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GENERAL NOTICE

NOTICE 3433 OF 2002

ESTATE AGENCY AFFAIRS ACT, 1976 (ACT NO. 112 OF 1976) APPEAL REGULATIONS

I, Alexander Erwin, the Minister of Trade and Industry do hereby publish for general comment the appeal regulations to the Estate Agency Affairs Act (Act No 112 of 1976) as contained in the schedule hereto

Interested persons are invited to submit written comments within a period of 21 days from the date of this notice to:

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PROCEDURE TO BE FOLLOWED IN RESPECT OF AN APPEAL TO THE ESTATE AGENCY AFFAIRS BOARD AND THE MANNER IN WHICH THE APPEAL MUST BE HEARD

The Minister of Trade and Industry has, after consultation with the Estate Agency Affairs Board, under section 33(1)(jB) of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act, has that meaning, and—
“appellant” means the person referred to in section 8C(1) of the Act;
“case presenter” means the person appointed or designated in terms of regulation 5(1);
“code of conduct” means the code of conduct referred to in section 8(b) of the Act;

"complainant" means the person who lodged the complaint with the Board that gave rise to the proceedings before the committee of inquiry;

"date of the appeal hearing" means the date determined in terms of regulation 3(1);

"estate agent charged" means the estate agent who appeared before the committee of inquiry on a charge of conduct deserving of sanction;

"notice of appeal" means the notice referred to in regulation 2(1);

"record" means the record of the proceedings before the committee of inquiry;

"the Act" means the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976).

Notice of appeal

2. (1) The appellant must deliver to the Board a notice, dated and signed by the appellant, containing the following particulars:

(a) the name, postal address, telephone number and facsimile number (if any) of the appellant;

(b) the place where and the date(s) when the appellant appeared before the committee of inquiry and, if known, the case reference number;

(c) whether the appeal is lodged in respect of—

(i) the decision finding the estate agent charged not guilty of conduct deserving of sanction;

(ii) the decision finding the estate agent guilty of conduct deserving of sanction;

(iii) the penalty imposed by the committee of inquiry;

(iv) the order made in terms of section 30(7)(a) of the Act;

(v) the decision not to make an order contemplated in section 30(7)(a) of the Act;

(vi) any other aspect of the committee of inquiry's decision or the proceedings thereat, not mentioned above;

(d) the decision sought from the Estate Agency Affairs Board; and

(e) whether or not the appellant requires a copy of the record or a transcription thereof.

(2) If applicable, the notice of appeal must be accompanied by—

(a) the deposit referred to in section 8C(3)(a) of the Act; and

(b) the amount determined by the Board from time to time as a charge for the furnishing of a copy of the record or a transcription thereof.

- (3) The notice of appeal must be delivered to the Board not later than 30 days after the committee of inquiry has furnished the appellant with the reasons for its decision.
- (4) The Board must after receipt of the notice of appeal deliver a copy thereof to—
 - (a) the estate agent charged, where such estate agent is not the appellant; and
 - (b) the complainant, where the complainant is not the appellant.
- (5) The appeal is deemed to be lodged on the date that the Board receives the notice of appeal.
- (6) A notice not containing the particulars referred to in sub-regulation (1) or, if applicable, not accompanied by the amount or deposit referred to in sub-regulation (2), is not a valid notice of appeal and delivery thereof to the Board has no effect.

Determination of date of the appeal hearing and invitation to attend

3. The Board must—

- (1) after receipt of the notice of appeal determine the date on which the appeal will be heard, such date to be not later than 120 days after the appeal has been lodged;
- (2) in writing notify the appellant and the estate agent charged (where such estate agent is not the appellant) of the date of the appeal hearing and invite them to be present at the hearing to submit oral or written arguments to the Board should they wish to do so;
- (3) invite the complainant to attend the appeal hearing, where the complainant is not the appellant.

Summary of arguments

4. (1) The appellant must not later than 30 days after the date of the notice of appeal or, if applicable, the date on which the appellant has been furnished with a copy of the record or a transcription thereof (whichever is the latest), deliver to the Board a summary in which the appellant explains the reasons for the appeal.
- (2) The summary referred to in sub regulation (1) must, where applicable, —
 - (a) refer to the relevant page numbers of the record and the document containing the committee of inquiry's reasons for its decision;

- (b) clearly state whether, in the appellant's opinion, the committee of inquiry—
 - (i) wrongly applied the law;
 - (ii) erred in how it interpreted the facts;
 - (iii) wrongly applied the code of conduct.
- (3) Where the appellant is not the estate agent charged, the Board must—
 - (a) upon receipt of the summary referred to in subregulation (1) deliver a copy thereof to such estate agent;
 - (b) invite such estate agent to furnish the Board with a reply within 21 days after delivery of the copy of the summary, should the estate agent wish to do so; and
 - (c) furnish the appellant with a copy of the reply, if any, referred to paragraph (b).
- (4) If the appellant fails to deliver to the Board the summary contemplated in subregulation (1) the notice of appeal referred to in regulation (2) lapses.

Board's powers and duties in respect of appeal

5. The Board—

- (1) may appoint any person, or designate any staff member of the Board, to appear at the hearing of the appeal to counter the appellant's case or to perform such other function as the Board may direct;
- (2) must make a copy of the record or a transcription thereof available to any person, provided such person has requested a copy in writing and paid to the Board the amount referred to in regulation 2(2)(b); and
- (3) may for the proper performance of its functions in terms of these regulations obtain such legal or other advice as it may deem necessary or expedient.

Duties of the case presenter

- 6. The case presenter, if appointed, must not less than 21 days before the date of the appeal hearing deliver to the appellant and, in cases where they are not the appellant, the estate agent charged and the complainant, a memorandum containing—
 - (a) a reply to the appellant's summary referred to in regulation 4(1);

- (b) a response to the reply (if any) furnished by the estate agent charged as contemplated in regulation 4(3)(b); and
- (c) what order, in the case presenter's view, the Board should make in the circumstances.

Hearing of appeal

7. (1) The appeal takes the form of a reconsideration of the merits of the charge faced by the estate agent before the committee of inquiry, but confined to the record.

(2) Neither the appellant nor the estate agent charged (where such estate agent is not the appellant) may introduce new facts or legal arguments not raised before the committee of inquiry.

(3) The appellant, the estate agent charged and the complainant may attend the hearing of the appeal, with or without a legal representative, or be represented by a legal representative.

(4) At the hearing the Board must give the appellant the first opportunity to present argument in support of the appeal, if the appellant is present or represented, whereafter the Board must allow—
 - (a) the estate agent charged the opportunity to reply (where such estate agent is not the appellant), if such estate agent is present at the hearing or represented; and
 - (b) the case presenter (if appointed) to make submissions to the Board.
- (5) The Board may put questions to the appellant, the complainant and the estate agent charged (if they are present at the hearing or represented) on any matter relevant to the appeal.
- (6) The chairperson at the appeal hearing may give directions in respect of the procedure to be followed at the hearing of the appeal, with due regard to the principles of natural justice.
- (7) No member of the Board who was a member of the committee of inquiry may participate in any manner in the appeal hearing or be present thereat.
- (8) The Board may proceed with the hearing in the absence of the appellant, the estate agent charged and the complainant if any of them for whatever reason fails to attend the appeal hearing after having been invited by the Board to do so in terms of regulation 3.

Decision of the Board

8. (1) The Board must arrive at a decision referred to in section 8C(2) of the Act, having regard to all relevant considerations including—
- (a) the arguments and submissions presented to it at the hearing, if any;
 - (b) the record;
 - (c) the papers referred to in regulations 2(1), 4(1), 4(3)(c) and 6;
 - (d) the reasons given by the committee of inquiry for its decision;
 - (e) the replies given to the questions (if any) put by the Board to the appellant, the estate agent charged and the complainant (as the case may be); and
 - (f) legal or other advice obtained in terms of regulation 5(3).
- (2) The Board's decision shall be conveyed in writing to the appellant, the estate agent charged and the complainant (as the case may be).

Service and delivery of notices

9. (1) All documents and notices to be delivered or sent by the Board in terms of these regulations shall be effectively served if delivered personally or sent by post—
- (a) in the case of the appellant, to the appellant's postal address stated in the notice of appeal;
 - (b) in the case of the estate agent charged (if such estate agent is not the appellant), to the estate agent's address on record with the Board;
 - (c) in the case of the complainant (if the complainant is not the appellant), to the address last known to the Board, unless such party has in writing furnished the Board with another address to be used for such purpose, in which case all documents and notices shall be effectively served if sent by post to such address.
- (2) For the purposes of these regulations any document or notice—
- (a) delivered by hand is deemed to be received on the date of delivery;
 - (b) sent by registered post is deemed to be received on the fourth day after the postmarked date upon the receipt for registration, unless the contrary appears.

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