelik aan hom of haar te verstrek;
 35 (b) sy redes vir daardie besluit ooreenkomsdig paragraaf (a) aan hom of haar verstrek het en na kennismetting aan die raad, na die hof teen daardie besluit appelleer, en daarop kan die hof—
 (i) bedoelde appèl van die hand wys;
 (ii) indien hy van oordeel is dat die raad nie ooreenkomsdig die betrokke bepaling van hierdie Wet gehandel het nie, 'n bevel gee wat teenoorgesteld is aan die besluit van die raad of wat die besluit van die raad wysig;
- 40 (iii) die saak vir verdere oorweging na die raad terugverwys; of
 (iv) die ander bevel gee, met inbegrip van 'n bevel aangaande koste, wat hy dienstig ag.
- 45 (2) 'n Hof kan op aansoek deur die raad beveel dat 'n besluit van, of straf opgelê deur, die raad nie uitgestel of opgeskort word hangende 'n appèl na die hof kragtens die bepaling van hierdie artikel nie, indien die hof sodanige bevel ag in die openbare belang te wees."
- 50

Wysiging van artikel 32 van Wet 112 van 1976, soos gewysig deur artikel 5 van Wet 60 van 1978, artikel 11 van Wet 57 van 1980, artikel 12 van Wet 51 van 1984 en artikel 8 van Wet 40 van 1986

- 55 15. Artikel 32 van die Hoofwet word hierby gewysig—
 (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Every estate agent shall open and keep one or more separate trust accounts, which shall contain a reference to this section, with a bank [or building society] and such estate agent or his or her employee, as the case may be, shall forthwith deposit therein [the moneys] all trust money held or received by [him in his capacity as an] or on behalf of such estate agent [or as an employee of such estate agent, on 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.”;

(b) by the addition to subsection (2) of the following paragraph: 10

“(e) Trust money in an account invested in terms of paragraph (a) or deposited in terms of subsection (1) shall be retained by the estate agent in question in that account until the estate agent is lawfully entitled to it or instructed to make payment therefrom to any person.”; and

(c) by the addition to subsection (3) of the following paragraph: 15

“(c) administer the accounts referred to in subsections (1) and (2)(a) in the prescribed manner.”.

Amendment of section 32A of Act 40 of 1986

16. Section 32A is hereby amended by the substitution for the words “improper conduct”, wherever they occur, of the words “conduct deserving sanction”. 20

Amendment of section 33 of Act 112 of 1976, as amended by section 6 of Act 60 of 1978, section 13 of Act 57 of 1980 and section 9 of Act 40 of 1986

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

(a) by the insertion in subsection (1) after paragraph (e) of the following paragraph: 25

“(eA) prescribing the penalty payable to the board in terms of section 16(5);”;

(b) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

“(h) prescribing the manner in which a charge of [improper] conduct deserving of sanction against any estate agent shall be brought and investigated and the manner in which a person must be summoned to appear before a committee of inquiry or the board.”; and 30

(c) by the insertion in subsection (1) after paragraph (j) of the following paragraphs: 35

“(jA) prescribing the manner in which any account referred to in section 32(3)(c) shall be administered;

“(jB) prescribing the procedure to be followed in respect of an appeal to the board and the manner in which the appeal must be heard.”.

Substitution of section 34A of Act 112 of 1976

40

18. The following section is hereby substituted for section 34A of the principal Act:

“Estate agent not entitled to remuneration in certain circumstances

34A. (1) No estate agent shall be entitled to any remuneration or other payment in respect of or arising from the performance of any act referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of ‘estate agent’, unless at the time of the performance of the act a valid fidelity fund certificate has been issued—

(a) to such estate agent; and

(b) if such estate agent is a company, to every director of such company or, if such estate agent is a close corporation, to every member referred to in paragraph (b) of the definition of ‘estate agent’ of such corporation. 50

- “(1) Elke eiendomsagent moet een of meer aparte trustrekeninge, wat ’n verwysing na hierdie artikel moet bevat, by ’n bank [**of bougenootskap**] open en hou en sodanige eiendomsagent, of sy of haar werkgewer werknemer, na gelang van die geval, moet onverwyld daarin [**die geld**] alle trustgeld stort wat [**hy in sy hoedanigheid van eiendomsagent of van werknemer van so ’n eiendomsagent, ten behoeve van enige persoon hou**] deur of namens sodanige eiendomsagent gehou of ontvang word en die naam van sodanige bank [**bougenootskap**] en die nommer van elke sodanige trustrekening onverwyld aan die raad verstrek.”;
- (b) deur die volgende paragraaf by subartikel (2) te voeg:
- “(e) Trustgeld in ’n rekening wat ingevolge paragraaf (a) belê of ingevolge subartikel (1) gestort is, moet deur die betrokke eiendomsagent in daardie rekening gehou word totdat die eiendomsagent regtens daarop geregtig is of opdrag gegee word om betaling daaruit aan ’n persoon te maak.”; en
- (c) deur die volgende paragraaf by subartikel (3) te voeg:
- “(c) die rekeninge bedoel in subartikels (1) en (2)(a) op die vooreskreve wyse administreer.”.

20 Wysiging van artikel 32A van Wet 40 van 1986

16. Artikel 32A van die Hoofwet word hierby gewysig deur die woorde “onbehoorlike gedrag”, waar dit ook al voorkom, deur die woorde “gedrag wat strafmaatreëls regverdig” te vervang.

Wysiging van artikel 33 van Wet 112 van 1976, soos gewysig deur artikel 6 van Wet 60 van 1978, artikel 13 van Wet 57 van 1980 en artikel 9 van Wet 40 van 1986

17. Artikel 33 van die Hoofwet word hierby gewysig—
- (a) deur in subartikel (1) na paragraaf (e) die volgende paragraaf in te voeg:
- “(eA) wat die boete voorskryf wat aan die raad kragtens artikel 16(5) betaalbaar is;”;
- (b) deur paragraaf (h) van subartikel (1) deur die volgende paragraaf te vervang:
- “(h) wat die wyse voorskryf waarop ’n aanklag van [**onbehoorlike**] gedrag wat strafmaatreëls regverdig teen ’n eiendomsagent ingebring en ondersoek moet word en die wyse waarop ’n persoon gedagvaar moet word om voor ’n komitee van ondersoek of die raad te verskyn.”; en
- (c) deur in subartikel (1) na paragraaf (j) die volgende paragrawe in te voeg:
- “(jA) wat die wyse voorskryf waarop ’n rekening bedoel in artikel 32(3)(c) geadministreer moet word;
- (jB) wat die prosedure voorskryf wat gevolg moet word ten opsigte van ’n appèl na die raad en die wyse waarop die appèl aangehoor moet word.”.

Vervanging van artikel 34A van Wet 112 van 1976

18. Artikel 34A van die Hoofwet word hierby deur die volgende artikel vervang:

“**Eiendomsagent onder sekere omstandighede nie op vergoeding geregtig nie**

- 34A. (1) Geen eiendomsagent is geregtig op enige vergoeding of ander betaling ten opsigte van of voortspruitend uit die verrigting van enige handeling bedoel in subparagraaf (i), (ii), (iii) of (iv) van paragraaf (a) van die omskrywing van ‘eiendomsagent’ nie, tensy ’n geldige getrouheidsfondssertifikaat ten tyde van die verrigting van sodanige handeling uitgereik was aan—
- (a) sodanige eiendomsagent; en
- (b) indien sodanige eiendomsagent ’n maatskappy is, aan elke direkteur van sodanige maatskappy of, indien sodanige eiendomsagent ’n beslote korporasie is, aan elke lid bedoel in paragraaf (b) van die omskrywing van ‘eiendomsagent’ van sodanige korporasie.

(2) No person referred to in paragraph (c)(ii) of the definition of ‘estate agent’, and no estate agent who employs such person, shall be entitled to any remuneration or other payment in respect of or arising from the performance by such person of any act referred to in that paragraph, unless at the time of the performance of the act a valid fidelity fund certificate has been issued to such person.”.

5

Insertion of section 34B in Act 112 of 1976

19. The following section is hereby inserted in the principal Act after section 34A:

“Prohibition of completion of documents by certain estate agents

34B. (1) An estate agent who has not complied with the prescribed standard of training may not in his or her capacity as an estate agent draft or complete any document or clause in a document—
 (a) conferring any mandate on any estate agent to perform any act referred to in paragraph (a) of the definition of ‘estate agent’; or
 (b) relating to the sale or lease of immovable property.

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(2) Any estate agent who contravenes subsection (1) shall not be entitled to any payment, remuneration or damages in respect of or by reason of any document contemplated in that subsection or for bringing about the transaction or agreement embodied in that document.”.

15

Substitution of section 37 of Act 112 of 1976

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20. The following section is hereby substituted for section 37 of the principal Act:

“Short title and commencement

37. This Act shall be called the Estate [Agents] Agency Affairs Act, 1976 [and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette*].”.

25

Substitution of long title of Act 112 of 1976

21. The following long title is hereby substituted for the long title of the principal Act:
 “To provide for the establishment of an Estate [Agents] Agency Affairs Board and an Estate Agents Fidelity Fund; for the control of certain activities of estate agents in the public interest; and for incidental matters.”.

30

Short title and commencement

22. This Act shall be called the Estate Agents Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

5 (2) Geen persoon bedoel in paragraaf (c)(ii) van die omskrywing van 'eiendomsagent', en geen eiendomsagent wat so 'n persoon in diens neem, is geregtig op enige vergoeding of ander betaling ten opsigte van of voortspruitend uit die verrigting deur sodanige persoon van enige handeling bedoel in daardie paragraaf nie, tensy 'n geldige getrouheidsfondsertifikaat ten tyde van die verrigtinge van die handeling aan sodanige persoon uitgereik was.”.

Invoeging van artikel 34B in Wet 112 van 1976

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

10 **“Verbod op voltooiing van dokumente deur sekere eiendomsagente**

34B. (1) 'n Eiendomsagent wat nie aan die voorgeskrewe standaard van opleiding voldoen het nie mag nie in sy of haar hoedanigheid as eiendomsagent 'n dokument of klousule in 'n dokument opstel of voltooi nie—

15 (a) wat aan 'n eiendomsagent 'n mandaat verleen om enige handeling bedoel in paragraaf (a) van die omskrywing van 'eiendomsagent' te verrig; of

(b) wat op die verkoop of verhuur van onroerende goed betrekking het.

20 (2) 'n Eiendomsagent wat subartikel (1) oortree, is nie geregtig op enige betaling, vergoeding of skadevergoeding ten opsigte van of uit hoofde van 'n dokument beoog in daardie subartikel of vir die totstandbrenging van die transaksie of ooreenkoms beliggaam in daardie dokument nie.”.

Vervanging van artikel 37 van Wet 112 van 1976

20. Artikel 37 van die Hoofwet word hierby deur die volgende artikel vervang:

25 **“Kort titel en inwerkingtreding**

37. Hierdie Wet heet die Wet op [Eiendomsagente] Eiendomsagent-skapsaangeleenthede, 1976 [en die bepalings daarvan tree in werking op 'n datum wat die Staatspresident by proklamasie in die Staatskoerant bepaal].”.

30 **Vervanging van lang titel van Wet 112 van 1979**

21. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:

“Om voorsiening te maak vir die instelling van 'n Raad vir [Eiendomsagente] Eiendomsagentskapsaangeleenthede en 'n Eiendomsagente-getrouheidsfonds; vir die beheer van sekere bedrywighede van eiendomsagente in die openbare belang; en vir bykomstige aangeleenthede.”.

Kort titel en inwerkingtreding

22. Hierdie Wet heet die Wysigingswet op Eiendomsagente, 1998, en tree in werking op 'n datum wat die President by proklamasie in die Staatskoerant bepaal.

