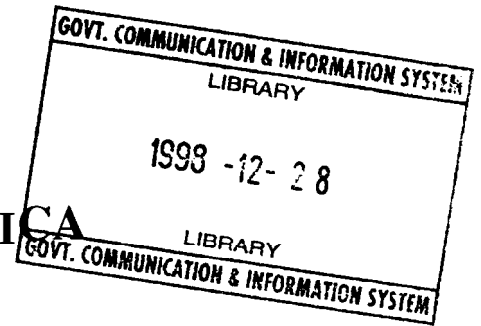




REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

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No. 19413

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:

- [1 Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(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:—

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;

- (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.”

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 10

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 15

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.” 20

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, 35

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 40

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—

- (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. 5
- (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; 10
- (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); 15
- (e) make an order contemplated in section 30(7)(u).
- (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, 20
- (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.”. 25

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 30

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. 35

(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 40

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- 45
- (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;

- (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 5
- (d) utilise such amount as it may determine for the purposes of— 10
- (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).

Group insurance schemes 15

- 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. 20
- (2) Any premium payable in respect of the insurance contemplated in subsection (1) shall be paid from the fund." 25

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 25

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.”; 30 35

- (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.” 40 45

Repeal of section 17 of Act 112 of 1976

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 Section 17 of the principal Act is hereby repealed.

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— 15
 (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.”.

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

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— 30
 (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;” 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

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: 5
“Withdrawal and lapse of fidelity fund certificates”;

(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 10
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;

(b) if that person is a company or a close corporation, and the fidelity fund 15
certificate of any director of the company or of any member of the
corporation has lapsed in terms of subsection (5);

(c) if such person or, if such person is a company, any director of that 20
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 25
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 30
(v);

(b) is a company or a close corporation, and the company or close 30
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: 35

“(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, 40
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 45
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:

“(g) fails to comply with any provision of section **[16(1), (2) or (4)]** ^{1 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 ¹⁰
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, ¹⁵
of such company;

(iii) if he or sbe 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 ²⁰
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 ²⁵
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 ³⁰
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 ³⁵
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 ⁴⁰
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. ⁴⁵

(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 ⁵⁰
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 ⁵⁵
the Board under paragraph (a), provided at least one member of such
committee is qualified—

- (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:

“(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— 45

(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

(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— 10
 (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. 15
 (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. " 20

Substitution of section 37 of Act 112 of 1976

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*.